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Racism, xenophobia and related intolerance



Racist and xenophobic reactions towards refugees, asylum seekers and migrants persisted across the EU in 2016. Muslims experienced growing hostility and intolerance, while discrimination and anti-Gypsyism continued to affect many Roma. The European Commission set up a High Level Group on combating racism, xenophobia and other forms of intolerance to support national efforts in this area, as well as to counter hate crime and hate speech. EU Member States targeted hate crime in diverse ways, reviewing classifications of bias motivations, conducting awareness-raising campaigns and providing specialised training to law enforcement officers and prosecutors. Meanwhile, the European Commission continued to monitor implementation of the Racial Equality Directive. Recurring challenges include various impediments to equality bodies' effectiveness and independence, discriminatory ethnic profiling and a lack of national action plans to fight racism.

3.1. Refugees, asylum seekers and migrants remain targets of racism and xenophobia

Racist and xenophobic reactions to the arrival of refugees, asylum seekers and migrants in the EU, which had marked 2015, continued unabated in 2016. These included hate speech, threats and hate crimes. Where perpetrators could be identified, they were most often – but not exclusively – found to be extreme right-wing sympathisers (for more information on asylum, migration and integration, see Chapter 5).

For example, vigilante groups with ties to right-wing extremist groups violently attacked and harassed asylum seekers and migrants in **Bulgaria, Finland, Germany, Greece, Hungary and Sweden**.¹ In **Bulgaria and Poland**, some authority figures welcomed such groups patrolling areas with large numbers of refugees and asylum seekers, as FRA noted in its November 2016 monthly report on the migration situation in the EU. The available evidence indicates that right-wing

extremists, members of the general population and those with minority ethnic or religious backgrounds can all be perpetrators of racist and xenophobic violence.²

Germany remains the EU Member State that collects the most comprehensive data on hate crime targeting asylum seekers, their accommodation centres or organisations that work for their benefit. The authorities recorded 2,545 hate crimes targeting asylum seekers and refugees between 1 January and 31 December 2016, with another 988 targeting asylum seekers' accommodation and 217 targeting help organisations or volunteers. Nearly all of the identified perpetrators were right-wing extremists.³

Data from the **Netherlands** show that 53 crimes with a discriminatory motive targeting refugees were brought to the attention of the police in 2015. Most of these crimes were recorded in the context of protests against planned asylum seeker centres.⁴ In **Finland**, 15 attacks against reception centres were registered by the police in 2015, including arson.⁵ No data were available for 2016 at the time of writing for either Finland or the Netherlands.

Promising practice

Holding workshops on hate speech and migration

A project, run by the Peace Institute–Institute for Contemporary Social and Political Studies in **Slovenia**, educates young people about hate speech against migrants through workshops at schools. Students first analyse particular cases of hate speech and discuss its effects and potential responses to it. The second part entails a discussion with a person with a migrant background. The main objective is for students to be able to recognise hate speech and set it in the context of migration, human rights and intercultural dialogue. The project is financed by the state budget.

For more information, see The Peace Institute, Institute for Contemporary Social and Political Studies, 'Workshops on hate speech and migration' (Delavnice o sovražnem govoru in migracijah)

Human rights activists, politicians and journalists perceived as 'pro-refugee' were also targeted by extreme right-wing sympathisers in 2016. The most brutal example is perhaps the murder of Jo Cox, a Member of Parliament in the **United Kingdom**, who was shot and stabbed to death in June. The presiding judge noted during sentencing that "[t]here is no doubt that this murder was done for the purpose of advancing a political, racial and ideological cause namely that of violent white supremacy and exclusive nationalism most associated with Nazism and its modern forms", adding that this "is one of the indices of an offence of exceptionally high seriousness for which the appropriate starting point is a whole life term".⁶

Muslims also experienced more hostility and intolerance across the EU in 2016, increasingly perceived as terrorists or sympathisers of terrorism. For example, a survey by the Pew Research Center shows that many Europeans perceive migration as being linked to the threat of terrorism.⁷ On average, in the 10 EU Member States surveyed, 59 % of respondents believe that the presence of refugees in their country increases the likelihood of terrorist attacks. The Member States surveyed were **France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Spain, Sweden** and the **United Kingdom**.

"In some parts of Europe, and in the United States, anti-foreigner rhetoric full of unbridled vitriol and hatred, is proliferating to a frightening degree, and is increasingly unchallenged. The rhetoric of fascism is no longer confined to a secret underworld of fascists, meeting in ill-lit clubs or on the 'Deep Net.' It is becoming part of normal daily discourse."

Zeid Ra'ad Al Hussein, UN High Commissioner for Human Rights (2016), "Human rights "under unprecedented pressure" world-wide: Zeid calls on people to stand up for rights of others"

There is no concrete evidence that terrorists systematically use the movements of refugees to enter the EU undetected – though isolated cases were identified, as Europol notes.⁸ Nevertheless, some political actors continued to exploit such perceptions to further their agendas in 2016, just as in 2015. For example, the Prime Minister of **Hungary** claimed before a referendum on EU quotas for the relocation of asylum seekers that "migration poses a threat, increases terrorism and increases crime. Mass migration fundamentally changes Europe's cultural make-up. Mass migration destroys national culture."⁹ In **Slovakia**, the Prime Minister stated in May 2016 that "Islam has no place in Slovakia",¹⁰ and the President of the **Czech Republic** said in January that "it is basically impossible to integrate Muslim communities".¹¹

The potential negative impact of such rhetoric is perhaps best illustrated by reactions that followed the **United Kingdom's** referendum on its continued membership in the EU. The National Police Chiefs' Council stressed that "[p]olice forces are working closely with their communities to maintain unity and tolerance and prevent any hate crime or abuse following the EU referendum. [...] We are seeing an increase in reports of hate crime incidents to True Vision, the police online hate crime reporting site."¹² In the four days following the referendum, 57 % more hate crimes were reported to the police than in the same four-day period during the previous month.¹³ Data published by the Home Office in October 2016 further show that there was a clear increase in the number of racially or religiously aggravated offences recorded by the police following the referendum.¹⁴

3.2. EU steps up efforts to counter hate speech and hate crime

The Framework Decision on Racism and Xenophobia penalises racist and xenophobic hate speech and hate crime.¹⁵ In December 2015, the European Commission initiated formal inquiries with Member States in which major transposition gaps remained, with a view to launching infringement proceedings where necessary. This prompted notable legislative developments in **Cyprus**,¹⁶ **France**,¹⁷ **Hungary**,¹⁸ **Ireland**,¹⁹ **Italy**²⁰ and **Slovakia**.²¹

Italy introduced legislative provisions on hate speech and propaganda based on racial and ethnic grounds, an explicit reference to Holocaust denial, crimes of genocide, crimes against humanity and war crimes, providing for a penalty of two to six years of detention. In **France**, a bill making racism, antisemitism and homophobia general aggravating circumstances was under scrutiny in the Senate in 2016. It proposes raising

the maximum punishment for racist or discriminatory insults (currently six months and € 22,500) to the same level as that for provocation and racist or discriminatory slander (one year and € 45,000).

Hungary amended its criminal code provisions relating to the offence of 'incitement against a community' to comply with the Framework Decision on Racism and Xenophobia. Similarly, **Slovakia** amended its Criminal Code of Criminal Procedure. Pursuant to the changes, all trials for racist and extremist crimes will be handled by a Special Criminal Court. The amendments also introduce a new type of crime: apartheid and discrimination of a group of people.

In addition to its enforcement actions in 2016, the EU stepped up its efforts to counter hate crime and hate speech in various ways – thereby following up directly on the conclusions of the first Annual Colloquium on Fundamental Rights, which focused on combating antisemitism and anti-Muslim hatred.²³ In April, the European Commission set aside € 7,325,000 for grants²⁹ that meet the objective of combating racism, xenophobia, homophobia and other forms of intolerance under the Rights, Equality and Citizenship Programme.²⁴

Priority funding areas include grassroots projects on preventing and combating antisemitism and anti-Muslim hatred and intolerance; projects promoting the development of tools and practices to prevent, monitor and combat online hate speech; and projects fostering understanding between (religious) communities, and preventing and combating racism and xenophobia through interreligious and intercultural activities. A further € 1,500,000 were earmarked to promote the exchange of best practices on preventing and combating hate crimes among public authorities.

Such exchanges are at the core of the EU High Level Group on combating racism, xenophobia and other forms of intolerance, which the European Commission set up in June.²⁵ The group aims to facilitate the exchange and dissemination of best practices between national authorities to better prevent and combat hate crime and hate speech; foster thematic discussions on gaps, challenges and responses; strengthen cooperation and synergies between key stakeholders, with the ultimate aim of providing guidance to Member States on how to better prevent and combat hate crime and hate speech; and examine national strategies that exist to combat racism, xenophobia and other forms of intolerance.

The high level group brings together all 28 Member States, civil society organisations, community representatives, FRA and other relevant EU agencies, as well as international organisations including the UN, the Organization for Security and Co-operation in Europe and the Council of Europe. It is composed of two

subgroups, with one focusing on countering online hate speech and the other on methodologies for recording and collecting data on hate crime. These subgroups will operate for an initial period of two years.

3.2.1. EU tackles hate speech on social media

With many people using social media platforms as their main sources of information, addressing online hate speech is crucial. As FRA noted in its contribution to the second Annual Colloquium on Fundamental Rights, (unverified) statements posted online can go viral almost instantly and may incite hatred.²⁶ Challenging and removing them is difficult. This can have a corrosive effect, especially when such content is amplified and alternative views are seldom, if ever, expressed.

The European Commission coordinates the subgroup on online hate speech under the High Level Group on combating racism, xenophobia and other forms of intolerance.²⁷ This subgroup aims, among others, to assess the implementation of a voluntary code of conduct on countering illegal hate speech online, agreed in May 2016 between the Commission and four information technology (IT) companies: Facebook, Twitter, Microsoft and YouTube. Though strongly criticised by organisations defending freedom of expression and information,²⁸ the code of conduct was well received by Member States and civil society organisations active in the field of tackling online hate speech. Some civil society organisations working on digital rights and freedom were also critical, citing concerns about private legal entities – such as social media platforms – acting as arbiters between competing fundamental rights. The code of conduct sets out that these companies shall review, remove or disable illicit content within 24 hours of receiving a valid removal notification from users.²⁹

"[T]o prevent the spread of illegal hate speech, it is essential to ensure that relevant national laws transposing the Council Framework Decision 2008/913/JHA are fully enforced by Member States in the online as well as the in the offline environment. While the effective application of provisions criminalising hate speech is dependent on a robust system of enforcement of criminal law sanctions against the individual perpetrators of hate speech, this work must be complemented with actions geared at ensuring that illegal hate speech online is expeditiously acted upon by online intermediaries and social media platforms, upon receipt of a valid notification, in an appropriate time-frame."

European Commission (2016), Code of Conduct on Countering Illegal Hate Speech Online, pp. 1-2

Although monitoring online content under the code of conduct is a continuous process, results are available for the first monitoring exercise, which covered the six weeks from 10 October to 18 November 2016.³⁰ Ten civil society organisations and two equality

bodies based in nine Member States participated in this exercise (**Austria, Belgium, Denmark, France, Germany, Italy, the Netherlands, Spain and the United Kingdom**). Eight of these organisations are members of the International Network Against Cyberhate; the equality bodies are the Belgian Interfederal Centre for Equal Opportunities and the Italian National Office against Racial Discrimination.

For the first monitoring exercise, the organisations sent IT companies a total of 600 notifications of alleged illegal online hate speech, as defined in national criminal codes transposing the Framework Decision on Racism and Xenophobia. The largest proportion of notifications concerned antisemitic content (23.7 %), followed by content relating to national origin (21 %), anti-Muslim hatred (20.2 %), race (11.7 %) and ethnic origin (9.5 %). The remaining 13.9 % of notifications fell into the category of 'other content', which encompasses colour, descent, religion, sexual orientation and gender-related hatred. The IT companies removed 28.2 % of the content of which they were notified, and 40 % of the notifications were reviewed within 24 hours.³⁵

Initiatives taken in Member States in 2016 to counter online hate speech can also be noted here. Largely mirroring the high level group, the **Slovak** government established a working group on hate crimes in June to counter online hate speech, bringing together public authorities, non-governmental organisations and IT companies.³⁶ Since September, the **Danish** Institute for Human Rights has coordinated a Nordic network mapping online sexist speech and hate speech.³⁷ The Ministry of Culture in **Latvia** issued recommendations in September on how to prevent the dissemination of hate speech in the media, including online. To that end, the ministry recommends, among other things, stricter enforcement of existing legislation; revising outdated definitions of the 'media'; training law enforcement agents; and conducting public awareness campaigns.³⁸

3.2.2. EU and Member States target hate crime

As reported in previous Fundamental Rights Reports, and as Table 3.1 and Table 3.2 on official data on hate crime show, large discrepancies remain in terms of how Member States record incidents of hate crime, preventing meaningful comparisons between countries. Variations and gaps between EU Member States can result from many factors, including how these crimes are defined in criminal law; how incidents or their characteristics are recorded; the willingness and ability of victims and/or witnesses to report incidents; victims' awareness of organisations to which incidents can be reported; the degree of victims' trust that authorities will deal with such incidents appropriately; and the actual occurrence of racist, xenophobic and related crime.

Partly to address these discrepancies, the European Commission asked FRA to coordinate a subgroup on methodologies for recording and collecting data on hate crime under the High Level Group on combating racism, xenophobia and other forms of intolerance.³⁹ This subgroup, set up in October, aims to identify core elements of a methodology with which to record incidents and data on hate crime to enable comparisons between Member States. The initial priorities of the subgroup will be to agree on a monitoring definition of hate crime; develop a set of bias indicators to be recorded; and design a reporting tool that covers relevant bias indicators, victims' perceptions and bias motivations underlying a hate crime. The first outputs of the subgroup are expected in 2017.

Examples from several Member States illustrate the types of steps taken to prevent and counter hate crime, including reviewing classifications of bias motivations; awareness-raising campaigns on hate crime; training law enforcement officers and prosecutors; and enhancing understanding of hate crime through research.

Concerning classifications, the Police and Border Guard Board in **Estonia** began recording three new categories of bias motivations: race, religion, origin; sexual orientation/identity; and other.⁴⁰ The **Danish** National Police issued national guidelines on how to record hate crime.⁴¹ The Danish Director of Public Prosecutions revised instructions to the police and prosecution services on how to process cases of hate crime and ethnic discrimination, which can lead to improving the quality of recorded data.⁴²

Several Member States conducted campaigns to raise awareness of hate crime and hate speech in 2016. In the **Czech Republic**, the focus lay on supporting relevant professionals in tackling hate crime.⁴³ In **Germany**⁴⁴ and **Portugal**,⁴⁵ attention was directed at empowering young people to recognise and act against online hate speech. In Austria, the campaign #GegenHassimNetz (#againsthateontheWeb), supported by the Austrian Federal Chancellery, aims to expose cases of hatred and racism on the web and offers ways of dealing with such postings. **Ireland**⁴⁶ and the **United Kingdom**⁴⁷ ran campaigns on public transport services to encourage people to report racism when they witness it and raise awareness of how and where hate crime can be reported.

Member States also organised specialised training on hate crime for police officers throughout the year – including **Bulgaria**,⁴⁸ **Cyprus**⁴⁹ and **Greece**.⁴⁶ In **Hungary**, the Working Group against Hate Crime arranged several training events for police officers, using videos on experiences of different victim groups, after which participants assessed factors hindering victims from cooperating with police and reporting incidents to them. A forum was established for exchanging good practices related to the investigation of hate crime cases.⁴⁷

Table 3.1: Summary overview of officially recorded data pertaining to hate crime by EU Member State, as of 31 December 2016

Member State	Recorded data (according to recording authorities' definition)	Recording authority	Publication of data
AT	Politically motivated crimes: offences committed and cases reported to the court	Ministry of the Interior, Federal Agency for State Protection and Counter-terrorism	Annual report on the protection of the Constitution
BE	Incident/s/crimes recorded by the police	Belgian Federal Police	Criminal statistics of the Belgian Federal Police
CY	Motive in incidents and/or cases of racial nature and/or with racial motive	Office for Combating Discrimination, Crime Combating Department, Police Headquarters	Criminality statistic data - racist incidents - incidents and/or cases of racial nature and/or with racial motive, published by the Cyprus Police
CZ	Crimes with an extremist context	Ministry of the Interior, Security Police Department	Annual report on the issue of extremism in the Czech Republic
DE	Politically motivated crime: criminal offences; acts of violence	Ministry of the Interior	Annual report on the protection of the Constitution
DK	Hate crimes separated into three main categories: racially motivated, religiously motivated and sexually oriented, which are further divided into a number of subcategories	National Police of Denmark	Annual report on hate crimes
ES	Hate crimes distinguished by racial, xenophobic, antisemitic, religious and disability bias	Ministry of the Interior, Forces and Security Bodies	Ministry of the Interior: report on incidents related to crimes of hate in Spain
FI	Suspected hate crimes reported to the police motivated by prejudice or hostility towards the victim's real or perceived ethnic or national origin, religion or belief, sexual orientation, transgender identity or appearance, or disability	Police University College of Finland	Annual report on hate crimes reported to the police in Finland
FR	Cases with racial, antisemitic and anti-Muslim aspects recorded by the police and the gendarmerie	Ministry of the Interior	Annual report on the fight against racism, antisemitism and xenophobia
HR	Hate crime incidents recorded by police by bias motivation: race, colour, religion, national or ethnic origin, disability, sex, sexual orientation, or gender identity.	Police, State's Attorney Office and the Ministry of Justice	Data published in the police annual statistics
IE	National total of reported racially motivated crime (including antisemitism)	Central Statistical Office	Data on reported racist crime published on the website of the Office for the Promotion of Migrant Integration
IT	Hate crimes recorded by police by bias motivation: racism, xenophobia, bias against LGBT people and bias against people with disabilities	Police	Data published on the website of ODIHR
LT	Data collected according to the Criminal Code	Police Department under the Ministry of the Interior and the Prosecutor General's Office	Data published on the website of Information Technology and Communications Department under the Ministry of the Interior of the Republic of Lithuania
NL	Incidents of criminal discrimination	Discrimination incidents recorded by the police	Annual report on criminal discrimination
PL	Crimes of incitement to hatred recorded by the police	Ministry of the Interior and Administration	Data published on the website of ODIHR
SE	Offences reported to the police with an identified hate crime motive	Swedish National Council for Crime Prevention	Annual report on statistics relating to offences reported to the police with an identified hate crime motive

Table 3.1: (continued)

Member State	Recorded data (according to recording authorities' definition)	Recording authority	Publication of data
UK	<p><i>England, Northern Ireland and Wales:</i> recordable crimes under Home Office recording rules; monitored categories are race, faith and religion, sexual orientation, transgender, disability and antisemitism</p> <p><i>England and Wales:</i> hate crime offences for the five centrally monitored strands: race, sexual orientation, religion, disability and gender identity</p> <p><i>Northern Ireland:</i> crimes with a hate motivation recorded by the police of Northern Ireland</p> <p><i>Scotland:</i> hate crime reported to the Procurator Fiscal: race crime and crimes aggravated by religious, disability, sexual orientation or transgender identity prejudice</p>	<p><i>England, Northern Ireland and Wales:</i> regional police forces in England, Northern Ireland and Wales</p> <p><i>England and Wales:</i> Home Office</p> <p><i>Northern Ireland:</i> Police Service of Northern Ireland</p> <p><i>Scotland:</i> Crown Office and Procurator Fiscal Service</p>	<p><i>England, Northern Ireland and Wales:</i> data published on the police-funded website True Vision, designed to provide information about hate crime</p> <p><i>England and Wales:</i> Home Office annual statistical bulletin on hate crime recorded by police in England and Wales</p> <p><i>Northern Ireland:</i> Home Office annual bulletin on trends in hate motivated incidents and crimes recorded by the police</p> <p><i>Scotland:</i> Hate Crime in Scotland, 2015–16 annual report</p>

Source: FRA, 2016

Table 3.2: Official data pertaining to hate crime published in 2016, by bias motivation and by EU Member State

Member State	Racism	Anti-Roma	Antisemitism	Anti-Muslim hatred	Religion	Extremism	Sexual orientation	Gender identity	Disability
AT	323		41	31		523			
BE	1,028		8				169		
CY	5		0		0		0	0	
CZ	54	33	47	5		175			
DE	1,214		1,366		1,112		222		19
DK	104		13	41	6		26	5	
ES	505		9		70		169	24	226
FI	991		8	71	54		55	6	65
FR	797		808	429					
HR	1	1 ^a	2 ^a	1 ^a	1		6		
IE	105								
IT	369 ^a						45 ^b		14 ^b
IT	8				1		32		
NL	2,215		428	439	21		1,574	109	61
PL	133 ^a	26 ^a	50 ^a	42 ^a	12 ^a				
SE	4,765	239	277	558	719		602	62	
UK - EN, WAL & NI	40,744 ^b		629 ^b		3,177 ^b		5,553 ^b	607 ^b	2,350 ^b
UK - EN & WAL	49,419 ^c				4,400 ^c		7,194 ^c	858 ^c	3,629 ^c
UK - NI	853 ^c				19 ^c		210 ^c	12 ^c	74 ^c
UK - SCO	3,712 ^c				581 ^c		1,020 ^c	30 ^c	201 ^c

Notes: Comparisons between Member States are not possible, as they each record different types of data relating to hate crime.

Blank entries = no data are collected or published.

ODIHR = Office for Democratic Institutions and Human Rights.

^a ODIHR hate crime reporting.^b Fiscal year (1 April 2014 to 31 March 2015).^c Fiscal year (1 April 2015 to 31 March 2016).

Source: FRA, 2016 (based on data published by responsible EU Member State authorities)

EU-MIDIS II: gauging progress

FRA launched its second European Union Minorities and Discrimination Survey (EU-MIDIS II) in 2015. It assesses the actual impact of EU and national anti-discrimination and equality measures on people's lives.

EU-MIDIS II covers all 28 EU Member States and involves about 26,000 randomly selected respondents from different ethnic minority or immigrant backgrounds. The survey focuses on experiences of discrimination, criminal victimisation, and rights awareness. It also collected data on socio-economic conditions and issues relating to social inclusion and participation, addressing employment, education, health and housing.

The survey aims to support policymakers in developing more targeted responses to racism and hate crime, and can also bolster the advocacy work of civil society organisations. Selected EU-MIDIS II findings on the situation of Roma were published in 2016; further outputs, as well as data visualisation on the FRA website, will follow in 2017.

For more information, see FRA (2015), *EU-MIDIS II: European Union Minorities and Discrimination Survey*



Training on hate crime for judges and prosecutors was also organised – for example, in **Belgium**,⁴⁸ **Bulgaria**⁴⁹ and **Poland**.⁵⁰ In **Latvia**, the Judicial Training Centre led a seminar for prosecutors and judges on ‘Hate Crimes and Freedom of Expression’, addressing what qualifies crimes as hate crimes and outlining relevant ECtHR case law.⁵¹ In **Hungary**, several courses were organised⁵² and an online learning programme⁵³ for legal practitioners was launched in May 2016.

Children at schools can also become victims of racism. In **Cyprus**, the Code of Conduct against Racism and the Guide for Handling and Recording Racist Incidents was applied to at least 73 schools of all levels in 2015-2016.⁵⁴ Primary schools recorded 40 incidents and a secondary school recorded one incident. According to the Ministry of Education, the low number of recorded incidents is affected by underreporting by both schools and by victims, who may be afraid to report incidents or not convinced that doing so would be useful.

