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6 Information society, privacy and data protection

The year's terrorist attacks in Brussels, Nice and Berlin further intensified debates about ways to effectively fight terrorism in compliance with the rule of law. A number of steps were taken in this respect at both EU and national levels. They include national reforms on surveillance measures, consultations on encryption, and the adoption of the Passenger Name Record (PNR) Directive. Meanwhile, the adoption of the General Data Protection Regulation (GDPR) and the Data Protection Directive for the police and criminal justice sector (Police Directive) constituted a crucial step towards a modernised and more effective data protection regime. The EU in 2016 did not propose revised legislation in response to the Court of Justice of the European Union's (CJEU) earlier invalidation of the Data Retention Directive, but new CJEU case law further clarified how data retention can comply with fundamental rights requirements.

6.1. Responding to terrorism: surveillance, encryption and passenger name records – international standards and national law

The EU faced a continued wave of terrorist attacks throughout 2016. France, Belgium and Germany were particularly affected, with the most devastating attacks killing 86 in Nice, 32 in Brussels and 12 in Berlin. Such attacks threaten various fundamental values, including the right to life, which states are obliged to protect. Coupled with the continuing threat posed by returning foreign terrorist fighters,[1] the attacks underscored the security challenges faced by Member States and, consequently, by the EU. As a result, counter-terrorism remained high on both national and EU agendas and sparked diverse discussions and policy responses, including regarding intelligence and law enforcement agencies; encryption of data; and the collection of passenger name records (PNR) data.

Policy responses included efforts to provide intelligence and law enforcement agencies with increased powers and to improve their cooperation at both national and European levels. Although these services play a vital role in safeguarding national security and individuals' right to life and security, Member States should ensure that their activities – such as surveillance – are conducted in a democratic, lawful manner.

The European Parliament asked FRA to research fundamental rights protection in the context of large-scale surveillance, prompting the following observations about developments in this field in 2016.

6.1.1. International organisations call for restraint on surveillance

Member States' efforts to strengthen intelligence and law enforcement agencies triggered calls for restraint by various international organisations, who also reminded all parties to respect relevant international and European legal standards.

> *"Whatever we do to counter terrorism must be consistent with the values which unite us: human rights, democracy and the rule of law."*
>
> *Terrorism: #NoHateNoFear, a Council of Europe Parliamentary Assembly (PACE) initiative*

The UN Special Rapporteur on the right to privacy, Joseph Cannataci, who took on his role in July 2015, has since issued two reports. In his March 2016 report,

he proposed a shift in approach to the tensions of the field – from speaking of "privacy versus security" to instead speaking of "privacy and security", with both rights seen as "enabling rights rather than ends in themselves".[2] He also noted that many countries had rushed privacy-intrusive legislation through parliament.[3] Meanwhile, the UN Special Rapporteur on human rights and counter-terrorism, Ben Emmerson, in a report issued in April 2016, stated that the "demonstrable inadequacy of a strict security approach to countering terrorism" had led states to shift their focus to measures that address the root causes of terrorism and radicalisation.[4]

The Council of Europe Parliamentary Assembly (PACE) echoed this approach in a resolution calling on Member States to "refrain from indiscriminate mass surveillance, which has proven to be inefficient"[5] and instead improve national and international cooperation.[6] In the same spirit, PACE also launched the #NoHateNoFear initiative to counter terrorism. It aims to draw attention to the complexity of the problem to avoid fuelling populist movements, which "play on security as a simplistic option to combat terrorism".[7] (For more on this issue, see Chapter 3 on Racism, xenophobia and related intolerance.)

To help further clarify the legal framework applicable to Member States, the Secretary General of the Council of Europe pledged to work with states in launching a process before the end of 2016, aiming to codify international standards, good practices and guidance relating to mass surveillance.[8] In March, the Venice Commission also adopted a so-called Rule of Law Checklist, providing, among others, specific rule of law benchmarks on the collection of data and surveillance.[9]

The UN Human Rights Council (HRC) called upon states to review their practices and legislation relating to surveillance and ensure that they are in line with their obligations under international human rights law. It underlined that any interference with the right to privacy must be regulated by "publicly accessible, clear, precise, comprehensive and non-discriminatory" laws.[10] Data protection in the context of surveillance has also featured throughout the Universal Periodic Review of EU Member States (**Belgium**,[11] **Estonia**,[12] **Latvia**[13]) and was stressed in the UN Human Rights Committee's concluding observations on **Denmark**,[14] **Poland**[15] and **Sweden**.[16] Regarding **Sweden**, for example, the committee stated that it was concerned by the limited transparency about the scope of surveillance powers and the safeguards in place both regarding their application and the sharing of raw data with other intelligence services.[17]

Meanwhile, in January 2016, the European Court of Human Rights (ECtHR) delivered an important judgment on secret surveillance. In *Szabó and Vissy v. Hungary*, the court found that the 2011 **Hungarian** legislation on secret anti-terrorist surveillance violated Article 8 of the ECHR because it failed to provide adequate safeguards against abuse. Referring to the Court of Justice of the European Union's (CJEU) judgment in *Digital Rights Ireland v. Minister of Communications & Others*, the ECtHR stated that, where national rules enable large-scale or strategic interception and where this interference "may result in particularly invasive interferences with private life", the "guarantees required by the extant Convention case-law on interceptions need to be enhanced so as to address the issue of such surveillance practices".[18]

Contrary to claims that the ECtHR outlawed mass surveillance with *Szabó and Vissy*, it in fact did "not seem to have taken a final position on the legality of the massive and indiscriminate collection of personal data (i.e. non-targeted bulk collection)".[19] Several cases pending before the court are likely to further clarify its stance on surveillance by intelligence services.[20]

6.1.2. Fear of terrorism prompts calls for increased powers for, and cooperation between, intelligence and law enforcement services

As noted above, the year's terror attacks served as a stark reminder of the security challenges faced by Member States and, by extension, the EU. For policymakers looking to devise effective responses and security measures, doing so while complying with fundamental rights was a central challenge.

On 23 March, one day after the attacks in Brussels, Commission President Juncker announced that, to counter terrorism effectively, the EU would need to establish a Security Union.[21] Reflecting the importance attached to security, in September 2016 the Council of the EU appointed Julian King to the newly created post of Commissioner for Security Union. The commissioner aims to create an effective and sustainable Security Union, with fundamental rights at the heart of the framework.[22]

From a data protection perspective, the calls and efforts to increase the interoperability of EU information technology (IT) systems appear to focus predominantly on technical matters, and have – so far – only cursorily addressed fundamental rights aspects. (For more on such systems, see Chapter 5.) FRA is a member of the Commission's High Level Expert Group on Information Systems and Interoperability, and in this role has sought to underline how fundamental rights should be embedded in any IT-based responses.[23] Another criticism of the proposed measures, voiced in the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, relate to their effectiveness.[24] The committee pointed out that perhaps it is not blanket collection and retention of data – mostly on people

who are not suspected of any crimes or involvement in terrorist activities – that is necessary to counter terrorism, but rather better analysis of existing data and more investment in local authorities' capacities.[25]

Regarding information exchanges between and among law enforcement and intelligence services, the Commission deemed urgent the need to address existing gaps between these two communities.[26] One option it suggested is opening the Counter Terrorism Group (CTG) to 'interaction' with law enforcement authorities through the existing Europol framework.[27] The CTG is a platform for informal cooperation among intelligence services, functioning outside the EU framework. It includes the services of EU Member States, Switzerland and Norway.[28] The Commission also emphasised the need for increased cooperation between these institutions and the EU Intelligence and Situation Centre (IntCen), with a view to creating an information exchange hub.[29]

In September, the European Council adopted the Bratislava Roadmap.[30] Key elements of this working programme include proposed measures to increase cooperation and intelligence exchanges between Member State security services to help the EU ensure the internal security of Member States and fight terrorism.[31]

Much activity also occurred at Member State-level throughout the year. A number of Member States enacted legislation that affects surveillance by intelligence services. In many, reform was in progress. Key subjects included the mandates of intelligence services and measures available to them; their cooperation with national law enforcement authorities; and the national oversight systems. Member States that took action faced the challenge of striking an appropriate balance between complying with their obligation to protect the life and integrity (security) of their citizens against ever more apparent threats, and respecting citizens' privacy in line with European standards. These balancing efforts often occurred amidst a trend Commission President Juncker had warned against:[32] simplification of issues and solutions, populism and disregard for evidence in decision-making.

Regulating surveillance at national level: consultation and transparency

One of the persisting issues at national level is a lack of transparency and public dialogue, whether relating to the adoption of new laws or to the functioning of the intelligence services. In **Poland**, for example, the new Anti-terrorist Act[33] was introduced in a fast-track legislative process, without official public consultation. The act substantially extends the powers of the intelligence services without providing any additional safeguards against the abuse of those powers. In **Romania**, although a public consultation took place, provisions expanding the powers of the Romanian Intelligence Service (RIS) (*Serviciul Român de Informații*, SRI) appeared only in the final version of the Emergency Ordinance[34] and were not part of the document submitted for public debate.

On the other hand, a number of Member States engaged in legislative and oversight reforms with a view to gaining trust via transparency. In the **United Kingdom**, extensive consultation preceded the passing of the Investigatory Powers Act. The Joint Committee on the Draft Investigatory Powers Bill heard 59 people in 22 public panels,[35] including public authorities, non-governmental organisations, academia and private companies.[36] The government also sought expert advice from the Independent Reviewer of Terrorism Legislation.[37]

The **Irish** government in January 2016 appointed a retired judge to carry out an independent review of a law relating to public authorities' access to communications data of journalists.[38] The **Belgian** parliament established a temporary 'Fight against Terrorism' Commission to examine the bills implementing some of the measures put forward by the government following the terrorist attacks in Paris.[39] After the March attacks in Brussels, a Parliamentary Investigative Commission was also set up to examine the circumstances that led to the attacks.[40]

Member States also endeavoured to increase the transparency and legality of the functioning of their intelligence services by regulating previously unregulated areas. For example, in **Germany**, a law regulating the German intelligence service's (BND) gathering of intelligence on foreigners abroad came into force – a substantial step towards transparency.[41] Similarly, in **Italy**, a draft law aims to regulate the police's and judicial authorities' use of wiretapping and 'Trojan programs', malicious programs used to hack computers.[42] The Chamber of Deputies has already approved the law. Moreover, in **Cyprus**, the Cyprus Intelligence Service (CIS) was also brought within a regulatory framework in April.[43]

Intelligence services' operations and oversight

As previously noted, Member State efforts to increase the effectiveness of security services involved two main approaches in 2016: expanding their powers, competences or resources; and facilitating cooperation between relevant actors, both at national and EU levels.

For example, in the **United Kingdom**, the Investigatory Powers Act gives the services the power to require the retention of internet connection records indiscriminately when it relates to any of a list of purposes, including national security. This means that internet providers must keep track of each connection to the internet through a website or an instant messaging application.[44]

In **Poland** and **Hungary**, measures to increase executive control and centralise information management were implemented. In **Poland**, a new law on the Prosecutor's Office was adopted in March 2016. Pursuant to its provisions, the previously independent office of the Prosecutor General is now held by the Minister of Justice. The legislation also allows the Prosecutor General to order the competent authorities to conduct surveillance if it is related to ongoing investigations. Thus, the minister is now responsible for both providing oversight of the special services and ordering operational surveillance.[45] **Hungary** established a new information centre – the Counter-Terrorism Information Analysis Centre (*Terrorelhárítási Információs és Bünügyi Elemzö Központ*, TIBEK) – to collect and systematise information derived from various surveillance operations conducted by the different national security services.[46]

Legislative changes and other measures also addressed the oversight systems for intelligence services. The **United Kingdom** Investigatory Powers Act creates a new oversight system with a single Investigatory Powers Commissioner, who is to be assisted by Judicial Commissioners.[47] The act introduces a so-called double-lock system: alongside approval by the Secretary of State, warrants for surveillance measures also need to be authorised by a Judicial Commissioner.[48]

Meanwhile, in **France**, the state of emergency introduced after the November 2015 Paris attacks was prolonged for a fourth time. According to the law enacted at the last extension, it is to be lifted on 15 July 2017.[49] The state of emergency extends intelligence services' powers relating to, for example, the real-time monitoring of individuals.[50]

Promising practice

Providing relevant advice before authorising certain surveillance efforts

A draft bill for a new Act on the Intelligence and Security Services is currently under discussion in the **Netherlands**. In the meantime, a temporary commission advises ministers before they authorise intelligence services to apply special powers to lawyers and journalists. It was established to comply with a domestic court judgment (District Court of The Hague (*Rechtbank Den Haag*), Case No. C/09/487229, 2015) as well as with an ECtHR judgment (*Telegraaf Media Nederland B.V. and others v. the Netherlands*, No. 39315/06, 2012). The commission is staffed by the Chair of the Review Committee and a deputy. Its advice is binding.

For more information, see Minister of the Interior and Kingdom Relations & Minister of Defence (Minister van Binnenlandse Zaken en Koninkrijksrelaties & Minister van Defensie) (2015), Tijdelijke regeling onafhankelijke toetsing bijzondere bevoegdheden Wiv 2002 jegens advocaten en journalisten

6.1.3. Encryption sparks debate

The issue of encryption dominated debates at international, European and national levels throughout 2016. Encryption is a privacy-enhancing technology that allows the secure processing of data. Data and communications are converted into a code that allows access only to those who have a key or password or, in case of end-to-end encryption, only to those for whom the data are intended.

The debate presently revolves around whether or not the interests of national security and crime prevention justify requiring companies to insert back doors into their programs to make the encrypted data accessible. The argument for access by intelligence and law-enforcement services is that terrorists or other criminals could otherwise avoid detection and police authorities could be prevented from obtaining crucial evidence. The counter-arguments, as developed by a group of pre-eminent cryptographers, computer scientists and security specialists, are that "the costs would be substantial, the damage to innovation severe, and the consequences to economic growth difficult to predict".[51]

Thus, weakening encryption software may have a number of unintended consequences. For example, it may adversely affect the security of online transactions, people's trust in these, and, consequently, the appropriate functioning of the EU's Digital Single Market. Another such consequence relates to the security of journalists' sources and so to journalism as a whole. Recognising this aspect of the encryption debate, in its resolution on 'The safety of journalists', the UN Human Rights Council called upon states not to interfere with the use of technologies providing encryption and anonymity.[52]

Likewise, the UN Special Rapporteur on the right to privacy condemned the direction of ongoing reforms in the field in the **United Kingdom**,[53] and stated that "the security risks introduced by deliberately weakened encryption are vastly disproportionate to the gains".[54] The rapporteur commended the **Dutch** government for accepting and endorsing the importance of encryption in providing internet security and thereby ensuring the protection of the privacy and confidentiality of communications, whether pertaining to citizens, the government or companies.[55]

The Council of Europe's Recommendation CM/Rec(2016)5 on Internet freedom noted that "[t]he State does not prohibit, in law or in practice, anonymity, pseudonymity, confidentiality of private communications or the usage of encryption technologies", adding that "[i]nterference with anonymity and confidentiality of communications is subject to the requirements of legality, legitimacy and proportionality of Article 8 of the [ECHR]."[56]

That encryption may hamper the prevention, detection and prosecution of all kinds of crime is recognised at EU level. So is its effectiveness in providing secure data processing, a key element of data protection.[57] The terrorist attacks and questions about whether encryption software may have helped the perpetrators particularly prompted debates on the issue. In August, the interior ministers of **Germany** and **France** identified encrypted communication as a major challenge for investigations. They underlined the need to identify solutions that permit both effective investigations and the protection of privacy and the rule of law. To that end, they called on the Commission to consider putting forward legislation imposing uniform obligations on internet and electronic communication providers in terms of cooperation with authorities and, in particular, law enforcement agencies.[58]

In November, concerns about encryption triggered two developments at EU level. First, the European Judicial Cybercrime Network (EJCN) was launched.[59] It aims to facilitate the exchange, among judicial authorities, of information and good practices regarding cybercrime and cyber-enabled crime.[60] Encryption is a key challenge in investigating and prosecuting such crime.[61] Second, the Slovak Presidency prepared a report with a survey on Member States' experiences with, and views on, encryption-related matters.[62] Of the 25 Member States that responded, the majority thought that the EU should play a practical and facilitative – rather than legislative – role, focusing on improving technical skills among national authorities, exchanging information, and cooperation between national police, Eurojust, Europol and the EJCN.[63] In this respect, the Commission's Joint Research Centre, together with Europol and national law enforcement authorities, is already engaged in developing solutions for decryption techniques compliant with EU law.[64]

Towards the end of 2016, the Commission established a working group to look at the role of encryption in criminal investigations. It asked FRA to contribute alongside Europol, Eurojust and ENISA. The issue is likely to remain high on the agenda in 2017.

6.1.4. PNR Directive adopted but implementation proceeds slowly

The PNR Directive entered into force in May 2016, and Member States have two years to transpose it.[65] The Commission emphasised the importance of quickly implementing the instrument, which it considers important for achieving an effective and sustainable Security Union.[66] To this end, as part of the European Security Agenda, the Commission provided € 70 million in additional funding for Member States to establish national PNR systems.[67]

Despite improvements, fundamental rights concerns remain

The final text of the directive reflects some of the recommendations FRA outlined in its 2011 opinion on the EU PNR data collection system.[68] As reported in FRA's *Fundamental Rights Report 2016*,[69] the directive includes an exhaustive list of what is considered serious crime for purposes of the directive, so that the grounds for law enforcement authorities' use of PNR data are foreseeable and accessible by every individual. That said – although the grounds permitting the use of PNR data are restricted to terrorist offences and serious crime – the list of offences is quite extensive, including 26 different offences.[70]

The directive also reflects some points FRA's 2011 opinion made concerning necessity, proportionality and data protection safeguards of the PNR system.[71] Data protection safeguards in the final text are more enhanced than in the Commission's initial proposal in 2011. A good example is the addition of the requirement for Member States to appoint data protection officers to their national Passenger Information Units.[72] However, despite considering necessity and proportionality, the text does not include fundamental rights-relevant indicators as part of the Commission's procedure for annually reviewing the statistical information on PNR data provided to the Passenger Information Units, as FRA initially recommended.[73] Accordingly, any interferences with the right to privacy and data protection or the right to non-discrimination when applying the directive are not reviewed.

For retention of PNR data to be proportionate and not go beyond what is necessary, legal frameworks must distinguish categories of data according to their usefulness and outline objective criteria that determine the duration of retention.[74] The PNR Directive envisages data retention for five years.[75] That said, it refers neither to specific categories of data nor to any specific grounds for such a long retention period. The Advocate General highlighted the absence of these elements, among others, in the Opinion on the *Agreement between the EU and Canada for transfer of PNR data*[76] when examining its compatibility with the EU Charter of Fundamental Rights.[77] The Advocate General concluded that, insofar as the agreement does not meet the necessity and proportionality requirements, as well as other data protection safeguards, it cannot enter into force in its current form. The CJEU will deliver its ruling in this case in 2017. Although it concerns the EU-Canada PNR scheme, the court's finding will certainly be relevant to the EU PNR scheme as well as the PNR Directive.

The application of the PNR Directive will ultimately depend on how Member States incorporate its provisions into national law. In light of the potential

deficiencies, Member States could, for example, add to their national laws the missing fundamental rights-relevant indicators for the review procedure by the Commission. Furthermore, the directive allows Member States to extend the application of the PNR system to flights within the EU at their own discretion.[78] It remains to be seen how Member States will exercise this discretion, considering that the right to free movement must be unequivocally respected and may be restricted only on grounds of public policy, public security or public health, taking into account necessity and proportionality.[79]

Implementation proceeds at slow pace

Despite the Commission's emphasis on fast implementation, the majority of Member States have not advanced particularly far in transposing the directive.

Of the 12 Member States that received financial support from the Commission in 2015 to establish national PNR systems,[80] only **Bulgaria**, **Latvia**[81] and **Slovenia** have proceeded to do so. **Bulgaria**'s new rules, in force since February 2016, include many provisions implementing the PNR Directive.[82]

Four Member States established national PNR systems before adoption of the PNR Directive: **Belgium**, **France**, **Hungary** and the **United Kingdom**. While Belgium and France are currently adjusting their legislation to the EU PNR system, the **United Kingdom** has not taken any steps towards implementation of the new directive. **Belgium** is finalising the legislation for its national PNR system; several members of the Belgian parliament and the European Commission have expressed concern about the legal text, questioning its appropriateness because it goes far beyond the European directive by including rail, maritime and road transport.[83] **France** finalised the technical adaptations to the PNR Directive; the new rules entered into force and will apply gradually from the end of 2016 onwards.[84] **Hungary** already adopted its first national PNR legislation in 2013[85] and the parliament adopted the necessary amendment for the implementation of the PNR Directive in November 2016.[86]

Of the Member States without national PNR systems, only four have already taken steps to initiate legislative procedures to implement the PNR Directive or are in the process of doing so. These are **Cyprus**, **Germany**,[87] **Luxembourg**[88] and **Slovakia**.

Although Member States pushed for the creation of an EU PNR data collection system as a response to 'foreign terrorist fighters' and the Paris attacks, 17 Member States do not appear to prioritise implementing the PNR Directive. The slow pace of implementation could relate to differing terrorism threat levels and the varying importance of personal data protection in Member States.

On 28 November 2016, the Commission published a detailed EU PNR implementation plan[89] "to tackle some of the problems that have emerged in preparing for effective implementation by spring 2018".[90] Meanwhile, the Council of Europe Consultative committee of the convention for the protection of individuals with regard to automatic processing of personal data in September adopted an opinion on the "Data protection implications of the processing of Passenger Name Records";[91] it provides complementary guidance on data protection safeguards applicable to third countries that are parties to the convention.

6.2. EU legal framework attunes itself to digitalisation, Member States slowly adapting

> *"Being European means the right to have your personal data protected by strong, European laws. Because Europeans do not like drones overhead recording their every move, or companies stockpiling their every mouse click. This is why Parliament, Council and Commission agreed in May this year a common European Data Protection Regulation. This is a strong European law that applies to companies wherever they are based and whenever they are processing your data. Because in Europe, privacy matters. This is a question of human dignity."*
>
> *European Commission, Juncker, J.-C. (2016), 'State of the Union address 2016', Speech/16/3043, 14 September 2016*

6.2.1. A modern and strengthened European data protection law

In April 2016, after more than four years of negotiation, the EU legislators adopted the data protection reform. The reform has the ambitious goal of adapting the European legal framework governing the protection of personal data to the realities and challenges arising from an ever more data-driven society. It consists of the General Data Protection Regulation (GDPR)[92] and the Police Directive.[93] The GDPR will apply as of 25 May 2018, and Member States have until 6 May 2018 to incorporate the Police Directive into national law.

The first crucial clarification brought about by the GDPR concerns the territorial application of EU law. The regulation now clearly states that it applies to all processing of EU residents' personal data, regardless of whether or not such processing takes place in the territory of the Union. The GDPR also simplifies several procedures. For example, it removes companies' obligation to notify data protection authorities (DPAs) of their processing activities: undertakings are now required to record such processing, and are to deliver them to DPAs only upon request. Small and medium-size businesses or organisations are exempted from this requirement, except in certain enumerated situations.

Moreover, the regulation increases the availability of effective remedies. Notable novelties include the possibilities for individuals to seek remedies in their country of residence and for third parties to initiate collective claims. DPAs are now also able to impose significant fines on data controllers: while current national legislation implementing the 1995 directive generally sets up maximum fines under € 1 million, the GDPR allows for compensation up to € 20 million or 4 % of the total worldwide annual turnover, whichever is greater.

The Police Directive seeks to facilitate information exchange in criminal law enforcement. Criteria for exchanges of information between national police and judicial authorities are harmonised to facilitate processes and ultimately increase efficiency in this field. The Police Directive includes many of the reforms introduced by the GDPR, such as the implementation of 'data protection by design' measures, the obligation to notify people of breaches, and clarifications of the processor's liability and requirements.