3.2.3. Courts confront racist and related hate speech and hate crime

Several ECtHR rulings issued in 2016 concluded that Member States failed to efficiently investigate incidents potentially involving discriminatory motives. At national level, various court decisions further clarified what kind of acts and statements constitute incitement to hatred and insult.

In *R.B. v. Hungary*,⁵⁵ the ECtHR found a violation of Article 8 (right to respect for private and family life) of the ECHR on account of an inadequate investigation into the applicant's allegations of racially motivated abuse. The applicant, a woman of Roma origin, claimed that she was subjected to racist insults and threats by participants in an anti-Roma march and that

the authorities failed to investigate the racist verbal abuse. The court concluded that the authorities failed to take all reasonable steps to determine the role of racist motives, and ordered **Hungary** to pay € 4,000 for non-pecuniary damage and € 3,717 for costs and expenses. It should be noted that the incident at issue occurred before Hungary introduced the legislative amendments referred to at the beginning of Section 3.2, pursuant to which Section 216 of the Criminal Code now prohibits ‘violence against a member of a community’.

In *Boacă and others v. Romania*⁵⁶ the ECtHR found that the lack of any apparent investigation by the authorities into a complaint of discrimination amounted to a violation of Article 14 (principle of non-discrimination) in conjunction with Article 3 (prohibition of inhuman or degrading treatment) of the ECHR. Seven applicants of Roma origin claimed that they suffered ill-treatment by the police and that the authorities decided not to bring criminal charges against the police officers, who had beaten them predominantly because of their Roma ethnicity. The court ordered **Romania** to jointly pay the applicants € 11,700. This case belongs to a group of older cases, for which the Council of Europe Council of Ministers' examination was closed by Resolution CM/ResDH(2016)150 in *Barbu Angheliescu v. Romania and other 35 cases*. In this resolution, the Council of Ministers welcomed the measures adopted by the Romanian authorities to enhance the effectiveness of criminal investigations into allegations of ill-treatment by law-enforcement officials, noting the reinforced monitoring of their implementation by the General Prosecutor's Office.⁵⁷

In *M.C. & A.C. v. Romania*,⁵⁸ the ECtHR examined a case concerning the police investigation of an attack on two Bucharest Pride March participants. The applicants were subjected to homophobic abuse and were punched and kicked by a group of six people on the metro.

The court found that the Romanian authorities' failure to efficiently investigate the incident and its potential discriminatory motive was in breach of Article 3 of the ECHR, in conjunction with Article 14. The court ordered **Romania** to pay € 7,000 to each applicant for non-pecuniary damage and € 3,863.02 to them jointly for costs and expenses.

Meanwhile, in the **Czech Republic**, the Supreme Court ruled that placing a sticker with the symbol of a Nazi movement on the window of a car and then using the car in regular traffic amounted to a public expression of sympathy with a movement aiming to suppress human rights and freedoms, prohibited by the Criminal Code.⁵⁹

In **Luxembourg**, the Court of Appeal fined a politician € 7,000 for inciting racial hatred by producing and disseminating pamphlets accusing immigrants of being responsible for the "destruction of the country".⁶⁰ In **Malta**, two men were fined € 3,000 each for anti-immigrant hate speech on Facebook.⁶¹

In the **Netherlands**, the Supreme Court ruled that certain statements made by a politician – such as "Ali B. and Mustapha, move to Ankara" and "today we demonstrate against the multicultural terror and for a total immigration stop" – constituted incitement to racial discrimination and insult motivated by racial bias as defined in the Dutch criminal code. In another case, the leader of the Dutch Party for Freedom was tried over statements he made about Moroccans. The District Court of the Hague convicted him of inciting discrimination and "insulting a group", but deemed the evidence insufficient to find him guilty of incitement to hatred.⁶²

3.3. Tackling discrimination effectively in line with the Racial Equality Directive

The European Commission indicated in 2014 that increasing awareness of existing protection and ensuring "better practical implementation and application" of the Racial Equality Directive (2000/43/EC) was a major challenge.⁶³ It continued to closely monitor implementation of the directive in 2016, initiating and pursuing infringement proceedings against Member States found to be in breach of its provisions.

Following up on the CJEU's 2015 judgment in *CHEZ Razpredelenie Bulgaria AD v. Komisia za zashtita ot diskriminatsia*,⁶⁴ the European Commission sent a formal notice to the Bulgarian government, asking it to present the measures it planned to undertake

to bring the national anti-discrimination legislation in line with the Racial Equality Directive. In response, the Bulgarian parliament adopted amendments to the Protection against Discrimination Act and revised the legal definitions of the terms 'indirect discrimination' and 'unfavourable treatment'.⁶⁵

In May 2016, the European Commission sent a formal notice to **Hungary** based on non-conformity with the Racial Equality Directive. The formal notice, which is the first step of an infringement procedure, concerns discrimination against Roma children in the education sector. Specifically, the Commission expressed concerns that legislation and administrative practices in place lead to discrimination against Roma children both by segregating them in mainstream education and by resulting in their over-representation in special schools for mentally disabled children.⁶⁶ The Commission has sent letters of formal notice to two other Member States, the **Czech Republic**⁶⁷ and **Slovakia**,⁶⁸ in relation to similar issues in the recent past, also alleging discrimination against Roma children in educational legislation and practice.

The Council of the European Union also raised concerns over inequalities in education regarding Roma children in the **Czech Republic**,⁶⁹ **Hungary**⁷⁰ and **Slovakia**.⁷¹ In the case of **Hungary**, the Council noted that the lack of equal access to quality mainstream education is particularly acute for Roma children. With regard to **Slovakia**, it stressed that the "recently adopted anti-segregation legislation has yet to be implemented to bring about positive change and increase Roma participation in mainstream education, including pre-school education."⁷²

Meanwhile, to tackle segregation of Roma children in primary and secondary education, **Romania** adopted two framework orders prohibiting segregation on ethnic grounds.⁷³

In addition to the ongoing infringement proceedings noted above, a number of other Member States have been under investigation for discrimination against Roma and Travellers, in particular in the fields of education and housing. For more information on Roma integration, see Chapter 4.

3.3.1. Diverse challenges hamper effective functioning of equality bodies

The European Commission also closely monitors the setting up of equality bodies in EU Member States. Pursuant to Article 13 (2) of the Racial Equality Directive, these bodies should be able to provide independent assistance to victims of discrimination. In that respect, the Commission in 2014 initiated

infringement proceedings against **Slovenia** for failing to set up an independent equality body able to provide efficient assistance to such victims.⁷⁴ In response, the Slovenian parliament adopted the Protection against Discrimination Act, establishing an independent body – the Office of the Government of the Republic of Slovenia for Principle of Equality – without, however, providing the new body with appropriate financial means to perform its function.⁷⁵ Following adoption of the new law, the Commission discontinued its infringement proceedings against Slovenia in July 2016. The Commission carried out similar investigations into the independence and functioning of equality bodies in a number of Member States during 2016.

Strengthening the powers of equality bodies contributes to more effective implementation of the Racial Equality Directive. The European Network of Equality Bodies (Equinet) stressed the need for standards to secure the effectiveness of such bodies. According to Equinet, these standards should address and secure, among other things, adequate financial staff and physical resources, general powers – such as commissioning and conducting research, making recommendations, conducting general investigations and challenging domestic legislation – and specific powers to underpin tribunal-type functions.⁷⁶

A number of Member States adopted legislation aimed at increasing the powers, and extending the mandates, of their equality bodies in 2016. For example, **Greece** adopted legislation making the Ombudsperson the central supervisory authority of the two Equality Directives.⁷⁷ The new law also gives the Ombudsperson the mandate to investigate, as an independent mechanism, incidents of arbitrary acts involving security forces and in detention facilities. In addition, it creates 20 additional staff posts to permit the entity to effectively accomplish its tasks under its new competences as equality body as well as a national mechanism for the investigation of incidents of ill-treatment. Moreover, if the ECtHR finds that **Greece** is guilty of violating the ECHR, the Ombudsperson shall review the case at issue and decide whether or not to initiate an investigation. Although the Greek National Commission for Human Rights considered this development to be positive, it noted that the powers allocated to the Ombudsperson do not suffice to guarantee its effective functioning as an independent investigative mechanism.⁷⁸

In **Portugal**, legislation adopted in 2016 refers to the setting up of a National Council for Equality and Non-Discrimination.⁷⁹ This body will coordinate the public bodies and agencies dealing with equality and non-discrimination.⁸⁰ The Commission for Equality and against Racial Discrimination (CICDR) is also empowered to monitor the implementation of laws prohibiting racism and ethnic discrimination.

“The situation of specialised bodies has also been affected in many countries by the general austerity measures and budget cuts. Although the tasks and the scale of the problem continued to increase, the financial and human resources have rarely been adjusted accordingly. Limited resources and expertise can also affect specialised bodies’ ability to fulfil their advisory role to legislative and executive authorities, as well as other stakeholders, which is emphasised in ECRI’s GPR No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.”

European Commission against Racism and Intolerance (ECRI) (2016), Annual Report on ECRI’s Activities, p. 12

In parallel, international human rights monitoring bodies raised concerns that budgetary and staff cuts, as well as legislative amendments relating to the mandates of equality bodies, could affect their effective functioning.

The Committee on the Elimination of All Forms of Racial Discrimination (CERD), in its concluding observations on **Italy**⁸¹ and **Portugal**,⁸² recommended that authorities allocate sufficient human and financial resources to their equality bodies. The UN Human Rights Committee voiced concern about the dissolution of the Polish Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance, calling on the authorities to reinstate it or establish an alternative institution.⁸³ Instead, the **Polish** parliament decided to cut the budget of the Commissioner for Human Rights to PLN 35 million – approximately € 9 million – the budget granted to this body in 2011, before extension of its mandate.⁸⁴ This prompted the UN Human Rights Committee to call on the Polish authorities to provide the commissioner the necessary resources to allow the body to implement its mandate effectively, independently and fully.⁸⁵

In the **United Kingdom**, trade unions expressed concerns about the effective function of the Equality and Human Rights Commission (EHRC) after its restructuring. Under the restructuring, the EHRC’s budget would be pared to GBP 17.4 million by 2020 – down from GBP 62 million in 2010 – and its workforce would be reduced by 10 % (20 posts).⁸⁶ CERD in its concluding observations on the **United Kingdom** recommended “that any spending cuts and legislative amendments relating to the mandates of the national human rights institutions should not restrict their independent and effective operation”.⁸⁷

“Our reforms will ensure that we remain a strong and independent voice protecting equality and human rights and challenging government where rights are threatened. We strongly resisted budget cuts at the highest levels but we believe the difficult changes we are making will ensure we can still deliver our ambitious programme. For example, we have produced our biggest report on race, will soon be publishing the most comprehensive assessment ever of disability in Britain, and we will remain a robust and independent voice to protect people’s rights as we leave the European Union.”

Rebecca Hilsenrath, Equality and Human Rights Commission Chief Executive, personal communication, 6 November 2016

In several Member States, equality bodies sought to raise awareness of anti-discrimination legislation by undertaking awareness-raising activities and developing information tools, reports and guidance documents – including in **Belgium**,⁸⁸ **Bulgaria**,⁸⁹ **Croatia**,⁹⁰ **Cyprus**,⁹¹ the **Czech Republic**,⁹² **Denmark**,⁹³ **Estonia**,⁹⁴ **Hungary**,⁹⁵ **Malta**⁹⁶ and the **United Kingdom**.⁹⁷

The **Bulgarian** Commission for Protection against Discrimination published a training curriculum and a handbook on anti-discrimination, both designed for prison staff. The **Croatian** Ombudsman paid several visits to areas populated by Roma, informing Roma inhabitants about his functions and how he could assist them in cases of ethnic discrimination. In **Cyprus**, the Ombudsman offered lectures and seminars on racism and discrimination at schools, youth organisations and trade unions. The Danish Institute for Human Rights (DIHR) set up a new advisory forum called Ethnic Forum, which will operate as a platform via which key actors in the field of non-discrimination can exchange knowledge with civil society organisations. In **Estonia**, the Office of the Gender Equality and Equal Treatment Commissioner published a booklet in English and Russian that clarifies differences between discrimination on the grounds of ethnicity, language and nationality. The Estonian Human Rights Centre organised a seminar on the topic of intolerance and xenophobia in the working environment.⁹⁸ In **Hungary**, the Equal Treatment Authority delivered training to the management of the National University of Public Service on non-discrimination law and on the powers of the Equal Treatment Authority. The **Maltese** National Commission for the Promotion of Equality delivered 16 training sessions addressing discrimination on the ground of race/ethnic origin, amongst other grounds. It also carried out awareness-raising initiatives to promote equality on the basis of race and ethnic origin, through its Facebook page⁹⁹ and YouTube channel.¹⁰⁰

3.3.2. Discriminatory police treatment and ethnic profiling persist

Discriminatory racial and ethnic profiling – an issue already addressed in previous FRA Fundamental Rights Reports – remained a serious issue across the EU in 2016. Such profiling can undermine trust in law enforcement among persons with ethnic minority backgrounds, who may frequently find themselves stopped and searched for no reason other than their appearance.

In **France**, the Court of Cassation in a landmark case reviewed claims by 13 men of African or Arab origin alleging that they were victims of humiliating police checks. None of the men had a police record. The court ruled that the police illegally checked the identities of three of them based on discriminatory ethnic profiling, stating that identity checks based on physical features associated with a real or supposed origin, without any prior objective justification, are discriminatory.¹⁰¹

However, it found that eight other contested identity checks were legal, as they were based on objective elements and therefore not discriminatory. The court did not decide on two other cases, returning them to lower courts for retrial.

The Court of Cassation's decision set more specific rules for identity checks. According to the ruling, alleged victims of discriminatory profiling only have to provide courts with 'elements' that support an assumption of discrimination – the testimony of a single witness, for instance – while police authorities have to prove that 'objective elements' justified the identity checks.

France's *Commission Nationale Consultative des Droits de l'Homme* (CNCDH) also issued an opinion on abusive and discriminatory identity checks, recommending that the authorities ensure the traceability of identity check operations.¹⁰² In addition, the CNCDH launched a survey aiming to collect testimonies and experiences of victims of discriminatory ethnic profiling and police abuse.¹⁰³

The **Finnish** Non-Discrimination Ombudsman called on the Helsinki police to respond to claims that police action in four immigration control operations in Helsinki amounted to racial profiling. In its report, the police called the operations justified to combat illegal immigration and denied all allegations of ethnic profiling.¹⁰⁴

In the **United Kingdom**, the Home Secretary in September re-admitted to the best use of stop and search scheme 13 police forces who were previously suspended from the scheme.¹⁰⁵ These forces had been found to be failing to meet three or more of the scheme's requirements during inspections conducted in 2015 by Her Majesty's Inspectorate of Constabulary. In September, the inspectorate published the findings of its re-inspection, confirming that all 13 forces had been fully compliant with all features of the scheme.¹⁰⁶ Meanwhile, research conducted by the Independent Police Complaints Commission (IPCC) in the **United Kingdom** showed that black and minority ethnic groups (76 %), in particular black respondents (61 %), expressed lower levels of trust in the police to use reasonable force in the course of their duties than the general population (83 %).¹⁰⁷

In parallel, international human rights monitoring bodies stressed the need to tackle discriminatory ethnic profiling and misconduct by law enforcement officials. In its concluding observations on **Greece**, CERD raised concerns that Roma are disproportionately subjected to frequent identity checks.¹⁰⁸ CERD also raised concerns about practices of police discriminatory ethnic profiling in **Italy**¹⁰⁹ and **Spain**.¹¹⁰ Meanwhile, ECRI pointed out to **Cypriot** authorities "that racial profiling by the police is defined and prohibited by law"¹¹¹ ECRI also recommended that the **French** authorities "intensify the training of law enforcement representatives with

regard to the contents of the Code of Ethics¹¹³. Similarly, in its reports on **Italy**¹¹³ and **Lithuania**,¹¹⁴ ECRI called on the authorities to set up independent police complaints services with the task of investigating allegations of racist violence committed by law enforcement officials.

Promising practice

Providing police training on anti-discrimination and diversity

To tackle stereotypes and stigmatisation in the police sector, in particular towards Muslim people, the **Belgian** Federal Police developed a policy note entitled 'Diversity and anti-discrimination'. This initiative aims to make diversity the norm, for it to be integrated into all the work of every police directorate, and for it to be considered in any evaluation. The Belgian Equality Body, Unia, supports the federal police in applying its diversity policy. The police and the equality body are also planning to jointly coordinate an action plan for 2016–2018, strengthening this objective. For instance, training on anti-discrimination legislation will be organised and Unia will define diversity indicators to measure the action plan's impact.

For more information, see Unia (2016), Annual Report 2015: Living together put to the test (Rapport Annuel 2015 – Le vivre ensemble mis à l'épreuve), Brussels, Unia

A number of Member States introduced and pursued educational measures and initiatives to raise human rights awareness among law enforcement officials. Topics covered included legislation in force to counter racism and ethnic discrimination, and policing diverse societies.

As reported in the *Fundamental Rights Report 2016*, the **Dutch** National Police adopted a strategic document to achieve more diversity in the police force, entitled *The Power of Difference*.¹¹⁵ In January 2016, the strategic document was translated into several regional-level policy documents that promote better registration of discriminatory incidents; better cooperation between societal actors, the police and the Public Prosecution Service in tackling discrimination; and the prevention of ethnic profiling by the police. In **Spain**, the Platform for the Police Management of Diversity adopted a Curricular Design on the police management of diversity and non-discrimination.¹¹⁶ This tool aims to train police services on how to deal with cases of discrimination and on how to manage hate crime cases.

In 2017, FRA will update and expand the scope of its guide on avoiding discriminatory ethnic profiling. It will draw on findings from EU-MIDIS II, and take into account new technological developments and their increased use by both law enforcement authorities and for border management.

3.4. Member State action plans to fight racism still lacking

Examining national strategies for combating racism, xenophobia and other forms of intolerance is, as noted above, one of the aims of the EU's high level group dedicated to these issues. However, few EU Member States had dedicated national action plans in place in 2016. Those that do not have such plans in place could draw on the guidance of the Office of the UN High Commissioner for Human Rights, which published a practical guide on developing national action plans against racial discrimination in 2014.¹¹⁷

The UN Durban Declaration and Programme of Action, signed in September 2001, emphasises states' responsibility to combat racism, racial discrimination, xenophobia and related intolerance.¹¹⁸ It further urges states "to establish and implement without delay" national policies and action plans to combat these phenomena. Nearly 15 years later, in August 2016, the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance encouraged states "that have not done so to seriously consider developing a comprehensive national plan of action [to counter these phenomena], especially in the global context of a growing rise of xenophobic sentiments in a prolonged migration crisis."¹¹⁹

Five EU Member States had dedicated action plans in place in 2016: **France**, **Germany**, **Slovakia**, **Sweden** and the **United Kingdom**. Some subsume their efforts under more general categories, such as countering discrimination (the **Netherlands**) or promoting social inclusion (**Belgium**, **Finland**).



Source: Screenshot from FRA video 'A decade of human rights protection: FRA turns 10'

In others, dedicated action plans that had expired were not renewed by the end of 2016, with no indication of when they would be reactivated (**Italy**, **Luxembourg**, **Spain**). It should be noted that, even where plans have not been renewed, relevant activities provided for therein can nevertheless continue. Meanwhile, in **Greece**, the National Council against Racism and Intolerance – established in April 2016 – was tasked with developing a dedicated action plan. It had not achieved this by the end of the year.

The **French** government adopted a dedicated action plan to fight racism and antisemitism in April 2015,

covering the period 2015–2017.¹²⁰ Under this plan, operational committees against racism and antisemitism, responsible for ensuring its implementation, must be set up in each *département*. The first step in that direction was taken in June 2016, when a decree establishing these committees was adopted and came into force.¹²¹ Eighty-five such committees were set up between April 2015 and November 2016.¹²²

In January 2016, the government of **Slovakia** adopted an action plan to prevent and eliminate racism, xenophobia, antisemitism and other forms of intolerance, covering the period 2016–2018. The plan's main aims are to prevent racist stereotyping, prejudice and hate crime, as well as to actively combat racism, xenophobia and related intolerance.¹²³

Sweden adopted a national plan against racism, other forms of intolerance and hate crime in November 2016, covering the period 2017–2020.¹²⁴ The plan falls under the responsibility of the Ministry of Culture and targets five bias motivations: Afrophobia, anti-Roma prejudice, antisemitism, anti-Muslim hatred and prejudice against the Sami people. It provides for awareness-raising activities; better coordination among responsible authorities; enhanced dialogue with civil society; online prevention; and reinforcing the criminal justice system's response to hate crime.

In the **United Kingdom**, the Equality and Human Rights Commission (EHRC) in August 2016 called upon the government to create a comprehensive race equality strategy for the UK as a whole. The commission recommended that the strategy should be informed by the experience of all ethnic groups in Britain; that the range and scope of available disaggregated ethnicity data should be improved; and that transparent and effective monitoring arrangements should be put in place.¹²⁵

One of the key principles of the Scottish Government's race equality framework is to complement mainstreaming approaches with lawful positive action to address the impact of disadvantages faced by people with minority ethnic backgrounds.¹²⁶ The equality objectives of the Welsh Government cover racial equality, and aim to reduce all forms of harassment and abuse, including hate crime.¹²⁷ The racial equality strategy of the Northern Ireland Executive establishes a framework for action to tackle racial inequalities and to open up opportunity for all; to eradicate racism and hate crime; and to promote good race relations and social cohesion.¹²⁸

As noted above, the fight against racism, xenophobia and related intolerance can be subsumed under other categories. This is the case in the **Netherlands**, where the government adopted its national action plan against discrimination in January 2016.¹²⁹ The plan aims

to prevent and combat discrimination on all legally recognised grounds, including ethnic discrimination. Specific manifestations of racism, xenophobia and related intolerance addressed in the plan include discrimination on the grounds of origin, skin colour or religion; anti-Black racism; discrimination against Muslims; and antisemitism.

In May 2016, the Ministry of Education and Culture in **Finland** adopted an action plan to prevent hate speech and racism and to foster social inclusion. Under this plan, the ministry grants subsidies to support measures and projects that help prevent racism, with a focus on living together. This includes promoting multiculturalism, a sense of community and inclusion.¹³⁰

Meanwhile, the Minister for Equal Opportunities of the French Community in **Belgium** in August made funding available for educational activities to support the fight against racism, with a particular focus on intercultural dialogue.¹³¹ In July 2016, the **German** federal government adopted a strategy to prevent extremism and promote democracy, covering the period 2016–2019. One of the strategy's aims is to counter racist and discriminatory agendas promoted by right-wing extremist groups. This will be done by supporting civil society organisations active in the field, as well as by educating children, adolescents and adults to advocate social tolerance.¹³²

Promising practice

Promoting anti-racist education

In March 2016, the **French** government mobilised public institutions, civil society organisations, cultural establishments, memorials, public education providers and media organisations to take part in a week of education against racism and antisemitism. More than 70 events took place at the National Museum for the History of Immigration. Another 500 activities took place throughout the country, including film screenings, debates, performing arts, exhibitions and workshops.

For more information, see France, Ministry of Education (2016), 'Week of education and action against racism and antisemitism, 21–28 March 2016' (Semaine d'éducation et d'actions contre le racisme et l'antisémitisme du 21 au 28 mars 2016)

The national equality body in **Italy** has organised annual weeks of action against racism since 2004. Through this, the equality body aims to promote social dialogue to sensitise public opinion to the benefits of a multi-ethnic, open and inclusive society. As in France, a number of activities were organised throughout the country, including seminars, sports competitions and readings.

For more information, see Ufficio Nazionale Antidiscriminazioni Razziali (2016), 'Open your mind, turn off prejudices (Accendi la mente, spegni i pregiudizi)'

FRA opinions

Racist and xenophobic reactions to the arrival of refugees, asylum seekers and migrants in the EU that marked 2015 continued unabated in 2016. They included hate speech, threats, hate crime, and even murder. Yet very few Member States collect specific data on incidents that target refugees, asylum seekers and migrants. This is particularly relevant for the implementation of Article 1 of the EU Framework Decision on Racism and Xenophobia, which outlines measures Member States shall take to punish certain intentional racist and xenophobic conduct. Article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) obliges State parties to make incitement to racial discrimination, as well as acts of violence against any race or group of persons, offences punishable by law. All EU Member States are parties to ICERD.

FRA opinion 3.1

EU Member States should ensure that any case of alleged hate crime or hate speech – including those specifically targeting asylum seekers, refugees and migrants – is effectively investigated, prosecuted and tried. This needs to be done in accordance with applicable national provisions and, where relevant, in compliance with the provisions of the EU Framework Decision on Racism and Xenophobia, European and international human rights obligations, as well as ECtHR case law on hate crime and hate speech. Member States could also collect more detailed data on incidents that specifically target refugees, asylum seekers and migrants.

Few EU Member States had dedicated national action plans to fight racial discrimination, racism or xenophobia in place in 2016. This is the case even though the United Nations Durban Declaration and Programme of Action resulting from the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance assigns states primary responsibility for combating racism, racial discrimination, xenophobia and related intolerance. Implementing such plans would provide EU Member States with an effective means for ensuring that they meet their obligations under the Racial Equality Directive and the Framework Decision on Racism and Xenophobia. The EU High Level Group on combating racism, xenophobia and other forms of intolerance – formed in June 2016 – provides EU Member States with a forum for exchanging practices to secure the successful implementation of such action plans.

FRA opinion 3.2

EU Member States should adopt specific national action plans to fight racism, racial discrimination, xenophobia and related intolerance. In this regard, Member States could follow the exhaustive and practical guidance offered by the Office of the United Nations High Commissioner for Human Rights on how to develop such specific plans. In line with this guidance, the action plans should set goals and actions, assign responsible state bodies, set target dates, include performance indicators, and provide for monitoring and evaluation mechanisms.

Systematically collecting disaggregated data on incidents of ethnic discrimination, hate crime and hate speech can contribute to better application of the Racial Equality Directive and the Framework Decision on Racism and Xenophobia. Such data also facilitate evaluations of policies and action plans to prevent and combat racism, xenophobia and related intolerance. However, evidence collected by FRA shows that persistent gaps remain in how EU Member States record incidents of ethnic discrimination and racist crime. Unreported incidents remain invisible and preclude victims from seeking redress. This is particularly relevant considering EU Member States' obligation to actively ensure the effective protection of victims and guarantee their access to effective protection and remedies under Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination. Through the EU High Level Group on Combating Racism, Xenophobia and other forms of intolerance, FRA continues to work with Member States, EU institutions and international organisations to improve the recording of and data collection on hate crime.

FRA opinion 3.3

EU Member States should make efforts to systematically record, collect and publish annually comparable data on ethnic discrimination and hate crime to enable them to develop effective, evidence-based legal and policy responses to these phenomena. These data should include different bias motivations as well as other characteristics, such as incidents' locations and anonymised information on victims and perpetrators. Any data should be collected in accordance with national legal frameworks and EU data protection legislation.

Evidence from 2016 shows that a number of equality bodies faced budgetary and staff cuts or legislative amendments relating to their mandates, which could affect their effective functioning. Article 13 (1) of the Racial Equality Directive requires all EU Member States to designate an equality body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. However, the directive only provides minimum standards for the competences of equality bodies. In the context of data protection, EU law refers explicitly to independence and defines what such independence requires. The General Data Protection Regulation, adopted in 2016, calls for sufficient "human, technical and financial resources, premises and infrastructure" for data protection authorities.

FRA opinion 3.4

EU Member States should allocate to equality bodies the human, technical and financial resources, premises and infrastructure necessary to allow them to fulfil their functions and deploy their powers within their legal mandate effectively and independently.

Members of ethnic minority groups continued to face discriminatory ethnic profiling by the police in 2016, against a backdrop of heightened tension caused by terrorist attacks in EU Member States. This practice contradicts the principles of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 14 (prohibition of discrimination) of the European Convention on Human Rights, relevant jurisprudence of the European Court of Human Rights, as well as primary and secondary EU law. Training and internal monitoring could help to detect disproportionate targeting of ethnic minorities and lead to corrective action by the relevant authorities.

FRA opinion 3.5

3.5 EU Member States should end discriminatory forms of ethnic profiling. This could be achieved through providing systematic training on anti-discrimination law to law enforcement officers, as well as by enabling them to better understand unconscious bias and challenge stereotypes and prejudice. Such trainings could also raise awareness on the consequences of discrimination and on how to increase trust in the police among the public. In addition, EU Member States could consider recording the use of stop-and-search powers, and in particular recording the ethnicity of those subjected to stops, in accordance with national legal frameworks and EU data protection legislation.

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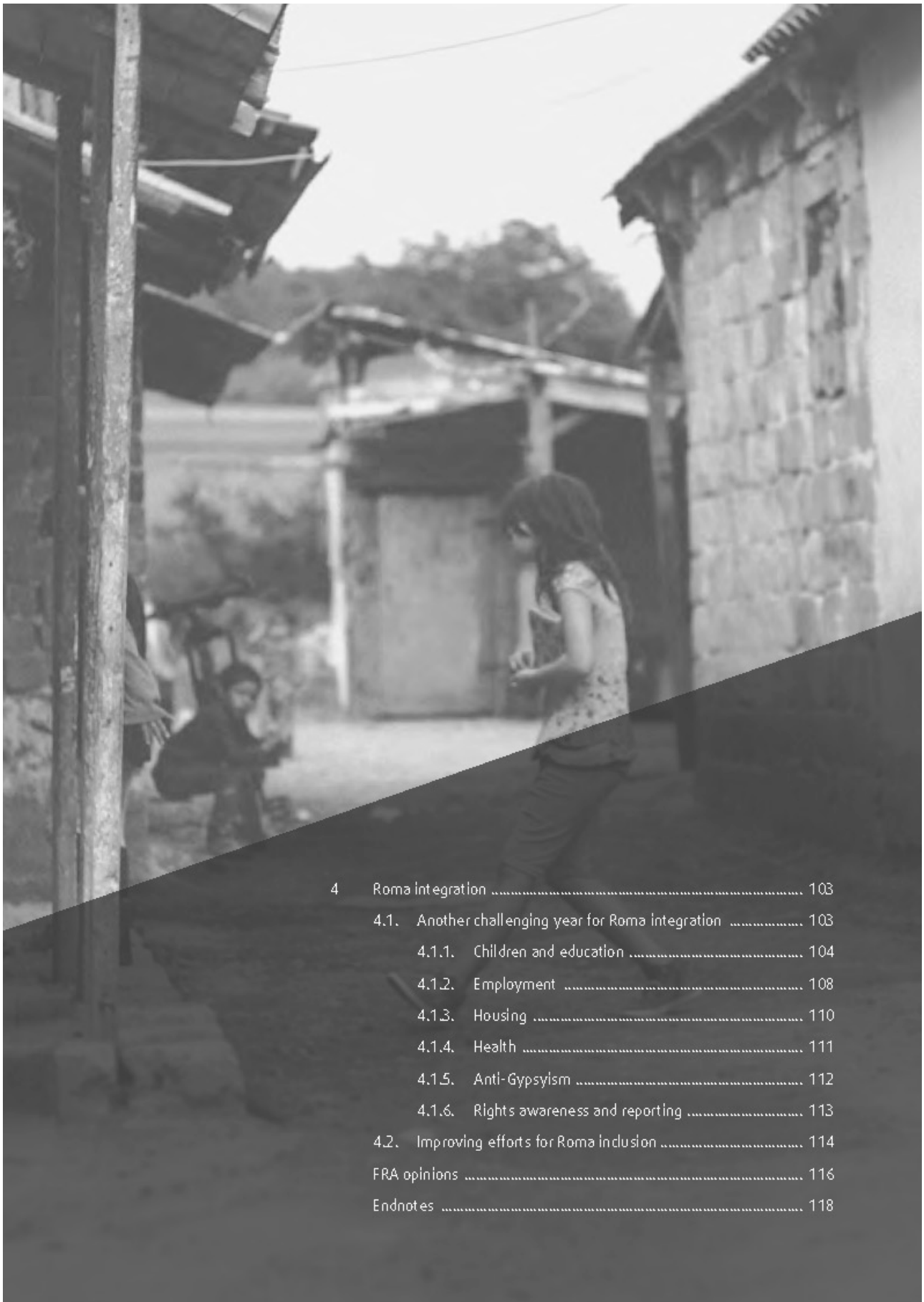
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UN & CoE

28 January – Council of Europe (CoE) Commissioner for Human Rights issues his report following a visit to Belgium in September 2015

January

16 February – CoE Commissioner for Human Rights publishes his letters to the governments of Bulgaria, France, Hungary, Italy and Sweden concerning evictions of Roma

February

1 March – United Nations (UN) Committee on the Rights of the Child publishes its concluding observations on Ireland

1 March – European Commission against Racism and Intolerance (ECRI) publishes its fifth monitoring reports on France, Monaco and Georgia and the conclusions on the implementation of its priority recommendations in respect of Ireland and Liechtenstein

14 March – UN Committee on the Elimination of Discrimination against Women (UN CEDAW) publishes its concluding observations on the Czech Republic

17-18 March – ECRI issues its fifth monitoring reports on Cyprus, Italy, Lithuania and conclusions on Finland, the Netherlands and Portugal

March

21 April – UN Human Rights Committee adopts its concluding observations on Slovenia

28 April – UN Human Rights Committee adopts its concluding observations on Sweden

April

17 May – UN Committee on the Rights of Persons with Disabilities publishes its concluding observations on Slovakia

19 May – Ad hoc Committee of Experts on Roma and Traveller Issues (CAHROM) releases a thematic report on child/early and forced marriages within Roma communities

May

3 June – UN Committee on the Rights of the Child publishes its concluding observations on Bulgaria

7 June – ECRI publishes its fifth monitoring report on Cyprus, Italy, the Former Yugoslav Republic of Macedonia, and Lithuania, and the conclusions on the implementation of its priority recommendations in respect of Finland, the Republic of Moldova, The Netherlands, Portugal, the Russian Federation and San Marino

11 June – UN Committee against Torture publishes its findings on France

15 June – CoE Commissioner for Human Rights issues his report following a visit to Poland in February 2016

22 June – CAHROM releases thematic reports on Roma health mediators and on vocational education and training for Roma

29 June – release of a joint statement on evictions of Roma and Travellers, by the Operational Platform for Roma Equality (OPRE), and signed by the Office of the UN High Commissioner for Human Rights (OHCHR), the OSCE's Office for Democratic Institutions and Human Rights (OSCE/ODIHR), FRA, the European Network of European National Human Rights Institutions (ENNHRI), the European Network of Equality Bodies (Equinet), and the CoE

29-30 June – ECRI issues its Fifth monitoring report on Malta, Turkey and the United Kingdom

June

12 July – UN Committee on the Rights of the Child publishes its concluding observations on the United Kingdom

14 July – UN Committee on Economic, Social and Cultural Rights publishes its concluding observations on Sweden and United Kingdom

20 July – UN Committee on the Rights of the Child publishes its concluding observations on Slovakia

25 July – UN CEDAW publishes its concluding observations on France

July

23 August – CoE Commissioner for Human Rights publishes his letter to the Prime Minister of Romania concerning the human rights of Romania's Roma population

August

September

3 October – Committee on the Elimination of All Forms of Racial Discrimination (CERD) publishes its concluding observations on Greece and the United Kingdom

5 October – CoE Commissioner for Human Rights issues his report following a visit to Croatia in April 2016

26 October – UN Committee on Economic, Social and Cultural Rights publishes its concluding observations on Poland

31 October – UN HCR adopts its concluding observations on Slovakia

October

4 November – CoE Commissioner for Human Rights publishes his letter to the Prime Minister of the Czech Republic concerning the human rights of Roma and persons with disabilities

22 November – UN Human Rights Committee publishes Concluding Observations on the fourth report of Slovakia

November

December

EU

January

February

March

April

May

28 June – European Court of Auditors (ECA) issues a special audit report on EU-funded projects to promote Roma integration in the Member States

June

27 July – European Commission issues a Communication assessing implementation of the EU Framework for National Roma Integration Strategies and the Council Recommendations on Effective Roma Integration Measures in the Member States

July

August

September

13 October – Council of the EU issues Conclusions on the European Court of Auditors Special Report No. 14/2016 – ‘EU policy initiatives and financial support for Roma integration: significant progress made over the last decade, but additional efforts needed on the ground’

October

November

8 December – Council of the EU adopts Conclusions on Roma

20 December – European Parliament issues Report on a European Pillar of Social Rights (2016/2095(INI))

December

4

Roma integration



Despite the ambitious goals set by national Roma integration strategies and the significant contribution of EU funds, little progress was visible in 2016. Over the past year, evidence on the situation of Roma in employment, education, housing and health shows that progress has been slow in respect to implementation of the EU Framework for National Roma Integration Strategies. Discrimination and anti-Gypsyism persist, and de facto segregation in housing and education continue to affect many Roma. The proposed European Pillar of Social Rights could give new impetus to Roma integration efforts, if it includes explicit reference to the right to non-discrimination guaranteed by Article 21 of the EU Charter of Fundamental Rights.

4.1. Another challenging year for Roma integration

FRA has conducted its Second European Union Minorities and Discrimination Survey (EU-MIDIS II), which, among others, collected information on almost 34,000 persons living in Roma households in nine Member States. The results largely confirm the assessment of the European Commission's Communication of June 2016 on the implementation of the EU Framework for National Roma Integration Strategies. Acknowledging some positive trends and developments, it also identified "serious bottlenecks [...] in fighting anti-Roma discrimination, especially residential and educational segregation and prevention of forced evictions".¹

In parallel, country-specific recommendations were issued under the European Semester. Those for **Bulgaria**, the **Czech Republic**, **Hungary**, **Romania** and **Slovakia** call for action to increase the provision of quality education for Roma and their inclusion in schools and pre-schools, and to prevent early school leaving.² Also along these lines, the Council conclusions on 'Accelerating the Process of Roma Integration' express regret that only limited progress has been made in advancing Roma integration, in particular at the local level, because of insufficient cooperation between

stakeholders, lack of commitment by local authorities, the ineffective use of available funds and continued discrimination against Roma. In this context, the Council conclusions in December 2016 reaffirmed the EU Framework for National Roma Integration Strategies up to 2020 and emphasised the need for integrated measures to improve the situation of marginalised and disadvantaged groups in Europe, including Roma.³

On terminology

The Council of Europe uses 'Roma and Travellers' as umbrella terms. They refer to Roma, Sinti, Kale, Romanichals, Boyash/Rudari, Balkan Egyptians, Eastern groups (Dom, Lom and Abdal) and groups such as Travellers, Yenish, and the populations designated under the administrative term "Gens du voyage", as well as persons who identify themselves as Gypsies.

See the Council of Europe's webpage dedicated to Roma and Travellers

The selected EU-MIDIS II findings published in November 2016 confirm the need for integrated measures. As many as 41 % of Roma respondents in the nine EU Member States surveyed felt discriminated against because of their Roma background at least once in the preceding five years in at least one area of daily life asked about in the survey (looking for work, at work, housing, health and education). A total of 26 % of Roma indicated that the last incident of

discrimination based on their Roma background took place in the 12 months preceding the survey.⁴ These findings largely corroborate those of the Eurobarometer 2015 on discrimination, which highlights that a large proportion of the general population in the countries covered by EU-MIDIS II consider discrimination based on ethnic origin to be fairly or very widespread in their country (46–70 %).⁵

FRA ACTIVITY

EU-MIDIS II: generating data on the fundamental rights situation of Roma

In 2016, FRA completed the Second European Union Minorities and Discrimination Survey (EU-MIDIS II). Among others, it collected information on almost 34,000 persons living in Roma households in nine Member States. The survey was the third time the agency collected data on the fundamental rights situation of Roma. The data allow comparisons with Eurostat data, while retaining, as far as possible, comparability with the previous surveys on Roma.



In the framework of EU-MIDIS II, FRA surveyed Roma in nine EU Member States where probabilistic sampling using some form of random selection of respondents was possible: **Bulgaria, the Czech Republic, Greece, Hungary, Poland, Portugal, Romania, Slovakia and Spain**. The data are representative for Roma in geographic or administrative units with density of Roma population higher than 10 %.

For more information, see FRA's webpage on the survey and FRA (2016), Second European Union Minorities and Discrimination Survey (EU-MIDIS II): Roma – Selected findings, Publications Office, Luxembourg, 2016

This chapter presents evidence on challenges faced by Roma in the areas of education, employment, housing and health, and also with respect to hate crime, rights awareness, and reporting of discrimination and hate crime.

4.1.1. Children and education

The EU has a responsibility to promote the protection of children's rights under Article 3 (3) of the Treaty on European Union (TEU). The EU Charter of Fundamental Rights guarantees the protection of the rights of the child, in particular under Article 24 (on the rights of the child) and Article 31 (on the prohibition of child labour). The 2013 Council Recommendation on effective Roma integration measures⁶ notes that the situation of Roma children in the Union is particularly worrying, and

recommends specific measures, in particular as regards education. Across the EU, primary and lower secondary education is compulsory and free of charge. This means that governments have an obligation to ensure that all children, including Roma, enrol in and attend school.

Several years after the 2011 Commission Communication on an EU Framework on National Roma Integration Strategies, however, Roma children continue to live under conditions that violate their fundamental rights, ► the results of EU-MIDIS II show. As discussed in Chapter 7 of this report, child poverty is an issue of high concern, and Roma children are particularly vulnerable. Every third Roma child in the countries covered by EU-MIDIS II was living in a household in which at least one person had faced hunger at least once in the preceding month.⁷

Education is key to improving life chances and escaping the vicious cycle of poverty and exclusion. As noted above, a June 2016 report by the European Commission assessed the implementation of the EU Framework for National Roma Integration Strategies and the relevant Council Recommendation. It confirms that "education continues to receive the most attention by Member States in their integration measures". In their national policies, Member States focus on countering early school leaving (although in many cases these strategies do not explicitly target Roma); promoting access to and quality of early education (increased funds allocated to building kindergartens, legislative changes to introduce or extend compulsory pre-school education, etc.); and promoting inclusive education and individualised support to children in mainstream education (preventing placement in special schools on the basis of social background).⁸ However, segregation and early school leaving remain problems for Roma children, requiring more concerted and targeted efforts.

According to EU-MIDIS II, 7 % of respondents (students or parents) experienced discrimination in education because of their Roma background in the 12 months preceding the survey, and twice as many (14 %) did so in the five years preceding the survey.⁹ Additionally, on average, only every second Roma child in the relevant age group attends early childhood education (compared with the EU 2020 strategy target of 95 %) – a small increase from the previous survey results. As a result, Roma children also lag behind the general population in enrolment in subsequent levels of education (see Table 4.1).

Segregation in education remains a problem. EU-MIDIS II results show that almost half (46 %) of Roma children aged 6–15 attend schools where all or most of their schoolmates are Roma. The highest percentages were in Slovakia (62 %), Hungary (61 %) and Bulgaria (60 %).¹⁰ In response, the European Commission sent a letter of formal notice to **Hungary** in May 2016, the first step ► of an infringement procedure (see Chapter 3 for more

Table 4.1: Enrolment rates of Roma in each level of education, by age group, compared with the general population in nine EU Member States (%)

Education level (ISCED 2011) ^a	Roma			General population	
	Net Enrolment rate ^b	Total Enrolment rate ^c	Not attending any educational level	Net enrolment rate	Total Enrolment rate
ISCED1+2	86	93	7	90	93
ISCED3	30	52	48	79	92
ISCED4+	(2) ^d	5	95	34	47

Notes: ^aThe United Nations Educational, Scientific and Cultural Organization (UNESCO) developed the *International Standard Classification of Education (ISCED)* to facilitate comparisons of education statistics and indicators across countries on the basis of uniform and internationally agreed definitions.

^bNet enrolment rate: percentage of children of the relevant age attending education level that corresponds to their age out of the total number of children of that age.

^cTotal enrolment rate: percentage of children of the relevant age attending any education level out of the total number of children of that age.

^dValue based on low number of observations.

Sources: FRA, 2016 (*Second European Union Minorities and Discrimination Survey: Roma – Selected Findings*, p. 25); UNESCO, *International Standard Classification of Education (ISCED)*

details). The Commission similarly sent letters of formal notice regarding educational segregation to the **Czech Republic**¹¹ in 2014, and to **Slovakia**¹² in 2015. In **Slovakia**, de facto educational segregation due to residential concentration was reported to and confirmed by the State School Inspectorate in two elementary schools (*Základná škola*), affecting 157 and 200 Romani children in January and February 2016, respectively.¹³ In its concluding observations on the combined third to fifth periodic reports of Slovakia, the UN Committee on the Rights of the Child also points out that “Roma children continue to be the victims of de facto segregation in the State party’s school system, with over 50 % being taught in Roma-only classes or attending classes in separate school pavilions, often providing inferior education.”¹⁴

Early school leaving continues to affect Roma children disproportionately and is one of the key reasons behind low attainment rates. On average, 68 % of Roma aged 18–24 have attained at most lower secondary education and are not involved in any further training.¹⁵ In **Bulgaria**, the National Council on Cooperation on Ethnic and Integration Issues claimed that a large number of young Roma drop out of school early because their parents are not motivated to send their children to school, and that this remains a great challenge for national and local authorities.¹⁶ In the **Netherlands**, a study revealed that many Roma children attend only primary school and many go to special schools for pupils with learning problems. The study argues that the high truancy rate among Roma children results from discrimination against Roma in the Dutch education system and in society combined with low parental expectations regarding education.¹⁷ The 2016 Observations of the Committee on the Elimination of Racial Discrimination for **Spain** note that early school drop-outs and “ghetto schools, which account for a large number of migrants and Roma children” are a problem in many regions. The

committee encourages the state to adopt “effective education policies that ensure the equitable distribution of students, in order to put an end to this phenomenon.”¹⁸ FRA’s Local Engagement for Roma Inclusion (LERI)¹⁹ research project in Agia Varvara, **Greece**, and in Sokolov, the **Czech Republic**, showed that early school leaving can be addressed by engaging parents and through participatory community-level actions to encourage students to remain in school. LERI in Medway, the **United Kingdom**, also tested family learning models to address the educational needs of both parents and students. LERI is part of FRA’s qualitative action research on the ground, identifying drivers of and barriers to inclusion efforts at the local level.

FRA ACTIVITY

FRA research on the ground: Local Engagement for Roma Inclusion

FRA’s Local Engagement for Roma Inclusion (LERI) project is a qualitative action research project developed in response to the European Commission’s Communication on an EU Framework for National Roma Integration Strategies up to 2020. In 2016, the research project brought together local authorities and residents, Roma in particular, to investigate how they could best be involved in Roma integration actions, and identify which aspects of these actions work, which do not, and why. The project aims to facilitate the engagement of all local stakeholders, including Roma, in joint efforts to enable Roma inclusion. The experience gained and the lessons learned during the process will help improve the design, implementation and monitoring of Roma integration policies and actions at the local level.