The reforms also enhanced the powers of DPAs. They emphasise cooperation and coordination among these authorities to ensure consistent application of the data protection legislation across EU Member States. Several mechanisms pursue this aim: the establishment of a lead supervisory authority (referred to as the 'one-stop-shop' principle); the consistency mechanism; and the replacement of the Article 29 Working Party with a new independent EU body, the European Data Protection Board (EDPB). The Police Directive also clarifies DPAs' tasks and powers. In particular, DPAs are granted corrective powers over controllers and processors, and they may impose temporary or permanent bans on illegal data processing. DPAs are also entrusted with dealing with complaints lodged by data subjects. While this broadened range of powers is welcome, it will require additional resources for DPAs.

Overall, the GDPR aims to eliminate most discrepancies in Member States' legal frameworks, such as regarding legally enforceable rights; obligations and responsibilities of data controllers and processors; powers and competences of DPAs; and available sanctions in case of violations. It reforms and enhances key principles ensuring effective personal data protection.

Moreover, the regulation will significantly affect any future developments in the data protection field. All new legislation has to reflect the changes brought by the GDPR – as, for instance, in the cases of the recently adopted Network and Information Systems (NIS) Directive[94] and the EU-US Privacy Shield, once the GDPR applies fully.[95] The CJEU will ultimately decide on the latter's compliance with the new principles of the GDPR in a case brought by the advocacy group Digital Rights Ireland in September 2016.[96] In the meantime, Maximilian Schrems is continuing his case[97] against Facebook before both the Irish courts and the CJEU – this time seeking to invalidate the "Standard Contractual Clauses', the preapproved contractual agreements that Facebook uses to transfer the data of EU citizens to the USA.

6.2.2. Towards national reforms

The GDPR will apply uniformly across the EU. However, several opening clauses leave room for Member States to further develop some of the principles in the regulation. The **German** Ministry of the Interior has assessed the feasibility of making use of these clauses.[98] In most Member States, such as **Belgium**, **Finland**, **Germany**, **Greece** and **Sweden**, governments have set up working groups tasked with assessing whether or not new legislation will be needed.

Some Member States, such as **Bulgaria**, **Latvia** and **Poland**,[99] have announced that draft laws will be published in 2017 and are currently assessing the required adaptations, sometimes through stakeholder consultations (**Poland**). In **Belgium**, the government announced that the DPA will undergo an in-depth reform to ensure its transformation into a fully independent regulator.[100]

DPAs are both actors in, and beneficiaries of, the reform. Their mandate and responsibilities will expand. Therefore, most authorities are raising awareness about, and advising data controllers to facilitate, the reform. Recent studies in Lithuania, however, show that there is little awareness of the new regulation among both the general population and the private sector.[101]

In some Member States, such as **Hungary**,[102] **Lithuania**[103] and the **United Kingdom**,[104] DPAs developed a dedicated webpage on the regulation with special advice aimed at companies. Several DPAs, such as in **Lithuania**, **Luxembourg** and **Portugal**, organised public events or seminars on the reform. In some Member States, DPAs were already undergoing internal reforms prior to adoption of the GDPR, and are now continuing such reforms following the principles established by the new regulation. This is the case in **Ireland**, where the Data Protection Commissioner (DPC) is conducting an in-depth reform and expansion in terms of human, financial and operational resources.[105]

However, despite the large new set of competences granted to DPAs by the GDPR (see Section 6.2.1),[106] some Member States – such as **Croatia** and the **Czech Republic** – do not plan any reforms or adaptations of their DPAs.

6.2.3. An enhanced privacy framework

One of the key initiatives of the Digital Single Market (DSM) Strategy was to assess the e-Privacy Directive and adapt it to the digital and technological

developments of the market. The e-Privacy Directive was introduced in 2002 to address the requirements of new digital technologies and ease the advancement of electronic communications services by regulating spam, cookies, confidentiality of information and other specific issues that were not covered by the Data Protection Directive.

Between April 2016 and July 2016, the Commission conducted a public consultation and a Eurobarometer survey, aiming to assess the principles currently regulating electronic communication. The outcomes highlight the differences in the viewpoints of industry and civil society. Respondents from the industry were generally confident that the current directive is sufficient and has so far achieved its goals. Citizens and civil society, however, pointed out its narrow scope, the imprecision of the rules and the lack of strong enforcement incentives.[107] The failure to protect citizens from so-called 'cookie-walls', which prevent users from accessing online services if they do not consent to the storage of their data, was also noted.

A 2016 Eurobarometer survey on e-privacy showed that European residents value their privacy and expect it to be protected online. The privacy of their personal information, online communications and online behaviour was very important to the majority of the survey respondents.[108] This is in line with the 2015 Eurobarometer results, which showed that personal data protection is a very important concern for Europeans.

Eurobarometer survey underlines importance of e-privacy to Europeans

In a 2016 Eurobarometer survey on e-privacy, more than nine in 10 respondents said that it is important that personal information – such as pictures and contact lists – on their computer, smartphone or tablet can be accessed only with their permission, and that it is important that the confidentiality of their emails and online instant messaging is guaranteed (both 92 %). More than eight in 10 also said that it is important that tools for monitoring their activities online – such as cookies – can be used only with their permission (82 %). Six in 10 respondents already changed the privacy settings on their internet browser (e.g. to delete browsing history or cookies) (60 %). Respondents find it unacceptable to have their online activities monitored in exchange for unrestricted access to a certain website (64 %), or to pay not to be monitored when using a website (74 %). Almost as many say that it is unacceptable for companies to share information about them without their permission (71 %).

Source: European Commission (2016), Flash Eurobarometer 443: e-Privacy, Brussels, December 2016

The European Data Protection Supervisor (EDPS) and the Article 29 Working Party also agreed on the need to review the current legal framework with respect to e-privacy.[109] They highlighted the need to avoid any data retention requirement in the new legal framework, in conformity with the CJEU's *Digital Rights Ireland* ruling; pointed out that end-to-end encryption must be allowed; and recalled that consistency with, and non-duplication of, the GDPR standards should be ensured. To ensure such consistency and non-duplication, the EDPS recommended that legislators opt for a regulation instead of a directive as the legal basis for the updated act. The European Commission is expected to present a proposal in early 2017.

6.3. In search of a data retention framework

6.3.1. European regime on data retention still absent

As discussed in previous FRA Fundamental Rights Reports, whereas developments in 2014 focused on the question of whether or not to retain data, the prevalent voice among EU Member States in 2015 was that data retention is an efficient measure for ensuring national security and public safety and for fighting serious crime. In 2016, with an EU legal framework on data retention still lacking, the CJEU further clarified what safeguards are required for data retention to be lawful.

The joined cases *Tele2 Sverige* and *Home Secretary v. Watson*[110] scrutinised the conformity of the compulsory retention of electronic communications data with the e-Privacy Directive and the EU Charter of Fundamental Rights. The cases were brought as a consequence of the *Digital Rights Ireland* judgment, in which the CJEU laid down the requirements for data retention to be legal. The question was whether or not requiring telecommunication companies to store data on telephone calls, emails and websites visited by their clients violates the right to privacy and personal data protection. The court concluded that Member States cannot impose a general obligation on providers of electronic telecommunications services to retain data, but did not ban data retention altogether. Such retention is compatible with EU law if deployed against specific targets to fight serious crime. Retention measures must be necessary and proportionate regarding the categories of data to be retained, the means of communication affected, the persons concerned and the chosen duration of retention. Furthermore, national authorities' access to the retained data must be conditional and meet certain data protection safeguards. Table 6.1 presents an overview of the requirements.

This important judgment raises a number of questions in connection with other key acts, particularly the recently adopted PNR Directive (see Section 6.1.4). It provides guidance to legislators of the forthcoming proposed e-privacy reform but also further clarifies the safeguards needed in national or European data retention frameworks. In the absence of a European data retention regime, it remains to be seen how national legislators will react to the CJEU judgment, which could trigger additional litigation at Member State level.

Table 6.1: Data retention obligations in light of *Tele2 Sverige* and *Home Secretary v. Watson*

Targeted retention for purpose of fighting serious crime	
Required safeguards	**How to establish safeguards in national legislation**
Strictly necessary categories of retained data AND Strictly necessary means of communications affected AND Strictly necessary persons concerned AND Strictly necessary retention period	Clear and precise rules for scope and application of data retention measures AND Objective criteria establishing connection between data to be retained and objective pursued AND Objective evidence establishing a link with a public and serious crime, including by using a geographical criterion

Source: *FRA, 2017 (based on CJEU, Tele2 Sverige AB v. Post-och telestyrelsen and Secretary of State for Home Department v. Watson and Others, Joined Cases C-203/15 and C-698/15, 21 December 2016, paras. 108–112)*

The CJEU delivered another important judgment in *Breyer*,[111] which examined whether or not dynamic Internet Protocol (IP) addresses can qualify as personal data, and whether pursuing a legitimate interest can suffice to justify storing and processing personal data or this can be done only for the specific purposes outlined in the (now invalidated) Data Retention Directive. The CJEU concluded that such addresses may constitute personal data where the individual concerned can be identified, even where a third party must obtain additional data for the identification to take place.[112] (The French Court of Cassation similarly concluded in November 2016 that IP addresses constitute personal data.[113]) The CJEU also held that data retention is allowed as long as website operators are pursuing a legitimate interest when retaining and using their visitors' personal data. This is of major importance for data retention rules; it follows that online media service providers can lawfully store their visitors' personal data to pursue a legitimate interest, rather than just for the purposes previously outlined in the invalidated Data Retention Directive. Thus, the grounds justifying data retention have become broader.

6.3.2. Ambiguity persists at national level

Member States made only limited progress in adopting new legal frameworks for data retention to incorporate the requirements and safeguards set out in the CJEU's case law. Most seem reluctant to amend their national laws to conform to the *Digital Rights Ireland* and *Tele2* judgments. In the meantime, challenges against domestic data retention laws in Member States generally abated, though three characteristic cases challenging data retention were brought in **Germany**, the **Netherlands** and the **United Kingdom** in 2016.

In **Germany**, the Federal Constitutional Court rejected several expedited actions[114] brought by lawyers, doctors, journalists, members of parliament and media associations – i.e. professionals bound by professional secrecy – as users of telecommunication services for private or business purposes. The applicants were seeking to annul the new provisions on the retention of telecommunication metadata introduced by a 2015 law.[115] The court held that suspending the disputed provisions was not justified because the mere storage of data does not automatically cause serious disadvantages, even to persons bound by professional secrecy. The court further stressed that the conditions set out in the legislation for the use of data for criminal investigations meet the standards laid down in previous case law.

In the **Netherlands**, the Administrative Jurisdiction Division of the Council of State decided on an administrative action[116] against the Passport Act (*Paspoortwet*),[117] which allows the Dutch authorities to store in a database digital fingerprints obtained for new passports or identity cards. The Council of State referred the case to the CJEU for a preliminary ruling, but the court concluded that it could not review the matter because it does not fall within the scope of the European Passport Regulation.[118] The Council of State then decided that the long-term decentralised storage of digital fingerprints by the authorities is illegitimate.[119] However, this cannot prevent the authorities from refusing to issue a passport.

Finally, the **United Kingdom** Court of Appeal[120] reviewed a claim alleging that the retention of, and access to, sensitive personal data – in particular, on gender reassignment – by certain officials breached

the right to private life (Article 8 of the ECHR). The court dismissed the appeal, holding that although there was an interference with Article 8, it was proportionate. Specifically, the data were already in the public domain and would mostly be of no interest to those assessing them, and they would typically have no contact with the applicant. Additionally, disciplinary measures were provided for in case of any abuse of access by the officials.

Member States hesitant to revise national data retention laws

As previously noted, the majority of Member States consider data retention an efficient way to protect national security and public safety as well as to address crime. Given the CJEU's judgment in *Digital Rights Ireland*, although there is no strict legal obligation to do so, to ensure full respect for fundamental rights, the next step for Member States would be to reform their domestic legal frameworks and provide for the safeguards laid down by the CJEU. However, only four Member States enacted legislative amendments following the judgment and only six Member States are pursuing such amendments.

Figure 6.1 outlines the amendments in progress or enacted in 2016. As it illustrates, most governments responded to the CJEU's holding by introducing stricter access controls and specifying the types of crime justifying access to retained data. The remaining Member States have taken no steps to introduce fundamental rights safeguards in their domestic data retention regimes.

In **Belgium**, a new law has been in force since July 2016.[121] Given the concerns expressed during the legislative process,[122] it added strict safeguards and security measures. The law also clearly defines which authorities can access and retain data and for how long, and specifies the requirements for accessing three different categories of data.[123] However, the blanket retention of data by telecommunication providers has not been removed.[124] In **Slovakia**, a new law entered into force on 1 January 2016, abolishing the preventative blanket retention and storage of data by telecommunications companies and introducing all the safeguards prescribed by the CJEU.[125]

In **Denmark**, the government announced that preparations for revising data retention rules are underway, stating that the revised rules are currently under consideration and planned to be introduced in the fall of 2017.[126] The revised rules will take into consideration the CJEU's *Tele2* judgment.

In **Luxembourg**, the government introduced a bill amending the data retention regime in accordance with *Digital Rights Ireland* and restricting the possibilities of retaining data to the grounds specifically listed in the bill.[127] It was debated whether or not the bill contains a wider list of offences justifying retention beyond what is strictly necessary.[128] In the **United Kingdom**, the Investigatory Powers Act[129] provides for the Secretary of State to require communication service providers to retain relevant communications data for one or more of the statutory purposes for a period up to 12 months and specifies a number of safeguards in respect of data retention.

In **Hungary**, the government has not taken any steps to amend the Act implementing the Data Retention Directive.[130] However, the Hungarian parliament amended the Act on certain questions of electronic commercial services and information society services[131] to expand the scope of data retention. It introduced data retention obligations for electronic and IT service providers similar to those applicable under the Act implementing the Data Retention Directive. The new law obliges electronic and IT service providers that allow encrypted communication through their services to store all metadata related to such communications for one year.[132] It thus widens the scope of data retention.

All in all, Member States' progress on the issue since the CJEU's invalidation of the Data Retention Directive remains limited. This may partly be due to the absence of harmonised rules at EU level. Eurojust, the EU agency for judicial cooperation in criminal matters, has stated that, while data retention schemes are considered necessary tools in the fight against serious crime, there is a need to create an EU regime on data retention that complies with the safeguards laid down by the CJEU.[133] In any event, regardless of whether at European or national level: as long as data retention measures continue to be deployed, adequate protection measures must soon be implemented to prevent fundamental rights violations.

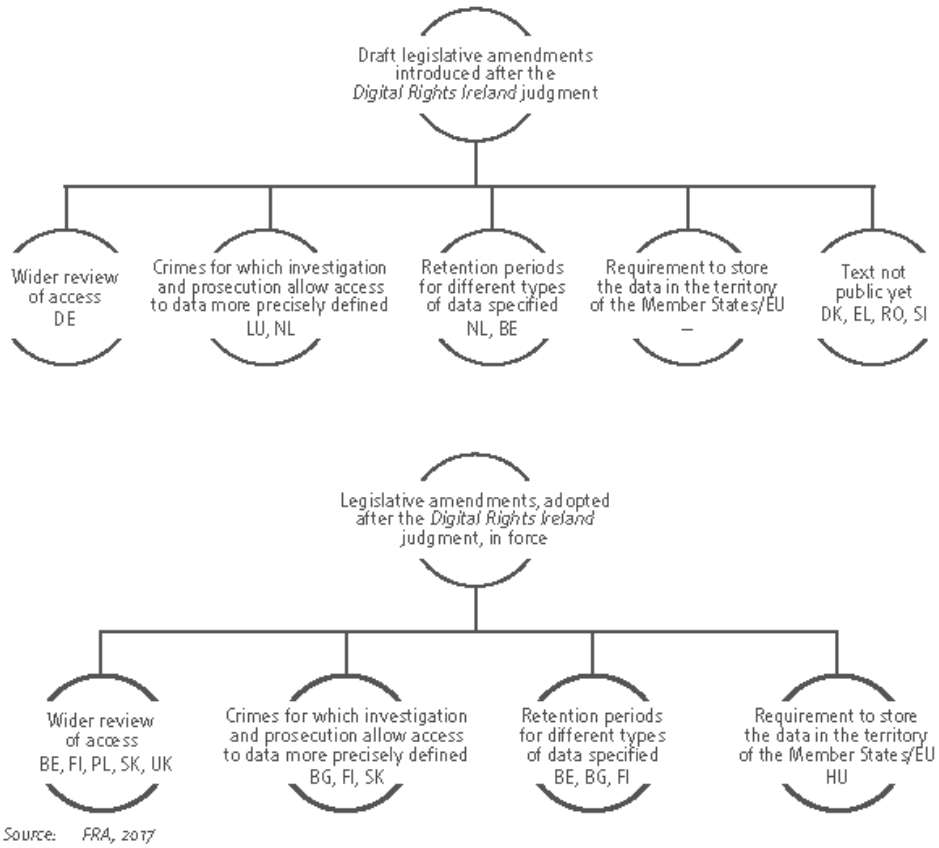
Promising practice

Auditing state bodies with access to communications data

In 2014, the Office of the Data Protection Commissioner (DPC) in **Ireland** completed an audit into the handling of information in the Garda Síorhána (police force), which included an examination of practices in relation to access to retained communications data. In 2016, the DPC expanded on this by auditing all state bodies with access to retained communications data. This is the first time that a comprehensive review of access to retained data has been carried out across the agencies.

For more information, see Lally, C. (2016), 'Garda use of powers to access phone data to be audited', Irish Times, 20 January 2016

Figure 6.1: Amendments to national data retention laws in 2016



Source: *FRA, 2017*

FRA opinions

FRA evidence, which builds on research on the protection of fundamental rights in the context of large-scale surveillance carried out at the European Parliament's request, shows that a number of EU Member States reformed their legal frameworks relating to intelligence gathering throughout the year. Enacted amid a wave of terrorist attacks, these changes enhanced the powers and technological capacities of the relevant authorities and may increase their intrusive powers – with possible implications for the fundamental rights to privacy and personal data protection. The Court of Justice of the European Union and the European Court of Human Rights provide essential guidance on how to protect best these rights. Legal safeguards include: substantive and procedural guarantees of a measure's necessity and proportionality; independent oversight and the guarantee of effective redress mechanisms; and rules on providing evidence of whether an individual is being subjected to surveillance. Broad consultations can help to ensure that intelligence law reforms provide for a more effective, legitimate functioning of the services and gain the support of citizens.

FRA opinion 6.1

EU Member States should undertake a broad public consultation with a full range of stakeholders, ensure transparency of the legislative process, and incorporate relevant international and European standards and safeguards when introducing reforms to their legislation on surveillance.

Encryption is perhaps the most accessible privacy enhancing technique. It is a recognised method of ensuring secure data processing in the General Data Protection Regulation (GDPR) as well as the e-Privacy Directive. However, the protection it provides is also used for illegal and criminal purposes. The spread of services providing end-to-end encryption further adds to the tension between securing privacy and fighting crime, as they, by design, prevent or make more difficult access to encrypted data by law enforcement authorities. To overcome this challenge, some Member States have started considering – or have already enacted – legislation that requires service providers to have built-in encryption backdoors that, upon request, allow access to any encrypted data by law enforcement and secret services. As noted by many, however, such built-in backdoors can lead to a general weakening of encryption, since they can be discovered and exploited by anyone with sufficient technical expertise. Such exposure could run counter to what data protection requires and could indiscriminately affect the security of communications and stored data of states, businesses and individuals.

FRA opinion 6.2

EU Member States should ensure that measures to overcome the challenges of encryption are proportionate to the legitimate aim of fighting crime and do not unjustifiably interfere with the rights to private life and data protection.

The General Data Protection Regulation, which will apply as of 2018, lays down enhanced standards for achieving effective and adequate protection of personal data. Data protection authorities will play an even more significant role in safeguarding the right to data protection. Any new legal act in the field of data protection will have to respect the enhanced standards set out in the regulation. For example, in 2016 the EU adopted an adequacy decision for the purpose of international data transfers: the EU-U.S. Privacy Shield. This decision explicitly states that the European Commission will regularly assess whether the conditions for adequacy are still guaranteed. Should such assessment be inconclusive following the entry into application of the General Data Protection Regulation, the decision asserts that the Commission may adopt an implementing act suspending the Privacy Shield. Furthermore, in 2016, the EU adopted its first piece of legislation on cyber security – the Network and Information Security Directive – and, in early 2017, in the context of the Digital Single Market Strategy, the Commission proposed an e-Privacy Regulation to replace the e-Privacy Directive.

FRA opinion 6.3

EU Member States should transpose the Network and Information Security Directive into their national legal frameworks in a manner that takes into account Article 8 of the EU Charter of Fundamental Rights and the principles laid down in the General Data Protection Regulation. Member States and companies should also act in compliance with these standards when processing or transferring personal data based on the EU-U.S. Privacy Shield.

Whereas developments in 2014 focused on the question of whether or not to retain data, it became clear in 2015 that Member States view data retention as an efficient measure for ensuring protection of national security, public safety and fighting serious crime. There was limited progress on the issue in 2016: while the EU did not propose any revised legislation in response to the Data Retention Directive's invalidation two years earlier, the CJEU developed its case law on fundamental rights safeguards that are essential for the legality of data retention by telecommunication providers.

FRA opinion 6.4

EU Member States should, within their national frameworks on data retention, avoid general and indiscriminate retention of data by telecommunication providers. National law should include strict proportionality checks as well as appropriate procedural safeguards so that the rights to privacy and the protection of personal data are effectively guaranteed.

The European Parliament Civil Liberties, Justice and Home Affairs Committee (LIBE) rejected the proposal for an EU Passenger Name Record (PNR) Directive in April 2013 due to concerns about proportionality and necessity, and a lack of data protection safeguards and transparency towards passengers. Emphasising the need to fight terrorism and serious crime, the EU legislature in 2016 reached an agreement on a revised EU PNR Directive and adopted the text. Member States have to transpose the directive into national law by May 2018. The adopted text includes enhanced safeguards that are in line with FRA's suggestions in its 2011 Opinion on the EU PNR data collection system. These include enhanced requirements, accessibility and proportionality, as well as further data protection safeguards. There are, however, fundamental rights protection aspects that the directive does not cover.

FRA opinion 6.5

EU Member States should enhance data protection safeguards to ensure that the highest fundamental rights standards are in place. This also applies to the transposition of the EU Passenger Name Record (PNR) Directive. In light of recent CJEU case law, safeguards should particularly address the justification for retaining Passenger Name Record data, effective remedies and independent oversight.

Index of Member State references

Endnotes

1 European Parliament, European Parliamentary Research Service (2016), *Foreign fighters – Member State responses and EU action*, Briefing, March 2016.

2 United Nations (UN), Human Rights Council, Cannataci, J. (2016), *Report of the Special Rapporteur on the right to privacy*, A/HRC/31/64, 8 March 2016, para. 23.

3 *Ibid.*, para. 9.

4 UN, Human Rights Council, Emmerson, B. (2016), *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, A/HRC/31/65, 29 April 2016 para. 9.

5 Council of Europe, Parliamentary Assembly (PACE) (2016), *Combating international terrorism while protecting Council of Europe standards and values*, Resolution 2090 (2016), 27 January 2016, para. 16.7.

6 *Ibid.*

7 PACE (2016), *Terrorism: #NoHateNoFear, a PACE initiative*, 20 June 2016.

8 Council of Europe, Jagland, T. (2016), *State of Democracy, Human Rights and the Rule of Law – A Security Imperative for Europe*, p. 8.