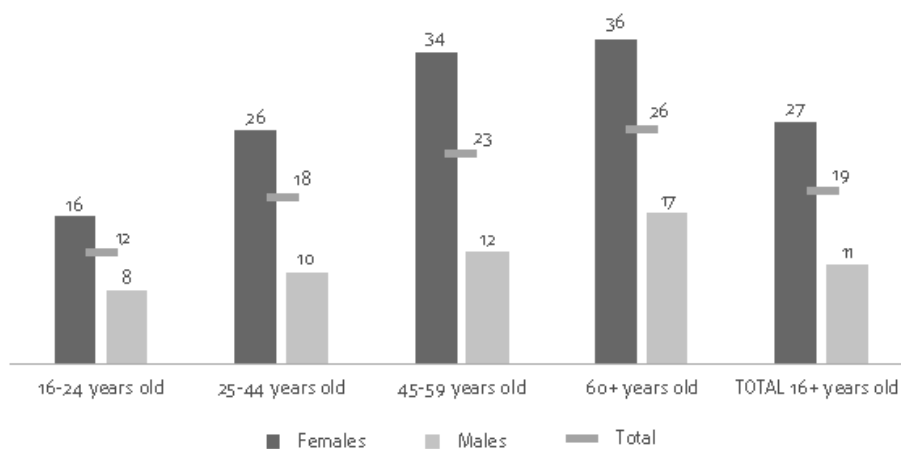
For more information, see FRA’s webpage on the project

Early marriage among Roma

Health care, child welfare, education and other relevant authorities have a responsibility to protect and prevent Roma children from marrying early. The mean age at first marriage for Roma across the nine Member States where Roma were surveyed was 26.3 years (25.5 for Roma females and 27.3 for Roma males) – while for the general population in these countries in 2014, it was 30.2 years (28.8 for females and 31.6 for males).

The data from EU-MIDIS II show that certain progress has been achieved in this area. While, on average, 19 % of Roma respondents older than 16 years were married before the age of 18, the incidence of early marriage declines steadily over time: the share of those who married before the age of 18 among respondents older than 60 is 26 %, falling to 12 % for those aged 16-24 (see Figure 4.1).

Figure 4.1: Roma who married for the first time when less than 18 years old, by age and gender (%)



Sources: FRA, 2016 (EU-MIDIS II); OECD (2016), OECD Family Database, SF3.1: Marriage and divorce rates

In the **Netherlands**, although the criminal law relating to forced marriages has been tightened and child marriages are illegal, the National Rapporteur for Human Trafficking found that children in the Roma community are still at risk of such practices. The rapporteur also concluded that, at the moment, no active approach is in place under criminal law to tackle forced early marriages.

Promising practices combating early marriage are in place in some Member States. An EU-funded project called 'Marry when you are ready' – covering **Austria, Bulgaria, Croatia and Italy** – aims to tackle the issue of early and forced marriages among Roma. Similar projects addressing early marriage were implemented in **Belgium, Bulgaria, Greece, Slovenia and Spain** through a multi-country 'Early Marriage Prevention Network' project.

Sources: International Centre for Reproductive Health (ICRH) (2016), *Huwelijksdwang in België – Een analyse van de huidige situatie*, Ghent; Netherlands, National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (Nationaal Rapporteur Mensenhandelen Seksueel Geweld tegen Kinderen) (2016), *Dicht op kwetsbaarheid. Een verkennend onderzoek naar de kwetsbaarheid van kinderen voor mensenhandel*; Associazione Promozione e Solidarietà – Centro di Servizio per il Volontariato del Lazio, 'Marry when you are ready'; European Roma Information Office, Early Marriage Prevention Network

Promising practice

Providing education to hard-to-reach populations

France is among the countries applying various approaches to provide Roma children with access to education. One example is *Camion école – Antennes Scolaires Mobiles* – a mobile classrooms project aiming to make school accessible to Roma children living in slums. Three mobile schools of the association ASET⁹³ have been operational in the Department of Seine-Saint-Denis, providing education to Roma children. The approach is particularly relevant today, with the issue of children living in unsettled conditions – not just Roma, but also migrants and refugees – increasingly a challenge.

Another example is the work of the *Groupe de suivi académique pour la scolarisation des enfants vivant en situation de grande précarité* in the region of Paris. Formed in September 2016, the group is a network of different actors (teachers, social workers and NGOs) who support children at risk of poverty in their education.

The success of both approaches depends on the support and engagement of all local stakeholders. Both send an important message: the technical infrastructure (in the first case a mobile school unit) is the last element of the chain leading to success. Unless other elements – such as preparatory work with local communities and the engagement of people who can be role models for the children – are in place, success is not feasible.

For more information, see France, Ministry of Education (Ministère de l'Éducation), 'Organisation of the schooling of newly arrived non-French-speaking pupils' (Organisation de la scolarité des élèves allophones nouvellement arrivés), Instruction No. 2012-141, 2 October 2012; and the website of ASET⁹³.

The importance of education was emphasised in the Council Conclusions on Accelerating the Process of Roma Integration, which urged Member States to ensure equal access of Roma to education, increase efforts to eliminate all forms of segregation in education (at all levels and particularly the segregation of Roma children into special schools), and provide good-quality education.²⁰ The 2016 statement by the Chair of FRA's Fundamental Rights Forum draws attention to the responsibility of EU institutions and EU Member States to "encourage the learning of social competence and human rights principles, enhance critical thinking and media literacy, and increase intercultural understanding through education."²¹ Member States demonstrate various approaches to this.

In **Bulgaria**, the new Pre-school and School Education Act (*Закон за предучилищното и училищното образование*), in force since 1 August 2016, defines

among its main principles the provision of equal access to quality education and the inclusion of every child in the education process. The law introduces a national educational standard for children with mother tongues other than Bulgarian and prohibits the formation of classes or groups of children based on their ethnic origin. Under the law, every school and kindergarten is obliged to prepare its own programmes for prevention of early drop-out and for inclusion of children from vulnerable groups.²²

Promising practice

Offering after-school activities via 'Tanoda' schools

'Tanoda' stands for 'study hall'. The project offers structured afternoon activities to vulnerable children in **Hungary**. It dates back to the early 1990s, when a number of civil society actors realised that just bringing children from vulnerable or marginalised backgrounds to school is only the beginning of the long road to their integration. After-school activities (not limited to assistance with homework) is no less important for overcoming deficits in knowledge, social or concentration skills.

When the programme started, it was operated by non-governmental organisations only and funded primarily by private donors. In the 2000s, the proportion of public funding started to increase and, in 2012, the government launched a publicly funded 'Tanoda Programme' using European Social and Investment Funds (ESIF). In the first budgetary period, between 2012 and 2014, public spending (from the European Social Fund) reached HUF 5,300 million (c. € 17 million) and the number of study halls tripled within these two years; in October 2014, 5,000 students were studying in 169 schools or organisations in the framework of the programme.

For more information, see State Secretariat responsible for Social Affairs and Social Integration (Szociális Ügyekért és Társadalmi Felzárkózásért Felelős Államtitkárság) (2014), 'Within two years the number of after-schools tripled' (Két év alatt megháromszorozódott a tanodák száma), Press release, 16 October 2014.

The Government of the **Czech Republic** has put in effect several mainstream mechanisms that are expected to have a positive impact in the field of inclusive and early childhood education, explicitly affecting Roma. Amendments to the Education Act (561/2004 Coll.), as defined in Decree no. 178/2016 Coll., ensure that compulsory early childhood education starts at the age of five and envisage preferential admission for Roma children to kindergartens that are municipally owned.²³ Decree No. 27/2016 Coll. to the act stipulates that children with special needs are to be provided, free of charge, with supportive measures that enable them to pursue their education in mainstream schools.²⁴

To tackle early school drop-out among Roma children, particularly among young girls, the government in **Portugal** is planning to hire Roma mediators to bridge the gap between Roma families and schools in areas where Roma communities reside and thus try to reverse the trend of early school drop-out among these children.²⁵ The Portuguese government also launched a Grants Programme for University Scholarships for Roma students in 2016. It envisages 25 scholarships during the 2016/2017 school year.²⁶

In **Romania**, the Ministry of National Education (*Ministerul Educației Naționale*, MEN)²⁷ set aside 622 places in universities for Roma students in 2016, besides 265 places for masters' degrees; and 3,150 places were allocated for Roma students in high schools. A Romani-language curriculum was developed and included in the national curriculum. **Romania** also established a network of inspectors for Roma education issues, which means that each County School Inspectorate included in its staff plan a position for an inspector for minorities, and there are also three such positions within the central office of the MEN. In October 2016, the National School for Political and Administrative Studies launched a two-year Master Course for Roma Studies to help stakeholders dealing with Roma issues.

Implementing integration measures in education can create friction between communities, if Roma are exclusively rather than explicitly targeted. This happened in **Bulgaria**, where in 2016 the Centre for Educational Integration of Children and Schoolchildren from Ethnic Minorities (CEICSEM) (*Център за образователна интеграция на децата и учениците от етническите малцинства*, ЦОИДУЕМ) offered a stipend of € 30 per month only to Roma pupils with average grades of at least 3.5 on a scale from 2 to 6, to support them in completing secondary education.²⁸ However, the project (and the long-term benefits of affirmative action in general) was not properly communicated and non-Roma parents perceived this as discriminatory.²⁹

4.1.2. Employment

Employment is a core element of the Europe 2020 growth strategy, which aims to ensure that 75 % of the population aged 20–64 is employed by 2020. In regard to Roma, the 2013 Council Recommendation on effective Roma integration³⁰ recommends that Member States take effective measures, including combating discrimination and supporting first work experience, vocational training, on-the-job training, lifelong learning and skills development, self-employment and entrepreneurship. FRA's Chair's Statement following the 2016 Fundamental Rights Forum calls for "more precise and targeted benchmarks in the areas of growth and quality employment, adequate income support, and universal access to quality services."³¹ The emerging

European Pillar of Social Rights identifies employment as a key priority. The European Parliament report on a European Pillar of Social Rights also addresses various aspects of employment and employability as key determinants of social inclusion and highlights the importance of personalised, face-to-face support, in particular for excluded and vulnerable households.³²

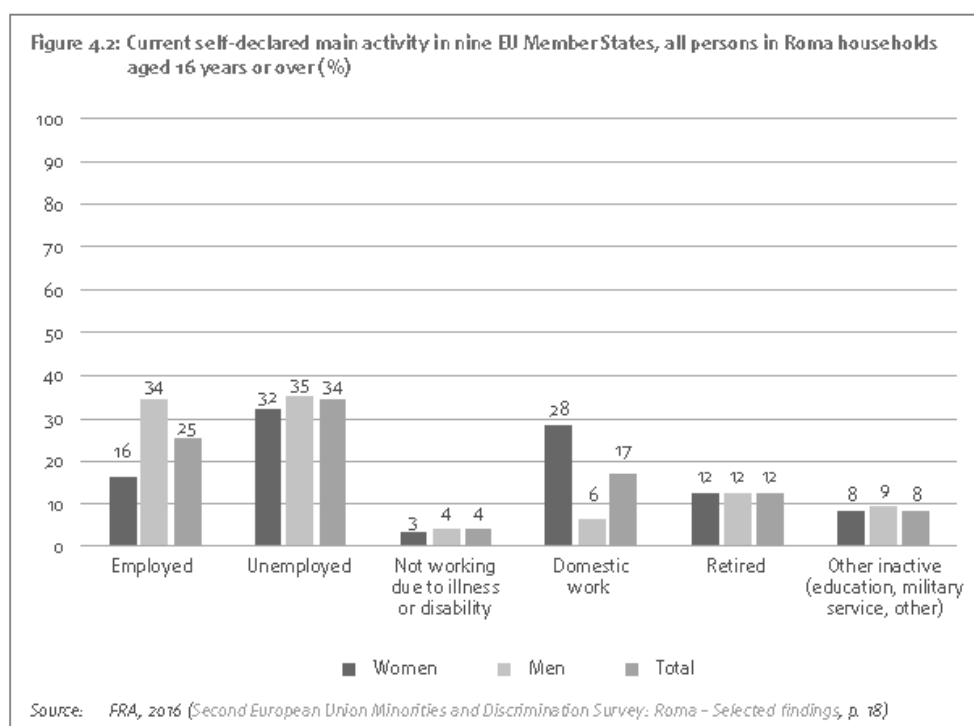
Despite efforts undertaken by Member States, and as reported by FRA in 2016, Roma participation in the formal labour market remains weak. As the European Commission Communication concludes, low levels of education and skills and widespread discrimination are factors explaining poor employment outcomes for Roma.³³

The results of EU-MIDIS II support the Commission's conclusion (see Figure 4.2). Only a quarter of the respondents consider themselves 'employed'. Not surprisingly, the 'at-risk-of-poverty rate' among Roma in the nine Member States covered by the survey was on average 80 %.³⁴

Low employment rates result from a variety of factors, such as low qualifications, early school leaving, lack of vocational skills and training, general unemployment rates, etc. However, in the case of Roma, prejudice and discrimination augment all these issues, further decreasing the chances of employment. When looking for work, on average, one in six Roma respondents felt discriminated against on the grounds of their ethnic origin in the 12 months preceding the survey; this prevalence increases to 40 % if the period is extended to the five years before the survey. Roma also reported experiencing discrimination when at work: 5 % in the previous 12 months and 17 % in the previous five years.³⁵

Roma are not the only group suffering from unemployment, but the magnitude of this phenomenon among Roma is unparalleled. The combination of inadequate skills, prejudice and discrimination comes on top of the 'usual' risks related to sluggish economies, jobless growth and decline in labour-intensive occupations. This is why achieving tangible improvements in the area of employment of Roma is particularly challenging.

The Council conclusions from December 2016 on accelerating the process of Roma integration include reference to specific actions that can address prejudice and discrimination against Roma and improve their skills to improve access to work opportunities. Such actions would seek synergies between education and employment policies to improve the flexibility, mobility and employability of Roma. To address jobless growth and the decline of labour-intensive occupations, the Council also calls for the creation of sustainable job opportunities in the least developed regions; support for the employability of young Roma; promotion of



policies such as vocational and on-the-job training, individual counselling services, social entrepreneurship and first work experience programmes; and increased job opportunities in the public sector, especially the education system, to prevent the intergenerational transmission of poverty in Roma communities?³⁶

Policy measures on employment vary among Member States and range from training and requalification to community work. In general, Member States in their reports to the Commission gave priority to mainstreaming measures for all unemployed people, such as training, subsidised jobs and public works, without explicit reference to Roma. However, many of them apply a mix of targeted and mainstreamed measures. Most Member States also report measures supporting first work experience, vocational or on-the-job training, lifelong learning and skills development.

For example, in **Belgium**,³⁷ as part of the European Social Fund (ESF) Operational Programme 2014–2020, the agency ESF Flanders (*FSE Vlaanderen*) finances projects that organise an integrated pathway towards training and jobs for people from the Roma community in Flanders and Brussels. In **Hungary**, employment interventions targeting Roma are implemented as part of the Hungarian National Social Inclusion Strategy to combat long-term poverty, which mentions Roma explicitly. The interventions include education and training, as well as public employment

programmes targeting mainly undereducated, long-term unemployed people on a compulsory basis (currently 183,000 participants annually). However, public work schemes may not be enough to improve substantially the reintegration of participants in the open labour market, and also bear the risk of “locking participants into the scheme, particularly low-skilled workers and people in disadvantaged regions.”³⁸ Employment components are also included in complex interventions to improve services in disadvantaged regions with a budget of € 58 million and in complex anti-segregation programmes with a budget of € 154.8 million.³⁹

In **Romania**, an Integrated Package to Combat Poverty/Anti-Poverty Package (*Pachetul integrat pentru combaterea sărăciei*)⁴⁰ was launched at the end of February 2016. It was designed bearing in mind all public policies that aim to combat poverty and derive their budgets from state funds and the European Structural and Investment Funds (ESIF). The Operational Program for Human Capital also targets Roma communities directly (call 4.1) and indirectly (call 4.2) for implementing integrated services providing support in issuing the ID documents.

Slovakia adopts a mix of targeted and mainstreamed approaches and relies predominantly on ESIFs to implement Roma integration policies. The Implementation Agency of the Ministry of Labour, Social Affairs and Family

(*Implementačná agentúra Ministerstva práce, sociálnych vecí a rodiny*), using the ESF, supported national social field work and community work projects in some areas with particularly concentrated Romani populations. The projects had a specific focus on young people and children.⁴¹

In **Spain**, the long-established *Acceder Programme* (*Programa Acceder*), currently funded through the ESF under the Operational Programme for Social Inclusion and Social Economy, develops personalised ‘roadmaps’ to assist young Roma to access the labour market. The *Learning by Doing Programme* (*Programa Aprender Trabajando*) aims to increase employability and professional skills, as well as equal access to the labour market, for young Roma. In 2011, the *Acceder Programme* obtained authorisation from the Spanish Ministry of Employment, through the Spanish Public Employment Service (*Servicio Público de Empleo Estatal*), to function as an employment agency throughout Spain. This allows the *Fundación Secretariado Gitano* (FSG) to bring employment support services closer to Roma in their efforts to access employment. To date, more than 87,000 people have benefited directly from the *Acceder Programme*, with Roma constituting 67 %, and women 53 %, of the beneficiaries, far surpassing its initial objectives. Over a period of 15 years, the FSG helped into work more than 62,000 people, of whom 70 % were Roma and 52 % were women. Furthermore, it was the first job for 27 % of them. On average, half of the participants found a job after completing the project.⁴²

The **Swedish** Employment Office (*Arbetsförmedlingen*) and the municipalities report that they have increased their contact with Roma, which has resulted in more people receiving support for studying and work. Roma relations officers (*brobyggare*) hired to serve in schools, social services and employment offices have played a significant and positive role in the initiative.⁴³

Targeted training and participatory support activities can support Roma entrepreneurs in establishing small-scale micro-enterprises as well as expanding and improving their businesses, preliminary findings from FRA’s LERI⁴⁴ research in Agia Varvara, **Greece** and in Besenec, **Hungary** show. Experiences from LERI in **France** also show that participatory activities to help learn French can support entry into the labour market, particularly for Roma coming from other EU Member States.

4.1.3. Housing

Access to adequate housing with basic infrastructure is an essential precondition for social inclusion. Article 34 (3) of the EU Charter of Fundamental Rights recognises the right to social and housing assistance to ensure a decent existence for all those who lack sufficient resources. The Council Recommendation on effective Roma integration calls for more effective measures to eliminate spatial segregation, promote non-discriminatory access to

social housing, and ensure access to public utilities and infrastructure for housing in compliance with national legal requirements.⁴⁵ However, the 2016 Commission report notes that “the most important housing challenges – namely fighting segregation and preventing forced evictions – were insufficiently addressed”, although several Member States reported measures promoting non-discriminatory access to social housing, while others reported measures to tackle segregation.⁴⁶

Data from EU-MIDIS II highlight the urgent need for concrete measures to ensure that Roma enjoy the right to adequate housing. When trying to rent or buy an apartment or house, 41 % of Roma respondents had felt discriminated against, based on their Roma background, in the preceding five years. Housing and employment are the two areas where Roma appear to experience discrimination the most.⁴⁷ On average, 30 % of Roma in the nine Member States live in households without tap water and 46 % have no toilet, shower or bathroom inside their dwelling.⁴⁸

In **Romania**, the government continued to implement the Social Housing Pilot Programme for Roma Communities,⁴⁹ which aims to build 300 units of social housing for Roma. In **Spain**, Roma are explicitly mentioned in the Development Plan for Promoting the Rental Housing, Building Rehabilitation and Urban Regeneration and Renewal, 2013–2016.⁵⁰ Meanwhile, in the **United Kingdom**, a 2016 report by the Equality and Human Rights Commission notes that certain local authorities are reluctant to provide new sites or refurbish existing ones, although funding was available. Gypsies and Travellers face difficulties in obtaining planning permission to develop private sites, the commission reports.⁵¹ In **Ireland**, a decision delivered on 16 May 2016 by the Council of Europe’s European Committee on Social Rights (ECSR) concerning housing found Ireland in breach of Article 16 of the European Social Charter in relation to the provision and maintenance of accommodation for Travellers. The judgment arose from a 2013 collective complaint made jointly by the European Roma Rights Centre with support from the Irish Traveller Movement.⁵²

The Council Conclusions of December 2016 again urge Member States to “prevent further unjustified forced evictions of Roma by ensuring that forced evictions always take place in full compliance with Union and national law and in accordance with international human rights instruments, in particular the European Convention on Human Rights”.⁵³ Still, there were several allegations in 2016 of evictions and/or forced demolitions of Roma houses in a number of Member States. In **Bulgaria**, non-governmental organisations (NGOs) reported that Roma houses had been demolished in the Stolipinovo neighbourhood of Plovdiv⁵⁴ and in Skara Zagora, Varna and Pleven.⁵⁵ In **Cyprus**, in 2016 Roma families residing in abandoned Turkish Cypriot houses in Limassol were

served with eviction orders. The evictions were to a large extent averted through the combined efforts of the school attended by the Roma children, the Ombudsman and the Commissioner for Children's Rights.⁵⁶

In **France**, NGOs reported that the number of evictions from camps was particularly high during the first quarter of the year (3,683 people forcibly evicted from 25 locations), slowed somewhat during the second quarter of 2016 (932 people forcibly evicted from 12 locations), but again increased thereafter.⁵⁷ The number of evictions however continued to decline, a trend since 2013 (some 20,000 people evicted in 2013, some 11,500 in 2015, and some 10,000 in 2016).

In **Slovakia**, NGOs reported that Romani families had been evicted from the Romani suburb Lunik IX in Košice and then set up a temporary settlement in nearby woods,⁵⁸ and that the city of Žilina had resumed evicting Romani families living there and demolishing their houses.⁵⁹ In its concluding observations on the nineteenth and twentieth periodic reports of **Italy**, the UN Committee on the Elimination of Racial Discrimination reiterated its deep concern about the persistent and entrenched discrimination that Roma, Sinti and Camminanti communities continue to experience. In particular, forced evictions continue; they continue to live in segregated camps or housing areas with substandard accommodation, many unsuitable for human habitation, and in remote areas far from basic services, including healthcare and schools; municipal authorities build new segregated Roma-only camps; and local authorities have introduced discriminatory criteria to assess social housing and housing benefits.⁶⁰

FRA's LERI⁶¹ research tested participatory community-level approaches to addressing housing exclusion and risk of evictions, in particular in Stara Zagora, **Bulgaria**, where mapping evicted families helped the local authorities to find appropriate solutions while at the same time raising awareness among Roma households of legal options to rebuild their homes. In Aiud and in Cluj-Napoca, **Romania**, the project developed local action groups on housing inclusion to address the housing insecurity of families in informal settlements, looking for ways to give houses official legal status, submit social housing applications, and propose changes to criteria for social housing allocation that are less likely to exclude socially marginalised populations.

4.1.4. Health

In their reports on implementation of the Council recommendation, most Member States reported measures to facilitate access to healthcare and preventative care, in particular vaccination of children and family planning, and to raise health awareness. However, for some Roma, lack of registration and health insurance coverage can limit access to healthcare.⁶² The data from EU-MIDIS II

show that, on average, 74 % of Roma respondents report that they are covered by national basic health insurance and/or additional insurance. At the same time, only 8 % of Roma respondents felt discriminated against because of their Roma background when using healthcare services in the 12 months preceding the survey.⁶³

FRA's LERI⁶⁴ research in Pavlikeni, **Bulgaria**, identified one of the main challenges of the local community as low coverage of national health insurance and exclusion from the scheme. The project tested a small-scale pilot to cover health insurance fees for some Roma families so that they could overcome financial barriers to accessing healthcare and be reintegrated into the healthcare system.

Promising practice

Setting up health mediator networks

Health mediators are increasingly common in Member States. **Bulgaria** is one of the first to test and implement them not just as a system for providing access to health services to marginalised Roma communities but also as an opportunity for professional development for young Roma working as mediators.

The Ethnic Minorities Health Problems Foundation launched the approach in Bulgaria in 2001. The aim was to address discrimination that Roma face in access to health services. The foundation ran a pre-admission scheme that has enabled 106 Roma people to study as healthcare professionals: 22 as doctors and the rest as pharmacists, dentists, nurses and midwives. In 2016, a total of 195 health mediators were working in 113 municipalities in Bulgaria, an increase from 109 mediators in 2012. Their positions are funded from municipal budgets. Being part of the community themselves, the health mediators know the specific challenges first-hand and are better equipped to facilitate dialogue and cooperation between the vulnerable populations and the institutions. The implications of such cooperation go well beyond access to health.

A similar approach was adopted in **Slovakia**, where the programme also benefited from the existence of the network of field social workers. In Slovakia the programme relies predominantly on European Structural Funds. In 2016, the NGO Healthy Communities continued to implement the programme in 200 Roma settlements. It engaged some 200 health mediators, focusing on preventative care and health awareness, with a specific focus on children through vaccinations and regular check-ups.

Sources: Thornton, J. (2017), 'Bulgaria attempts to combat discrimination against Roma', *Lancet*, Vol. 389, 21 January 2017, pp. 240–241; National Network of Health Mediators (2016), 10th National Meeting of the "Initiative for Health and Vaccination Prophylactics" ('Десета Национална среща "Инициатива за здраве и ваксинация профилатикс"), 8 December 2016; website of Healthy Communities (Zdravé Komunity).

The recognition of the forced sterilisation of Roma women in past years remains an issue. Regarding the **Czech Republic**, the Budapest-based NGO European Roma Rights Centre (ERRC) issued a parallel report⁶⁵ to the UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) in January 2016. It pointed to persisting legal, policy and other obstacles concerning the compensation of Roma women who were subjected to forced sterilisation in the past. Another report, on the personal experiences of sterilised Romani women, followed in November.⁶⁶ The UN Human Rights Committee also raised the issue of recognising past forced sterilisation cases in its concluding observations on the fourth report of **Slovakia**.⁶⁷

The services of Roma health mediators are increasingly used. The December 2016 Council conclusions urge Member States to secure funding for healthcare mediator programmes targeting Roma.⁶⁸ This approach continued to expand in **Bulgaria**⁶⁹ and **Slovakia**⁷⁰ in 2016, while **Greece** also included health mediators in legislation aimed at improving access to healthcare for vulnerable groups, including Roma.⁷¹

4.1.5. Anti-Gypsyism

Deeply rooted prejudice and discrimination that many Roma face contribute to their social exclusion. There is little evidence of systematic efforts to expose and tackle negative stereotypes fuelling anti-Gypsyism. The most extreme manifestation of anti-Gypsyism is in hate crime and hate speech, which Member States need to address as these fall under the scope of the EU's Framework Decision on Combating certain forms and expressions of racism and xenophobia by means of criminal law.⁷² The findings of EU-MIDIS II show that one out of five Roma respondents say that someone made offensive or threatening comments to them in person in the 12 months preceding the survey because of their Roma background. Four per cent of Roma respondents report having been physically attacked in the preceding 12 months because

of their Roma background. Of Roma who experienced a physical attack, 70 % did not report it anywhere.

The Council of Europe issued a report on the situation of Roma and Travellers in the context of rising extremism, xenophobia and the refugee crisis in Europe in 2016. It notes that incidents of hate speech and hate crime remain frequent across European countries. The social climate is unfavourable for Roma and Travellers, and has worsened amidst the refugee crisis and jihadist attacks in several cities in Europe.⁷³

National Roma integration strategies focus on sector-specific issues. References to anti-Gypsyism are rare and generic in nature (see Table 4.2). More specifically, 20 Member States do not mention anti-Gypsyism in their national Roma integration strategies or integrated sets of policy measures. Moreover, in most of these, the strategies do not even refer to racism. Three Member States do mention the term anti-Gypsyism (or its national adaptation), in the introductory sections describing the status of Roma (**Belgium, Sweden**) or by listing ECRI General Policy Recommendation No. 13 on combating anti-gypsyism and discrimination against Roma as one of several recommendations taken into account (**Latvia, Finland** mentions anti-Gypsyism as the aim in one key area in the strategy. Three countries' strategies also include specific measures to combat anti-Gypsyism – those of the **Czech Republic, Italy** and **Spain**. The national Roma integration strategy of the Czech Republic devotes particular attention to this issue.

The UN Committee on the Elimination of Racial Discrimination published its concluding observations on the nineteenth and twentieth periodic reports on **Italy**, noting the prevalence of racist discourse, stigmatisation and negative stereotypes in political debates, which are also directed against Roma.⁷⁴ UNAR (*Ufficio Nazionale Antidiscriminazioni Razziali*), the Italian equality body, detected 1,366 cases of

Table 4.2: How do national Roma integration strategies or integrated sets of policy documents reflect Anti-Gypsyism?

Not mentioned	Mentioned only	Have specific goals	Have specific measures
AT, BG, HR, CY, DK, EE, EL, DE, FR, HU, IE, LT, LU, NL, PL, PT, RO, SI, SK, UK	BE: mentioned once (Status section – anti-Roma racism) LV: mentioned once (section on recommendations from various organisations, including the Council of Europe and the EU) SE: mentioned once (living conditions – anti-Roma motive)	FI: mentioned in description of problem and one of the aims of 'Key area 4.5'	CZ: mentioned in the status section, analysis section, with separate sub-section dealing with anti-Gypsyism; in specific goal 10.1 (protection of Roma against extremism and racially motivated crime) ES: under 'Non-discrimination and promotion of equal treatment' mentions a measure to promote implementation of the Council of Europe recommendation on anti-Roma attitudes IT: one of the aims of the strategy; specifically mentions eliminating anti-Gypsyism

Source: FRA, 2016 (based on information available via the Commission's webpage on Roma integration by EU country)

online hate speech targeting the Roma population from 1 August to 31 October 2016.⁷⁵

Evidence of the prevalence of hate speech against Roma is also reported in several other countries. For example, in **Bulgaria**, a study on hate speech by the NGO Open Society Institute – Sofia (OSI – Sofia) estimates that the majority of hate speech cases are against Roma,⁷⁶ while the NGO Bulgarian Helsinki Committee (BHC) reports that progress in countering hate speech is insignificant.⁷⁷

In **Slovakia**, the Ministry of the Interior recorded 25 complaints of hate speech crimes on the grounds of Roma ethnic origin in 2016. The police are investigating four of them. Furthermore, there were 17 complaints of incitement to racial hatred on the grounds of Roma ethnic origin. Out of these, the police rejected 11 petitions and are continuing to investigate the remaining six cases.⁷⁸

A number of countries reported incidents of hate crime against Roma. In **Bulgaria**, a case of violence against Roma gained significant public attention. On 16 April 2016, a man made a video of himself forcing a young Roma man to say that they were not equal because of their different ethnic origin. The offender received a suspended sentence of 11 months in prison for bodily injury caused with racist motives. He was also placed on probation for three years.⁷⁹

In **Croatia**, a physical attack on a Roma family was reported,⁸⁰ and so was a bomb attack on a kindergarten attended by Roma children.⁸¹ The investigation is still in progress, so a complete case description cannot be delivered. In **Italy**, the Italian National Observatory on Hate Speech against Roma and Sinti (*Osservatorio nazionale sui discorsi d'odio nei confronti di rom e sinti*) reported nine violent attacks against Roma in various Italian cities from 1 January to 31 October 2016.⁸²

In **Romania**, the NGO European Roma Rights Centre submitted a report to the European Commission highlighting excessive use of force against Roma.⁸³

In Slovakia, the Public Defender of Rights (*Verejný ochranca práv*) reported that a Roma man had been beaten during his detention at the police station in Lučenec in May 2016. The case is currently under review,⁸⁴ as is another complaint reported to the Ministry of the Interior.⁸⁵

In **Sweden**, the Commission against Anti-Gypsyism (*Kommissionen mot antiziganism*) reported⁸⁶ in 2016 that, although the legal framework for combating hate crime⁸⁷ is adequate, its implementation is not satisfactory, as very few complaints lead to prosecution and even fewer to convictions, despite an increase in the number of hate crimes reported. The report also notes that Roma women and children are particularly at risk of hate crime.⁸⁸

For more information on hate speech and hate crime, see ► Chapter 3 on Racism, xenophobia and related intolerance.

4.1.6. Rights awareness and reporting

Awareness of rights, as well as knowing where and how to complain when these are violated, is essential to ensuring access to justice. The 2013 Council recommendation calls specifically on Member States to also empower Roma through the organisation of "information activities to further raise awareness among Roma of their rights (notably in relation to discrimination and the possibilities of seeking redress) and of their civic duties".

Of the 26 % of the Roma respondents who felt discriminated against because of their Roma background at least once in the preceding 12 months, only 12 % reported the last incident to an authority or filed a complaint, EU-MIDIS II results show. Such a low reporting rate should be read together with the low awareness of the organisations or bodies that could provide support or advice in cases of discrimination: 82 % of Roma respondents are not aware of such an organisation in their country. More respondents (29 % on average) recognised an equality body, when the name was shown, although results vary by country. On average, only 36 % of respondents knew that a law prohibiting discrimination based on skin colour, ethnic origin or religion exists; about one third (35 %) thought that such a law does not exist; and 27 % simply did not know whether or not such legislation exists.⁸⁹

Promising practice

Improving access to justice for Roma and other vulnerable groups

A project implemented in **Romania** with support from the Norwegian Financial Mechanism 2009-2014 brought together the Superior Council of Magistracy, the Council of Europe and Norwegian Courts Administration, as well as national partners such as the National Institute of Magistracy and the National Agency for Roma. It aims to increase vulnerable populations' – especially Roma's – awareness, knowledge and assertion of their rights and obligations, as mandatory steps for better access to justice according to European standards. The project adopts a broad social vulnerability perspective – the Roma population is an explicit but not exclusive target group.

One of the project's targets is to strengthen legal professionals' knowledge on the issue of countering discrimination. In this respect, training sessions on antidiscrimination were organised for judges, prosecutors and lawyers during 2015 and 2016.

For more information, see Access to justice for vulnerable groups in Romania, 2014

The importance of being able to access justice becomes evident when looking at cases where discrimination was reported and courts or relevant bodies provided redress.

In **France**, for example, a Roma woman was not allowed to enrol her son in the local primary school. The woman appealed and the court found that the mayor's decision did not sufficiently take into account the child's right to education.⁹⁵ In **Italy**, a court found that a politician, a member of the European Parliament, was in breach of legislation for using derogatory language intended to humiliate Roma and contribute to a hostile and intimidating social environment that would hinder Roma integration.⁹⁷

In **Ireland**, the Workplace Relations Commission is the designated body to which complaints are made in the first instance in relation to the Employment Equality Acts 1998–2015 and the Equal Status Acts 2000–2015. Subsequent appeals are heard in the Labour Court or Circuit Court. It adopted twelve decisions about discrimination on the grounds of membership of the Traveller community in 2016 (eleven Equal Status decisions and one Employment Equality decision). Six of these found that the complainant had been discriminated against.

4.2. Improving efforts for Roma inclusion

In 2016, for the first time, Member States reported on the measures taken in response to the 2013 Council Recommendation on effective Roma integration measures in the Member States.⁹⁸ The European Commission has reported that 12 Member States (**Austria, Belgium, Bulgaria, the Czech Republic, France, Greece, Hungary, Italy, Poland, Romania, Slovakia and Spain**) chose to fund measures under the investment priority of the ESF on socio-economic integration of marginalised communities, such as Roma, and they allocated € 1,5 billion to them.⁹⁹

A number of Member States set up national platforms for Roma inclusion to mobilise stakeholders to coordinate action. These national platforms are supported by the Commission and were established in **Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, Greece, Hungary, Latvia, Lithuania, Romania, Slovakia, Slovenia and Spain**, while **Estonia** established a Roma integration council (*Romade Iõimumise nõukoda*).⁹⁴

The national policy frameworks and measures in place do not seem, as yet, to yield significant results on the ground, as the Commission also stressed in 2016.⁹⁵ The active involvement of multiple stakeholders, including Roma, local authorities and civil society, is essential for the success of local-level integration measures.

This is reflected both in the Commission's 2016 report and in the special report of June 2016 by the European Court of Auditors, which notes that "the need for active participation by civil society organisations, in particular representatives of the Roma community itself, was not always taken into account in the selected [Member States] when national Roma integration strategies were being drafted."⁹⁶ The report also notes that relevant stakeholder groups are not always appropriately involved in the preparation and implementation of projects; that omission puts the success and sustainability of the projects at risk.

FRA research also shows that, to have tangible results on the ground that can be monitored, national-level participation needs to be translated into local-level engagement of Roma and local authorities. When local communities come together to jointly discuss integration challenges and have an opportunity to participate in designing, implementing and monitoring local-level inclusion policies and actions, meaningful and tangible results can be achieved. This is reflected in a variety of local-level case studies through FRA's LERIP⁹⁷ project, a qualitative action research project under FRA's multiannual Roma Programme.

While the active and meaningful engagement of Roma themselves is essential, it is equally important to have in place robust monitoring procedures to inform policy development. In 2016, Member States and the European Commission continued efforts to improve the monitoring of Roma integration measures, as required by the 2013 Council recommendation. Robust and comparable data are essential. The 2016 European Court of Auditors' report issued a relevant recommendation, no. 8 (b), calling on the European Commission to encourage Member States to collect comprehensive and appropriately disaggregated statistical data within the next two years, in accordance with national legal frameworks and EU legislation and including existing possible derogations.⁹⁸ The European Commission commented on this recommendation that the issue should be left to the discretion of Member States, in line with the principle of subsidiarity, and also highlighted challenges in the collection of statistical data on Roma, including technical and legal difficulties as well as high costs.

The European Court of Auditors' report also calls for the inclusion of "indicators and target values which deal with anti-discrimination or, more specifically, anti-Gypsyism".⁹⁹ In 2016, FRA contributed to these efforts by coordinating and providing technical expertise to a working party on Roma integration indicators – comprised of **Austria, Belgium, Bulgaria, the Czech Republic, Croatia, Finland, France, Greece, Hungary, Ireland, Italy, the Netherlands, Portugal, Romania, Slovakia, Spain and the United Kingdom** – which developed a detailed reporting template to support reporting by Member States following the structure

of the Council recommendation. Twenty-one Member States used the template to report on measures taken. By the end of 2016, the Commission took efforts to improve the tool, with the aim of developing a more user-friendly online information collection application to simplify collection of data for indicators that identify measures taken on Roma integration. Further efforts to improve translation and full functionality of the tool are still being addressed.

Meanwhile, the Council Conclusions of December 2016 urge Member States "to set measurable goals and milestones, with a view to accelerating the process of Roma integration", "further develop appropriate data collection, monitoring and reporting methodologies as necessary so as to support effective evidence-based policies" and "maintain a robust system for monitoring and evaluating the effectiveness of the national strategies".

FRA opinions

During 2016, Roma people across the EU continued to face discrimination, segregation and social exclusion. The limited progress in implementing national Roma integration strategies shows the need for a thorough review of the proposed and planned interventions. There is also a need to promote the active and meaningful participation of Roma, particularly at local level. For local-level Roma integration to succeed, the active involvement of multiple stakeholders is of utmost importance, including local authorities, civil society and representatives of all sectors of the local population. National-level participation needs to be translated into local-level engagement of Roma and local authorities to produce tangible results on the ground that can be monitored.

FRA opinion 4.1

EU Member States should review their national Roma integration strategies (or set of integrated policy measures) to ensure that Roma themselves are empowered to actively engage in the process of Roma inclusion. Member States should explicitly identify and implement specific measures to promote the active and meaningful participation and engagement of Roma, especially at local level.

Findings of FRA's second wave of the European Union Minorities and Discrimination Survey (EU-MIDIS II) show that Roma continued to be discriminated against because of their ethnicity in 2016. They face social exclusion and marginalisation, exacerbated by poverty, and are victims of hate crime. Most Roma living in the EU still do not enjoy their right to non-discrimination as recognised under Article 21 of the EU Charter of Fundamental Rights, the Racial Equality Directive and other European and international human rights instruments. While the Racial Equality Directive outlaws ethnic discrimination and the Framework Decision on Racism and Xenophobia requires criminal sanctions, such legal measures alone do not suffice to address the discrimination of Roma. They need to be combined with active inclusion policies to address the racial inequality and poverty that Roma frequently experience.

FRA opinion 4.2

EU Member States should ensure effective enforcement of the Racial Equality Directive and the Framework Decision on Racism and Xenophobia to tackle persisting discrimination against Roma and anti-Gypsyism. They should adopt explicit policy measures to address anti-Gypsyism in their national Roma integration strategies or set of integrated policy measures.

Findings of FRA's second EU Minorities and Discrimination Survey (EU-MIDIS II) show that employment is an area where discrimination against Roma triggers a chain of other vulnerabilities – namely, as regards income, education and housing conditions. Entire households, and not just the unemployed, bear the negative implications of unemployment. Roma children and Roma women constitute especially vulnerable groups, with their rights at risk of violation.

FRA opinion 4.3

The EU should consider including Roma integration in the context of the proposed European Pillar of Social Rights. The pillar should envisage specific provisions addressing the risk of structural discrimination, by, for example, reinforcing the provisions for equal treatment in the workplace and ensuring marginalised populations can effectively exercise their rights.

Tracking progress on Roma integration requires solid data – both on the measures taken, the processes and their outcomes for the people. More needs to be done to ensure the availability of robust data collection and solid monitoring of Roma integration. The European Court of Auditors' Special Report on the EU policy initiatives and financial support for Roma integration confirmed this need. It found that the lack of comprehensive and robust data remains problematic not only in relation to projects, but also for policymaking at EU and national level. However, tools allowing for solid monitoring do exist and the relevant actors can make use of these tools.

FRA opinion 4.4

EU Member States should – in accordance with national legal frameworks, EU data protection legislation and with the active and meaningful engagement of Roma communities – collect anonymised data disaggregated by ethnic identity, allowing the assessment of the National Roma Integration Strategies and policies on Roma inclusion. Eurostat could include relevant questions in large-scale surveys, such as the Labour Force Survey and the EU Statistics on Income and Living Conditions, thereby following the recommendation of the European Court of Auditors. In addition, Member States should develop or use existing monitoring tools of national Roma integration strategies to assess the impact of Roma integration measures.

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UN & CoE

January

February

16 March – European Commission against Racism and Intolerance (ECRI) adopts its General Policy Recommendation No. 16 on safeguarding irregularly present migrants from discrimination

March

April

11 May – Council of Europe (CoE) Secretary General's Special Representative on migration and refugees reports on the situation of refugees and migrants in Greece and the former Yugoslav Republic of Macedonia

31 May – CoE Commissioner for Human Rights releases a report on migrant integration, providing guidance to governments and parliaments on designing and implementing successful integration policies

May

17 June – Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Committee) launches an urgent monitoring exercise focusing on the protection of children affected by the refugee crisis

June

12 July – In a series of judgments – *A.B. and Others v. France* (No. 11593/12), *R.M. and M.M. v. France* (No. 33201/11), *A.M. and Others v. France* (No. 24587/12), *R.K. and Others v. France* (No. 68264/14) and *R.C. v. France* (No. 76491/14) – the European Court of Human Rights (ECtHR) holds that France violated the prohibition of inhumane and degrading treatment when detaining children (Article 3 of the ECHR); in *A.B. and Others* and *R.K. and Others*, the court also holds that the right to liberty and security as well as to respect for family life were violated (Articles 5 and 8 of ECHR)

July

August

19 September – Heads of state and government of UN Member States adopt a global UN strategy in New York to address the challenges resulting from large movements of refugees and migrants

29 September – CoE Ad hoc Committee for the Rights of the Child (CAHNF) initiates work to elaborate European standards on guardianship and age assessment

September

13 October – In *B.A.C. v. Greece* (No. 11981/15), the ECtHR holds that leaving an asylum-seeker under precarious conditions for some 14 years violates the competent authorities' positive obligation to provide an effective and accessible means of protecting the right to private life, also in conjunction with the right to an effective remedy (Articles 8 and 13 of the ECHR)

14 October – CoE Secretary General's Special Representative on migration and refugees expresses concern over French "Calais Jungle" refugee camp

October

3 November – CoE's anti-torture committee publishes a report on its monitoring visit to Hungary, criticising the treatment and conditions of migrants and refugees and noting that material conditions in immigration and asylum detention centres vary considerably

November

15 December – In *Paposhvili v. Belgium* (No. 41738/10), the ECtHR holds that deporting a seriously ill person to Georgia violates the prohibition of torture (expulsion) and the right to respect for family life (Articles 3 and 8 of ECHR)

15 December – In *Khalifa and Others v. Italy* (No. 16483/12), the ECtHR concludes that the detention of certain irregular migrants in a reception centre on Lampedusa and on board of ships violated Articles 5(1), 5(2) and 5(4) of the ECHR; the ECtHR also found a violation of Article 13 taken together with Article 3 because the applicants had no opportunity to challenge the conditions in which they were held

15 December – CoE's anti-torture committee publishes two reports highlighting inadequate safeguards for foreign nationals returned by air from Italy and Spain but also noting positive observations

December

EU

19 January – European Commission proposes database for third-country nationals' criminal records (ECRIS-TCN)

January

15 February – In *J. N. v. Staatssecretaris van Veiligheid en Justitie* (C-601/15 PPU), the Court of Justice of the European Union (CJEU) for the first time interprets the detention provisions in the asylum acquis in light of the right to liberty and security (Article 6 of the EU Charter of Fundamental Rights) and states that limitations to Article 6 are only allowed when strictly necessary

22 February – Europol launches the new European Migrant Smuggling Centre

February

1 March – In *Ibrahim Abo and Amira Ossa* (C-443/14 and C-444/14), the CJEU rules that residence restrictions that are not applicable to other third-country nationals may be imposed on beneficiaries of subsidiary protection only if it is justified to promote their integration

17 March – In *Mizra v. Bevándorlási és Állampolgársági Hivatal* (C-695/15), the CJEU rules that Article 3(3) of Regulation (EU) No. 604/2013 must be interpreted in a way that permits a Member State that has admitted responsibility under the Dublin Regulation to send an asylum applicant to a safe third country

18 March – EU adopts the EU-Turkey statement, enabling the return to Turkey of asylum applicants who reach the Greek islands after 20 March

March

6 April – European Commission announces the reform of the Common European Asylum System and tables a revised legislative proposal for Smart Borders, which includes the establishment of an EU Entry/Exit System

April

4 May – European Commission tables proposals to change the Dublin and Eurodac Regulations and to create a European Union Agency for Asylum

24 May – Passenger Name Record (PNR) Directive enters into force

May

7 June – European Commission publishes an Action Plan on the integration of third-country nationals; it provides a common policy framework and concrete supporting measures to help Member States further develop and strengthen their national integration policies for third-country nationals

7 June – European Commission revises the former Blue Card scheme and proposes a single EU-wide scheme to be used across the EU, aimed at facilitating intra-EU mobility; lowering the salary threshold to enter the scheme; creating more appropriate conditions for recent third-country national graduates and workers in areas with labour shortages; making the Blue Card available for highly skilled beneficiaries of international protection; and strengthening the rights of card holders and their family members

7 June – In *Séline Affum v. Préfet du Pas-de-Calais, Procureur général de la cour d'appel de Douai* (C-477/15), the CJEU holds that imprisoning a third-country national whose return procedure has not yet been completed, merely on account of illegal entry across an internal border – resulting in an illegal stay – is prohibited

June

13 July – European Commission presents the second package of proposals to reform the Common European Asylum System, including reforms to the Asylum Procedures Qualification and Reception Conditions Directives

13 July – Commission proposes a permanent EU Resettlement Framework

July

August

13 September – In *Alfredo Rendón Marín v. Administración del Estado* (C-165/14) and *Secretary of State for the Home Department v. CS* (C-304/14), the CJEU rules that EU law does not permit automatically refusing a residence permit to, or expelling from the territory of the EU, a non-EU national who has the sole care of a minor who is a EU citizen on the sole ground that he has a criminal record

29 September – Council Dec. (EU) 2016/175 establishes that the number of persons admitted from Turkey by a Member State (under the EU-Turkey deal) should be deducted from the number of persons to be relocated to that Member State under Council Decision (EU) 2015/1601

September

6 October – European Border and Coast Guard Regulation enters into force, upgrading the tasks and responsibilities of Frontex

October

16 November – European Commission proposes a regulation to establish an automated European Travel Information and Authorisation System (ETIAS) to identify any risks associated with a visa-exempt visitor travelling to the Schengen Area

November

8 December – European Commission adopts its Fourth Recommendation on the resumption of Dublin transfers to Greece as a step towards a normal functioning of the rules of the Dublin system

9 December – Council of the EU adopts Conclusions on the integration of third-country nationals legally residing in the EU

21 December – European Commission presents modifications to improve the functionalities of the Schengen Information System, which include measures to record entry bans and return decisions, the use of facial images for biometric identification and the creation of new alerts for wanted unknown persons

December

5

Asylum, visas, migration, borders and integration



More than 5,000 people died when crossing the sea to reach Europe in 2016, even though irregular arrivals by sea dropped by over 60 % from 2015, totalling some 350,000 in 2016. Wide-ranging changes to the European asylum system were proposed while efforts to improve the efficiency of return policies intensified. Legal avenues to reach safety in Europe remained illusory for most migrants, since new restrictions to family reunification in some EU Member States offset the small progress achieved in humanitarian admissions. Information technology systems were reinforced to better combat irregular migration and respond to threats of serious crimes. Meanwhile, integrating the significant number of people granted international protection proved challenging, including in the educational context.