9 Council of Europe, European Commission for Democracy through Law (Venice Commission) (2016), *Rule of law checklist*, CDL-AD(2016)007, 18 March 2016, pp. 31–33.

10 UN, Human Rights Council (2016), *Resolution on the protection of human rights and fundamental freedoms while countering terrorism*, A/HRC/33/L.27/Rev.1, 28 September 2016, para. 25.

11 UN, Human Rights Council (2016), *Report of the Working Group on the universal periodic review – Belgium*, A/HRC/32/8, 11 April 2016, Recommendations 138.71, 139.17 and 141.14.

12 UN, Human Rights Council (2016), *Report of the Working Group on the universal periodic review – Estonia*, A/HRC/32/7, 12 April 2016, Recommendation 123.45.

13 UN, Human Rights Council (2016), *Report of the Working Group on the universal periodic review – Latvia*, A/HRC/32/15, 14 April 2016, Recommendation 120.68.

14 UN, Human Rights Committee (2016), *Concluding observations on the sixth periodic report of Denmark*, CCPR/C/DNK/CO/6, 15 August 2016, paras. 27–28.

15 UN, Human Rights Committee (2016), CCPR/C/POL/CO/7, *Concluding observations on the seventh periodic report of Poland*, 23 November 2016, paras. 39–40.

16 UN, Human Rights Committee (2016), *Concluding observations on the seventh periodic report of Sweden*, CCPR/C/SWE/CO/7, 28 April 2016, paras. 36–37.

17 UN, Human Rights Committee (2016), *Concluding observations on the seventh periodic report of Sweden*, CCPR/C/SWE/CO/7, 28 April 2016, para. 36.

18 ECtHR, *Szabó and Vissy v. Hungary*, No. 37138/14, 12 January 2016, para. 70.

19 Article 29 Data Protection Working Party (2016), Working Document 01/2016 on the justification of interferences with the fundamental rights to privacy and data protection through surveillance measures when transferring personal data (European Essential Guarantees), 13 April 2016, p. 8.

20 ECtHR, *Centrum För Rättvisa v. Sweden*, No. 35252/08; ECtHR, *Big Brother Watch and Others v. the United Kingdom*, No. 58170/13; ECtHR, *Bureau of Investigative Journalism and Alice Ross v. the United Kingdom*, No. 62322/14; ECtHR, *10 Human Rights Organisations and Others v. the United Kingdom*, No. 24960/15; ECtHR, *Breyer v. Germany*, No. 50001/12. All these cases are at the stage of having been communicated to the respective governments.

21 European Commission, Juncker, J.-C. (2016), 'Juncker after Brussels terror attacks: "We need a security union"', Press conference, 24 March 2016.

22 King, J. (2016), 'Introductory remarks by Commissioner-designate Sir Julian King to the LIBE Committee', Press release, Strasbourg, 12 September 2016.

23 European Commission (2016), *High Level Expert Group on Information Systems and Interoperability – Interim report by the chair of the high-level expert group*, December 2016, pp. 2–3.

24 European Parliament, Committee on Civil Liberties, Justice and Home Affairs (2016), 'Exchange of views with Gilles de Kerchove, EU Counter-Terrorism Coordinator (CTC) on the fight against terrorism and recent attacks in Member States', Committee meeting, LIBE/8/02582, 26 September 2016.

25 *Ibid.*

26 European Commission, (2016), *Enhancing security in a world of mobility: improved information exchange in the fight against terrorism and stronger external borders*, COM(2016) 602 final, Brussels, 14 September 2016, p. 14.

27 *Ibid.*, pp. 14–15.

28 *Ibid.*, p. 12 and fn. 30.

29 European Commission (2016), *Delivering on the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union*, COM(2016) 230 final, Brussels, 20 April 2016, p. 10.

30 European Council (2016), *Bratislava Declaration and Roadmap*, 16 September 2016.

31 *Ibid.*

32 European Commission, Juncker, J.-C. (2016), *State of the Union*, 14 September 2016, p. 6.

33 Poland, Anti-terrorist Act (*Ustawa o działaniach antyterrorystycznych*), 10 June 2016.

34 Romania, Emergency Ordinance No. 6/2016 on Certain Measures for the Enforcement of Technical Surveillance Warrants in Criminal Cases (*Ordonanța de urgență nr. 6/2016 privind unele măsuri pentru punerea în executare a mandatelor de supraveghere tehnică dispuse în procesul penal*), 11 March 2016.

35 United Kingdom, Joint Committee on the Draft Investigatory Powers Bill (2016), *Draft Investigatory Powers Bill – Report*, 11 February 2016, p. 26.

36 See, for example, United Kingdom, Joint Committee on the Draft Investigatory Powers Bill (2015-2016), *Oral Evidence*; United Kingdom, Joint Committee on the Draft Investigatory Powers Bill (2015-2016), *Written Evidence*.

37 Anderson, D., Q.C. (2015), *A Question of Trust*; Anderson, D., Q.C. (2016), *Report of the Bulk Powers Review*.

38 Ireland, Department of Justice and Equality (2016), 'Statement by the Minister for Justice and Equality in relation to access to telephone records', 19 January 2016.

39 House of Representatives (2016), 'Magazine La chambre', *La Chambre.be*, p. 3; House of Representatives, Text adopted by the temporary 'Fight against Terrorism' Commission – Bill concerning complementary measures related to the fight against terrorism (*Projet de loi relatif à des mesures complémentaires en matière de lutte contre le terrorisme/ Wetsontwerp inzake aanvullende maatregelen ter bestrijding van terrorisme*), 14 April 2016.

40 Belgium, Proposition to establish a Parliamentary Investigative Commission responsible for examining the circumstances leading to the terrorist attacks of

22 March 2016 in Brussels National Airport and Maelbeek metro station (*Proposition visant à instituer une commission d'enquête parlementaire chargée d'examiner les circonstances qui ont conduit aux attentats terroristes du 22 mars 2016 dans l'aéroport de Bruxelles-National et dans la station de métro Maelbeek à Bruxelles, y compris l'évolution et la gestion de la lutte contre le radicalisme et la menace terroriste/Voorstel tot oprichting van een parlementaire onderzoekscommissie belast met het onderzoek naar de omstandigheden die hebben geleid tot de terroristische aanslagen van 22 maart 2016 in de luchthaven Brussel National en in het metrostation Maalbeek te Brussel, met inbegrip van de evolutie en de aanpak van de strijd tegen het radicalisme en de terroristische dreiging*), 11 April 2016.

41 Germany, Act on Signals Intelligence Gathering in Germany of Foreigners Abroad (*Gesetz zur Ausland-Ausland-Fernmeldeaufklärung des Bundesnachrichtendienstes*), 2016, Section 2.

42 Italy, Draft Law No. 2067 concerning the Reform of the Criminal Code and Criminal Procedure Code in order to enhance judicial guarantees and the right to a fair length of judicial proceeding and to the re-integration aim of detention (*Modifiche al codice penale e al codice di procedura penale per il rafforzamento delle garanzie difensive e la durata ragionevole dei processi nonché all'ordinamento penitenziario per l'effettività rieducativa della pena*), 3 August 2016.

43 Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (*Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών*), No. 75(I)/2016.

44 United Kingdom, Investigatory Powers Act 2016, 29 November 2016, Sections 61–62.

45 Poland, Law on Prosecutor Office (*Prawo o prokuraturze*), 28 January 2016, Art. 1.2., 57.2 and 57.3.

46 Hungary, Act LXIX of 2016 on the amendment of certain acts related to counter-terrorism (*2016. évi LXIX. törvény a terrorizmus elleni fellépéssel összefüggő egyes törvények módosításáról*), 17 July 2016, Article 16.

47 United Kingdom, Investigatory Powers Act 2016, 29 November 2016, Sections 227 and 240.

48 *Ibid.*, Section 23.

49 France, Law No. 2016-1767 of 19 December 2016 extending the application of Law No. 55-385 of 3 April 1955 concerning the state of emergency (*Loi n° 2016-1767 du 19 décembre 2016 prorogeant l'application de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence*), 19 December 2016.

50 France, Interior Security Code (*Code de la sécurité intérieure*), Art. 851-2.

51 Abelson, H., Anderson, R., Bellovin, S.M., Benaloh, J., Blaze, M., Diffie, W., Gilmore, J., Green, M., Neumann, P.G., Landau, S., Rivest, R.L., Schiller, J.I., Schneier, B., Specter, M. and Weitzner, D.J. (2015), 'Keys Under Doormats: mandating insecurity by requiring government access to all data and communications', Journal of Cybersecurity, p. 10.

52 UN, Human Rights Council (2016), *Resolution on the safety of journalists*, A/HRC/33/L.6, 26 September 2016, para. 13. See also UN, Human Rights Council, Kaye, D. (2016), *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, A/HRC/32/38, 11 May 2016, para. 62.

53 UN, General Assembly (GA) (2016), *Report of the Special Rapporteur on the right to privacy*, A/71/368, 30 August 2016, para. 34.

54 *Ibid.*, para. 32.

55 Netherlands, Ministry of Security and Justice (2016), 'Cabinet's view on encryption', Letter from the Ministry of Security and Justice to the President of the House of Representatives of the States General, 4 January 2016.

56 Council of Europe, Committee of Ministers (2016), Recommendation CM/Rec(2016)5 of the Committee of Ministers to member States on Internet freedom, 13 April 2016, para. 4.1.7.

57 See, for example, Europol (2016), The Internet Organised Crime Threat Assessment (IOCTA) 2016, p. 46; Europol/European Union Agency for Network and Information Security (ENISA) (2016), 'On lawful criminal investigation that respects 21st Century data protection – Europol and ENISA Joint Statement', 20 May 2016; Eurojust (2016), 'Conclusions of the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States of the European Union', 11th Meeting, The Hague, 3 June 2016, pp. 2–3.

58 France, Ministry of the Interior (2016), 'Initiative franco-allemande sur les enjeux clés de la coopération européenne dans le domaine de la sécurité intérieure', 23 August 2016, pp. 3–4.

59 Eurojust (2016), 'Kick-off meeting for the European Judicial Cybercrime Network', Press release, 25 November 2016.

60 Council conclusions on the European Judicial Cybercrime Network, Luxembourg, 9 June 2016.

61 Eurojust (2016), 'Kick-off meeting for the European Judicial Cybercrime Network', Press release, 25 November 2016.

62 Council of the European Union (2016), *Encryption: Challenges for Criminal Justice in Relation to the Use of Encryption*, 14711/16, 23 November 2016.

63 *Ibid.*

64 European Commission (2016), 'Encrypted material: a challenge for law enforcement investigations', 10 June 2016.

65 Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, OJ 2016 L 119 (PNR Directive).

66 European Commission (2016), 'European Agenda on Security: First report on progress towards an effective and sustainable Security Union', Press release, IP/16/3367, Brussels, 12 October 2016.

67 *Ibid.*

68 FRA (2011), *Opinion on the proposal for a Directive on the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime*, FRA Opinion 01/2011, Vienna, p. 113.

69 FRA (2016), *Information Society, Privacy and Data Protection*, Vienna.

70 FRA (2011), *Opinion on the proposal for a Directive on the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime*, FRA Opinion 01/2011, Vienna, pp. 16, 22.

71 *Ibid.*, p. 113.

72 *Ibid.*, p. 20.

73 *Ibid.*, p. 21.

74 CJEU, Joined Cases C-293/12 and C-594/12, *Digital Rights Ireland and Seitlinger and others*, 8 April 2014, paras. 63–64.

75 Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, OJ 2016 L 119 (PNR Directive), Art. 12.

76 European Commission (2013), *Proposal for a Council Decision on the conclusion of the Agreement between Canada and the European Union on the transfer and processing of passenger name record data*, COM(2013) 528 final, Brussels, 18 July 2013.

77 CJEU, 'Opinion of Advocate General Mengozzi', Opinion 1/15, 8 September 2016.

78 Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, OJ 2016 L 119 (PNR Directive), Art. 2.

79 Directive (EC) 2004/38 of the European Parliament and of the Council of 29 April 2004 on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ 2004 L 158 (Free Movement Directive), Art. 27; Court of Justice of the European Union (CJEU), *ZZ v. Secretary of State for the Home Department*, Case C-300/11, 4 June 2013.

80 European Parliament, European Parliamentary Research Service (2015), 'The proposed EU Passenger Name Records (PNR) Directive revived in the new security context', Briefing, April 2015.

81 Latvia, annotation of the Draft law "On Aircraft Passenger Data Processing' Processing' (*Gaisa kuģu pasažieru datu apstrādes likums*), 14 June 2016.

82 Bulgaria, Amendments to the State Agency for National Security Act (*Закон за изменение и допълнение на Закона за Държавна агенция „Национална сигурност"*), 23 February 2016.

83 Belgium (2016), 'Le projet de loi PNR est renvoyé au Conseil d'Etat', *Le Vif*, 24 November 2016.

84 France, Interior Security Code (*Code de la sécurité intérieure*), Article L232-1; France, Government (*Gouvernement*), 'Adoption of the European PNR, an essential stage in the reinforcement of the fight against terrorism' (*Adoption du PNR européen, une étape indispensable dans le renforcement de la lutte contre le térrorisme*), 15 April 2016.

85 Hungary, *'2013. évi CXCVIII. törvény a nemzeti utasadat-információs rendszer létrehozása érdekében szükséges, valamint a rendőrséget érintő és egyes további törvények módosításáról'*, 11 November 2013.

86 Hungary, *2016. évi CXVI. Törvény az egyes belügyi tárgyú törvények módosításáról'*, 8 November 2016.

87 Germany, German Bundestag (*Deutscher Bundestag*) (2016), 'Geheimdienstkooperation gegen den Terrorismus', 1 June 2016.

88 Luxembourg, Ministry of Foreign and European Affairs (*Ministère des Affaires Etrangères et Européennes*), "Report on the transposition of European Directives and the implementation of the law of the Union' (*Rapport sur la transposition des directives européennes et l'application du droit de l'Union*), 22 June 2016.

89 European Commission (2016), *Implementation Plan for Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime*, SWD(2016) 426 final, Brussels, 28 November 2016.

90 European Commission, King, J. (2016), 'Opening remarks – Commissioner King participates in a structured dialogue at the Committee on Civil Liberties, Justice and Home Affairs in the European Parliament', Speech, Brussels, 8 November 2016

91 Council of Europe, Consultative Committee of the Convention for the Protection of Individuals with Regard to the Automatic Processing of Personal Data (T-PD) (2016), Opinion on the Data protection implications of the processing of Passenger Name Records, 19 August 2016.

92 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4 May 2016.

93 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, and repealing Council Framework Decision 2008/977/JHA, 4 May 2016.

94 Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measure for a high common level of security of network and information systems across the Union, OJ 2016 L 194 (NIS Directive), OJ L 194, 19 July 2016.

95 Commission Implementing Decision (EU) 2016/1250 of 12 July 2016 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the EU-U.S. Privacy Shield, OJ 2016 L 207, 1 August 2016.

96 CJEU, *Action brought on 16 September 2016 – Digital Rights Ireland v Commission*, Case T-670/16.

97 Ireland, High Court, *Data Protection Commissioner v. Facebook Ireland Ltd. and Maximilian Schrems*, 2016/4809P, 19 June 2016.

98 Kühling, J., Martini, M., Heberlein, J., Kühl, B., Nink, D., Weinzierl, Q. and Wenzel, M. (2016), *Die Datenschutz-Grundverordnung und das nationale Recht. Erste Überlegungen zum innerstaatlichen Regelungsbedarf*, Münster, MV-Verlag.

99 Poland, Inspector General for the Protection of Personal Data (*Generalny Inspektor Ochrony Danych Osobowych*) (2016), *'Wyzwania związane z unijną reformą prawa ochrony danych osobowych'*, Press release, 22 June 2016.

100 Belgium, Press Centre, *'Réforme de la Commission pour la protection de la vie privée'*, Press release, 13 May 2016.

101 Lithuania, Human Rights Monitoring Institute (2016), *The Privacy Paradox: The Lithuanian Public's Perceptions of Data Protection*; Lithuania, Human Rights Monitoring Institute (2016), *The Preparedness of Lithuanian Business to Implement GDPR. The Preparedness of Lithuanian Business to Implement GDPR*.

102 National Authority for Data Protection and Freedom of Information (2016), 'Twelve steps in the preparation for the application of the General Data Protection Regulation' (*Felkészülés az Adatvédelmi Rendelet alkalmazására 12 lépésben*).

103 Lithuania, State Data Protection Inspectorate (*Valstybinė duomenų apsaugos inspekcija*) (2016), 'Data protection reform', News, 12 October 2016.

104 Information Commissioner's Office, Data protection reform.

105 Department of the Taoiseach, 'An Taoiseach and Minister Murphy Announce New Dublin Premises for the Office of the Data Protection Commissioner', 9 December 2015.

106 See also FRA (2016), *Fundamental Rights Report 2016*, Publications Office, Luxembourg, p. 108.

107 European Commission, *Full Report on the Public Consultation on the Evaluation and Review of the ePrivacy Directive*, 19 December 2016; European Commission (2016), *Flash Eurobarometer Interactive 443: e-PrivacyFlash Eurobarometer Interactive 443: e-Privacy*, 19 December 2016.

108 European Commission (2016), *Flash Eurobarometer Interactive 443: e-Privacy*, Brussels, 19 December 2016.

109 European Data Protection Supervisor, *Opinion 5/2016 Preliminary EDPS Opinion on the review of the ePrivacy Directive (2002/58/EC)*, 22 July 2016; Art. 29 Working Party, *Opinion 03/2016 on the evaluation and review of the ePrivacy Directive (2002/58/EC)*, 19 July 2016.

110 CJEU, *Tele2 Sverige AB v. Post-och telestyrelsen* and *Secretary of State for Home Department v. Tom Watson and Others*, Joined Cases C-203/15 and C-698/15, 21 December 2016.

111 CJEU, *Patrick Breyer v. Bundesrepublik Deutschland*, Case C-582/14, 19 October 2016.

112 *Ibid.*, para. 49.

113 France, Court of Cassation (*Cour de Cassation*), *Arrêt No. 1184 du 3 novembre 2016*, 15-22.595, 3 November 2016.

114 Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2016), 1 BvQ 55/15, 12 January 2016; Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2016), 1 BvQ 42/15, 8 June 2016;Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2016), 1 BvR 229/16, 8 June 2016.

115 Germany, Act for the introduction of an obligation to retain and of a maximum retention period for metadata (*Gesetz zur Einführung einer Speicherpflicht und einer Höchstspeicherfrist für Verkehrsdaten*), 18 December 2015.

116 Netherlands, Administrative Jurisdiction Division of Council of State (*Afdeling Bestuursrechtspraak Raad van State*), *Uitspraak op het hoger beroep van: [appellante], wonend te Den Haag, tegen de uitspraak van de rechtbank Den Haag van 23 maart 2011 in zaak nr. 10/5376 in het geding tussen: [appellante] en de burgemeester van Den Haag*, 25 May 2015.

117 Netherlands, Passport Act (*Paspoortwet*), 9 March 2014.

118 CJEU, CJEU*W.P. Willems and Others v. Burgemeester van Nuth and Others*, Joined Cases C-446/12 to C-449/12, 16 April 2015.

119 Netherlands, Administrative Jurisdiction Division of Council of State (*Afdeling Bestuursrechtspraak Raad van State*), zaak nr. 201207583/1/A3 of 25 May 2016, par. 7.6.

120 United Kingdom, Court of Appeal (Civil Division), *R. (on the application of C) v. Secretary of State for Work and Pensions*, [2016] EWCA Civ 47, 9 February 2016.

121 Belgium, Act concerning the collection and retention of data in the electronic communications sector (*Loi relatif à la collecte et à la conservation des données dans le secteur des communications électroniques/Wet betreffende het verzamelen en het bewaren van de gegevens in de sector van de elektronische communicatie*), 29 May 2016.

122 NURPA (2016), *Opinion from Dataparik, the Liga voor Mensenrechten, the Ligue des droits de l'Homme and NURPA concerning the data retention bill* (*Avis de Dataparik, la Liga voor Mensenrechten, la Ligue des droits de l'Homme et la NURPA concernant le projet de loi relatif à la collecte et à la conservation des données dans le secteur des communications électroniques*), (DOC 54 1567/001), 15 February 2016.

123 Belgium, Act concerning the collection and retention of data in the electronic communications sector (*Loi relatif à la collecte et à la conservation des données dans le secteur des communications électroniques/Wet betreffende het verzamelen en het bewaren van de gegevens in de sector van de elektronische communicatie*), 29 May 2016, Art. 46§3.

124 *Ibid.*

125 Slovakia, Act No. 397/2015 Coll. which for the purposes of the Criminal Code provides a list of substances with anabolic or other hormonal action and amending and supplementing certain laws (*Predpis č. 397/2015, ktorým sa na účely Trestného zákona ustanovuje zoznam látok s anabolickým alebo iným hormonálnym účinkom a ktorým sa mení a dopĺňajú niektoré zákony*), 13 November 2015.

126 Denmark, Danish Government (*Regeringen*) (2016), *Lovgivning Folketingsåret 2016/2017*, October 2016.

127 Luxembourg, Bill 6763 to amend the Code of Criminal Procedure and the amended Act of 30 May 2005 regarding the protection of privacy in electronic communications (*Projet de Loi n°6763 portant modification du Code d'instruction criminelle et de la Loi modifiée du 30 mai 2005 concernant la protection de la vie privée dans le secteur des communications électroniques*), 7 January 2015.

128 Luxembourg, Parliament (*Chambre des Députés*), Legal Commission (*Commission juridique*), Minutes of the meeting of 9 March 2016 (*Procès-verbal de la réunion du 9 mars 2016*), pp. 3-4; Luxembourg, Bill 6763, Opinion by the Consultative Commission on Human Rights (*Avis de la Commission Consultative des Droits de l'Homme, CCDH*), 27 July 2015 ; Luxembourg, Bill 6763, Opinion by the Council of State (*Avis du Conseil d'Etat*), 10 July 2015, pp. 3-4.

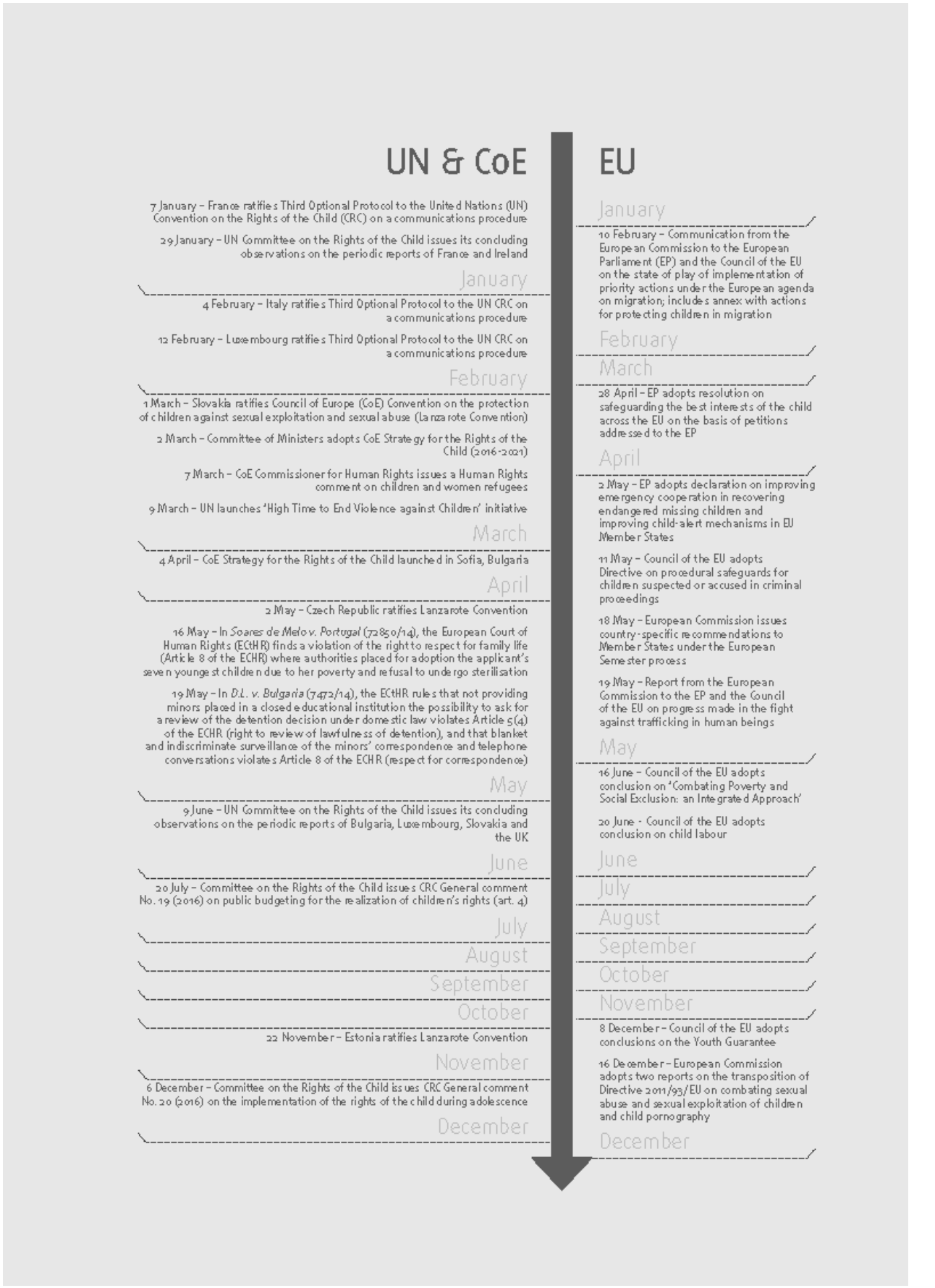
129 United Kingdom, United Kingdom Parliament, Investigatory Powers Act 2015-16 to 2016-17, 29 November 2016.

130 Hungary, Act C of 2003 on electronic media (*2003. évi C. törvény az elektronikus hírközlésről/hírközlesről*), 1 January 2004.

131 Hungary, Act CVIII of 2001 on certain questions of electronic commercial services and information society services (*az elektronikus kereskedelmi szolgáltatások, valamint az információs társadalommal összefüggő szolgáltatások egyes kérdéseiről*), 23 January 2002.

132 Hungary, Act LXIX of 2016 on the amendment of certain acts related to counter-terrorism (*2016. évi LXIX. törvény a terrorizmus elleni fellépéssel összefüggő egyes törvények módosításáról*), Article 48, 17 July 2016.

133 Eurojust (2016), *Annual Report 2015*, The Hague, Eurojust, p. 59.



7
Rights of the child

Almost 27 % of children in the EU are at risk of poverty or social exclusion. While this is a slight improvement compared with previous years, the EU 2020 goals remain unreachable. The new EU Pillar of Social Rights could play an important role in addressing child poverty. The adoption of a directive on procedural safeguards for children suspected or accused of crime is expected to improve juvenile justice systems and bring further safeguards for children in conflict with the law. Meanwhile, thousands of migrant and asylum-seeking children travelling alone or with their families continued to arrive in Europe in 2016. Despite EU Member States' efforts, providing care and protection to these children remained a great challenge. Flaws in reception conditions persisted, with procedural safeguards inconsistently implemented, foster care playing only a limited role and guardianship systems often falling short. These realities underscored the importance of replacing the expired EU Action Plan on unaccompanied children with a new plan on children in migration.

7.1. Child poverty rate improves marginally

The risk of poverty or social exclusion remains a reality for a high proportion of children in the EU. According to the latest available Eurostat data, in 2015, 26.9 % of children in the EU-28[1] were at risk of poverty or social exclusion (AROPE).[2] There was, however, some encouraging news: the percentage dropped slightly – from 27.8 % in 2014. This means that about 890,000 fewer children were at risk of poverty in the EU-28 in 2015 than in 2014.[3]

Significant variations exist between regions, underlining the urgent need to intensify support for Member States that are lagging behind. As discussed below, the European Semester and various other programmes can facilitate such efforts.

The highest proportions of children at risk of poverty or social exclusion range from 34.4 % in **Spain** up to 46.8 % in **Romania**, with **Bulgaria**, **Greece** and **Hungary** in between. In **Denmark**, **Finland**, the **Netherlands**, **Slovenia** and **Sweden**, meanwhile, fewer than 17 % of children are at risk. In 20 countries, the percentage of children at risk of poverty or social exclusion decreased between 2014 and 2015. In seven Member States, it increased, most significantly in **Cyprus** and **Lithuania** – by around 4 percentage points. In **Denmark**, **Greece**, **Italy** and **Slovakia**, it increased only slightly – by around 1 percentage point. (Eurostat data for Ireland were not yet available at the time of writing.)

Parents' educational levels strongly affect children's risk of poverty or social exclusion. The higher their educational level, the lower the children's risk.[4] Children with parents who have completed less than upper secondary education[5] are about six times more at risk of poverty or social exclusion (65.5 %) than children with parents who completed tertiary education[6] (10.5 %), and the risk is twice that of those with parents who benefitted from secondary or post-secondary education (30.3 %).[7]

The parents' country of birth also has a strong impact on the risk of poverty: 33.2 % of children whose parents were not born in the country of residence are at risk of poverty, compared with 18.4 % of those whose parents were born in the country of residence.[8] As the second wave of FRA's European Union Minorities and Discrimination Survey (EU-MIDIS II) on Roma shows, children's ethnic origin also affects access to basic services.[9] For more information on the situation of ▶ Roma, see Chapter 4.

The EU 2020 Strategy, adopted in 2010, aims to reduce the number of people in or at risk of poverty and social exclusion by at least 20 million people by 2020. This is far from being reached. Between 2005 and 2015, the percentage of children at risk of poverty or social exclusion in the EU decreased only slightly: from 28.1 % in 2005 to 26.9 % in 2015.[10] As shown in Figure 7.1, trends at the national level have been quite diverse – depending strongly on how Member States have been affected by the economic crisis and/or have been able to respond thereto.

In about one third of the countries, only minor changes can be observed between the situations in 2005 and 2015, increasing or decreasing by at most one percentage point. This is the case in **Belgium**, **Denmark**,[11] **Finland**, **Germany**, **Ireland**, **Luxembourg**, **Portugal**, **Slovenia**, **Sweden** and the **United Kingdom**. The lack of progress since 2005 is especially worrying in countries that had high rates that year – such as **Belgium** and **Luxembourg** at around 23 %, and **Ireland**, **Portugal** and the **United Kingdom** at around 30 %.

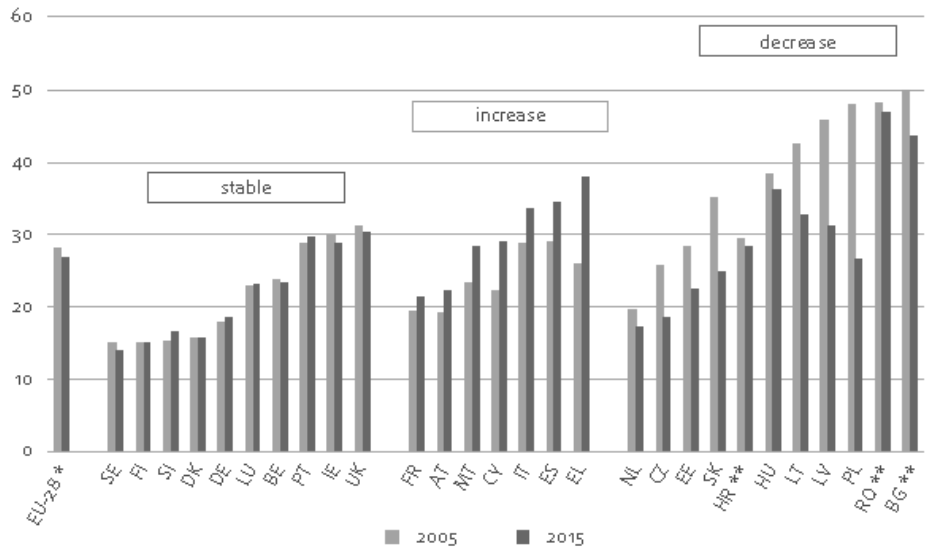
In seven countries, the proportions of children at risk of poverty or social exclusion increased by 2–12 percentage points over time: **Austria**, **Cyprus**, **France**, **Greece**, **Italy**, **Malta** and **Spain**. In **Greece**, the increase over the 10-year period in question was around 12 percentage points. In most cases, this was not a continuous process. In **Austria**, for example, the rate remained at the same level after an initial increase, while **Cyprus** experienced a strong increase only during the second half of the period.

One third of the countries achieved significant reductions in child poverty or social exclusion rates between 2005 and 2015: the **Czech Republic**, **Estonia**, **Hungary** and the **Netherlands** – between 1 and 7 percentage points; **Latvia**, **Lithuania** and **Slovakia** – between 10 and 15 percentage points; and, in particular, **Poland** – with a reduction of 21 percentage points. The risk of poverty or exclusion for children in **Bulgaria**, **Croatia** and **Romania** also decreased since 2010, the first year for which data are available for these countries.

7.1.1. Tackling child poverty via the European Semester

Understanding the links between economic fluctuations, policy interventions and poverty rates, and how all of these link to the European Semester – the EU's economic and fiscal policy coordination cycle – requires further analysis.[12] After countries receive country-specific recommendations (CSRs), they present National Reform Programmes (NRPs) the following year, detailing their concrete plans for complying with the CSRs. The links between policy measures included

Figure 7.1: Children at risk of poverty or social exclusion in 2005 and 2015, by EU Member State (%)



Notes: * In 2005: EU-27 estimate
** EU Member States with data from 2010 onwards only

Source: Eurostat, European Union Statistics on Income and Living Conditions (EU-SILC) 2005 and 2015 [ilc_pepso1]

in NRPs and their impact remain blurry. Moreover, when looking at the CSRs adopted by the Council of the EU for each Member State, it is difficult to identify the rationale based on which countries receive recommendations. As noted in previous FRA Fundamental Rights Reports, the link between national child poverty rates, the CSRs formulated and the measures suggested in national NRPs is not always clear.

The overall number of CSRs adopted by the Council of the EU has decreased over the last few years, including those focusing on children. Figure 7.2 shows an overall decrease in the number of CSRs relating to children between 2014 and 2016. Although child poverty rates remain high, child poverty is the area least reflected in the recommendations given during this period.

In 2016, eight Member States received specific recommendations that directly referred to children: **Bulgaria** (on inclusive education), the **Czech Republic** (on early childhood education and inclusive education), **Hungary** (on inclusive education), **Ireland** (on child care services and child poverty), **Romania** (on inclusive education), **Slovakia** (on child care services, early childhood education and inclusive education), **Spain** (on child care services) and the **United Kingdom** (on child care services). In addition, Italy received a recommendation on the adoption and implementation of the national anti-poverty strategy, but with no reference to children.

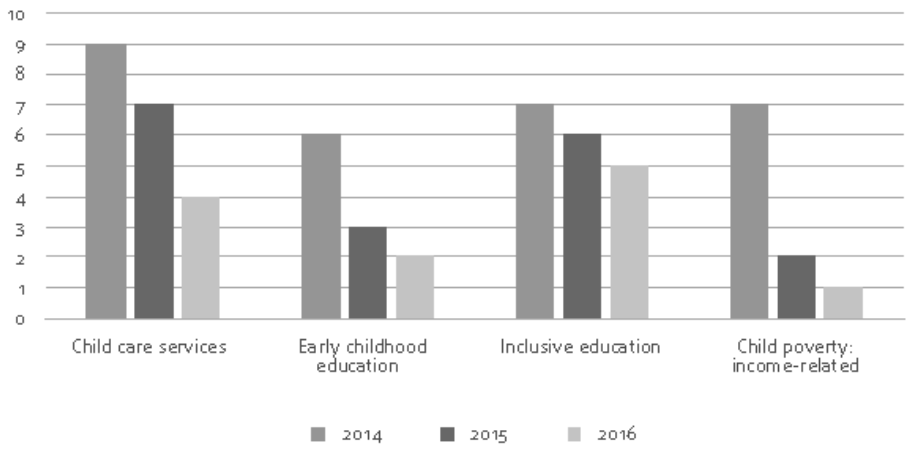
A link can indeed be observed between the NRPs presented by Member States during the European Semester process in 2016, and whether or not they received CSRs relating to children in 2015. Some civil society actors[13] believe, however, that only a few NRPs reflect the principles of the European Commission's *Recommendation on investing in children*,[14] a key policy document.

All 10 Member States with child-related CSRs in 2015 responded with child-related initiatives in their 2016 NRPs. For example, **Austria** received two CSRs on child-care services and inclusive education in 2015.[15] Its 2016 NRP elaborates in detail all the measures taken in this field – ranging from labour law reforms to family allowance increases – and provides specific budget figures.[16]

Of the 13 Member States that received no child-related CSRs in 2015, 10 nonetheless made references, to some extent, to child-related initiatives in their NRPs for 2016. For example, **Lithuania**'s NRP includes initiatives on deinstitutionalisation and on pre-primary education. Specifically, its NRP states that, in 2016, € 4 million will be allocated to developing an instrument to move children with disabilities and children without parental care from institutional care to family-based services.[17]

However, receiving no child-related CSR may lead a country to touch only briefly upon child-related initiatives in its NRP. In **Slovenia**, for example, current and new initiatives mentioned are restricted to promoting the Slovenian language among families with low socio-economic status and migrant backgrounds and social inclusion for vulnerable groups, as well as "establishing a concept for ensuring quality on the level of kindergartens and schools".[18] Since these were not part of the CSRs, there may not be any direct follow up on their execution.

Figure 7.2: Child-related country-specific recommendations, by area and year (number of recommendations)



Source: *FRA, 2016 (based on CSRs for 2014, 2015 and 2016)*

Given the risk that Member States without child-specific CSRs may not focus on children or identify particular positive policy efforts that target them, it is crucial that – as requested by the European Parliament[19] – the CSRs, and the European Semester as a whole, always and consistently address the situation of children. The European Semester is mainly a macro-economic coordination tool; it should not ignore the social impact on particularly vulnerable groups and children – especially when the Europe 2020 target on poverty reduction is, in contrast to other targets, still far from being reached.

> *"[The Council] encourages the Member States, taking into account their specific situations, to [...] address child poverty and promote children's well-being through multi-dimensional and integrated strategies, in accordance with the Commission Recommendation Investing in children."*
>
> *Council of the European Union (2016), Council Conclusions 'Combating poverty and social exclusion: an integrated approach', 16 June 2016, paragraph 13*

A number of developing initiatives could strengthen measures to address child poverty in line with Article 3(3) of the Treaty on the Functioning of the European Union, which identifies the protection of the rights of the child as a general EU objective. In 2016, the European Parliament discussed the Commission's proposal for the establishment of a Structural Reform Support Programme 2017–2020.[20] It has yet to be adopted by the Council, but is expected to improve the use of EU structural funds relating to children. Another important EU initiative that can affect the situation of children is the European Pillar of Social Rights, which details a number of essential principles to support labour markets and welfare systems within the Euro area. The Commission launched a consultation in March 2016[21] and organised a number of national and European events to exchange views thereon. The first preliminary outline[22] of the Pillar of Social Rights does cover the well-being of children, though in a rather fragmented and partial manner, within the chapters on equal opportunities and access to the labour market and on adequate and sustainable social protection. In the consultation, civil society organisations opined that the proposed outline insufficiently considers child rights.[23] For example, the EU Alliance for Investing in Children, a network of European civil society organisations, recommended mainstreaming children's rights, investing in children, promoting the voice of children and ensuring that children in vulnerable situations are also included in the pillar.[24]

Including a child rights perspective in national budgets is also highlighted in a new General Comment by the UN Committee on the Rights of the Child on 'Public budgeting for the realization of children's rights', which provides guidance on the interpretation of Article 4 of the Convention on the Rights of the Child (CRC).[25] The committee outlines detailed guidance and recommendations on how to promote children's rights in relation to each of the four stages of the public budget process: (a) planning, (b) enacting, (c) executing and (d) following up. At every stage, States parties are expected to demonstrate that they have made every effort to mobilise, allocate and spend budget resources to fulfil the economic, social and cultural rights of all children.

> *"The immediate and minimum core obligations imposed by children's rights shall not be compromised by any retrogressive measures, even in times of economic crisis."*
>
> *United Nations, Committee on the Rights of the Child (2016), General comment No. 19 on public budgeting for the realization of children's rights (art. 4), paragraph 31*

7.1.2. Member State efforts to counter child poverty

Member States continued to develop policies and programmes to combat child poverty and social exclusion. Some go beyond the actions presented in the NRPs, and fall within the framework of the Commission's *Recommendation on investing in children* and its three pillars: access to adequate resources; access to affordable quality services; and children's right to participate.[26]

Relevant legislative and policy changes introduced by Member States throughout the year include two new laws passed in **Portugal** – one on the 2016-2019 major planning targets[27] and one on the 2016 state budget.[28] The laws aim to allow for: an increase in family allowances and prenatal subsidies, with an additional rise in such subsidies for single-parent families; a reformulation of the income scales to increase the number of families who receive allowances; and activating school social programmes for children and young people living in seriously deprived social and economic conditions. The Portuguese NRP, published in October 2016, also has a strong focus on poverty, children and families.[29]

National policies regarding children living in poverty have to comply with fundamental rights, as a case involving **Portugal** underlines. In *Soares de Melo v. Portugal*, the European Court of Human Rights (ECtHR) concluded that Portugal violated the right to respect for family life protected by Article 8 of the European Convention on Human Rights.[30] The case concerned a family from which seven of a total of 10 children were forcibly taken into care with a view to their adoption because the mother did not provide the children with adequate material living conditions. This case adds to existing ECtHR jurisprudence establishing that poverty as such is not a reason to deprive a child of parental care, and that authorities need to sufficiently support families for them to be able to adequately care for their children.[31]

Romania has one of the highest child poverty rates. In 2016, the government announced an 'integrated package' as part of the implementation of the National Strategy on Social Inclusion and the Reduction of

Promising practice

Teaming up with the business sector to tackle child poverty

Involving the business sector in addressing poverty and social exclusion was a key theme at FRA's 2016 Fundamental Rights Forum. Examples of Member States joining forces with businesses to combat child poverty through public–private partnerships include:

In **Italy**, a new law introduced an experimental Fund to Combat Education Poverty (2016–2018) in cooperation with banking foundations. Banks that donate to the fund benefit from tax reductions.The fund will have an annual budget of € 100 million.

Sources: Italy, Law No. 208 on annual and multiannual national budgeting (Legge 2 dicembre 2015, n. 208, Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato, legge di stabilità' 2016), 28 December 2015; Decree No. 153 of the Ministry of Labour and Social Policies (Modalità' applicative del contributo riconosciuto sotto forma di credito d'imposta, in favore delle fondazioni di cui al decreto legislativo 17 maggio 1999, n. 153), 1 June 2016

In **Ireland**, the Department of Children and Youth Affairs in partnership with a private funder, Atlantic Philanthropies, put in place the Area Based Childhood Programme (2013–2017), an innovative prevention and early intervention initiative with a € 34 million investment. It includes targeted interventions to break the cycle of child poverty in disadvantaged areas through services such as community-based prenatal care and education; improving literacy and numeracy; and promoting the mental health and well-being of young people. The effort includes the establishment of a learning group so that lessons learnt from this programme can be 'mainstreamed' in relevant policy and practice throughout Ireland.

For more information, see Atlantic Philanthropies; The Centre for Effective Services (CES), 'Area based childhood programme'

In **Hungary**, the K&H Bank, a financial institution, has implemented a programme to assist children living in poor villages since 2014. Under the programme, K&H has provided healthcare institutions with medical devices to treat children more effectively, organised training programmes on entrepreneurship for children, and equipped kindergartens and elementary schools with sports equipment. The bank published calls for proposals directly addressing local governments and local institutions in poor regions.

For more information, see K&H (2016), '5 dolog, amiről a szegény gyerek álmodik', 28 April 2016

Poverty 2015–2020.[32] It is aimed especially at families living in rural communities, poverty 'pockets' and Roma communities. Various services are planned – such as health and education services for children and teenagers, employment programmes for young people and vulnerable adults, and care for dependent adults and elderly people. Notably, the package appears to shift the national focus away from social benefits and towards a more community-based and preventative approach.[33]

A network of more than 100 civil society actors praised the **Irish** government for what they consider the first ever family-friendly budget in 2016[34] and the very positive number of measures for families and children included in the 2017 budget.[35]

7.2. Protecting rights of children accused or suspected of crimes

Every year over 1 million children face criminal proceedings in the EU, the European Commission calculates. They form 12 % of the European population facing criminal justice systems each year.[36] The minimum age of criminal responsibility varies greatly among Member States, from eight years of age in Scotland to 18 years in Belgium.[37]

Making justice systems in Europe more child-friendly is a key action point of the EU Agenda on the rights of the child.[38] The Council of Europe has provided useful guidance.[39] One major milestone of 2016 was the adoption of a new directive on procedural safeguards for children accused or suspected in criminal proceedings.[40] For more information on access to justice and the rights of suspects and accused persons across the EU more generally, see Chapter 8.

7.2.1. New directive enhances protection

The Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings[41] came into force on 10 June 2016 and has to be incorporated into national law by 11 June 2019. The directive establishes minimum rules on procedural safeguards to ensure fair trials for children. It also aims to enhance Member States' 'mutual trust' in each other's criminal justice systems, prevent juvenile offenders from reoffending, and foster their social integration.

The directive is a legally binding instrument. Its introduction is a welcome development and will help EU Member States implement well-established human rights standards.[42] The directive will allow individuals to pursue alleged violations of the rights embedded

in it before domestic courts. It also regulates the right to information about proceedings in a comprehensive manner, and so addresses one of the gaps identified in Member States.[43] It addresses another identified gap[44] by requiring specific training or competences of the professionals involved in criminal proceedings with children, including judges, prosecutors and lawyers. The right to an individual assessment is one of the directive's most noticeable provisions. Such an assessment serves to identify the specific needs of a child in terms of protection, education, training and social integration, and could help identify child victims of trafficking or forced criminality, for example.[45] FRA is exploring this issue in a project entitled 'Return/transfer of children at risk who are EU nationals'.[46]

However, civil society actors contend that the directive falls short in several areas. They consider its language imprecise, allowing for different interpretations and possibly leading to inconsistent applications. Its scope is also considered too limited, in that it introduces certain exceptions relating to minor offences – precisely the kinds of offences that children most frequently commit. Furthermore, the directive applies only to persons who were below 18 at the start of the proceedings, excluding those who were under 18 at the time of the alleged offence and subsequently attained majority.[47]

Various research efforts offer insights that can help Member States develop initiatives to make justice more child-friendly – such as the European Commission's study on children and criminal justice[48] in the 28 Member States and other research showing the specific vulnerabilities of groups of children, such as Roma children.[49] In early 2017, FRA published its second report on child-friendly justice, which focuses on the experiences and perspectives of children involved in judicial proceedings as victims, witnesses or third parties in nine EU Member States. It complements FRA's May 2015 report on professionals' experiences and perspectives. Both reports show that the necessary legal framework is usually in place, but that its practical implementation poses difficulties. The reports indicate, for example, that professionals lack the practical tools, protocols and training needed to fully carry out their role. The findings of both reports, and the promising practices presented therein, can help Member States identify barriers, gaps or weaknesses in their respective judicial proceedings, especially in the process of incorporating EU directives into national law.