This chapter first examines displacement trends and their impact on EU asylum policies. It then analyses the EU's efforts to maximise the use of information systems for migration management and internal security purposes and its impact on fundamental rights. A separate section describes EU Member States' use of alternatives to immigration detention, as a drive to more effectively implement returns creates new risks of arbitrary deprivations of liberty. The chapter then reviews whether or not there has been any progress with respect to legal channels for reaching the EU. The final section examines migrant integration efforts, focusing on children's access to education.

5.1. Displacement trends trigger major changes in asylum policies

According to the UN High Commissioner for Refugees (UNHCR), over 65 million people were displaced worldwide at the end of 2015, including over 20 million as refugees. Turkey hosted the largest number of refugees in the world: 2.5 million people. Aside from Palestinians in the Middle East, more than half (54 %) of all refugees worldwide came from just three countries: Syria (4.9 million), Afghanistan (2.7 million) and Somalia (1.1 million).¹ The number of displaced persons continued to grow in 2016.

According to Frontex, some 500,000 people irregularly entered EU territory in 2016, with Syrians and Afghans forming the largest shares. Most crossed the Mediterranean Sea to reach Italy (181,000 people) or crossed the land or sea borders into Greece (178,000 people).² Although individuals who reached the EU in 2016 constitute only a small portion of people displaced globally, several EU Member States faced serious difficulties in tending to their basic needs and providing adequate protection to those seeking asylum. For example, as temperatures continued to drop at the end of 2016, people were staying in unheated tents or reception facilities in Hungary (Körmend) and Greece (Samos, Lesbos).³

Arrivals to Greece dropped significantly after the EU-Turkey statement on 18 March, which reflected a deal between the EU and Turkey on how to handle migrants and refugees who cross into the EU from Turkey.⁴ The statement facilitates the return to Turkey of persons who crossed to the Greek islands in the eastern Aegean Sea without authorisation after 20 March 2016. For every Syrian returned to Turkey, another Syrian is to be resettled from Turkey to the EU.

At the operational level, the 'hotspot' approach became a central building block of the EU's response to asylum seekers and migrants arriving in its territory by sea. The purpose of the hotspots in Greece changed with implementation of the EU-Turkey statement. According to the European Commission, as a result of the agreement,

the hotspots on the islands in Greece needed “to be adapted – with the current focus on registration and screening before swift transfer to the mainland replaced by the objective of implementing returns to Turkey”.⁵ The Greek Parliament subsequently adopted new legislation transposing the Asylum Procedures Directive (2013/32/EU), which introduced the concepts of first country of asylum and safe third country, as well as procedures for fast-track examinations of applications for international protection at the border.⁶

In practical terms, this change of focus under the EU-Turkey statement initially meant transforming the hotspots into closed facilities. NGOs and UNHCR – which until then had played a central role in hotspots, particularly in providing services to new arrivals – opposed what they perceived as a move towards ‘mandatory detention’, and so terminated or significantly restricted their activities.⁷ In practice, the focus on detention was gradually replaced by restrictions of movement to the particular island, and most humanitarian organisations reinstated their efforts. However, the Greek hotspots remain a core pillar of the implementation of the essentially return-oriented EU-Turkey statement, which clearly distinguishes them from the Italian hotspots.

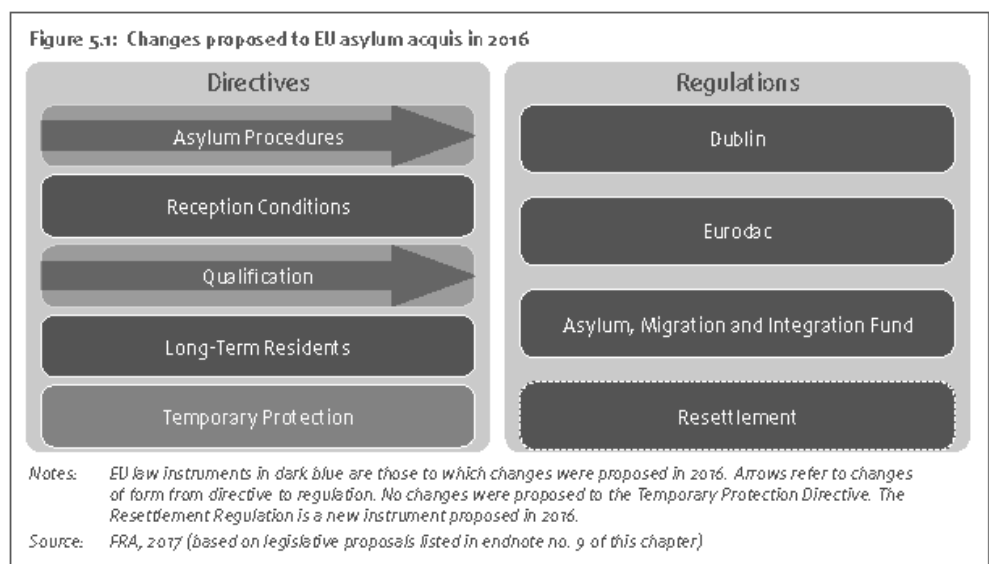
FRA presented a comprehensive overview of the fundamental rights challenges at hotspots as observed during its regular missions to Greece and Italy in its opinion submitted to the European Parliament in November 2016.⁸ Although the hotspot approach offers new opportunities to enhance protection and identify vulnerabilities upon arrival, its practical implementation raised a number of issues under the EU

Charter of Fundamental Rights, linked to child protection or sexual and gender-based violence, for example.

One of the most significant changes affecting fundamental rights concerned the increased European involvement in national asylum procedures in Greece. The European Asylum Support Office (EASO) trained and deployed teams of experts who assisted the Greek Asylum Service with the formal registration of applications for international protection. They also carried out the personal asylum interviews and drafted recommendations for decisions to be taken by the Greek authorities. Initially limited to assessing the admissibility of Syrian applicants, this approach was subsequently extended to eligibility interviews examining the substance of asylum claims.

The European Commission proposed changes to almost all core instruments of the EU asylum *acquis* in 2016, reacting to the need to simplify and shorten the asylum procedure, to discourage unauthorised onward movements of asylum seekers to other EU Member States, and increase the integration prospects of those entitled to international protection.⁹ Two instruments, on asylum procedures (Asylum Procedures Directive) and on the definition of who is in need of international protection and on their rights and obligations (Qualification Directive), are currently cast in the form of directives and will become regulations. The proposal for the Qualification Regulation (in Article 44) also includes an amendment to the Long-Term Residents Directive (2003/109/EC).

Figure 5.1 presents the instruments to which changes were proposed in 2016.



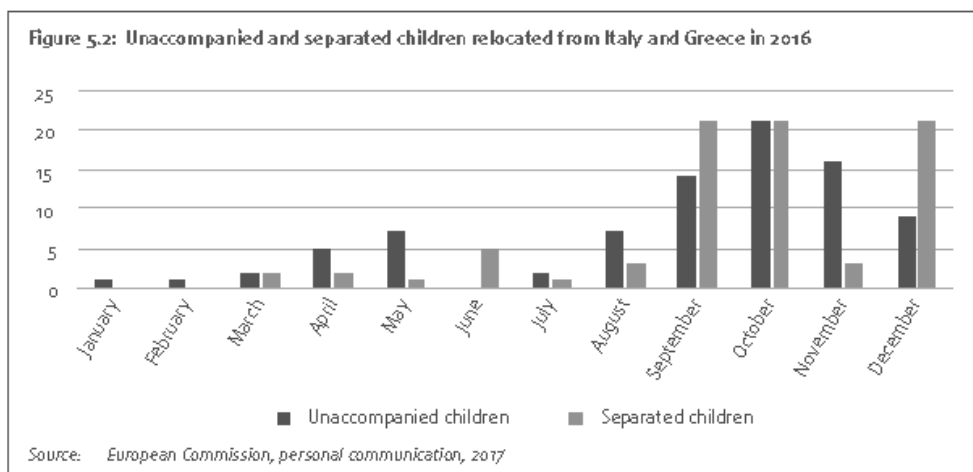
The European Parliament asked FRA to submit four legal opinions relating to asylum during 2016. Three concerned pending EU legislation: the proposal on safe countries of origin and the suggested amendments to the Dublin and Eurodac Regulations. FRA's opinions on Dublin and Eurodac highlighted the proposed changes' impact on children. The fourth legal opinion concerned the hotspot approach applied to new arrivals in Greece and Italy, and summarised FRA's experiences during its six-month presence on the Greek islands and its regular visits to hotspots in Italy.¹⁹

In response to the limited progress in reforming the EU asylum system, the UNHCR in December proposed a series of measures to enable Europe to better manage the emerging challenges in full respect of international law. Suggestions include better contingency planning; a common asylum registration system; and a new approach to unaccompanied children entailing early identification, appointment of a guardian and a best interests assessment.²¹

Meanwhile, several Member States toughened their asylum and migration legislation, leading to new fundamental rights challenges. Notably, **Hungary** allowed the police to send migrants apprehended within 8 km of the southern border with Serbia – including those who expressed their intention to apply for asylum – back to the outer side of the border fence. The region of Upper **Austria** reduced benefits for refugees to below the poverty threshold and less than the minimum benefits for Austrian nationals. **Germany** introduced cuts in social benefits where asylum seekers refuse, without good cause, to take part in integration measures assigned to them, such as attending German language classes or work opportunities. In **Sweden**, a new law introduced time-limited residence permits for refugees and persons granted subsidiary protection as long as they are not employed.²²

Limited progress occurred on the initial target of relocating 160,000 asylum seekers from Greece and Italy, set in 2015.²³ It was reduced to a minimum of 106,000 people following adoption of the EU-Turkey statement. (Member States have been given the option of resettling the remaining 54,000 directly from Turkey).²⁴ By 8 December 2016, a total of 8,162 asylum applicants had been relocated (6,212 from Greece and 1,950 from Italy), the majority of them Syrians. This was some 12 % of the minimum target to be met by September 2017. Three Member States – Austria (benefiting from a temporary suspension),²⁵ Hungary and Poland – have not accepted anyone.²⁶ Hungary's and Slovakia's requests to the Court of Justice of the European Union (CJEU) to annul the relocation scheme remained pending.²⁷ The example of Hungary illustrates the opposition in some EU Member States to compulsory relocation. Hungary held a referendum on 2 October asking the population the following question: "Do you want the European Union to order the mandatory settlement of non-Hungarian citizens in Hungary without the approval of the National Assembly?"²⁸ Although the referendum result turned out to be invalid because of low voter turnout, anti-refugee propaganda and xenophobic attitudes in Hungary continued to raise fundamental rights concerns. For more information, see Chapter 3.

Relocating unaccompanied and separated children remained a significant challenge. By the end of 2016, only one separated child was relocated from Italy, and 164 children (85 unaccompanied and 79 separated) were relocated from Greece; see Figure 5.2. Italy is hosting a significant number of Eritreans who could benefit from relocation. Practical obstacles that remained unaddressed at year's end relate to delays in appointing a guardian (a precondition to ensure that relocation is in the child's best interests) and the determination of the child's best interests. Regarding Greece, Member States' alleged difficulties with relocating married minors, with or without children of their own, as a specific category



of separated children are hampering the process. In addition, many unaccompanied children in Greece are nationals of countries not eligible for relocation.

Finally, towards the end of 2016, calls re-emerged for international protection applications to be assessed outside the EU. Germany's Federal Minister of the Interior proposed that asylum seekers and migrants rescued at sea be disembarked in North African countries. Their asylum applications would be examined in facilities supported by the EU and run in collaboration with the host country and the UNHCR.²⁹ No further details were made available on how such an approach could be made compatible with the EU Charter of Fundamental Rights and the European Convention on Human Rights (ECHR).

5.2. Information systems bring new risks and opportunities

The significant number of people who crossed the EU's external border and moved onwards without authorisation, together with threats to internal security, prompted Member States to reintroduce internal border controls within the Schengen area. At the end of 2015, border controls within the Schengen area were in place at some sections of the borders of four EU Member States (**Austria, France, Germany and Sweden**) and **Norway**. None of them lifted internal controls in 2016. In January 2016, **Denmark** also temporarily reintroduced border controls.³⁰ Such controls adversely affect one of the main freedoms within the EU: the right of citizens to move freely within the common area.

At the same time, the absence of internal border controls makes it difficult for Member State law-enforcement authorities to obtain necessary information on who is entering and leaving their territories. As the European Commission points out, data on persons entering or leaving the Schengen area are fragmented in different national or European information systems. National border guards and police authorities operate in a complex landscape of differently governed information systems, creating significant practical difficulties.³¹

5.2.1. Improving existing EU information systems

EU institutions and Member States made significant efforts to make EU information systems more robust throughout the year. As shown in Table 5.1, the European Commission presented seven legislative proposals to change existing systems or create new ones. Most changes concern the processing of data on third-country nationals.

The EU has so far set up three large-scale information technology (IT) systems with very different purposes,

containing personal data on individuals along with data on objects, in particular the second-generation Schengen Information System (SIS II). These IT systems are:

- Eurodac, to help determine the Member State responsible for examining an application for international protection;³²
- the Visa Information System (VIS),³³ to manage visa applications; and
- SIS II, which contains alerts on wanted persons and objects (e.g. missing persons, persons subject to an entry ban, or stolen cars or documents).³⁴

The personal data of around 40 million individuals are stored in one or more of these three large-scale IT systems, for one reason or another. The majority involve third-country nationals, as the largest amount of personal data is stored in VIS and Eurodac.

The European Commission presented proposals to expand Eurodac and SIS II in 2016. In addition, three more databases are planned: the European Criminal Records Information System for third-country nationals (ECRIS-TCN), the Entry/Exit System (EES), and the European Travel Information and Authorisation System (ETIAS). ECRIS-TCN will be an EU-wide database of criminal records of third-country nationals. The EES will record border crossings by third-country nationals who are entitled to visit the Schengen area.³⁵ ETIAS will gather data on visa-exempt third-country nationals before they arrive at the border, to determine whether or not the person may enter the EU.

A few trends can be seen. Data on all third-country nationals coming to the EU for short stays will be included in the new systems. Currently, the only personal data stored in EU databases are those of asylum and visa applicants, of persons apprehended when crossing the border in an irregular manner, and of people banned from entry.

As shown in Table 5.1, old and new EU systems will increasingly rely on biometric data to identify persons with a certain degree of certainty. In some systems, fingerprints are complemented by an additional biometric identifier, namely the facial image. The age at which biometrics can be taken is dropping, as scientific research indicates that high-quality fingerprints can be collected from children aged six.³⁶ Linked to this, the proposed SIS II reform suggests adding an alert for children at risk of abduction, and to better categorise types of missing persons, which could enhance the tracing of missing children.³⁷

The information systems serve different purposes. Most, however, include the objectives of enforcing immigration law and preventing, detecting and investigating serious

Table 5.1: Legislative changes relating to EU information systems proposed in 2016

System	Data stored	New?	Biometrics?	Persons	Source
ECRS -TCN	Criminal records of third-country nationals	✓	Fingerprints	TCN	COM(2016) 7 final, 19 January 2016
EES	Entry and exit data and refusal of entry data of TCNs crossing the external borders	✓	Fingerprints (4 fingers), facial image	TCN	COM(2016) 194 final, 6 April 2016
Eurodac	Extending scope of Eurodac to cater to wider migration management purposes with more data stored on individuals	–	Fingerprints (10 fingers), facial image	TCN	COM(2016) 272 final, 4 May 2016
ETIAS	Advance travel information and authorisation system for visa-free TCNs	✓	No	TCN	COM(2016) 731 final, 16 November 2016
SIS II (return)	Storing personal data, including confirmation of departure, of persons against whom a return decision has been issued	–	Fingerprints	TCN	COM(2016) 881 final, 21 December 2016
SIS II (border checks)	Improving SIS II for visa, border management and immigration law enforcement purposes, storing searchable biometrics and entry bans in SIS II	–	Fingerprints (10 fingers), palm prints, facial image	TCN	COM(2016) 882 final, 21 December 2016
SIS II (police and judicial cooperation)	Improving SIS II for judicial and police cooperation purposes, including storing searchable biometrics in SIS II	–	Fingerprints (10 fingers), palm prints, facial image, DNA profile	TCN, EU citizens	COM(2016) 883 final, 21 December 2016

Note: TCN = third-country national.

Source: FRA, 2017 (based on proposed legislation)

criminal offences. This leads to longer data retention periods. For example, the first proposal for an entry/exit system, published in 2013,²⁸ envisaged a retention period of 181 days; the revised proposal, issued in 2016, extended this to five years.²⁹

FRA has been looking into the fundamental rights implications of using biometric data in information systems in the areas of borders, visa and asylum since 2014.³⁰ The risks and benefits to fundamental rights are not fully known. As a starting point, data protection safeguards need to be observed, such as the principles of purpose limitation and data minimisation. Lawful access to, and use of, the data stored in the systems need to be ensured. Biometrics are sensitive personal data that call for special protection. Biometric identifiers are thought to establish a person's identity reliably. Therefore, safeguards to ensure quality become important.

Fundamental rights risks intrinsically linked to the processing of biometric identifiers include the use of coercive measures when collecting the identifiers. They also include risks to the safety of vulnerable persons, such as persons in need of international protection or victims or witnesses of crime, if personal data of such persons are shared with third countries or third parties – for example, if people are fleeing state

persecution. Third-country nationals are also likely to face more obstacles (language barriers, the need to start a procedure from a third country, etc.) if they wish to have incorrect data corrected or deleted.

The proper use of biometric data can prevent mistakes in establishing a person's identity and can reduce the risk of people being wrongfully apprehended or arrested. Biometrics could also potentially be used to optimise the tracking of people who are reported missing, including missing children. In addition, introducing a degree of automation in border control may reduce the risk of discriminatory ethnic profiling at borders.

From a fundamental rights point of view, improving EU-level information systems brings new opportunities but also challenges, as noted in this chapter's FRA opinion.

5.2.2. Interoperability

If the various proposals relating to IT-systems are accepted, technical aspects of the systems will be better aligned with each other, making it easier to consult them simultaneously. National authorities believe that this could improve efficiency and security. They note that, to facilitate border management and satisfy security needs, existing information systems

should not work in silos; they should “speak” to each other, making it easy to share information between them. As a result, significant efforts were made in 2016 to identify ways to improve the interoperability between existing and future information systems.

There are different ways to make information systems interoperable. For example, a single-search interface can query several information systems at the same time, then display combined results on a screen. This single-search interface can be queried with alphanumerical or biometrical data. Information systems could also be technically interconnected so that new information stored in one system would automatically be accessed by the other system. This option is envisaged by the proposed Entry-Exit System, through which the biometrics of visa holders would simultaneously be consulted in VIS.³¹ Finally, basic personal data needed to identify a person – and not just biometric data – could be stored in a common repository. This solution represents a more future-oriented model.³² To increase the reliability of the identification of a person across many IT-systems, a “shared biometric matching service” could be set up, using fingerprints and/or facial images.

Interoperability involves both risks as well as benefits to fundamental rights. It ensures that more data are more easily accessed. This may affect the right to asylum, to respect for privacy and family life, the rights of the child, and the right to liberty and security of the person. Decisions taken based on false matches can have negative consequences for individuals, underlining that quality standards are very important when searching and matching alphanumerical or biometric data – be it through a single-search interface, a shared biometric matching aid or a common repository of data. The increased accessibility of data, possibly including through mobile devices, may also heighten the risk of data being unlawfully processed and shared, including with third parties or third countries, exposing people to risks. Where non-EU databases are included among the interoperable IT-systems, there is also a risk that data may have been intentionally stored in information systems to harm an individual; that is, oppressive regimes may deliberately include political dissidents in the Interpol Database on Stolen and Lost Travel Documents to limit their ability to travel. Users of the information systems must remain vigilant and evaluate matches on a case-by-case basis.

Interoperability also brings benefits. For example, the status of persons who need protection may become immediately visible to users, thus avoiding uninformed decisions that put at risk applicants for international protection, missing children, or victims or witnesses of crime. To minimise negative fundamental rights consequences and promote benefits, interoperability should be based on ‘privacy by design’ solutions.

5.3. Alternatives to detention remain underutilised

A drive to increase the effectiveness of returns followed the EU Action Plan on Return of September 2015³³ and continued in 2016, with efforts focusing on making better use of asylum-related tools for return purposes. This is illustrated by the proposed changes to Eurodac, which is being redesigned to facilitate and accelerate the identification and documentation of migrants in an irregular situation. FRA has consistently pointed out that the effective return of migrants who are in an irregular situation and for whom there are no legal bars to removal is essential to uphold the credibility of the asylum system.³⁴ However, the current emphasis on implementing returns increases the risk of arbitrary detention, as alternatives to detention remain underutilised in this context. As noted in the discussion on migration in this report’s Focus Section, using alternatives to detention is particularly important to avoid detaining children.

In 2016, some Member States announced that they were increasing the use of immigration detention. For example, at the end of the year, **Italy** announced the creation of an immigration detention facility in each of its 20 regions.

Under EU law, Member States may resort to detention to prevent migrants from absconding or otherwise interfering with the return process. However, to comply with the right to liberty and security protected by Article 6 of the EU Charter of Fundamental Rights, deprivation of liberty must be used only as a last resort and migrants must be kept in facilities that respect standards of human dignity. Moreover, before authorities resort to deprivation of liberty, EU law requires them to examine in each individual case whether or not the purpose can also be achieved by applying more lenient measures, so-called alternatives to detention. The Return Directive (2008/115/EC) stipulates in Article 15 (1) that deprivation of liberty may be ordered “unless other sufficient but less coercive measures can be applied effectively in a specific case”. Similar provisions can be found in Recital 20 and Article 8 (2) of the recast Reception Conditions Directive (2013/33/EU). Article 8 (4) of the Reception Conditions Directive obliges Member States to lay down alternatives to detention in national law.

Alternatives to detention include a wide set of non-custodial measures. Typical measures consist of residence restrictions, the duty to report regularly to the police, and release on bail (see also Article 7 (3) of the Return Directive). The use of alternatives to detention is especially desirable for vulnerable categories of foreigners, such as children. Pursuant to Articles 16

and 17 of the Return Directive and Article 11 (2) of the Reception Conditions Directive, particular attention must be paid to children and other vulnerable people. Detaining children has a severe impact on their physical and mental health. Research indicates that even short periods of detention negatively affect children's cognitive and emotional development and can cause lifelong trauma and developmental challenges.³⁵

FRA last reviewed the use of alternatives to detention in 2012.³⁶ Increasing efforts to enforce returns of migrants in an irregular situation and to speed up asylum procedures have created an environment in which Member States resort to restrictive measures,

including deprivation of liberty. It is against this background that FRA decided to review how the situation has evolved over the past five years.

Overall, there has been progress in law, but alternatives remain little used in practice. All EU Member States have provisions on alternatives to detention in their national laws. The two Member States that did not have such provisions in 2012 – **Cyprus** and **Malta** – have meanwhile enacted legislation, although specific types of alternatives are listed only for asylum seekers and not for migrants in an irregular situation, which affects their actual use for this second category of persons.³⁷ Table 5.2 provides an overview of the state of play at

Table 5.2: Types of alternatives to detention envisaged in national legislation, EU-28, by country, at end of 2016

Member State	Duty to surrender documents	Bail/sureties	Regular reporting	Designated residence	Designated residence and counselling	Electronic monitoring
AT		X	X	X		
BE	X	X	X	X	X	
BG			X			
CY		X	X	X		
CZ		X	X	X		
DE			X	X	X	
DK	X	X	X	X		
EE	X		X	X		
EL	X	X	X	X		
ES	X		X	X		
FI	X	X	X	X		
FR	X		X	X		
HR	X	X	X	X		
HU	X	X	X	X		
IE	X		X	X		
IT	X		X	X		
LT		X	X	X		
LU	X	X	X	X		X
LV	X		X			
MT	X	X	X	X		
NL	X	X ^a	X	X		
PL	X	X	X	X		
PT			X	X		X
RO			X	X		
SE	X		X	X		
SI	X	X ^b	X	X ^b		
SK		X	X			
UK	X	X	X	X	X	X

Notes: Entries in red denote changes in legislation since 2012.

The duty to surrender documents in the United Kingdom (imposed on all individuals who do not have permission to stay) is per se not categorised as alternatives.

^a Concerns children whose guardianship is entrusted to an agency or an individual (Dutch Aliens Circular para. A6/5.3.3.3.).

^b Bail is not formally considered an alternative to detention, but is allowed under "permission to stay" decisions under a separate administrative procedure under Art. 73 (6) of the Slovenian Aliens Act. Designated residence is optional under Article 81 (3) of this act.

Source: FRA, 2017 (based on national legislation listed in endnote no. 38 of this chapter)

the end of 2016.³⁸ It illustrates the types of alternatives to immigration detention envisaged under national law for asylum seekers or persons in return procedures.

In the past four years, alongside **Cyprus** and **Malta**, five Member States stipulated new forms of alternatives to detention in their legal systems: **Belgium, Finland, Hungary, Luxembourg** and **Poland**. Electronic tagging is no longer used in **Denmark**, with legislative changes to remove it from the law underway at the end of the year. In **France**, Article L 552-4-1 of the *Code de l'entrée et du séjour des étrangers et du droit d'asile* (CESEDA) – which provided for electronic tagging – was removed.³⁹ **Lithuania** repealed one alternative to detention: entrusting an unaccompanied child to the care of a social institution.⁴⁰ In **Belgium**, since 2014, in addition to hosting foreigners in dedicated return houses, families with children may be given the option to remain in their own home while their return is being planned.⁴¹

Most Member States do not collect regular statistics on the use of alternatives, making it difficult to determine how frequently they are applied. FRA asked Member States to report how many persons were in immigration detention and how many were subject to an alternative to detention on a specific day of the year: 1 September 2016. Thirteen Member States provided both figures, although some did not specify whether the persons under a restrictive measure (detention or alternative) included only persons in return procedures or also asylum seekers. The data provided have been compiled by counting the individual files.

As Table 5.3 shows, the number of persons subject to an alternative to detention was higher than 10 % of those detained in only six Member States: **Croatia, Greece, Latvia, Lithuania, Luxembourg** and **Malta**. Alternatives to detention in **Greece** essentially consist of geographical restrictions of movement systematically imposed on certain categories of asylum seekers in the Eastern Aegean islands.⁴² **France** provided figures on detention and alternatives for the first 11 months of 2016, noting that, as of 30 November 2016, a total of 21,037 people had been placed in administrative detention as part of a removal measure (obligation to leave France, expulsion on grounds of public order, judicial exclusion order, decision to return pursuant to the Dublin III regulation, etc.) and 3,636 foreigners had been placed under house arrest. In three Member States – the **Czech Republic, Estonia** and **Slovakia** – nobody was subject to an alternative to detention on that day. Aside from **Greece**, in the other 12 Member States that reported back, on 1 September 2016, the number of persons subject to an alternative to detention corresponded to some 7 % of those under a detention regime.

Table 5.3: Persons in immigration detention or subject to an alternative to detention on 1 September 2016, in 13 EU Member States

Member State	Detention	Alternative to detention
AT	185	6
BE	535	22
CZ	107	0
EE	24	0
EL	2,958	4,169
HR	32	12
LT	31	16
LU	31	5
LV	49	34
MT	9	2
SE	290	2
SK	95	0
SL	16	1

Notes: Statistics provided by national authorities for the total number of persons detained pending removal and persons against whom alternatives to detention were executed on 1 September 2016. Statistics for Lithuania cover a different date: 31 December 2016. For Greece, the figure on alternatives to detention includes territorial restrictions on the Eastern Aegean islands imposed systematically on asylum applicants who could be returned to Turkey.

Source: FRA, 2016 (based on information provided by national authorities)

Alternatives are not applied systematically. In 2016, FRA identified several obstacles to their application; the following examples illustrate some of these. In **Bulgaria**, alternatives are not applicable to the majority of new arrivals because they cannot meet the mandatory requirement of having a place of residence in the country.⁴³ In **Hungary**, the authorities assess the applicability of only asylum bail: if its conditions are not met, the two other measures (designated place of residence and regular reporting obligation) are not assessed and the authority orders detention. The UNHCR also noted that the authority generally sets the amount of asylum bail at a very high level, and that no transparent guidance has been adopted on the factors to be taken into account in setting its amount. Few applicants have the requisite financial resources.⁴⁴ The lack of financial means was also reported as a problem in **Latvia**.⁴⁵ Similarly, in **Lithuania**, the possibility of using alternatives essentially depends on income and accommodation. Given that third-country nationals whose return or removal is being considered usually have no funds for subsistence and no residence in Lithuania, applying alternatives to them becomes difficult.⁴⁶

Promising practice

Providing community-based support to ex-offenders awaiting deportation

In the **United Kingdom**, alternatives to detention include community-based support. If people are to be deported after they committed a criminal offence, one-to-one, person-centred support can help them to stabilise their lives in the community, avoiding reoffending or absconding while their cases are resolved. Such alternatives to detention can assist them to understand and participate better in immigration procedures, enabling their cases to be resolved in a fair, timely and humane manner in the community, with the minimum use of enforcement. This shift in approach, from enforcement to involvement, can build greater fairness, accountability and trust into the system and produce better outcomes for individuals, communities and the government.

Sources: United Kingdom, Shaw, S. (2016), Review into the Welfare in Detention of Vulnerable Persons: A Report to the Home Office by Stephen Shaw; for information on Detention Action's Community Support Project, see Detention Action (2016), Without Detention: Opportunities for Alternatives, London, Detention Action, September 2016

5.4. Legal avenues to safety in the EU remain illusory

Many people in need of international protection continue to risk their lives and safety to reach the EU. Besides the dangerous sea crossing, many are also exposed to exploitation and violent crimes by criminal networks. Vulnerable migrants and refugees are particularly at risk. In 2015, FRA highlighted – in its focus paper on *Legal entry channels to the EU for persons in need of international protection: A toolbox* – that strengthening legal channels for refugees to reach protection and safety would not only reduce the number of migrants' lives lost at sea and the abuses perpetrated by smuggling networks, but would also enhance security, promote integration, fill skills gaps and reduce the need for psychosocial care due to traumatic experiences.⁴⁷ It suggested a combination of refugee-related schemes, such as resettlement and humanitarian admissions, and regular mobility schemes that are more refugee-friendly – for example, family reunification. FRA noted that private sponsorship can help tap additional resources that would otherwise not be available to support legal entry programmes.

Resettlement policy did make progress in 2016. However, this was offset by significant restrictions in national family reunification laws.

5.4.1. Resettlement and humanitarian admissions

One of the legal and safe options for people in need of international protection to enter the EU is resettlement. Resettlement involves the selection of refugees upon a referral by the UNHCR based on established criteria related to specific needs and vulnerabilities⁴⁸ and their subsequent transfer from a state in which they have sought protection (for example, in a refugee camp) to a third state that has agreed to admit them as refugees with permanent residence status.

In July 2015, EU Member States, as well as Iceland, Liechtenstein, Norway and Switzerland, agreed to resettle 22,504 people by 2017.⁴⁹ Despite a slow start, by 6 February 2017, the number of resettled persons was almost 14,000.⁵⁰ Part of this number comes from the resettlement mechanism under the EU-Turkey statement. Some 3,100 persons were resettled from Turkey between April 2016 and February 2017.⁵¹ Compared with the number of refugees resettled worldwide, however, EU efforts remain limited, which could partly be explained by the significant number of asylum applicants reaching the EU spontaneously. From January to 30 September 2016, the largest proportion of refugees was resettled to the United States (58,037), followed by Canada (17,786).⁵² During the same period, 8,547 persons were resettled to all EU Member States combined.⁵³ The UNHCR estimates that in 2017 it will submit to states some 170,000 refugees for resettlement, out of nearly 1.2 million people in need of resettlement.⁵⁴

As a result of EU-level initiatives, more EU Member States were engaged in resettlement than in previous years – 17 accepted resettled refugees in 2016.⁵⁵ To align resettlement policies in Member States, on 13 July 2016, the Commission proposed a permanent EU Resettlement Framework. It plans to establish common procedures for the selection of resettlement candidates and a common protection status for persons resettled to the EU.⁵⁶ The proposed regulation envisages an annual EU resettlement plan that establishes priorities regarding from which broad geographical regions resettlement should take place. The plan will contain the maximum number of persons to be resettled in the following year.⁵⁷ At the same time, the proposed regulation blurs the distinction between resettlement and family reunification. Individuals who may already be entitled to join their family members on the basis of Directive 2003/86/EC could be included by Member States in their resettlement quota.⁵⁸ This would allow Member States to use resettlement for individuals who already have a legal avenue to reach the EU. The UNHCR has pointed out that resettlement should not be used for persons who have a legal right to join their families in resettlement states in a timely manner pursuant to national or regional legislation.⁵⁹

Meanwhile, other humanitarian admission programmes – such as humanitarian corridors to Italy initiated for vulnerable migrants by the country’s Federation of Protestant Churches – continued to be implemented alongside EU and national resettlement schemes.

Promising practice

Humanitarian corridors to Italy established for vulnerable migrants

The Federation of Protestant Churches in Italy (FCEI) – a member of the Churches’ Commission for Migrants in Europe (CCME) – in partnership with the Sant’Egidio Community and the Waldensian and Methodist churches, launched a Humanitarian Corridors Programme at the beginning of 2016. The initiative is largely funded by the Waldensian Church. The organisations signed a memorandum of understanding with the Italian interior and foreign affairs ministries, allowing them to issue 1,000 humanitarian visas to vulnerable persons in Lebanon, Morocco and Ethiopia during 2016 and 2017. In January 2017, the Italian government and the Italian Catholic Bishops’ Conference signed another protocol, providing for a further 500 visas.

By the end of January 2017, 600 asylum seekers had arrived in Italy through these corridors. They are accommodated in facilities funded and managed by the different ecumenical organisations.

For more information, see Mediterranean Hope, ‘Corridoi umanitari’



Refugees welcomed at Rome’s Fiumicino airport – safe travel made possible by Italian churches’ project for humanitarian corridors. Photo: © Federation of Protestant Churches in Italy

Many beneficiaries of international protection who reached the EU as part of the 2015 migration flows have family members abroad. Bringing them to the EU lawfully is becoming increasingly difficult.

In 2016, at least seven Member States restricted their family reunification legislation, with the effect of reducing or delaying family reunification possibilities, particularly for beneficiaries of subsidiary protection. Four of these were among the five countries with the highest arrivals of Syrians in 2015 as well as 2016, according to Eurostat: Germany (158,655 in 2015 and 266,250 in 2016), Hungary (64,080 in 2015 and 4,875 in 2016), Sweden (50,890 in 2015 and 4,710 in 2016) and Austria (24,720 in 2015 and 8,730 in 2016).⁶⁴

For an overview of these changes, see Table 5.4.⁶⁵ Changes introduced at national level include new or shorter timeframes to apply for family reunification to benefit from more favourable conditions (**Austria, Finland, Hungary, Ireland, Sweden**); increased material requirements – for example, proving sufficient income, adequate accommodation or health insurance – in case of non-compliance with the new timeframe (**Austria, Finland, Hungary, Sweden**); restricting the notion of family member (no family reunification for children above 18 in **Austria** and limiting family reunification to core family members in **Ireland**); excluding beneficiaries of subsidiary protection from applying for family reunification for a certain time period after being granted protection (**Austria, Denmark, Germany, Sweden**); and abolishing the possibility of reimbursing the costs of certain family members travelling from their country of origin (**Denmark**).

When assessing interference with the right to respect for private and family life enshrined in Article 8 of the ECHR, the European Court of Human Rights takes into account whether or not there are insurmountable obstacles to the family living in the country of origin or in another state.⁶⁴ This would, for example, be the case for people in need of international protection who fear serious harm if they were to live with their families in their home country.⁶⁵ In this context, it seems difficult to justify Member States treating refugees (fleeing persecution) differently from persons granted subsidiary protection (typically fleeing armed conflict). In *Alo and Osso*, the CJEU stated that different treatment of refugees and beneficiaries of subsidiary protection status concerning residence requirements is not justified, if their situations are objectively comparable.⁶⁶ The CJEU pointed out that beneficiaries of subsidiary protection cannot, in principle, be subject to more restrictive rules, as regards the choice of their place of residence, than those applicable to refugees or non-EU citizens legally resident in the Member State concerned. According to

5.4.2. Family reunification

EU law regulates family reunification for refugees – but not for beneficiaries of subsidiary protection – in the Family Reunification Directive (2003/86/EC).⁶⁶ Family ties constitute one of the major factors determining the choice of destination country for asylum seekers.⁶⁷ The desire to live with one’s own family is a strong drive for migration. Family reunification is also an important factor facilitating integration.

Table 5.4: Legislative changes to family reunification legislation in 2016, seven EU Member States

Member State	Shorter deadlines to apply under more favourable rules	Additional conditions in case of elapsed deadline	Restricting notion of family member	Waiting period for beneficiaries of subsidiary protection
AT	X	X	X	X
DE				X
DK				X
FI	X	X		
HU	X	X		
IE	X		X	
SE	X	X		X

Note: In Denmark, the exclusion of subsidiary protection beneficiaries from family reunification is subject to exceptions, where Denmark's international obligations so require.

the European Council on Refugees and Exiles (ECRE),⁶⁹ the logic applied by the CJEU to residence restrictions would also apply to family reunification.

FRA reports every month on the fundamental rights situation in the Member States most affected by the arrivals of refugees and migrants. FRA's September 2016 report includes a thematic focus on family tracing and family reunification. It highlights, among other things, restrictive legislative changes at national level and lists practical obstacles faced by people who wish to bring their family members to the EU through legal family reunification procedures. The focus report covers Austria, Bulgaria, Germany, Greece, Hungary, Italy and Sweden. Subsequent monthly reports also refer to legislative changes concerning family reunification in 14 Member States.⁶⁸

Practical obstacles to family reunification also created additional hardships. The jump in the number of applications for family reunification created significant delays. For example, at German consulates in Jordan, Lebanon and Turkey, the waiting times for an appointment to file an application ranged from several months up to a year.⁶⁹ To benefit from fewer admission requirements, Finland asked applicants to visit a Finnish embassy or consulate to prove their identity within three months from the decision granting asylum to the sponsor; however, obtaining the necessary travel documents to reach the embassy – for example, for Syrians to go to Turkey – is often not possible within this timeframe.⁷⁰ Other practical obstacles include complicated procedures to determine family links (Greece), provision of limited information on the possibility of and procedure for family reunification, and limited access to legal assistance (Germany).⁷¹

5.5. Integration measures for recently arrived refugees and migrants in education

5.5.1. Ensuring access to education for refugee and migrant children

Article 14 of the EU Charter of Fundamental Rights and Article 28 of the UN Convention on the Rights of the Child assert the right of every child to education. EU Member States have an important responsibility to uphold this right for recently arrived refugee and migrant children. Most Member States and their societies significantly stepped up their efforts to provide access to education to such children in 2016, acknowledging the challenge as an opportunity and investment. However, not all Member States provided systematic support.

Protecting and fulfilling children's rights, especially the right to education, produces win-win outcomes that benefit both rights holders and the general population. The future positive contribution of migrants and refugees partly depends on timely measures to respect and promote their fundamental rights. Member State efforts to produce policies that meet the immediate needs of these children as early as possible will lay the foundations for their long-term integration into society and the labour market. The European Commission's 2016 Action Plan for the integration of third-country nationals⁷² stresses that education is a key policy priority to achieve successful integration and unlock children's full potential, to the benefit of all. As it stated during the action plan's launch, "[e]nsuring that third-country nationals can contribute

economically and socially to their host communities is key to the future well-being, prosperity and cohesion of European societies.⁷³

The Commission's action plan provides a common policy framework and supporting measures that should help Member States further develop and strengthen their national integration policies for third-country nationals. In particular, it clearly lays down the concrete policy, operational and financial support to be delivered at EU level.

On 9 December 2016, the Justice and Home Affairs Council conclusions⁷⁴ endorsed the action plan, prioritising a focus on education and promoting access to mainstream education systems. The Council noted that promoting integration, although a competence of Member States under EU law, is not an individual and independent effort: "the effective integration of third-country nationals legally residing [in the EU] contributes to the building of inclusive, cohesive and prosperous societies, which is of a common interest to all Member States."

Attending school again is an important starting point for children fleeing war, whose schooling has often been interrupted for a long time. Restoring their right to education in a new cultural, social and schooling environment requires special measures and targeted support.

Providing access to education for refugee and migrant children requires considerable efforts from Member States, and decisions as to how to approach the issue entail risks and challenges that affect the longer-term integration of such children in school systems and host societies more broadly. In some countries, such as Greece, there are still refugee and migrant children aged between 6 and 15 who do not yet attend school, and children above 15 who are not in education or training, as relevant structures to implement the government's plans have yet to be set up.⁷⁵ The International Organization for Migration contributes by providing transport to school for such children; according to its press release, 1,200 children already attended school in autumn 2016 and more are expected to start school in 2017. Meanwhile, negative – and in some cases even violent – reactions by locals and parents of native children in Italy and Greece have cast a shadow on the effort to send migrant and refugee children to school like all other children.

Separate schooling reflects but can also lead to or reinforce divisions in society, as the agency's research from 2015 and 2016 underscores. Introductory courses and support are necessary to bridge the gap with the rest of the pupils, especially to learn the national language. However, attending school separately from the rest of the children for long periods, in terms of

both location and type of schooling, inevitably delays their school integration. Depending on the settings and modalities of such courses, it may also limit their interactions and socialisation, compromising the chances for mutual understanding and integration.

This reality affecting newcomers also echoes and feeds into a long-standing problem of *de facto* segregation and separate schooling of children from migrant families. This often happens despite Member States' efforts to avoid it – a side effect of their residential concentration in distinct urban neighbourhoods and of their reduced contacts and interaction with the general population. As FRA's report *Together in the EU: Promoting the Participation of Migrants and Their Descendants* – published in March 2017 – demonstrated, this is clearly a concern for half of the Member States, particularly the traditional immigration countries. Relevant data are needed for the rest of the EU countries.⁷⁶

On the other hand, integration in normal classes without or before any preparatory period may lead to marginalisation in the classroom or to poorer-quality education being offered to some or even all pupils. It therefore requires considerable educational and learning support efforts in parallel.

Developing responses to these challenges is not easy. Member States need to share solutions and promising practices, as the Commission's action plan stresses. This can ideally be done in the context of the European Integration Network of the national contact points on integration of third-country nationals – a network of high-ranking public servants from Member State governments responsible for integration policies. Created by the European Commission in 2002, the action plan upgraded it to a European Integration Network, with a stronger coordination role and mutual learning mandate.

The comparative overview that follows examines Member States' diverse approaches to addressing the educational needs of newly arrived refugee and migrant children and to upholding their fundamental right to education in the context of their integration into, and contribution to, the host society.

For more information on intolerance and xenophobic incidents, see Chapter 3. More information about challenges relating to the rights of children can be found in Chapter 7.

5.5.2. Member States offer introductory courses and language support to refugee and migrant children

Almost all Member States adopted special measures providing language support and/or introductory courses

in 2016. Some already do so in the refugee reception centres. Others prioritise immediately integrating children into the mainstream schooling system, alongside regular classes that provide parallel educational support.

Introductory classes, mainly offering language support to pupils from refugee and migrant families before they join standard classes, are provided by all EU Member States.

Austria,⁷⁷ **Denmark**,⁷⁸ **Greece**,⁷⁹ **France**,⁸⁰ **Ireland**,⁸¹ **Lithuania**,⁸² **Luxembourg**,⁸³ **Malta**⁸⁴ and the **Netherlands**⁸⁵ are among the Member States that already provide educational support, mainly language and basic introductory support, at reception and in the reception centres.