7.2.2. National developments

Member States introduced several legal and policy changes in 2016 that touched on matters addressed by the Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings. In addition, several legal decisions issued during the year referred to rights enshrined in the new directive.

Article 5 of the directive stipulates that the holder of parental responsibility for a child accused or suspected in criminal proceedings must be provided, as soon as possible, with the same information that the child has the right to receive pursuant to Article 4. In relation to the parents' right to information, the Supreme Administrative Court of **Bulgaria** ruled that a child may not waive the right to have a holder of parental responsibility informed. The case concerned a child who was detained in a police cell for 24 hours and signed a declaration stating that he did not want any family member or other person to be notified of his detention.[50] The court concluded that the police authority's obligation to notify parents and provide an attorney were imperative and could not be waived. In October 2016, **Finland** amended the Act on the Treatment of Persons in Police Custody to specify that, if a child is detained, his or her legal guardian has to be informed promptly, unless this conflicts with the child's best interest. Social services shall also be informed.[51]

Article 10 of the directive provides that Member States shall ensure that depriving a child of their liberty at any stage of the proceedings is limited to the shortest appropriate time period and imposed as a measure of last resort. It also establishes that detention decisions shall be subject to periodic review, at reasonable time intervals. In *D.L. v. Bulgaria*, the ECtHR ruled against **Bulgaria** for not providing for such review under domestic law. The case concerned a 14-year-old girl placed in a closed boarding school for an indefinite period up to three years, owing to her 'antisocial behaviour'.[52] For more analysis of European case law on the rights of the child, see FRA's *Handbook on European law relating to the rights of the child*.[53]

Article 11 of the directive requires Member States to use, where possible, alternative measures to detention. An amendment to the **Austrian** Juvenile Court Act[54] entered into force on 1 January 2016, establishing that pre-trial detention for child offenders is to be used only in exceptional cases, and is no longer permissible for children suspected of having committed a criminal offence punishable with a fine or imprisonment of up to one year; measures are also in place to encourage replacing pre-trial detention with less severe measures.[55] **Luxembourg**'s legal framework grants extensive powers to the youth tribunal to place children in conflict with the law in institutional care (even abroad),[56] and to transfer a child to a 'disciplinary institution' if the child behaves 'badly' (*mauvaise conduite*) or acts in a 'dangerous manner' (*comportement dangereux*). It is currently under revision.[57] Based on existing legislation, 1,354 children were placed in alternative care in 2015[58] – for various reasons, most not involving conflict with the law – and almost two thirds of them were placed in settings that partly or entirely deprived them of liberty. The national human rights institution in **Luxembourg** adopted an opinion on the proposed bill, expressing great

concern that the current practice of depriving children of their liberty is not used as a measure of last resort, and emphasising the need to revise the existing system.[59]

The UN Global study on the situation of children in detention, commissioned by the UN General Assembly in 2015, is also expected to cover alternatives to detention. It has moved a step forward with the appointment of a Special Rapporteur, who will lead the study.[60]

Promising practice

Municipal support for reintegrating juvenile offenders

In the **Netherlands**, in a joint pilot initiative of the municipality of Amsterdam and the Ministry of Security and Justice, juveniles aged 14 to 23 who face pre-trial detention in a youth detention centre are instead held in a pilot small-scale facility close to their homes. The unit has eight places for boys. Supervision and security are provided 24 hours a day. The pilot project makes it possible for the youngsters to go to school or work and maintain contact with their parents, while working with care professionals to avoid repeat offending. The pilot runs from 16 September 2016 to 1 July 2017. Comparable pilots are being run in Groningen and Nijmegen.

For more information, see the Government of the Netherlands' press release of 5 July 2015

In **Poland**, the municipality of Warsaw joined civil society in an effort to provide support for the reintegration of juvenile offenders after their release from detention centres. The programme was initiated in 2015 to support juvenile offenders with temporary transitional accommodation. Participants can stay up to one year, and receive personal assistance to support their reintegration into education, employment and the family environment.

For more information, see the Warsaw Foundation's webpage

Article 14 of the directive obliges Member States to ensure the protection of children's privacy during criminal proceedings. In relation to the privacy of children in conflict with the law, the District Court of Amsterdam in the **Netherlands** ruled that, in line with a minor's right to privacy, the police or public prosecution may not disclose images or closed-circuit television (CCTV) footage of suspects in the public domain when it is likely that the suspect is a child. In that case, the police, with the permission of the Public Prosecution Service, showed on public television CCTV footage of a young man assaulting an adult. The suspect was subsequently found and arrested. He turned out be a child, and claimed that his right to privacy, as laid down by Article 40 of the CRC, was violated. The court agreed and reduced his penalty for the crime.[61]

7.3. Protecting unaccompanied children poses tremendous challenge

More than 1,166,885 people applied for asylum in the EU in 2016. This included 376,835 children.[62] In the previous year, more than 1.3 million people sought refuge in EU Member States, 384,935 of whom were children.[63] Well-established standards provide that all children are entitled to special care and protection. Unaccompanied children – children who arrive without a parent or other primary caregiver – require special attention, as they face additional risks of exploitation or abuse. This section looks at policies and measures taken by EU Member States to address the situation of unaccompanied children, especially in terms of guardianship and foster care.

For more information on asylum and migration, ▶ see Chapter 5.

7.3.1. Limited data collection hampers policy initiatives

According to the latest available Eurostat data, 96,465 asylum applications were filed by unaccompanied children in 2015.[64] Almost 91 % of these applicants were male. This is a large increase from 2014, when asylum applications by unaccompanied children totalled 23,150. In 2015, the five EU Member States that received the highest numbers of asylum applications from unaccompanied children were **Sweden** (35,250 applications), **Germany** (22,255), **Hungary** (8,805), **Austria** (8,275) and **Italy** (4,070).[65]

Data on asylum and migration collected by EU Member States and international organisations are not always comparable and do not effectively illustrate the situation of migrant children, accompanied or not, in the EU. This is also especially true of separated children – children who are accompanied by adults who are not their parents or primary caregivers.[66] The number of unaccompanied and separated children currently in the EU is higher than the number of asylum-seeking children, since many children are not registered or do not apply for asylum. Identifying and registering vulnerable persons remains a challenge across Member States.[67]

Research carried out for this report revealed no official data on the number of unaccompanied children who do not seek asylum. Research on the issue is generally sporadic.[68] In **Sweden**, the County Administrative Board of Stockholm published a report on unaccompanied children. It contains some information on children who did not seek asylum but did visit transit accommodation

for rest and food. According to interviews with the children, they place very little trust in the authorities and are aware that their chances of remaining in Sweden are slim.[69] Meanwhile, UNHCR reported that, between January and September 2016, close to 20,000 unaccompanied children arrived in **Italy**,[70] but the Italian authorities identified and registered only 14,225 unaccompanied children.[71] Missing Children Europe states that inconsistent data management and collection by Member States generates poor information on the real numbers of unaccompanied children in the EU.[72] The issue of data on children in the migration context was also discussed at the 10th European Forum on the Rights of the Child, the key European-level event on children's rights, and will be the subject of follow-up actions and recommendations to Member States.[73]

> *"Improved data collection and statistics concerning child refugees and migrants will allow for better policy planning, targeted budget allocation and more effective responses. Eurostat, together with other EU institutions and Agencies and in partnership with international organisations including the UN, could develop an enhanced platform towards the provision of such data."*
>
> *FRA (2016), Fundamental Rights Forum 2016, Chair's Statement, paragraph 25*

The EU Charter of Fundamental Rights requires that all children receive the protection and care necessary for their well-being. The EU has developed several legislative instruments relevant to unaccompanied children, including, among others, the recast EU asylum instruments (2011–2013),[74] the Human Trafficking Directive (2011),[75] the Return Directive (2008)[76] and the Reception Conditions Directive (2013).[77] All of these instruments provide special measures for vulnerable groups, including children in general and unaccompanied and separated children in particular. Article 24 of the Reception Conditions Directive applies to unaccompanied children, harmonising their reception, protection, family reunification and the appointment of a representative.[78]

A Communication from the Commission on the implementation of the European Agenda on Migration touched upon child protection, guardianship and education.[79] A revision of the Action Plan on Unaccompanied Minors (2010–2014) was announced in 2015, but the plan has not yet been replaced by a new one.[80] Meanwhile, under the EU Relocation Programme, as of February 2017, only 248 unaccompanied children had been relocated from **Greece** to other EU countries, and one from **Italy**.[81]

The ongoing reform of the Common European Asylum System[82] includes a number of proposals – including regarding the Reception Conditions Directive and the Dublin Regulation – that will affect safeguards established for children. The proposal to review the Reception Conditions Directive includes positive changes to guardianship systems for unaccompanied children.[83] In 2016, FRA published an opinion, at the European Parliament's request, on the impact on children of the proposal for a revised Dublin Regulation. It acknowledges certain progress from a fundamental rights perspective, such as the extended right to information for children. However, it also recommends providing additional guarantees – for example, the appointment of a guardian. The document provides 22 opinions relevant to children, such as on the right to be heard and informed, guardianship, best interests assessments and family unity.[84]

FRA chaired the EU Justice and Home Affairs agencies' network in 2016. The network agreed to strengthen cooperation on implementing EU policies on migration, with a special focus on child protection.[85] As noted above, the 10th European Forum on the Rights of the Child was devoted to the protection of children in the migration context. Held in late November, it brought together over 300 people working in asylum and migration as well as child protection and child rights, from all EU Member States and Iceland and Norway. A one-day side event on guardianship for unaccompanied children preceded the forum. Formal follow up to the forum will set out EU actions and recommendations to EU Member States on protecting children in the migration context. A group of more than 70 organisations issued a statement proposing seven priority actions, among them the adoption of an EU Action Plan on all refugee and migrant children.[86]

Notwithstanding the existence of relevant measures and legal frameworks, children are often subject to violations of their fundamental rights. FRA continuously reported on this reality in its monthly overviews of the asylum and migration situation, which cover developments in 14 Member States. Such violations include depriving children of liberty in the migration context; this is further dealt with in ▶ Chapter 5. As the CRC Monitoring Committee stated in the context of the closure of the camp known as the Jungle at Calais in France: "The failures regarding the situation of children in Calais are not isolated events but highlight the shortcomings of a migration system built on policies that are neither developed nor implemented with child rights in mind."[87]

7.3.2. While weaknesses in reception systems persist, some Member States turn to foster care

The CRC, which all EU Member States have ratified, provides that children deprived of their family environment shall be entitled to special protection and assistance by the State.[88] The UN Guidelines for the alternative care of children[89] consider family-based settings the preferred option and residential

care facilities the exception.[90] The UN Committee on the Rights of the Child's General Comment No. 6 on the Treatment of unaccompanied and separated children outside their country of origin provides that mechanisms established under national law to ensure alternative care for unaccompanied or separated children shall also cover such children outside their country of origin.[91]

In line with international standards promoting family-based care options, the Reception Conditions Directive stipulates that unaccompanied children shall be placed (a) with adult relatives, (b) with a foster family, (c) in accommodation centres with special provisions for children or (d) in other accommodation suitable for children.[92] The directive also requires Member States to take measures to prevent assault and gender-based violence, including sexual assault and harassment within accommodation centres.

There are clear weaknesses in the reception system for unaccompanied children. Because there are not enough specialised facilities for unaccompanied children, despite Member States' efforts, children are often accommodated in crowded first reception and transit facilities. Conditions at first reception facilities were reported to be inadequate in almost all Member States covered by FRA's monthly overviews on the asylum and migration situation in 14 Member States.

There is a disconnection between child protection systems and asylum or migration systems. Some accommodation options, care and child protection measures are provided to children without parental care who are nationals of the country but are not equally offered to foreign unaccompanied children. According to the CRC,[93] and based on the non-discrimination principle, all children are entitled to the same protection regardless of their migration or residence status. In addition, for asylum-seeking children, Article 22 (2) of the CRC states that an unaccompanied child should be accorded the same protection as any other child deprived of his or her family environment.

Reception is severely flawed, especially in **Greece** and **Italy**,[94] given the high number of arrivals and the specific situation in the hotspots. FRA's opinion on the fundamental rights situation in the 'hotspots', requested by the European Parliament, outlines various challenges and suggestions in the area of child protection.[95] (For more information, see Chapter 5.) To address the situation in **Italy**, a new law regulates the minimum standards for first reception centres that provide care for unaccompanied children 24 hours a day, seven days a week.[96] The new law includes the possibility of creating temporary facilities with up to 50 places. Civil society organisations have criticised this, among other aspects of the new law, for contravening national frameworks on reception facilities, which promote communities of family-type care or small-scale facilities. They argue that the law could lead to the depersonalisation of relations, preventing the creation of a family-type atmosphere.[97]

The dismantling of the Calais camp in 2016 triggered a lot of media and policy attention. The CRC Monitoring Committee stated that the governments of **France** and the **United Kingdom** fell seriously short of their obligations under the CRC in relation to the Calais camp, where "hundreds of children have been subjected to inhumane living conditions, left without adequate shelter, food, medical services and psychosocial support, and in some cases exposed to smugglers and traffickers".[98] After the camp's demolition, the **United Kingdom** initiated the development of a strategy to be adopted in 2017.[99] However, the government's February 2017 announcement regarding the number of children to be accepted in the country prompted expressions of concern, including from the House of Commons.[100]

The lack of clear identification and registration procedures is a particular flaw in Member State reception systems. This has often led to children's disappearances, with the consequent risk of abuse, sexual exploitation or trafficking. Children are more likely to go missing from transit and temporary first reception facilities that do not meet child protection standards.[101] There is not enough research to provide an overview of how many children on the move go missing, in what phase they do so (first reception, transit, facility at which they applied for asylum), and for what reasons. On one hand, a number of unaccompanied children could be missing but not reported to the police; on the other hand, the absence of a central registry may result in double registrations.[102]

According to Europol, more than 10,000 unaccompanied children went missing in 2015.[103] Some figures are available for 2016: by September 2016, 427 unaccompanied children had gone missing in **Denmark**,[104] 77 in **Finland**[105] and 6,357 in **Italy**.[106] In February 2016, about 90–95 % of unaccompanied children in **Hungarian** reception centres went missing, as did 80 % of those in **Slovenia**.[107] In January 2016, 4,749 unaccompanied child and adolescent refugees in **Germany** were considered to be missing,[108] of whom 431 were younger than 13. In May 2016, 1,829 unaccompanied minors seeking asylum were registered as missing with the **Swedish** Migration Agency.[109] In **Slovakia**, "[a]lmost *all the children placed in foster homes in the past five years have disappeared and no specific effort has been made to find them*", the Committee on the Rights of the Child stated in its concluding observations.[110]

Responding to disappearances presents great challenges; only "27.1 % of the missing unaccompanied migrant children were found in 2015", according to a 2016 report by Missing

Children Europe.[111] The same NGO suggests that some children leave voluntarily with the aim of reaching another country – where their relatives live, where they know of a well-established community, or where they believe they have a better chance of being granted international protection or the care systems would be better.[112]

Establishing foster care programmes for unaccompanied children

Over recent years, Member States have reformed their systems and are developing temporary and long-term family-based care options so that they can use residential care only as a temporary measure for children without parental care. However, in practice these alternative measures apply mainly to children from the host country, and most unaccompanied children in the EU still live in residential care.

Accommodation with a foster family is one of the options for unaccompanied children listed in the Reception Conditions Directive (Article 24(2)). However, in practice, foster care is available for unaccompanied children in only 12 Member States, as Figure 7.3 shows. Moreover, within some countries, practices are diverse and vary regionally or even locally.

In 16 Member States, foster care for unaccompanied children is not available or the placement of this particular group of children in foster families is extremely rare. For example, in **Greece**, competent national authorities do not provide foster care for unaccompanied children in practice. The NGO METAdrasi has developed a foster care project especially for very young children who are likely to be reunited with their family in another EU Member State. Since February 2016, 13 children have been placed in foster families, and five of them were subsequently reunited with their families in another EU Member State.[113]

Some countries are considering establishing foster care, such as Finland and Latvia. In **Finland**, the National Integration Programme for 2016–2019, which is based on the 2011 Integration Act,[114] lists among its action points

Figure 7.3: Availability of foster care for unaccompanied migrant children, by EU Member State (December 2016)

Source: FRA, 2016

the development of family care for unaccompanied children especially, but not exclusively, under the age of 12. In **Latvia**, the new Asylum Law, which entered into force in 2016, allows the Child Custody Court to place unaccompanied asylum seekers in foster families.[115]

In the 12 countries that provide foster care, practices are either diverse or uniform. Having diverse practices means that they may vary at regional, local or municipal level, because they are not harmonised nationally. This is the case in **Austria**, **Belgium**,[116] **Denmark**,[117] **Estonia**,[118] **France**,[119] **Germany**[120] and **Poland**.[121] Specifically, eight out of nine regions in **Austria**[122] allow the placing of unaccompanied children in foster families, but in practice foster care works only in some cities. For example, in Vienna, the Fonds Social Vienna, the Vienna City Department for Youths and Family, and SOS Children's Villages launched a joint project to create the possibility for families to host unaccompanied children older than 14, in addition to foster care families for children up to the age of 14.[123] By September 2016, almost 130 children had been placed in foster families in Austria.[124]

While FRA acknowledges the benefit of such efforts, these local and regional initiatives and project-based activities risk lacking sufficient safeguards. They should be the focus of particular attention. Some of these foster care programmes may not be an integral component of the child protection system, and may not observe national standards. In these cases, it becomes even more essential to monitor the services to ensure the children's protection and consideration of their best interests.

Some countries have more uniform systems in place at the national level – namely **Cyprus**, **Ireland**, the **Netherlands**, **Sweden**[125] and the **United Kingdom**. In **Ireland**, all newly arriving separated children under 12 years of age are placed in foster care on arrival.[126] However, according to the Irish Refugee Council, it can take weeks or months for children who are over 12 years old to be placed with foster families. In 2016, 59 out of 101 asylum-seeking unaccompanied children were placed in foster families.[127] On occasion, children remain in the residential home until the age of 18.[128] The **Netherlands** implemented a new model of reception, ensuring that all unaccompanied children up to 14 years of age are placed in foster families under the responsibility of the guardianship authority, Nidos, and those older than 14 are given accommodation in small-scale reception centres with 24-hour supervision, run by the Central Agency for the Reception of Asylum Seekers.[129] In the **United Kingdom**, fostering unaccompanied children requires going through the same process as fostering children who are nationals of the country, which is often quite a lengthy procedure. There is also a major shortage of foster care places.[130]

The Commission addressed the issue of foster care in a rights of the child call for proposals covering guardianship and foster care for unaccompanied children, launched in 2016. In 2017, it will launch a call for proposals covering preparations for leaving/ageing out of care, which includes children in migration in its scope.[131]

Promising practice

Promoting alternative care solutions for unaccompanied children

The European Commission, under the European Refugee Fund, co-funded a consortium of NGOs from different Member States to provide research and promote skills in developing family-based care for unaccompanied children. Initial findings provide a very good overview of the different family-based care models in use in the EU. The project also shows that social workers, reception professionals and – sometimes – guardians need training. Guardians are responsible for counselling host families who take care of unaccompanied children. All of these professionals need tools and specialised training on how to work with this group of children and their host families.

Under the Rights, Equality and Citizenship Programme, the EU co-funded a follow-up action project whereby Nidos (the **Netherlands**), in cooperation with Minor N'dako (**Belgium**), Jugendhilfe Süd Niedersachsen (**Germany**), OPU (**Czech Republic**), the **Danish** Red Cross and KIJA (**Austria**), has developed a training programme with supportive and online materials for professionals working with host families who take care of unaccompanied children. The training consists of different modules on recruitment, screening, matching and guidance of the host families. The project runs from 2015 to 2017.

For more information, see Nidos, Reception and living in families – Overview of family-based reception for unaccompanied minors in the EU Member States, February 2015; Alternative Family Care (ALFACA)

Meanwhile, the length and content of training for foster parents varies significantly both within and between Member States, as FRA showed in its mapping of child protection systems in 2015.[132] Social workers, reception professionals, guardians and foster families need tools and specialised training on how to work with unaccompanied children. A challenge for foster care is the risk of failing to consider the cultural needs of the child and the special support that foster parents might need. Foster families for unaccompanied migrant children should receive information about how to deal with a child who has a different cultural background or has experienced trauma and loss.[133]

Promising practice

Guiding foster carers on the asylum process

The Fostering Network in the **United Kingdom** launched a guide for foster carers supporting unaccompanied asylum-seeking children. The Fostering Network developed the guide in partnership with the Department for Education and the Refugee Council. It contains up-to-date information about the asylum process for children and provides links to support services. The guide includes an easy-to-understand flow chart of the asylum process, as well as a table that breaks down each stage and what foster carers need to do at each point.

For more information, see the Fostering Network, 'Looking after unaccompanied asylum seeking children in the UK'

7.3.3. Guardianship for unaccompanied children remains inadequate

All children deprived of parental care, including unaccompanied children, should have guardians appointed promptly to safeguard the children's best interests, ensure their overall well-being, facilitate child participation, exercise legal representation and complement the children's limited legal capacity.[134]

The concept of guardian is not clearly defined in EU law. EU directives use different terms, such as guardian, representative or legal representative (Article 24 of the Reception Conditions Directive, Article 25 of the Asylum Procedures Directive, Article 14 of the Anti-Trafficking Directive). The European Commission's 2016 proposal for the revision of the Reception Conditions Directive, however, enhances the concept of guardians for unaccompanied children.[135] Concretely, the proposal explicitly calls for the appointment of a guardian – instead of a legal representative, whose role is limited to the legal representation of the child in the proceedings. (As is further explained in FRA's opinion on the Dublin Regulation, the role of a guardian is generally broader and extends beyond pure legal representation, including promoting the best interests of the child.[136]) The proposal also specifies that a guardian should be appointed no later than five working days from the moment of application for international protection; ensures vetting of guardians; requires Member States to ensure that a guardian is not in charge of a disproportionate number of children; and obliges Member States to put in place monitoring and complaint mechanisms.[137] By contrast, the European Commission proposals for a revised Dublin Regulation and for the Asylum Procedures Directive do not require the appointment of a 'guardian', and refer only to the 'legal representative'.

Despite the migration trends of 2015 and 2016, national-level developments in the area of guardianship proceeded very slowly during 2016. Guardianships for unaccompanied children are not always the same as for children without parental care who are nationals of that Member State, or sometimes, even when they are the same, they do not work for unaccompanied children in practice. Occasionally, guardianship is implemented at a regional or local level, and different approaches may be applied in different parts of the country.[138]

The main challenges outlined in FRA's 2015 report on *Guardianship for children deprived of parental care* persist.[139] FRA's monthly migration reports for 2016 even point to deteriorations due to the increased number of unaccompanied children. Lengthy appointment procedures and timelines, difficulties in recruiting qualified guardians, a lack of independence and impartiality, and the high number of children assigned to each guardian top the list of challenges.[140]

Delays in appointing guardians for unaccompanied children were reported in several Member States in 2016. In some countries, the guardian is appointed immediately and no time elapses between identification of the child and appointment of the guardian – such as in the **Czech Republic**[141] and **Ireland**.[142] In other countries it takes longer, often due to the number of arrivals or asylum applications. In **Italy**, unaccompanied children live in emergency shelters for up to six months without having a guardian appointed or receiving any kind of specific assistance.[143] In **Germany**, in July 2016, the Federal Association for Unaccompanied Minor Refugees published a first evaluation of the implications of a law adopted in October 2015,[144] based on an online survey of 1,400 professionals working with unaccompanied children.[145] The findings show that the appointments of guardians in many cases exceeded the legal time limits provided for by law.