Outside the reception centres and in countries that do not have any, the maximum duration of this introductory period before the children join normal classes in area schools ranges from 12 to 36 months. In **Austria**,⁸⁶ **Denmark**,⁸⁷ **Poland**,⁸⁸ **Slovenia**⁸⁹ and **Sweden**,⁹⁰ the maximum period is 24 months. In **Belgium**,⁹¹ it is 12 months but can be extended to 18 months, or to 36 months for the Flemish community. In **Croatia**,⁹² **Finland**,⁹³ **France**,⁹⁴ **Luxembourg**,⁹⁵ **Malta**⁹⁶ and **Romania**⁹⁷ the maximum duration of introductory classes is 12 months. In the **Netherlands**⁹⁸ it can range from 12 to 24 months on a case-by-case basis. In **Greece**⁹⁹ it can be as long as 36 months – three full years outside of the mainstream school system. Authorities in Greece have chosen to provide introductory courses either inside the reception centres and hotspots or as afternoon classes in the schools, after the regular classes have ended and pupils have left. In **Estonia**, the maximum period is 10 months. In **Latvia** and **Lithuania**, linguistic support while attending regular classes lasts for 120 and 240 hours, respectively. In other Member States, either no specific maximum duration is nationally determined or there is a case-by-case assessment of the migrant and refugee children's individual progress in linguistic capacity before they join regular classes – as in **Germany**¹⁰⁰ or the **United Kingdom**,¹⁰¹ where such policies are decentralised and determined at local level.

The introductory courses for newcomer children in many cases provide more than language support. In **Belgium**,¹⁰² **Bulgaria**¹⁰³ and **Cyprus**,¹⁰⁴ they also get psychological support and counselling for post-traumatic stress. In **Austria**¹⁰⁵ and the **Czech Republic**,¹⁰⁶ introductory support includes courses on values, social competence and legal principles. In **Greece**,¹⁰⁷ alongside language support, pupils take courses in mathematics, computer skills and English and also engage in athletic and artistic activities.

Such courses, both in reception centres and in introductory school classes, are implemented by governments in cooperation with civil society or by local authorities. In others, non-governmental organisations assigned by authorities undertake this task, often within EU-funded projects, or voluntarily provide support to migrant and refugee children.

However, a significant number of EU Member States have opted to integrate third-country national pupils directly in normal mainstream classes, regardless of whether they offer a first phase of introductory support. **Bulgaria**,¹⁰⁸ **Croatia**,¹⁰⁹ **Cyprus**,¹¹⁰ **Estonia**,¹¹¹ **Finland**,¹¹² **Latvia**,¹¹³ **Italy**,¹¹⁴ **Poland**,¹¹⁵ **Portugal**,¹¹⁶ **Romania**,¹¹⁷ **Slovenia**,¹¹⁸ **Sweden**¹¹⁹ and the **United Kingdom**¹²⁰ provide mainly language support to newcomer pupils who are already in mainstream education and standard classes. **Lithuania**¹²¹ and **Malta**¹²² also do so, in addition to the educational support provided as early as in the reception centres. In most cases, introduction and language support in normal classes is part of national education policies. However, in a number of Member States, this is an optional initiative to be decided by schools, as in **Finland**,¹²³ or at regional level, as in **Romania**.¹²⁴

In **Hungary**, the government has confirmed that children have access to kindergarten and school education under the same conditions as Hungarian children.¹²⁵ At the age of 6, children are enrolled in local schools in the towns in which the reception centres are located, which host a special preparatory language learning class for children to later join regular classes. However, the Hungarian authorities were not in the position to provide any further information about the implementation of such measures, such as the duration of the learning support classes, the numbers of children covered, and whether schools are enrolling them and hosting such classes. In addition, there are civil society initiatives in the country – such as the 'Inclusive kindergartens and schools' by Menedék, the Hungarian Association for Migrants, supported by the Asylum, Migration and Integration Fund (AMIF).¹²⁶

Slovakia's Ministry of Education confirmed that no special integration measures were in place for primary and secondary education.¹²⁷ It is the only Member State that has not adopted, and is not implementing, any introductory support measures at national level to facilitate the integration of third-country national pupils in education. Member States could follow the best practices and approaches of other Member States that are dealing with this critical challenge.

Table 5.5 summarises the range of different approaches to providing introductory and language support to children of refugee and migrant families.

Table 5.5: Initiatives to secure access to education for refugee and newcomer pupils in EU Member States in 2016

Member State	Educational support in reception centres	Introductory classes before joining regular classes	Language support in regular classes	Maximum duration of introductory and language support (months)
AT	✓	✓	✓	24
BE	–	✓	✓	French community: 12–18 Flemish community: 12–36
BG	–	–	✓	N/A
CY	–	–	✓	N/A
CZ	–	–	✓	6
DE	–	✓	✓	N/A; individual assessment
DK	✓	✓	✓	24
EE	–	–	✓	10
EL	✓	✓	✓	36
ES	✓	–	–	N/A
FI	–	✓	✓ ^b	12
FR	✓	✓	✓	12
HR	–	✓	✓	12
HU	–	–	✓	N/A
IE	✓	✓ ^b	✓	N/A
IT	–	–	✓	N/A
LT	✓	–	✓	240 hours
LU	✓	✓	–	6–12
LV	✓	–	✓	120 hours
MT	✓	✓	✓	12
NL	✓	✓	–	12–24
PL	–	✓ ^e	✓	N/A
PT	–	✓	✓	10
RO	–	✓ ^e	✓	12
SE	–	✓	✓	24
SI	–	✓	✓	24
SK	–	–	✓	N/A
UK	–	✓ ^d	✓	N/A

Notes: N/A= not applicable

^a Introducing language support is optional for schools.

^b This is the case for some schools only.

^c Depends on region – ad hoc programmes.

^d Depending on individual assessment by schools that are independent or under local authority control.

^e Introducing introductory classes and language support are optional for schools.

Source: FRA, 2016

5.5.3. Schooling of refugee children triggers tensions

Schooling of children of refugees and migrants has not been introduced without tensions, and triggered occasionally harsh and negative reactions among segments of society in some Member States.

In 2016, there were violent reactions to the schooling of refugee and migrant children at least in **Italy** and **Greece**, as FRA reported in its monthly overviews.¹²⁸ In Sicily, **Italy**, refugee children were attacked by locals and needed to be hospitalised.¹²⁹

In **Greece**, refugee children's first days of joining schools' preparatory and introductory classes were marked by negative reactions from local parents, including attempts to obstruct and prevent the children's access to schoolrooms. According to the Greek government, negative reactions in the country were considered isolated incidents that took place in approximately 25 % of the schools, while, in many cases, migrant, refugee and asylum-seeking children were well received, with welcoming activities organised.

Some parents sent letters and gained media attention for refusing to accept migrant and refugee children or to enrol their own children in the same schools. In a couple of cases, they went so far as to padlock school entrances to prevent the children from accessing the schools, discouraging migrant and refugee families from bringing their children to school. This often occurred even though the children were not yet admitted to normal classes and in many cases were to follow different timetables that would not permit them to have contact with the rest of the children. In one case, the police had to escort refugee children as they entered the school premises.¹³⁰ This prompted the competent authorities in the country to conduct informational meetings with local community stakeholders to raise awareness among local communities and facilitate and encourage the schooling of migrant and refugee children.

5.5.4. Involving parents in school life and training teachers

As the European Commission's action plan stresses, "education plays a strong role in the socialisation of children and can foster social cohesion and mutual understanding between third country nationals and the receiving societies."¹³¹ Involving children, parents and the families of newcomers in school life may prove the key to promoting participation in shared spaces on the basis of common values and to strengthening relations with local communities in everyday life.

More than one third (10) of the Member States provided assistance measures to help parents and

families of migrant refugee children integrate into school life in 2016. Some Member States set a clear path of support for migrant and refugee families to join school life and strengthen their role in the education of their children. Member States such as **Austria**,¹³² **Luxembourg**,¹³³ **Malta**,¹³⁴ the **Netherlands**¹³⁵ and **Portugal**¹³⁶ provide translated education material, extra language and multi-level support to parents of third-country national school children. They integrate such modules in the general induction and introductory courses and support programmes for newly arrived children of asylum seekers, refugees and other third-country nationals. **Belgium**¹³⁷ provides mediation and general introductory services to parents, although not at school level. In **Poland**¹³⁸ and in the **Czech Republic**,¹³⁹ support is available in the form of bilingual teacher assistants for foreign national pupils, and not specifically for third-country nationals. **Estonia**¹⁴⁰ provides counselling to schools and staff to make sure they can provide advice to immigrant parents in supporting their children's learning. Similarly, general information material is provided to parents of third-country national children in **France**.¹⁴¹

Education and support for and training of teachers are important areas on which Member States need to focus their efforts, as the Justice and Home Affairs Council stressed in its conclusions of 9 December 2016.¹⁴² Member State investments in integrating migrant and refugee children in education can bear fruit if teachers are equipped with the skills and tools necessary to support such children in learning the national language and catching up with the rest of the classroom. They also need to be adequately trained and prepared to create and support cohesive and inclusive school communities that build on diversity as an advantage for reaching both curricular and extracurricular objectives of the personal and collective development and growth of all pupils and students.

By the end of 2016, half of the EU Member States did provide some kind of training to teachers who deal with migrant and refugee children who are learning the national language as a second language, FRA's data collection shows. In some Member States, such as **Austria**,¹⁴³ **Denmark**,¹⁴⁴ **Finland**¹⁴⁵ and **Ireland**,¹⁴⁶ the teacher-training curriculum includes teaching children who are learning the national language as a second language. In others, such as in **Slovakia** – where the Centre for Continuing Education at Comenius University in Bratislava offers systematic training for teachers in the programme 'Slovak as a Foreign Language'¹⁴⁷ – the influx of migrants and refugees has encouraged the production and provision to teachers of ad hoc training courses, information portals and material about improving their skills in dealing with a diverse classroom and teaching children of migrants and refugees.



Table 5.6: Initiatives for involving parents, and training support for teachers, in EU Member States in 2016

Member State	Involving parents in school life	Training support for teachers
AT	✓	✓
BE		-
BG	-	-
CY	-	-
CZ	✓	✓
DE	-	-
DK	✓	✓
EE	✓	✓
EL	-	-
ES	-	✓
FI	✓	✓
FR	✓	-
HR	-	✓
HU	-	-
IE	✓	✓
IT	-	-
LT	-	-
LU	✓	✓
LV	-	✓
MT	✓	✓
NL	-	-
PL	-	-
PT	✓	✓
RO	-	-
SE	-	✓
SI	-	✓
SK	-	✓
UK	-	-

Source: FRA, 2016

FRA opinions

In 2016, EU institutions and Member States made significant efforts to further develop information systems for migration management and internal security purposes. Existing systems were modified and new systems were proposed. For the future, the plan is to make such systems 'interoperable', allowing the competent authorities to access multiple systems simultaneously. A forthcoming FRA publication on interoperability will address the related fundamental rights concerns. In many cases, the fundamental rights impact of information systems is not immediately visible. The consequences of storing incorrect personal data may affect an individual only years later – for example, when applying for a visa or a residence permit. Article 8 (protection of personal data) of the EU Charter of Fundamental Rights and in particular its principle of purpose limitation (i.e. that data are only used for the purpose for which they were collected) is a central standard when developing technical solutions to improve interoperability between information systems. Therefore, all steps to enhance existing information systems and create new ones should be subject to a comprehensive fundamental rights impact assessment.

FRA opinion 5.1

The EU and its Member States should ensure that information systems for migration management are designed so that officers who handle the data contained therein can only access data in accordance with their work profiles. Officers should only have access to data relevant for the specific tasks they are carrying out at a given moment in time, and be fully aware of which databases they are consulting. Since interoperability means that more data – including biometric data – are more easily accessible, Member States should develop quality standards and administrative procedures to secure the accuracy of the data and limit the risks of unauthorised sharing of data with third parties or countries. Moreover, they should introduce specific safeguards to guarantee that interoperability does not lead to adverse effects on the rights of vulnerable persons, such as applicants for international protection or children, or to discriminatory profiling.

Article 6 of the EU Charter of Fundamental Rights, as well as secondary EU law in the field of asylum and return, requires Member States to examine in each individual case the viability of more lenient measures before resorting to deprivation of liberty. By the end of 2016, all EU Member States provided for alternatives to detention in their national laws, albeit in some cases

for certain categories only. However, the inclusion of alternatives to detention into national legislation is in itself not a guarantee that these are applied. In practice, alternatives remain little used.

FRA opinion 5.2

EU Member States should require the responsible authorities to examine in each individual case whether a legitimate objective can be achieved through less coercive measures before issuing a detention order. If this is not the case, the authorities should provide reasons in fact and in law.

Legal avenues to reach safety continued to be illusory for most refugees. There was some progress on resettlement in 2016, but this was offset by a step backwards concerning family reunification, with several EU Member States introducing restrictions in their national laws. Any action undertaken by a Member State, when acting within the scope of EU law, must respect the rights and principles of the EU Charter of Fundamental Rights, which enshrines in Article 7 the right to respect for private and family life. In the case of refugees and persons granted subsidiary protection, it can generally be assumed that insurmountable obstacles prevent their families from living in their home country and that establishing family life in a transit country is usually not an option.

FRA opinion 5.3

EU Member States should consider using a combination of refugee-related schemes and more refugee-friendly, regular mobility schemes to promote legal pathways to the EU. In this context, they should refrain from adopting legislation that would result in hindering, preventing or significantly delaying family reunification of persons granted international protection.

The EU could consider regulating family reunification of subsidiary protection status holders to address the different approaches taken by Member States.

Upholding every child's right to education in the continuing movement of migrant and refugee families in the EU is a major responsibility for the EU Member States. Article 14 of the EU Charter of Fundamental Rights and Article 28 of the United Nations Convention on the Rights of the Child guarantee the right to education to every child, including migrant and refugee children. Making sure that all children enjoy their right to education will benefit not only them, but also the societies they will live in.

This underlines that it is important and beneficial for both the economy and society at large to invest in human rights. 2016 shows that most Member States provided language support and aim to integrate refugee and migrant children in regular classes, allowing for their socialisation with other children and investing in long-term and sustainable social cohesion. However, the level of separated and segregated schooling remains too high.

FRA opinion 5.4

EU Member States should ensure that migrant and refugee children are effectively supported through linguistic, social and psychological support based on individual assessments of their needs. This would prepare them to attend school and integrate successfully in education and local communities. Policies and measures should be in place to avoid separated schooling and segregation and to promote access of migrant and refugee children to regular classes and the mainstream education system.

FRA evidence shows that in 2016 most EU Member States stepped up their efforts to introduce migrant and refugee children in education and support their integration. However, in very few cases, there are still migrant and refugee children who do not attend school, and some local communities and parents of native children react negatively to or even with violence against their schooling together with other children. Expressions of intolerance and hatred towards migrant and refugee children and their families that lead to the deprivation of the children's right to education violate EU and national legislation against discrimination and hatred. Addressing parents' concerns can support integration and promote the participation of migrants and refugees in local communities.

FRA opinion 5.5

EU Member States should address adequately discriminatory or violent reactions against the schooling of migrant and refugee children, both through law enforcement and by promoting mutual understanding and social cohesion. They should apply positive measures for fighting prejudices and help eradicate unfounded concerns. Furthermore, the Member States' authorities should enforce laws and rules against discrimination and hate-motivated crimes on any ground – including ethnic origin, race and religion – that are in force in all EU Member States.

Involving children's parents and families in school life and supporting their efforts to get involved is a crucial part of the education and integration process. A third of the EU Member States do provide measures to support and encourage parents and families of migrant and refugee children by involving them in the education process through information, mediation and language support. Such measures may improve the children's school performance, their and their families' integration in education and in local communities, and foster better community relations. The European Integration Network, whose status was upgraded through the European Commission Action Plan on Integration launched in June 2016, is an adequate framework and space for sharing best practices and solutions that can help Member States to both fulfil their human rights obligations and invest successfully in more cohesive and inclusive societies.

FRA opinion 5.6

EU Member States should share good practices and experiences in integration through education, promoting the participation of children's parents and families in school life, and making the right to education a reality for all children.

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12 January – In *Szabó and Vissy v. Hungary* (No. 37138/14), the European Court of Human Rights (ECtHR) holds that Hungarian legislation on secret surveillance violates the right to respect for correspondence, home and private life, as it failed to provide adequate safeguards against abuse (Article 8 of the ECHR)

12 January – In *Bărbulescu v. Romania* (No. 61496/08), the ECtHR holds that an employer may under certain circumstances monitor the employees' use of the internet at their workplace and may use the collected data to justify their dismissal, concluding that there was no violation of the right to respect for private and family life (Article 8 of the ECHR); the case was later referred to the Grand Chamber

13 January – Council of Europe (CoE) Committee of Ministers adopts Recommendation CM/Rec(2016)1 on protecting and promoting the right to free dom of expression and the right to private life with regard to network neutrality

26 January – CoE Parliamentary Assembly (PACE) adopts Resolution 2090 (2016) on combating international terrorism while protecting CoE standards and values

January

2 February – In *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary* (No. 22947/15), the ECtHR holds that imposing strict liability on internet portals for offensive comments posted by their readers, which did not amount to hate speech or direct threats to physical integrity, violates their right to free dom of expression and to impart information (Article 10 of the ECHR)

February

8 March – United Nations (UN) Special Rapporteur on the Right to Privacy issues his first report to the Human Rights Council

30 March – CoE issues its 2016-2019 Internet Governance Strategy

March

13 April – CoE Committee of Ministers adopts Recommendations CM/Rec(2016)4 and CM/Rec(2016)5, relating to internet freedom and the protection of journalism and safety of journalists and other media actors, respectively

April

19 May – In *D.L. v. Bulgaria* (No. 7472/14), the ECtHR holds that the automatic and blanket monitoring of the correspondence and telephone calls of minors placed in an educational centre violates the right to respect for correspondence (Article 8 of the ECHR)

May

7 June – In *Cevat Özel v. Turkey* (No. 19602/06), the ECtHR holds that the unjustified lack of ex post facto notification of the applicant of a temporary phone-tapping measure violates the right to respect for private and family life and for correspondence (Article 8 of the ECHR)

7 June – In *Karabeyoğlu v. Turkey* (No. 30083/10), the ECtHR holds that the use of data in disciplinary proceedings – which originated from a lawful telephone tapping in criminal proceedings – violates the right to respect for private and family life (Article 8 of the ECHR)

17 June – International conference on the globalisation of the Council of Europe convention for the protection of individuals with regard to automatic processing of personal data gathers 80 countries

June

July

30 August – UN Special Rapporteur on the Right to Privacy issues his second report, criticising British and German surveillance measure reforms

August

1 September – Draft modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data is published

15 September – CoE Consultative Committee of the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data adopts an opinion on the 'Data protection implications of the processing of Passenger Name Records'

16 September – CoE adopts the Bratislava Declaration and Roadmap

September

October

8 November – In *Magyar Helsinki Bizottság v. Hungary* (No. 18030/11), in a Grand Chamber judgment, the ECtHR finds a violation of Article 10 of the ECHR for police stations' refusal to provide an NGO with certain information about public defenders; the government's obligation to impart information held by a public authority may arise where disclosure has been imposed by a judicial order and access to information is instrumental for exercising the right to free dom of expression, and where its denial constitutes an interference with that right

24 November – European Judicial Cybercrime network is launched

November

13 December – In *Eylem Kaya v. Turkey* (No. 26623/07), the ECtHR holds that the prison authorities' systemic physical monitoring of the applicant's correspondence with her lawyer was not proportionate to the aim pursued and thus violated the right to respect for correspondence (Article 8 of the ECHR)

20 December – In *Radzhab Magomedov v. Russia* (No. 20933/08), the ECtHR holds that the national courts' rejection – without sufficient reasoning – of the applicant's request for disclosure of the warrant authorising the interception of his telephone communications in criminal proceedings violated his right to respect for private life (Article 8 of the ECHR)

December

EU

25 January – Europol creates the European Counter Terrorism Centre (ECTC), which focuses on foreign fighters, sharing intelligence on terrorism financing, online terrorist propaganda, illegal arms trafficking and international cooperation among counter-terrorism authorities

January

2 February – European Commission and US Government reach a political agreement on a new framework regarding exchanges of personal data for commercial purposes (“EU-US Privacy Shield”)

29 February – European Commission presents the draft Adequacy Decision for free data flow from the EU to the US Privacy Shield companies in the US

February

March

6 April – European Commission issues Communication on Stronger and Smarter Information Systems for Border and Security

12 April – European Commission launches Public Consultation on the Evaluation and Review of the ePrivacy Directive until 5 July 2016

13 April – Article 29 Working Party delivers its Opinion on EU-US Privacy Shield

20 April – European Commission issues Communication on Delivering on the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union

21 April – Council of the EU adopts Directive (EU) 2016/681 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime

27 April – Council of the EU and European Parliament (EP) adopt Regulation (EU) 2016/679, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data

April

5 May – Police Directive enters into force (transposition period until 6 May 2018)

24 May – GDPR enters into force (to be applied from 25 May 2018)

26 May – EP issues resolution on EU-US Privacy Shield

30 May – European Data Protection Supervisor (EDPS) delivers Opinion 4/2016 on EU-US Privacy Shield – More robust and sustainable solution needed

May

16 June – EDPS issues a background paper on necessity – a toolkit for assessing the necessity of measures that interfere with fundamental rights

June

12 July – European Commission adopts the decision on the adequacy provided by the EU-US Privacy Shield (EU) 2016/1250

18 July – EDPS issues guidelines for Data Protection and Whistleblowing in the EU institutions

22 July – EDPS delivers Opinion 5/2016 on e-Privacy: rules should be smarter, clearer, stronger

July

1 August – European Commission publishes a guide to the EU-US Privacy Shield for citizens, explaining available remedies for individuals who believe their personal data were used without taking into account data protection rules

4 August – European Commission publishes summary report on the Public Consultation on the Evaluation of the e-Privacy Directive

August

8 September – Advocate General Mengozzi delivers Opinion 1/15, requested by the EP, on the PNR Agreement between EU and Canada: agreement partly incompatible with Articles 7, 8 and 52 (1) of the EU Charter of Fundamental Rights

14 September – European Commission issues Communication COM(2016) 602 on ‘Enhancing security in a world of mobility: improved information exchange in the fight against terrorism and stronger external borders’

16 September – European Council adopts the Bratislava Declaration and Roadmap

16 September – In *Digital Rights Ireland v. Commission* (Case T-670/16), Digital Rights Ireland challenges the Commission’s adoption of the EU-US Privacy Shield decision before the General Court, alleging that it lacks adequate privacy protections

23 September – EDPS delivers Opinion 8/2016 on coherent enforcement of fundamental rights in the age of Big Data

September

12 October – First report by the European Commission on progress towards an effective and sustainable Security Union

19 October – In *Breyer v. Bundesrepublik Deutschland* (Case C-582/14), the Court of Justice of the EU (CJEU) rules that a dynamic IP address of a website visitor constitutes personal data with respect to the operator of the visited website. If the operator has the legal means to identify the visitor with additional information about the visitor held by an internet access provider, the decision notes that website operators may have a legitimate interest in storing personal data relating to visitors to their websites to protect themselves against cyberattacks

20 October – EDPS delivers Opinion 9/2016 on Personal Information Management Systems

26 October – Proposal for a Directive of the EP and the Council of the EU on combating terrorism

October

16 November – European Commission issues second report on progress towards an effective and sustainable Security Union

28 November – European Commission releases a Staff Working Document on the Implementation Plan for the Passenger Name Records (PNR) Directive

November

21 December – In *Tele2 Sverige* (C-203/15) and *Watson v. Home Secretary* (C-698/15), the CJEU rules in joined cases that Article 15 (1) of Directive 2002/58/EC, read in light of Articles 7, 8 and 11 and Article 52 (1) of the EU Charter of Fundamental Rights, precludes national legislation which, for the purpose of fighting crime, provides for general and indiscriminate retention of all traffic and location data of all subscribers and registered users relating to all means of electronic communication

December