FRA's monthly migration reports also noted the high number of children allocated per guardian in some Member States.[146] This can hinder the functioning of the service and result in insufficient care being provided to the children. For example, in **Sweden**, a person may serve as guardian for up to 30 children.[147] In **Bulgaria**, the number of children per guardian varies, but, at the end of October 2016, about 600 unaccompanied children were assigned to the six directors of the six reception centres. This means that each director is the guardian of about 100 children. In addition, guardians continue to handle the case files of other children who have gone missing but whose files are still not closed.[148]

To address some of these challenges, several Member States amended their laws and policies in 2016. For example, in **Cyprus**, the Asylum Law was amended to incorporate the recast Asylum Procedures Directive 2013/32[149] and the recast Reception Conditions Directive.[150] However, the Commissioner for the Rights of the Child has criticised the amendments for lacking a comprehensive and efficient approach to the detention of unaccompanied children, family reunification, asylum application, access to education and guardianship.[151]

Denmark amended its Family Law in 2016 and changed the body responsible for appointing personal representatives (for asylum-seeking children) and temporary guardians (for unaccompanied children who have been granted a residence permit). The revised legislation provides that an independent authority – the National Social Appeals Board[152] – now appoints guardians instead of a government authority. In **Romania**, the revision of the Law on Asylum includes new procedures for assigning legal representatives to unaccompanied children.[153] Two other important amendments include the right of the unaccompanied child to be informed immediately about the appointment of a legal representative and the obligation of the legal representative to act according to the principle of the best interest of the child and to have expertise in this field.[154]

Greece lacks an efficient guardianship system, the European Commission concluded in the context of the Dublin Regulation.[155] In response, the Greek government began to reform its guardianship procedure, with the support of Nidos, FRA and other actors. A number of Member States – including **Bulgaria** and **Italy** – assign guardianship tasks to staff members of reception facilities at which children are placed to overcome delays. This raises concerns that guardians may experience conflicts of interest and lack independence and impartiality.[156]

FRA opinions

At almost 27 %, the proportion of children living at risk of poverty or social exclusion in the EU remains high. This being the EU average, the proportion is higher in certain Member States and among certain groups, such as Roma children or children with a migrant origin. The Europe 2020 target on poverty reduction is thus still far from being reached. Article 24 of the EU Charter of Fundamental Rights provides that "[c]hildren shall have the right to such protection and care as is necessary for their well-being". Nonetheless, EU institutions and Member States put little emphasis on child poverty and social exclusion in the European Semester. The EU has taken a number of initiatives that could strengthen Member States' legislative, policy and financial measures, including the 2013 European Commission Recommendation on 'Investing in children: breaking the cycle of disadvantage', the Structural Reform Support Programme 2017-2020 and the adoption of a child-focused European Pillar of Social Rights.

FRA opinion 7.1

The EU should place more emphasis on comprehensively addressing child poverty and social exclusion in the European Semester – making better use of the 2013 European Commission recommendation – as well as in upcoming initiatives, such as the European Pillar of Social Rights. This could include focusing attention in the European Semester on those EU Member States where child poverty rates remain high and unchanged in recent years.

EU Member States, with the support of the European Commission, could analyse and replicate, when appropriate, success factors in laws and economic and social policies of those Member States that managed in recent years to improve the situation of children and their families.

The Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings is an important milestone in a vital and often contentious field of justice. Existing research, as well as the case law of the European Court of Human Rights (ECtHR) and national courts, highlight the need for special protection measures for children in conflict with the law. FRA research on children and justice shows that the legal framework to safeguard children is usually in place, but that the practical implementation of such legislation remains difficult, mainly due to a lack of practical tools, guidance or training for professionals.

FRA opinion 7.2

EU Member States should undertake a national review to identify existing practice and barriers, gaps or weaknesses in their respective juvenile justice systems. A plan of action should follow this national review to define policy measures and the required resources for the full implementation of the Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings. This could include training for judicial actors or the development of practical guidelines for individual assessments and for informing children in an age-appropriate manner.

Migrant and asylum-seeking children continued to arrive in Europe during 2016, alone or together with their families. Evidence collected by FRA shows that, despite Member States' efforts, there are clear weaknesses in the reception system for unaccompanied children – such as a lack of specialised facilities and crowded or inadequate first reception and transit facilities. Placing unaccompanied children with foster families is not yet a widely used option. Evidence suggests that providing adequate reception conditions is vital to prevent trafficking and exploitation of children, or children going missing. The European Commission has presented a number of proposals to reform the Common European Asylum System, while the 2011-2014 Action Plan on Unaccompanied Minors has not been renewed.

FRA opinion 7.3

The EU should develop an EU action plan on children in migration, including unaccompanied children, setting up clear policy priorities and measures to complement EU Member States' initiatives.

EU Member States should strengthen their child protection systems by applying national standards on alternative care to asylum-seeking and migrant children, focusing on the quality of care. This should include, as prescribed in the Reception Conditions Directive, placements with foster families for unaccompanied children. Furthermore, Member States should allocate enough resources to the municipal services that provide support to unaccompanied children.

Appointing a guardian for each unaccompanied child remains a challenge, as evidence collected by FRA shows. The main issues relate to lengthy appointment procedures and timelines, difficulties in recruiting qualified guardians, the high number of children assigned to each guardian, and a lack of independence and guarantees of impartiality of guardianship institutions in some EU Member States. The European Commission proposal to review the Reception Conditions Directive includes improvements to guardianship systems for unaccompanied children. The proposal requires appointing guardians who are responsible for looking after the child's best interests in all aspects of the child's life, not just for legally representing them. By contrast, the proposals for a revised Dublin Regulation and Asylum Procedures Directive require only the appointment of a "legal representative", and not of a "guardian".

FRA opinion 7.4

The EU legislator should put forward a coherent concept of guardianship systems with a clear role in safeguarding the best interests of unaccompanied children in all aspects of their lives.

EU Member States should ensure that child protection systems and guardianship authorities have an increased role in asylum and migration procedures involving children. Member States should develop or strengthen their guardianship systems and allocate necessary resources. They should ensure the prompt appointment of a sufficient number of qualified and independent guardians for all unaccompanied children. Finally, they could consider promising practices and existing research and handbooks, such as the European Commission's and FRA's joint Handbook on guardianship for children deprived of parental care, *to support this process.*

Index of Member State references

Endnotes

1 Eurostat (2015), *European Union statistics on income and living conditions (EU-SILC) 2015* [ilc_peps01].

2 The AROPE indicator measures the EU 2020 target on poverty 'Population at risk of poverty or social exclusion'. It combines three different indictors: 'at risk of poverty', 'severe material deprivation' and 'very low household work intensity'. For more information, see Eurostat, *Glossary: At risk of poverty or social exclusion (AROPE)*.

3 Eurostat (2017), *European Union Statistics on Income and Living Conditions (EU-SILC) 2015* [ilc_peps01].

4 Eurostat (2017), *European Union Statistics on Income and Living Conditions (EU-SILC) 2015* [ilc_peps60].

5 UNESCO, Institute for Statistics (2011), *International Standard Classification of Education* (ISCED 0-2).

6 UNESCO, Institute for Statistics (2011), *International Standard Classification of Education* (ISCED 5-8).

7 UNESCO, Institute for Statistics (2011), *International Standard Classification of Education* (ISCED 3-4).

8 Eurostat (2017), *European Union Statistics on Income and Living Conditions (EU-SILC) 2015* [ilc_li34].

9 FRA (European Union Agency for Fundamental Rights) (2016), *Second European Union Minorities and Discrimination Survey (EU-MIDIS II): Roma – Selected findings*, Publications Office of the European Union (Publications Office), November 2016.

10 Eurostat (2017), *European Union Statistics on Income and Living Conditions (EU-SILC) 2005 and 2015* [ilc_peps01].

11 Due to ongoing revisions by Statistics Denmark on the SILC time series, data from 2011 and onwards are not fully comparable to earlier data, even if the overall tendency is still valid. This may add uncertainty to the analysis of indicators such as the Gini coefficient, the income quintile share ratio (s80/s20), Risk of Poverty (ROP) and Risk of Poverty or social Exclusion (AROPE), for which the data comparisons across time must be interpreted with caution.

12 For more information, see the European Commission's webpage on the European Semester.

13 Eurochild (2016), *Is Europe doing enough to invest in children? 2016 Eurochild Report on the European Semester*, November 2016.

14 European Commission (2013), *Commission Recommendation of 20.02.2013. Investing in Children: breaking the cycle of disadvantage*, COM(2013) 778 final, 20 February 2013.

15 European Commission (2015), *Country-specific recommendations 2015*.

16 *Ibid.*

17 Lithuania (2016), National Reform Programme.

18 Slovenia, (2016-2017), National Reform Programme.

19 European Parliament (2015), Resolution of 24 November 2015 on reducing inequalities with a special focus on child poverty, 2014/2237(INI), Strasbourg, 24 November 2015.

20 European Commission (2015), *Proposal for a Regulation of the European Parliament and of the Council on the establishment of the Structural Reform Support Programme for the period 2017 to 2020 and amending Regulations (EU) No 1303/2013 and (EU) No 1305/2013*, COM(2015) 701 final, Brussels, 26 November 2015; European Parliament (2016), *Report on the proposal for a regulation of the European Parliament and of the Council on the establishment of the Structural Reform Support Programme for the period 2017 to 2020 and amending Regulations (EU) No 1303/2013 and (EU) No 1305/2013*, (COM(2015) 0701, C8-0373/2015, 2015/0263(COD), A8-0374/2016, 7 December 2016.

21 European Commission (2016), *Launching a consultation on a European Pillar of Social Rights*, COM(2016) 127 final, Strasbourg, 8 March 2016.

22 European Commission (2016), *First preliminary outline of a European Pillar of Social Rights*, Annex 1, COM(2016) 127 final, Strasbourg, 8 March 2016.

23 Eurochild (2016), *Briefing paper: A European pillar of social rights & recommendations for progressing children's rights*, Brussels, 26 July 2016.

24 For more information, see EU Alliance for Investing in Children, 'How the European Commission can make a European Pillar for Social Rights fit for children'.

25 United Nations (UN), Committee on the Rights of the Child (2016), *General comment No. 19 on public budgeting for the realization of children's rights (art. 4)*, CRC/C/GC/19, 20 July 2016.

26 European Commission (2013), *Commission Recommendation of 20.2.2013, Investing in children: Breaking the cycle of disadvantage*, C(2013) 778 final, Brussels, 20 February 2013.

27 Portugal, Law 7-B/2016 – passing the 2016-2019 Major Planning Targets (*Lei n.º 7-B/2016, de 31 de Março que aprova as Grandes Opções do Plano para 2016-2019*), 31 March 2016.

28 Portugal, Law 7-A/2016, passing the 2016 state budget (*Lei n.º 7-A/2016, de 30 de março sobre o Orçamento do Estado para 2016*), 30 March 2016.

29 Portugal, National Reform Programme 2016 (*Programa Nacional de Reformas 2016*), October 2016.

30 ECtHR, *Soares De Melo v. Portugal*, No. 72850/14, 16 May 2016.

31 See, for example, ECtHR, *Moser v. Austria*, No. 12643/0, 21 September 2006; *Wallová and Walla v. the Czech Republic*, No. 23848/04, 26 October 2006; *Havelka and Others v. the Czech Republic*, No. 23499/06, 21 June 2007; *A.K. and L. v. Croatia*, No. 37956/11, 8 January 2013; *R.M.S. v. Spain*, No. 28775/12, 18 June 2013.

32 Romania, Ministry for Employment, Family, Social and Older People Protection (*Ministerul Muncii, Protectiei Sociale, Familiei si Persoanelor Varstnice*) (2016), *General Plan of Sectoral Actions 2016* (*Planul General de Actiuni Sectoriale pentru 2016*).

33 European Commission, Employment, Social Affairs & Inclusion (2016), *Focus on social services and children in new Flash Reports about Romania and the Czech Republic*, 1 July 2016.

34 For more information, see Children's Rights Alliance, 'Budget 2016 is the Government's first family-friendly budget', 13 October 2015.

35 Children's Rights Alliance (2016), *Budget 2017 What does it mean for Children and Young People?*, 11 October 2016.

36 European Commission (2013), *Commission staff working document – Impact assessment*, SWD(2013) 480 final, and Annex VI, p. 103, Table A1.1, Brussels, 27 November 2013.

37 European Commission (2015), *Summary of contextual overviews on children's involvement in criminal judicial proceedings in the 28 Member States of the European Union*, p. 7.

38 European Commission (2011), *An EU agenda for the rights of the child*, Brussels, 15 February 2011.

39 Council of Europe, Committee of Ministers of the Council of Europe (2010), *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, 17 November 2010.

40 Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, OJ L 132/1, 21 May 2016.

41 *Ibid.*, Art. 43.4, p. 33.

42 For example, United Nations (UN), Committee on the Rights of the Child (2007), *General Comment No. 10 (2007): Children's rights in juvenile justice*, CRC/C/GC/10, 25 April 2007; Council of Europe (2010), *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, October 2011.

43 European Commission (2015), *Children's involvement in criminal, civil and administrative judicial proceedings in the 28 Member States of the EU*, Luxembourg, 2015; FRA (2015), *Child-friendly justice: Perspectives and experiences of professionals on children's participation in civil and criminal judicial proceedings in 10 EU Member States*, Luxembourg, Publications Office.

44 *Ibid.*

45 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Art. 8, OJ L 101/2, 15 April 2011.

46 For more information, see FRA's webpage on the effort.

47 For more information, see Amnesty International and Save the Children, *Joint paper on the proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings, December 2014 and Eurochild and International Juvenile observatory, Position on the Commission proposal for a Directive on procedural safeguards for children suspected or accused in criminal proceedings*, January 2015.

48 European Commission (2014), *Summary of contextual overviews on children's involvement in criminal judicial proceedings in the 28 Member States of the European Union*, Luxembourg, 2014.

49 The Traveller Movement (2016), *Overlooked and overrepresented: Gypsy, Traveller and Roma children in the youth justice system*, London, December 2016.

50 Bulgaria, Supreme Administrative Court (Върховен административен съд), Decision No. 804 of 26 January 2016 on administrative case No. 15838/2014, 5th Division (Решение № 804 от 26.01.2016 г. по адм. д. № 15838/2014 г., V о.), pp. 1–2, 26 January 2016.

51 Finland, *Act No. 893/2016 amending Act No. 893/2016 (Laki poliisin säilyttämien henkilöiden kohtelusta/ lag om behandlingen av personer i förvar hos polisen)*, October 2016.

52 ECtHR, *Case of D.L. V. Bulgaria*, No. 7472/14, 19 May 2016.

53 FRA (2015), *Handbook on European law relating to the rights of the child*, Luxembourg, Publications Office.

54 Austria, Federal Law on the amendment of the Juvenile Court Act (2015), *Jugendgerichtsgesetz-Änderungsgesetz (JGG-ÄndG) 2015*, BGBl. I No. 154/2015.

55 Austria, Federal Government (2015), Explanations to the Law on the amendment of the Juvenile Court Act (*Jugendgerichtsgesetz-Änderungsgesetz (JGG-ÄndG) 2015, 852 der Beilagen XXV. GP – Regierungsvorlage – Erläuterungen*).

56 Luxembourg, Child Protection Act, (*Loi du 10 août 1992 relative à la protection de la jeunesse*), Art. 6, 10 August 1992.

57 Luxembourg, Bill 6593 amending the Act on the reorganisation of the State socio-educational centre (*Projet de loi 6593 portant modification de la loi du 16 juin 2004 portant réorganisation du centre socio-éducatif de l'Etat*).

58 Luxembourg, Ministry of National Education, Childhood and Youth (*Ministère de l'Education Nationale, l'Enfance et la Jeunesse*), Annual activity report 2015 (*Rapport d'activité 2015*), February 2016, p. 17.

59 Luxembourg, Consultative Commission for Human Rights (*Commission consultative des droits de l'homme*, CCDH), Opinion on Bill 6593 regarding the reorganisation of the State socio-educational centres [...] and the draft Grand-ducal regulation regarding the creation of a security unit of the State socio-educational centre (*Avis sur l. les amendements gouvernementaux au projet de loi n°6593 portant modification 1. de la loi du 16 juin 2004 portant réorganisation du centre socio-éducatif de l'Etat;2. de la loi modifiée du 29 juin 2005 fixant les cadres du personnel des établissements d'enseignement secondaire et secondaire technique;3. de la loi modifiée du 23 juillet 1952 concernant l'organisation militaire;4. de l'article 32 du Livre 1er du code de la sécurité sociale, II. le projet de règlement grand-ducal portant organisation de l'unité de sécurité du centre socio-éducatif de l'Etat*), 8 November 2016.

60 United Nations (UN) General Assembly, *General Assembly Resolution No. 69/157 on the rights of the child*, A/RES/69/157, 3 February 2015.

61 Netherlands, District Court Amsterdam (*Rechtbank Amsterdam*) (2016), Case No. 13/650419-15, ECLI:NL:RBAMS:2016:2384, 14 April 2016.

62 Eurostat (2017), *Asylum and first time asylum applicants by citizenship, age and sex monthly data (rounded) 2016* [migr_asyappctzm].

63 Eurostat (2016), *Asylum applicants considered to be unaccompanied minors by citizenship, age and sex annual data (rounded) 2015* [migr_asyunaa].

64 *Ibid.*

65 *Ibid.*

66 FRA (2016), *Monthly data collection on migration situation: Thematic focus on children*, March 2016; FRA (2016), *Current migration situation in the EU – separated children*, December 2016.

67 FRA (2016), *Key migration issues: One year on from initial reporting*, October 2016.

68 Missing Children Europe (2016), *Figures and trends 2015 – From hotlines for missing children and cross-border family mediators*, Brussels, 2016.

69 Sweden, Country Administrative Board of Stockholm (*Länsstyrelsen i Stockholm*) (2016), *Current state analysis – Unaccompanied children that go missing (Nulägesanalys – Ensamkommande barn som försvinner)*, Art. 20 (3), Stockholm, 25 January 2016.

70 United Nations High Commissioner for Refugees (UNHCR) (2016), *Italy unaccompanied and separated children (UASC) dashboard* September 2016.

71 Italy, Ministry of Labour and Social Policies, *Monthly report on unaccompanied foreign children in Italy (Report mensile minori stranieri non accompagnati (MSNA) in Italia)*, 2016.

72 Missing Children Europe (2016), *Best practices and key challenges on interagency cooperation to safeguard unaccompanied children from going missing*, p. 25, February 2016.

73 For more information, see the Commission's webpage on the 10th European Forum on the Rights of the Child.

74 For more information, see European Commission, Migration and Home Affairs, Common European Asylum System.

75 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating

trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101/1, Brussels, 5 April 2011.

76 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24 December 2008.

77 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (Reception Conditions Directive), OJ L 180, 29 June 2013.

78 *Ibid.*, Art. 24.

79 European Commission (2010), *Communication from the Commission to the European Parliament and the Council on a state of play on the implementation of the priority actions under the European agenda on migration*, COM(2016) 85 final, Brussels, 10 February 2016.

80 European Commission (2015), *A European agenda for migration*, COM(2015) 240 final, 13 May 2015, Note No. 28, p. 12.

81 European Commission, *Communication on the ninth report on relocation and resettlement*, COM(2017) 74 final, Brussels, 8 February 2017.

82 European Commission (2016), *Towards reform of the common European asylum system and enhancing legal avenues to Europe*, COM(2016) 197 final, Brussels, 6 April 2016.

83 *Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)*, COM(2016) 465 final, Brussels, 13 July 2016.

84 FRA (2016), *FRA Opinion on the impact on children of the proposal for a revised Dublin Regulation*, December 2016.

85 For more information, see EU Justice and Home Affairs Agencies' cooperation in 2016, Final Report, December 2016.

86 For more information, see UNICEF (2016), 'Children cannot wait: 7 priority actions to protect all refugee and migrant children', 29 November 2016.

87 For more information, see Office of the United Nations High Commissioner for Human Rights (OHCHR) (2016), 'Calais camp: French and UK Government fell well short of their child rights obligations – UN experts', 2 November 2016.

88 UN, Convention on the Rights of the Child (CRC) (1989), Art. 20, 20 November 1989.

89 UN, General Assembly (2010), *Guidelines for the alternative care of children*, A/RES/64/142, 24 February 2010.

90 *Ibid.*, para. 22 and 23.

91 UN, (2005) General Comment N. 6 on the Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005.

92 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (Reception Conditions Directive), OJ L 180, Art. 24 (2), 29 June 2013.

93 UN, Convention on the Rights of the Child (CRC) (1989), Art. 2, 20 November 1989.

94 FRA (2016), *Key migration issues: One year on from initial reporting*, October 2016.

95 FRA 2016), *Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the 'hotspots' set up in Greece and Italy*, 29 November 2016.

96 Italy, Decree of the Ministry of the Interior of 1 September 2016, Establishment of government's first reception centres targeted at foreign unaccompanied minors (*Decreto del Ministero dell'Interno 1 settembre 2016, Istituzione di centri governativi di prima accoglienza dedicati ai minori stranieri non accompagnati*).

97 Italy, *Associazione per gli Studi Giuridici sull'Immigrazione, Special reception measures for unaccompanied children as of the draft law amending the Decree No. 113 (Misure straordinarie di accoglienza per i minori stranieri non accompagnati previste dal disegno di legge di conversione in legge del decreto legge 24 giugno 2016, n. 113)*, Torino, 28 July 2016.

98 For more information, see UN Office of the High Commissioner for Human Rights (OHCHR) (2016), 'Calais camp: French and UK Governments fell well short of their child rights obligations', 2 November 2016.

99 For more information, see United Kingdom Government (2016), 'Safeguarding unaccompanied asylum-seeking and refugee children', Written statement, 1 November 2016.

100 United Kingdom, Unaccompanied child migrants. Thirteenth Report of Session 2016-2017 (2017). House of Commons, Home Affairs Committee, 6 March 2017.

101 FRA (2016), *Key migration issues: One year on from initial reporting*, October 2016.

102 FRA (2016), 'Background note on ways to prevent unaccompanied migrant children from going missing', 21 April 2016.

103 European Parliament (2016), 'Fate of 10,000 missing refugee children debated in Civil Liberties Committee', Press release, 21 April 2016; Townsend, M. (2016), '10,000 refugee children are missing says Europol', *The Guardian*, 30 January 2016.

104 Information provided by the Danish Immigration Service, November 2016.

105 Information provided by the Finnish Immigration Service, November 2016.

106 Italy, Ministry of Labour and Social Policies, 'Monthly report on unaccompanied foreign children in Italy' (*Report mensile minori stranieri non accompagnati (MSNA) in Italia*), 2016.

107 Missing Children Europe (2016), *Figures and trends 2015 – From hotlines for missing children and cross-border family mediators*, Brussels, 2016.

108 Missing Children Europe (2016), *Best practices and key challenges on interagency cooperation to safeguard unaccompanied children from going missing*, February 2016.

109 Sweden (2016) Lost in Migration. A report on Missing Unaccompanied Minors in Sweden.

110 UN, Committee on the Rights of the Child (2016), *Concluding observations on the combined third to fifth periodic reports of Slovakia*, CRC/C/SVK/CO/3-5, Section 54 (a), 20 July 2016.

111 Missing Children Europe (2016), *Figures and trends 2015 – From hotlines for missing children and cross-border family mediators*, Brussels, 2016.

112 Missing Children Europe (2016), *Best practices and key challenges on interagency cooperation to safeguard unaccompanied children from going missing*, February 2016.

113 For more information, see METAdrasi.

114 Finland, Integration Act (*Laki kotoutumisen edistämisestä/ lag om främjande av integration*), Act No. 1386/2010, 1 September 2011.

115 Latvia, Asylum Law (*Patvēruma likums*), Section 9, para. 6, 17 December 2015.

116 Belgium, *Repér' AJ Le journal de l'Aide à la jeunesse, Un plan de soutien à l'accueil des MENA*, November 2016.

117 Denmark, former Ministry of the Social Affairs and the Interior (*Social- og Indenrigsministeriet*) (2016), *Analyse af*

servicelovens anvendelsesområde i forhold til udlændinge med processuelt eller ikke lovligt opholdsgrundlag, Sagsnr. 2015-6337, 29 June 2016.

118 Estonia, Act on granting international protection to aliens (*Välismaalasele rahvusvahelise kaitse andmise seadus*), Art. 17 (12), 14 December 2005.

119 France, Code for social action and families (*Code de l'action sociale et des familles*), Art. L. 223-1-1, 2016.

120 Germany, German Bundestag (*Deutscher Bundestag*) (2016), *Beteiligung, Förderung und Schutz von unbegleiteten minderjährigen Flüchtlingen durch die Kinder- und Jugendhilfe*, Printed document 18/7621, 22 February 2016.

121 Poland, Commissioner for Child's Rights (*Rzecznik Praw Dziecka*), Letter of 26 September 2016 to the Minister of the Interior and Administration.

122 Austria, Information provided by the association Asylum Coordination Austria (*Asylkoordination Österreich*), 7 October 2016.

123 Austria, City of Vienna (*Stadt Wien*), 'Gasteltern für jugendliche Flüchtlinge gesucht', Press release, 8 June 2016.

124 Austria, information provided by the association Asylum Coordination Austria (*Asylkoordination Österreich*), 7 October 2016.

125 Sweden, Social Service Act SWE-2001-L-60673 (*Socialtjänstlag (2001:453)*), 2001.

126 For more information, see TUSLA Child and Family Agency, 'Separated children seeking asylum'.

127 For more information, see Ireland, Department of Justice and Equality, 'Speech by An Tanaiste Ms Frances Fitzgerald TD on Calais – Refugees and unaccompanied minors'.

128 Irish Refugee Council (2015), *Asylum information database – Country report Ireland*, 2015, p. 57.

129 Netherlands, State Secretary for Security and Justice (*Staatssecretaris van Veiligheid en Justitie*), '*Verbetermaatregelen beschermde opvang voor alleenstaande minderjarige vreemdelingen*', Letter sent to House of Representatives (*Tweede kamer der Staten-Generaal*), 5 September 2016.

130 Learning Children's Services (ADCS) (2016), *Unaccompanied asylum seeking and refugee children*, November 2016, p. 9.

131 See, for example, Action grants to support transnational projects aiming to build capacity for professionals in child protection systems and legal professionals representing children in legal proceedings, 2016.

132 FRA (2015), *Mapping child protection systems in the EU*, February 2015.

133 Nidos, *Reception and living in families – Overview of family-based reception for unaccompanied minors in the EU Member States*, February 2015.

134 FRA (2014), *Guardianship for children deprived of parental care, a handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, Luxembourg, 2014.

135 European Commission (2016), *Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)*, COM(2016) 465 final, Brussels, 13 July 2016.

136 FRA (2016), *FRA Opinion on the impact on children of the proposal for a revised Dublin Regulation*, December 2016.

137 *Ibid.*, Art. 23, p. 59.

138 FRA (2015), *Guardianship for children deprived of parental care in the European Union, with particular focus on their role in responding to child trafficking*, Luxembourg, Publications Office, 2015.

139 *Ibid.*

140 FRA (2016), *Monthly data collection on the current migration situation in the EU August 2016 monthly report 1-31 July 2016*, August 2016.

141 Czech Republic, Kholllová, P., Organization for Aid to Refugees (*Organizace pro pomoc uprchlíkům*) (personal communication, 29 September 2016). See also Ministry of Labour and Social Affairs (2016), *Methodological guideline of the Ministry of Labour and Social Affairs No. 1/2016 applicable to municipality authorities with extended competences on the procedures regarding the social-legal protection of unaccompanied foreign minors* (updated) (*Metodické doporučení MPSV č.1/2016 k postupu obecních úřadů obcí s rozšířenou působností při poskytování sociálně-právní ochrany nezletilým cizincům bez doprovodu*), 2016, p. 7.

142 Ireland, TUSLA Child and Family Agency (2016), 'Separated children seeking asylum team'.

143 FRA (2016), *Monthly data collection on the current migration situation in the EU August 2016 monthly report 1-31 July 2016*, August 2016.

144 Germany, Act for improving the accommodation, supply and assistance of foreign children and youths (*Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendlicher*), 28 October 2015.

145 Germany, *Die Aufnahmesituation unbegleiteter minderjähriger Flüchtlinge in Deutschland Erste Evaluation zur Umsetzung des Umverteilungsgesetzes*, Berlin, July 2016.

146 FRA (2016), *Monthly data collection: Children*, March 2016.

147 Sweden, Association of Guardians for Unaccompanied Children for the Region of Västra Götaland (*Västra Götalands Godmansförening för ensamkommande barn*) (personal communication, 20 September 2016).

148 Bulgaria, State Agency for Refugees (*Държавна агенция за бежанците*) (2016), Interview with representative of the State Agency for Refugees, 31 October 2016.

149 *Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast)*, OJ L 180/60, 26 June 2013.

150 Cyprus, *Law amending the Refugee Law (No. 2) No. 106(I)/2016*, 14 October 2016; Cyprus, *Law amending the Refugee Law No. 105(I)/2016, 4577*, 14 October 2016.

151 Cyprus, Commissioner for the Rights of the Child (2016), *Position of the Commissioner for the Rights of the Child on bills entitled 1. Law on refugees (Amendment) of 2015 and 2. Law on refugees (Amendment) (No. 2) of 2015* (*Θέσεις της Επιτρόπου Προστασίας των Δικαιωμάτων του Παιδιού, Λήδας Κουρσουμπά, επί των Νομοσχεδίων με τίτλους 1. Ο περί Προσφύγων (Τροποποιητικός) Νόμος του 2015 & 2. Ο περί Προσφύγων (Τροποποιητικός) (Αρ.2) Νόμος του 2015*).

152 Denmark, Act No. 1741 of 22 December 2015 on amending different sections on appeal and competences etc. on the area of family law (The National Social Appeals Board as appeal instance in the area of family law) (*Lov nr. 1741 af 22. December 2015 om ændring af forskellige lovbestemmelser om klageadgang og kompetence m.v. på det familieretlige område (Ankestyrelsen som familieretlig klagemyndighed m.v.)*), 22 December 2015; Denmark, Bill No. 6 of 7 October 2015 on amending different sections on appeal and competences etc. on the area of family law (The National Social Appeals Board as appeal instance in the area of family law) (*Forslag til lov om ændring af forskellige*

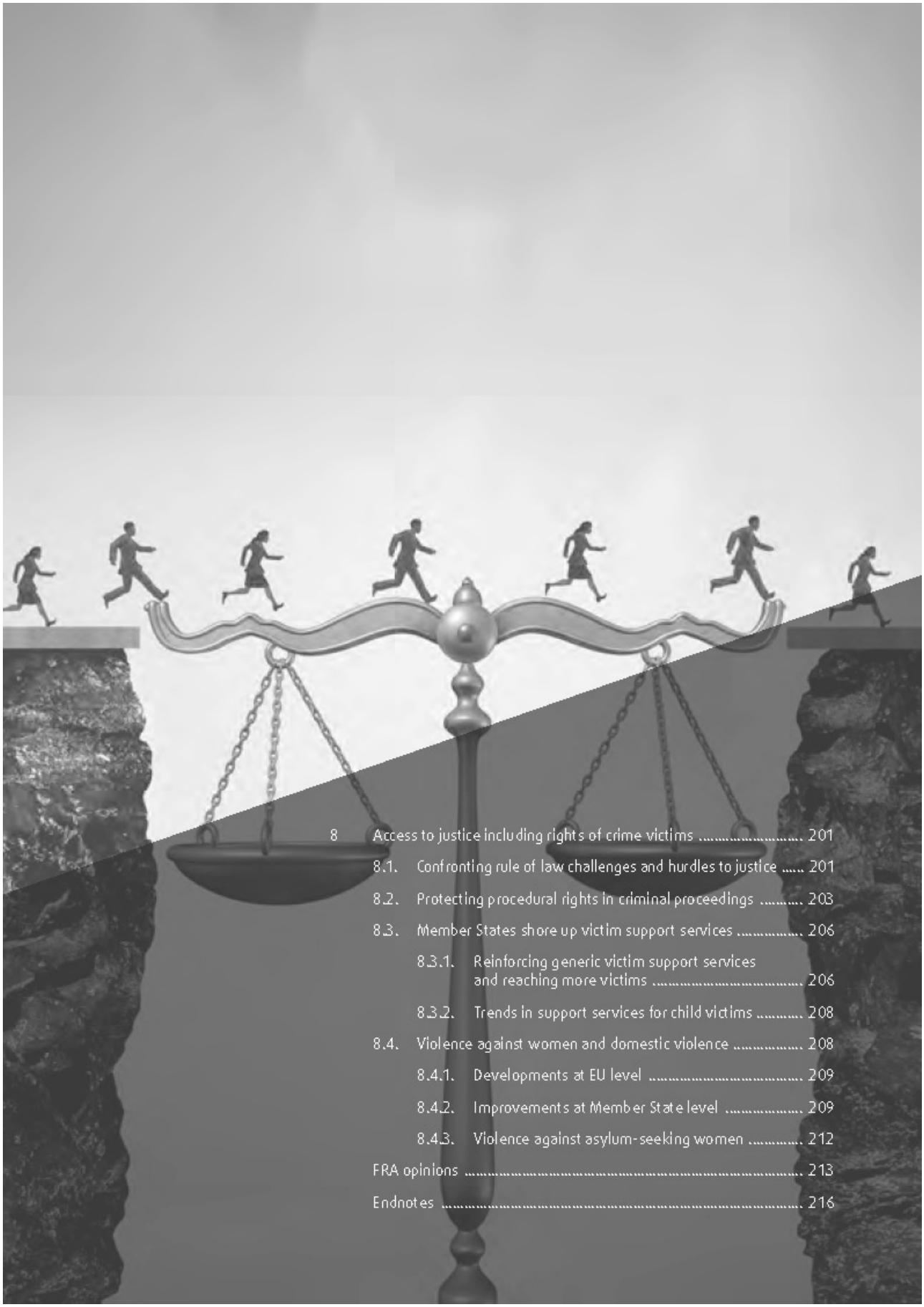
lovbestemmelser om klageadgang og kompetence m.v. på det familieretlige område (Ankestyrelsen som familieretlig klagemyndighed m.v.)), 7 October 2015.

153 Romania, Law No. 331 of 16 December 2015 for the amendment of legal norms in the field of foreigners (*Legea 331 din 16 decembrie 2015 pentru modificarea și completarea unor acte normative în domeniul străinilor*), Art. I.11.

154 *Ibid.*, Art. I.12.

155 European Commission (2016), *Recommendation addressed to the Hellenic Republic on the specific urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No. 604/2013*, C(2016) 3805 final, recital (19), Brussels, 15 June 2016.

156 FRA (2014), *Guardianship for children deprived of parental care, a handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, Publications Office, Luxembourg, 2014.



UN & CoE

28 January – Council of Europe's Parliamentary Assembly (PACE) adopts Resolution 2093 (2016) on recent attacks against women: the need for honest reporting and a comprehensive response

January

February

4 March – Acting on behalf of PACE, the Standing Committee adopts Resolution 2101 (2016) on the systematic collection of data on violence against women

March

21 April – Council of Europe (CoE) launches its 2016-2021 Action plan on strengthening judicial independence and impartiality

April

2 May – Czech Republic ratifies the Council of Europe's Convention on Action against Trafficking in Human Beings

9-13 May – Sub-Committee on accreditation of the global alliance of national human rights institutions recommends that the Greek National Commission for Human Rights be downgraded to B status

May

19 June – In Resolution A/HRC/32/L.19, the UN Human Rights Council (UN HRC) welcomes the report of the UN High Commissioner for Human Rights on 'Improving accountability and access to remedy for victims of business-related human rights abuse' adopted on 10 May 2016

23 June – In *Baka v. Hungary* (No. 20261/12), the European Court of Human Rights (ECtHR) holds that the premature termination of the President of the Hungarian Supreme Court's mandate on account of his criticisms of legislative reforms violated his right to a fair trial in form of access to court and the right of freedom of expression (Articles 6 and 10 of the ECHR)

June

July

August

13 September – In *Ibrahim and Others v. United Kingdom* [GC] (No. 50541/08), the ECtHR holds that the right to access a lawyer can be restricted to protect the rights of others and that the right to be informed on one's defence rights is inherent in the right to a fair trial (Article 6 of the ECHR)

28 September – UN HRC adopts its annual resolution A/HRC/33/L.17/Rev.1, encouraging different bodies across the UN system to further enhance opportunities for NHRIs to contribute to their work

September

28 October – European Network of National Human Rights Institutions issues a statement to support the Commissioner for Human Rights, Polish NHRI, in its work to promote and protect human rights in Poland and urges all relevant actors to take prompt action to ensure that the commissioner has sufficient funding to support its independence and carry out its mandate in line with the UN Paris Principles

October

9 November – CoE's Goup of Experts on Action against Violence against Women and Domestic Violence (GREVIO) considers a state report submitted by Austria on implementation of the Istanbul Convention, under the evaluation procedure provided for under Article 68 (1)

19 November – CoE, the European Network of National Human Rights Institutions, the International Ombudsman Institute, the Office of the UN High Commissioner for Human Rights and the OSCE Office for Democratic Institutions and Human Rights issue a joint statement calling for support for strong and independent national human rights institutions in the OSCE region and highlighting the important role of NHRIs in times when human rights and fundamental freedoms are under threat

November

December

EU

January

February

4 March – European Commission proposes the EU's accession to the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), alongside Member States that ratified the convention

9 March – Council of the EU and European Parliament (EP) adopt Directive 2016/343/EU on strengthening certain aspects of the presumption of innocence and the right to be present at trial in criminal proceedings

March

5 April – In the joined cases *Aranyosi* (C-404/15) and *Căldăraru* (C-404/15) and the Court of Justice of the European Union (CJEU) rules that the execution of a European arrest warrant must be deferred if there is a real risk of inhuman or degrading treatment because of the conditions of detention of the person concerned in the Member State where the warrant was issued

April

11 May – Council of the EU and EP adopt Directive 2016/800/EU on procedural safeguards for children who are suspects and accused persons in criminal proceedings

May

9 June – In *Criminal Proceedings against István Balogh* (C-25/15), the CJEU clarifies the meaning of 'criminal proceedings' in Directive 2010/64/EU on the right to interpretation and translation

9–10 June – Justice and Home Affairs Council establishes an (informal) European Network on Victims' Rights based on Article 26 (1) of Directive 2012/29/EU, with the purpose of aiding, stimulating and recommending improvements on EU legislation regarding victims' rights; the European Commission will also be involved and other bodies and agencies can be invited

20 June – Council of the EU adopts Conclusions on business and human rights, reaffirming the EU's active engagement in preventing abuses and ensuring remedies worldwide, and to ensure implementation of the UN guiding principles on business and human rights

June

July

August

September

11 October – In *European Commission v. Italian Republic* (C-601/14), the CJEU states that Article 12 of Directive 2004/80/EC relating to the compensation of crime victims guarantees all EU citizens appropriate and fair compensation for injuries suffered from violent intentional crimes, as this is corollary to freedom of movement

25 October – EP adopts a resolution with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights; this mechanism should include objective benchmarks and lay down a gradual approach to remedying breaches

26 October – Council of the EU and EP adopt Directive 2016/1919/EU on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings

October

24 November – EP adopts a motion for a Resolution on the EU's accession to the Istanbul Convention, calling on the Council of the EU and the Commission to speed up negotiations on the signing and conclusion of the convention

27 November – Transposition deadline for Directive 2013/48/EU on the right to a lawyer in criminal proceedings and the right to have a third party informed upon deprivation of liberty

November

13 December – EP adopts a resolution on the situation of fundamental rights in the EU in 2015, reiterating its call for the establishment of a Union Pact on Democracy, Rule of Law and Fundamental Rights; this should include an annual report with country-specific recommendations based on a variety of sources - including FRA, Council of Europe and UN reports, should incorporate and complement existing instruments such as the Justice Scoreboard, and replace the Cooperation and Verification mechanism for Romania and Bulgaria

December

8

Access to justice including rights of crime victims

The EU and other international actors tackled various challenges in the areas of rule of law and justice throughout the year. Several EU Member States strengthened the rights of persons suspected or accused of crime to transpose relevant EU secondary law, and the EU adopted new directives introducing further safeguards. Many Member States also took steps to improve the practical application of the Victims' Rights Directive to achieve effective change for crime victims, including in the context of support services. The final three EU Member States – Bulgaria, the Czech Republic and Latvia – signed the Istanbul Convention in 2016, underscoring that all EU Member States accept the convention as defining European standards of human rights protection in the area of violence against women and domestic violence. Meanwhile, the convention continued to prompt diverse legislative initiatives at Member State level.

8.1. Confronting rule of law challenges and hurdles to justice

Effective and independent justice systems play a key role in upholding the rule of law. Together with respect for fundamental rights and democracy, the rule of law is listed in Article 2 of the Treaty on European Union (TEU) as one of the core values on which the Union is founded. As in the previous year, the EU, Council of Europe and United Nations (UN) pursued numerous actions in 2016 to strengthen judicial independence and the rule of law more generally.

In previous years, and as discussed in past FRA Fundamental Rights Reports, various actors called for the European Commission to take action concerning possible violations of the rule of law in several EU Member States, including **Poland**, **Romania** and **Hungary**.[1] In 2016 the Commission decided – for the first time – to carry out an assessment of the situation in a Member State, namely **Poland**, on the basis of its Rule of Law Framework, adopted in 2014.[2] The Commission first issued a formal opinion[3] setting out its concerns. These related to the failure to appoint lawfully nominated judges to the Polish Constitutional Tribunal; the lack of publication and full implementation of the tribunal's judgments; and the lack of safeguards to ensure that any reform of the Law on the Constitutional Tribunal respects the judgments of the tribunal and makes sure that its effectiveness as a guarantor of the constitution is not undermined. This opinion was followed by the second step provided for in the Rule of Law Framework: concrete rule of law recommendations to the Polish authorities on how to address these concerns, giving the Polish government three months to take appropriate actions.[4] The European Parliament joined the Commission's efforts to tackle these rule of law challenges and adopted resolutions calling on the Polish authorities to follow up on the Commission's Rule of Law Opinion and the recommendations.[5]

On 27 October, however, the Polish government rejected these recommendations as "groundless" and based on "incorrect assumptions".[6] In response to this rejection, and taking into account the latest developments in Poland, the Commission complemented its earlier recommendations with additional recommendations in December 2016, providing the Polish government with a two-month deadline to take appropriate actions.[7] In the supplemental recommendations, the Commission recommended that Poland ensure that:

- the Constitutional Tribunal can as a matter of urgency effectively review the constitutionality of the Law on the status of judges, the Law on organisation and proceedings and the Implementing Law,

and that these judgments are published without delay and implemented fully;

- the appointment of the new President of the Constitutional Tribunal does not take place as long as the Constitutional Tribunal's judgments on the constitutionality of the new laws have not been published and implemented fully, and as long as the three judges who were lawfully nominated in October 2015 by the preceding Sejm (lower house of the Polish parliament) of the seventh term have not taken up their judicial functions in the tribunal;

- until a new President of the Constitutional Tribunal is lawfully appointed, he is replaced by the Vice-President of the tribunal, and not by an acting president or by the person appointed as President of the Constitutional Tribunal on 21 December 2016.

If no satisfactory follow up is carried out within the set time limit, the procedure laid down in Article 7 of the TEU could be triggered based on a proposal by the Commission, the European Parliament or one third of the Member States.

The Council of Europe's European Commission for Democracy through Law – the Venice Commission – also adopted opinions in 2016, in which it deemed incompatible with the requirements of the rule of law the legislative changes concerning the functioning of the Polish Constitution Tribunal and the independence of its judges.[8] The Council of Europe's Commissioner for Human Rights, Nils Muižnieks, and the UN Human Rights Committee joined EU actors and the Venice Commission in urging the Polish government to find a solution to the country's current rule of law and human rights situation.[9]

Meanwhile, the European Parliament sought to enhance the effectiveness of different mechanisms available to the EU institutions to prevent and address rule of law concerns in Member States. It adopted a resolution in 2016 calling for a permanent mechanism on democracy, the rule of law and fundamental rights in the form of an agreement concluded among the EU institutions. It specified that such a mechanism should align with, and complement, existing mechanisms and end the current 'crisis-driven' approach to perceived breaches of democracy, the rule of law and fundamental rights in EU Member States.[10] The resolution further stated that such a EU mechanism should ensure that all EU Member States respect the values enshrined in the EU treaties and set clear, evidence-based and non-political criteria for assessing their records on democracy, rule of law and fundamental rights in a systematic way and on an equal footing.

Acknowledging the key role national justice systems play in upholding the rule of law, the European Commission in 2016 continued to support EU Member State efforts to strengthen the effectiveness of their national justice systems through its EU Justice Scoreboard, an informational tool via which it provides relevant data on an annual basis.[11] The scoreboard looks at civil, commercial and administrative cases, focusing on three main aspects: the efficiency of justice systems; quality indicators; and independence.

The Commission presented key findings from its 2016 EU Justice Scoreboard in April. It noted that some countries made progress in certain areas by shortening civil and commercial litigation processes and improving access to justice systems for citizens and businesses. This resulted particularly from allowing for the electronic submission of small claims and promoting Alternative Dispute Resolution methods. However, the findings also showed that there is still room for improvement in the availability of judgments online and in electronic communication between courts and parties. Moreover, training on judicial skills and the use of information and communication technologies in case management systems need to be improved.

The 2016 Scoreboard contained several new features. Its analysis for the first time referred to results of Eurobarometer surveys conducted to examine citizens' and businesses' perceptions of judicial independence. The scoreboard also used new indicators, in particular on judicial training, the use of surveys, the availability of legal aid and the existence of quality standards.

> *"Independent courts keep governments, companies and people in check. Effective justice systems support economic growth and defend fundamental rights. That is why Europe promotes and defends the rule of law."*
>
> ***Jean-Claude Juncker, President of the European Commission,*** *State of the Union 2016: Towards a better Europe – a Europe that protects empowers and defends*, 14 September 2016

The Council of Europe adopted a new 2016–2021 Plan of Action on strengthening judicial independence and impartiality in April 2016. This plan follows up on findings from a 2015 report by Thorbjørn Jagland – the Council of Europe's Secretary General – on the state of democracy, human rights and the rule of law in Europe.[12] It is based on three courses of action involving measures that aim to safeguard and strengthen the judiciary in its relations with the executive and legislature; protect the independence of individual judges and ensure their impartiality; and reinforce the independence of the prosecution service.

> *"It is vital that judicial independence and impartiality exist in practice and are secured by law. It is equally important that public confidence in the judiciary be maintained or restored. The measures proposed are designed to promote a culture of respect for judicial independence and impartiality, which is crucial in a democratic society based on human rights and the rule of law."*
>
> *Thorbjørn Jagland, Council of Europe Secretary General, Speech delivered at High-Level Conference of Ministers of Justice and representatives of the Judiciary, Sofia, 21 April 2016*

8.2. Protecting procedural rights in criminal proceedings

Protecting the human rights of individuals subject to criminal proceedings is an essential element of the rule of law. With freedom of movement resulting in increased mobility in the EU for study, travel or work purposes, and large movements of refugees and migrants continuing across the EU (see Chapter 5), there is a greater risk that people may find themselves involved in criminal proceedings in a country other than their own. Persons who are suspected or accused of crimes in countries other than their own are particularly vulnerable, so appropriate procedural safeguards are crucial. This reality prompted adoption of a Roadmap on procedural rights of suspects and accused persons in criminal proceedings in 2009 (see Figure 8.1), providing for various instruments that aim to make sure that individuals receive a fair trial anywhere in the EU.

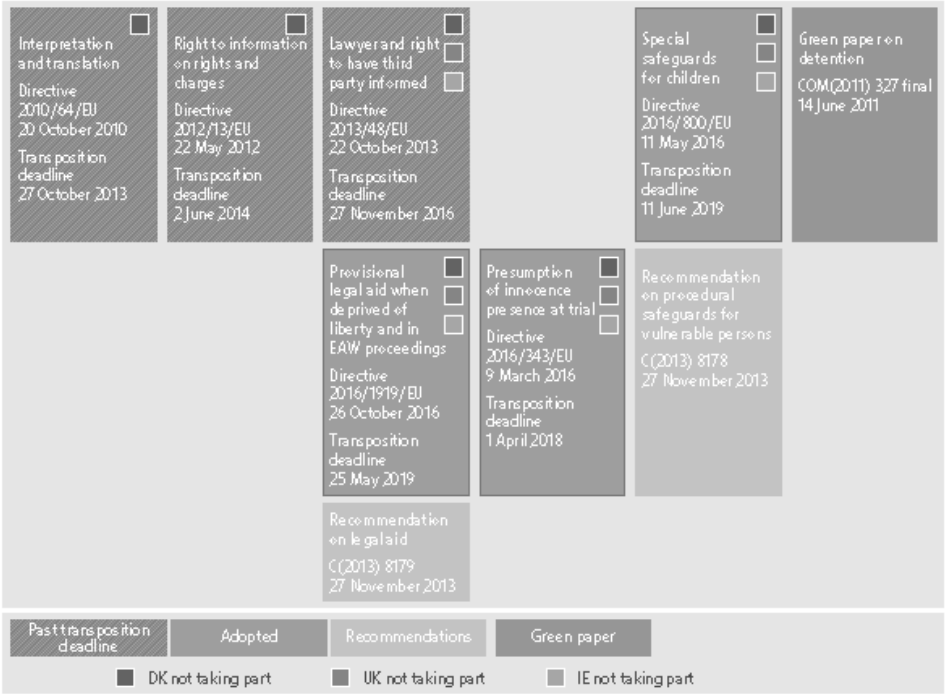
This section provides an overview of developments in the implementation of the 2009 Roadmap. It first looks at new legislative developments at EU level, highlighting three directives adopted in 2016. It then focuses on directives whose transposition deadlines have already passed, presenting relevant European case law and reviewing pertinent developments at Member State level.

New directives further strengthen procedural rights in criminal proceedings

In 2016, the EU completed implementation of the 2009 Roadmap by adopting three directives. These three directives afford suspects and accused persons procedural protection in the course of criminal proceedings in line with established international standards, in particular those arising from Article 47 of the EU Charter of Fundamental Rights (right to an effective remedy and to a fair trial) and Article 6 of the European Convention on Human Rights (ECHR) (right to a fair trial).

On 9 March, the Council and the European Parliament adopted Directive 2016/343/EU on the strengthening of certain aspects of the presumption of innocence and the right to be present at trial in criminal proceedings.[13]

Figure 8.1: Roadmap on procedural rights of suspects and accused persons in criminal proceedings



Note: *Roadmap for strengthening procedural rights of suspects and accused persons in criminal proceedings, adopted by the Council of the EU on 30 November 2009 and incorporated into the Stockholm Programme.*

Source: *FRA, 2016*

It strengthens the right to a fair trial by laying down common minimum rules in these areas. The directive also affirms that the right to remain silent and the right not to incriminate oneself are important aspects of the presumption of innocence. Member States have to transpose this directive by 1 April 2018.

On 11 May, the Council and the European Parliament adopted Directive 2016/800/EU on procedural safeguards for children who are suspects and accused persons in criminal proceedings.[14] The directive aims to make criminal proceedings more understandable and easier to follow for children who are suspected or accused of crime, and to prevent them from reoffending by fostering their social integration. The transposition deadline for this directive is 11 June 2019. For more information on FRA's work on children as victims and witnesses in criminal proceedings, see ▶ Chapter 7 on the rights of the child.

The last directive envisaged in the roadmap – Directive 2016/1919/EU on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings[15] – was adopted on 26 October. This directive aims to ensure the effectiveness of the right of access to a lawyer provided for under Directive 2013/48/EU by making legal aid available to accused persons in criminal proceedings and to persons who are the subject of European arrest warrant proceedings. Member States have until 25 May 2019 to transpose this directive.

European courts on right to interpretation and translation, to information, and to access a lawyer

The 2009 Roadmap includes three other directives – on the rights to interpretation and translation, to information, and to access to a lawyer – which Member States were required to transpose by 2013, 2014 and late 2016, respectively. Because of its specific opt-out regime, **Denmark** is not bound by any of the three directives,[16] while **Ireland** and the **United Kingdom** are not bound by the directive on the right to access a lawyer.[17]

The Court of Justice of the European Union (CJEU) issued several decisions in 2016 that further clarified the scope of these directives. In June 2016, it delivered a preliminary ruling on the scope of Directive 2010/64/EU on the right to interpretation and translation.[18] The *Balogh* case[19] centred on the translation of a judgment in the course of a special procedure under Hungarian law used to recognise foreign convictions. The CJEU held that the special procedure did not constitute criminal proceedings and therefore did not fall within the scope of the directive. Given that the procedure's only purpose was to accord the foreign conviction the same status as convictions delivered by Hungarian courts, it did not form part of the main proceedings. Translation was not necessary to protect the convicted person's right to a fair hearing. Moreover, in the course of the main criminal proceedings, the person had already obtained a translation of the foreign judgment.

The European Court of Human Rights (ECtHR) took into account Directive 2013/48/EU on the right of access to a lawyer[20] and Directive 2012/13/EU on the right to information[21] in *Ibrahim and Others v. United Kingdom*.[22] In that case, the police arrested the applicants in connection with the July 2005 explosions in London. They were interviewed urgently, without the presence of a lawyer, to obtain information about further planned attacks. The ECtHR found that the right to access a lawyer could in certain circumstances be restricted, referring to, among others, the similar approach taken in Article 3 (6) of Directive 2013/48/EU. According to the court, authorities are allowed to interrogate individuals without a lawyer present to protect the rights of potential or actual victims. It follows that, when the life or security of others is at stake, urgent interrogation without a lawyer's presence to obtain information that could help prevent damage can be justified. The ECtHR also stated that the right to be informed of one's defence rights is inherent in the right to avoid self-incrimination, the right to silence and the right to access a lawyer. It ruled that, when suspects are not notified of their rights or access to a lawyer is delayed, there is a presumption of unfairness, which the government then has to rebut.

National developments on right to interpretation and translation, to information, and to access a lawyer

EU Member States continued to adopt legislative measures to comply with Directives 2010/64/EU (on interpretation and translation) and 2012/13/EU (on information) after their transposition deadlines. As in 2015, they mostly did so to clarify certain mechanisms put in place or to address issues that arose from implementation. With the transposition deadline for Directive 2013/48 (access to lawyer) expiring in November 2016, Member States also adopted new laws to transpose this directive. However, as outlined below, EU Member States still need to address various issues, particularly by way of targeted policy measures such as concrete guidance, to ensure that all of these instruments work effectively in practice.

Belgium adopted legislation transposing Directive 2010/64/EU only in November 2016.[23] Meanwhile, several other Member States amended existing implementing laws. For example, **Hungary** introduced a requirement for interpreters and translators to observe confidentiality regarding their services.[24] In **Italy**, new legislation partly reformed the 2014 implementation law by introducing the possibilities of interpretation via video-conference in criminal proceedings and of replacing written translations with oral translations. It also set up an

official national list of translators and interpreters and limited assistance from state-funded interpreters during conversations between clients and lawyers.[35]

Legislative proposals to amend the existing implementing laws were put forth in **Ireland** (on conditions for using Irish Sign Language in courts in a Private Members Bill)[36] and the **United Kingdom** (provision of live-link interpretation).[37] Additionally, **Cyprus** introduced some non-legislative measures. The Chief of Police issued circulars to all police stations to instruct members of the police on the procedure for appointing interpreters when investigating cases involving foreign witnesses or suspects.[38] The list of interpreters has also been posted on the police central portal, and the duties of the interpreter are now spelled out in a circular letter used during police investigations.[39]

Meanwhile, national courts in 2016 continued to provide guidance on interpreting the relevant implementing laws. In **Finland**, for example, the Supreme Court clarified that the obligation stemming from Directive 2010/64/EU requires the state to meet the costs of interpreting communications between suspects and their legal counsel when lodging an appeal, irrespective of the outcome of the proceedings and irrespective of the suspect's financial situation.[40]

The Appeals Penal Court of Athens in **Greece** confirmed that, in line with the directive, a bill of indictment is an essential document that has to be officially and fully translated and served to the defendant in a language that he or she understands; the procedure is otherwise absolutely null.[41] The Kaunas Regional Court in **Lithuania** also clarified the definition of 'essential documents'. It reiterated that there is no statutory obligation to translate all procedural documents; only those that have to be served on parties pursuant to the Criminal Code must be translated. The code does not require serving the accused with a prosecutor's appeal against a court's decision to refer the case back to the prosecutor to supplement the pre-trial investigation. Therefore, there is no statutory obligation for the prosecutor to provide a translation of such an appeal.[42] Courts in **Ireland** had the opportunity to examine the need for sign-language interpretation services in criminal proceedings; in one case, they allowed for an appeal because no sign-language interpreter was present.[43]

Finally, as part of an infringement procedure, the European Commission adopted a reasoned opinion requesting **Lithuania** to fully implement procedural rights on interpretation and translation during criminal proceedings. Lithuania was given two months to notify the Commission of measures taken to remedy the situation; otherwise, its case may be referred to the CJEU.[44] Some measures were already taken in December, with a draft amendment to the Criminal Procedure Code introduced that month.[45]

EU Member States in 2016 also continued their efforts to ensure the effective application of the rights set out in Directive 2012/13/EU (right to information), following the expiry of its transposition deadline in 2014.

A new law adopted in Latvia deals with proposals to remand persons in custody. It provides that, as soon as such a proposal is received and before the measure is actually applied, accused persons have the right to become familiar with the details on which the proposal is based.[46]

Member States also pursued pertinent non-legislative initiatives. **Cyprus** introduced a simplified version of the letter of rights, which is now available in 19 languages.[47] The Ministry of Justice in **Malta** launched a Quality Service Charter for persons accessing court services, which includes information on rights of accused persons who have been arrested.[48]

National courts provided further guidance on interpreting the right to information in light of relevant fundamental rights standards. For example, the Court of Cassation in **France** ruled on the right to remain silent in a case involving an event that took place before the law implementing Directive 2012/13/EU came into force. The court instead referred to Article 6 (3) of the ECHR. It declared that any person placed in police custody should be informed of their right to remain silent and be able to benefit from a lawyer's assistance. The case concerned a man convicted of sexual assault based on his own statements, which the police obtained without informing the suspect of his right to remain silent. It should be noted that there were additional procedural and material shortcomings in the case; the violation of the rights to remain silent and to assistance of a lawyer did not serve as the only basis for the judgment's annulment. The Court of Cassation remitted the case back to the Court of Appeal of Versailles.[49]

FRA ACTIVITY

Highlighting opportunities to bolster rights in criminal proceedings

The vast majority of EU Member States have adopted legislation transposing Directives 2010/64/EU and 2012/13/EU. FRA's 2016 report on the rights protected by these two directives outlines progress made in their implementation. Its findings identify concrete opportunities to further bolster protection of the rights to translation, interpretation and information.

For more information, see FRA (2016), Rights of suspected and accused persons across the EU: translation, interpretation and information, Publications Office of the European Union, Luxembourg

The deadline for transposing Directive 2013/48/EU (right to access a lawyer) passed on 27 November 2016. Many Member States adopted the necessary measures to do so: **Belgium**,[40] **Finland**,[41] **Hungary**,[42] **Italy**,[43] **Latvia**,[44] **Malta**,[45] **Slovakia**,[46] **Sweden**,[47] the **Netherlands**[48] and **Romania**.[49]

Draft legislative measures to transpose the directive are currently pending before the national parliaments of several other Member States: **Cyprus**,[50] the **Czech Republic**,[51] **Germany**,[52] **Greece**,[53] **Luxembourg**[54] and **Lithuania**.[55] In the **Netherlands**, the Public Prosecution Service published policy guidance on how to implement suspects' right to the assistance of a lawyer during questioning by the police or the Public Prosecution Service.[56]

8.3. Member States shore up victim support services

Several Member States continued to work towards adopting legislation to transpose the Victims' Rights Directive (2012/29/EU) in 2016, even though its transposition deadline already passed on 16 November 2015. However, the majority of Member States concentrated on applying national laws transposing the directive. They focused on issues such as improving victim support services, training, the provision of information, and individual assessments of victims.

The European Parliament's and Council's agreement on the Directive on combating terrorism in November 2016 was a notable development.[57] The directive was adopted on 7 March 2017. In addition to strengthening the EU's legal framework for preventing terrorist attacks, it reinforces the rights of victims of terrorism. Victims will have the right to immediate access to professional support services providing medical and psycho-social treatment, to receive legal or practical advice, and to receive assistance with compensation claims. It will also strengthen emergency response mechanisms following attacks. At the national level, **Belgium** and **France** stepped up support services to victims of terrorism in 2016 in response to the terrorist attacks that occurred in those countries. For example, victim support services in Brussels organised specific support for victims of terrorist attacks,[58] while France set up an Information and Accompaniment Centre to support victims of terrorism, led by the victims' assistance association *L'Institut national d'aide aux victimes et de méditation* (INAVEM).[59]

8.3.1. Reinforcing generic victim support services and reaching more victims

Developments in the provision of support to crime victims in 2016 related both to victims in general ('generic') and specifically to child victims. Throughout the year, Member States worked towards addressing gaps in their victim support infrastructures to meet the demands of the Victims' Rights Directive, improving the information provided to victims; reaching out to more victims and encouraging them to report; providing for the required individual assessment of victims by police to identify particularly vulnerable victims; and boosting the capacity and funding of victim support services.

Reaching more victims

To improve outreach to victims, **Croatia** (through the Association for Support to Victims)[60] and **Latvia** (through the non-governmental organisation Skalbes)[61] began providing support and information to victims through free helplines on 116 006, the free Europe-wide number for helplines for victims of crime.[62] The **French** Justice Ministry launched a website in May 2016 to help crime victims find the right court, obtain information on how to access justice, and assess their entitlement to legal aid.[63]

In an attempt to also reach out to victims from other countries, and to encourage reporting of crime, the Minister for the Interior in **Bulgaria** approved forms to assist people (including non-Bulgarians) to report 'typical' crimes to the police – for example, theft, injury or fraud.[64] These forms are available in five languages: Bulgarian, English, French, German and Russian.[65]

Some Member States registered an increase in the numbers of victims requesting support. For example, since January 2016, the police in **Croatia** have been providing victims with information on their rights and contact details of available support services, including court departments and local civil society support organisations. The cooperation resulted in an increase in the number of people contacting services. Victim Support **Finland** reported a clear increase in the number of support relationships – longer-term relationships, where the crime victim is in need of extended support[66] – in 2016. (As is further discussed below, funding to the organisation increased significantly in 2016.[67]) The number of longer-term support relationships was 3,572 in 2016, compared with 2,590 in 2015. Similarly, the number of contacts – for example, one-off queries from crime victims – was 44,046 in 2016, compared with 35,638 in 2015.[68] The **Czech Republic** also reported a higher number of victims supported in 2016 than in 2015.[69] Finally, in the hope that more victims will benefit from and make use of services, **Poland** extended the scope of victim support services in 2016 – for example, to cover help from interpreters, help in getting payments for medication refunded, and increasing vocational training.[70]

Promising practice

Providing online support for crime victims

In April 2016, Victim Support **Malta** launched a website called 'Victim Support Online' to provide professional support to crime victims in a confidential and anonymous manner. Providing online support is a way to encourage more victims to seek support and receive information relevant to their cases. The website also aims to raise awareness of rights.

For more information, see the website of Victim Support Online

Germany's largest victim support organisation, Weisser Ring, launched an online helpdesk in August 2016. A total of 17 trained support workers advise and assist crime victims who email them seeking help. They provide online advice in writing – currently in German only. Victims can remain anonymous if they wish.

For more information, see Weisser Ring, 'Onlineberatung des Weissen Rings'; Weisser Ring, 'Weisser Ring: Online helpdesk starts'

Providing for individual assessments of victims

As noted in the *Fundamental Rights Report 2016*, most EU Member States still need to adopt measures to ensure that victims are assessed individually to identify specific protection needs, as required by Article 22 of the Victims' Rights Directive. The directive specifies that such assessments are to be provided in accordance with national procedures; in practice, police often carry these out. There were several positive developments at Member State level regarding such assessments in 2016.

In **Ireland**, Police Victim Service Offices were put in place across all areas of the state in 2016. These offices provide a central point of contact for crime victims in local areas, and are staffed by specially trained police members and civilian personnel. **Bulgaria** formed a civic council and a working group to make proposals on guaranteeing vulnerable victims' rights to individual assessments and special protection measures in accordance with the directive. **Croatia** implemented a 'Targeted Early Victim Needs Assessment and Support' project from January 2016 to June 2017.

Boosting victim support services' capacity and funding

In a notably positive trend, a significant number of Member States increased state funding for victim support services in 2016. These include **Croatia**, **Finland**, **France**, **Ireland**, **Luxembourg**, **Malta**, the **Netherlands**, **Sweden** and the **United Kingdom**. In some Member States, such increases came about in direct response to obligations under the Victims' Rights Directive, or expectations – for example, in Ireland[71] – that more victims would seek assistance once the directive came into force.

In **France**, the budget for victim support has almost doubled – from € 10.2 million in 2012 to € 20 million in 2016. It increased by 18 % from 2015 to 2016.[72] There was also a substantial increase in the funds for victim support generated by the Council administering the **Danish** Victims Fund in 2016.[73] These funds are not subject to economic or political considerations but stem from victim payments made by, for example, persons who have been sentenced under criminal legislation or have violated the Danish Road Traffic Act. Many other Member States have similar schemes to ensure steady funding for victims of crime, as FRA has found previously – for example, **Belgium**, **Estonia**, **Finland**, **France**, **Lithuania**, **Poland**, **Portugal**, **Sweden** and the **United Kingdom**.[74] Similarly, the Ministry of Justice of **Croatia** in 2016 for the first time received lottery funds to finance civil society organisations that provide support to victims and witnesses in counties with no established offices for such support at courts.[75] Increased funding enabled Victim Support **Finland** to increase its staff by almost 40 %. This has made it possible for the organisation to focus more on advertising services and developing online chat services. 'RIKUchat' is an online service for victims, their families or others to ask questions (anonymously if they wish) and receive guidance and advice on crime victim issues from trained persons. The service began in 2012, and is increasingly being used, with the number of chat discussions more than doubling between 2015 and 2016.[76]

However, challenges remained with regard to the implementation of the Victims' Rights Directive. For example, while **Cyprus** incorporated the directive into national law in April, few structures were reportedly in place for its implementation. No services have been offered to victims under he incorporating legislation, nor has any budget been allocated for the services planned.

Finally, notwithstanding the important progress made in many Member States in 2016, not all Member States have yet set up effective victim support services that are available to all victims of crime, despite the obligation in Article 8 of the Victims' Rights Directive to establish such services.[77]

Establishing effective victim support services is among the most important provisions of the Victims' Rights Directive (Articles 8 and 9), as they enable victims to access other rights under the directive in practice. Previous Fundamental Rights Reports, as well as FRA's 2015 report on *Victims of crime in the EU: The extent and nature of support for victims*, make this point, and FRA evidence on hate crime published in April 2016 reinforces it. FRA's report on *Ensuring justice for hate crime victims: professional perspectives*[78] offers insights

into the reporting and recording of hate crimes from the perspective of professionals: courts, public prosecutors, police officers and victim support organisations. It analyses the specific factors that affect how and why hate crime victims do or do not seek justice and the barriers and drivers to victims' success in being acknowledged as victims of severe discrimination. The Victims' Rights Directive provides that all crime victims should have access to professional support services. This includes victims of hate crime, whom the directive recognises as a category of victims in need of special protection. However, the actual situation clearly falls short of this goal; of all the experts FRA interviewed, six in 10 highlighted a lack of such services. For more information on hate crime, see Chapter 3 on Racism, xenophobia and related intolerance.

8.3.2. Trends in support services for child victims

Taking account of the Victims' Rights Directive's special focus on child victims, Member States made efforts to increase support for such victims. This included working both on reaching more victims – for example, by increasing funding to victim support services – and on improving the quality of support – for example, by training more professionals.

In Denmark and Ireland, the number of child victims who received assistance substantially increased, according to their most recent statistics. The Department of Justice and Equality in **Ireland** indicated that the large increase (in 2016) was partly due to extra funding provided for a programme run by the organisation Children at Risk in Ireland (CARI).[79] **Denmark** has five specialised 'children's houses' – established in 2013 – to support child victims of violence or sexual abuse. In 2015, 27 % more children received support from these than in 2014. The increase reflects the rise in referrals from municipalities to the children's houses.[80]

Bulgaria initiated a project on child-friendly justice and training of professionals. Among other objectives, it aims to strengthen the participation of prosecutors and police officers in the coordination mechanisms for child victims and to improve the facilitation of child-friendly hearings for child witnesses and victims.[81] The State Agency for Child Protection (SACP) and the Bulgarian Paediatric Association (BPA) are planning to train paediatricians in recognising violence against children, as evidence shows that very few doctors report such cases. The SACP has recommended that such training become part of medical students' regular training.[82]

The Association for Victim Support (APAV) in **Portugal** launched a specialised support network for children and young people who are victims of sexual abuse (CARE network) in January 2016.[83] During the first half of 2016, the network supported an average of 17 children per month. Police in **Cyprus** established a special unit for investigating cases of child sexual abuse in December 2016. The unit, supported by specialised personnel, aims to provide professional child-centred services to protect and support victims.[84] The Commissioner for the Protection of the Rights of the Child issued a public statement applauding this decision, highlighting the prospect of conducting interviews with children who are victims or witnesses in the safe and child-friendly environment of the 'House for the Child', in collaboration and coordination with other public services and in line with international standards for investigating cases of sexual abuse.[85]

In the **United Kingdom**, the **Northern Ireland** Department of Justice launched a consultation on a new Witness Charter. It will state that witnesses and victims under the age of 18 are entitled to receive help from a Victim and Witness Care Unit to access support; be automatically considered eligible for special measures; and receive therapy/counselling from a trained person.[86] The effort includes a child-friendly version of the Witness Charter, entitled 'A guide for young people by young people'.[87]

Scotland held a consultation from March to June 2016 on raising the minimum age of criminal responsibility from eight to 12.[88] In its contribution, Victim Support Scotland highlighted the importance of maintaining support for young victims of crime regardless of the age of the offender – of particular concern because "a substantial proportion of offences committed by young people are perpetrated against another young person".[89] For further information on the rights of children, see Chapter 7; Section 7.2 discusses the rights of children accused or suspected of crime.

Despite positive developments, some Member States still need to make considerable progress to ensure adequate and effective victim support for children. The UN Committee on the Rights of the Child pointed out deficiencies in dealing with child victims of violence in **Slovakia**, especially with regard to the reporting of suspected physical or sexual abuse and the absence of exact data and monitoring of the quality of crisis centres for child victims.[90] The Coalition for Children Slovakia, a network of non-governmental organisations promoting the rights of children, also points to a lack of funding of facilities that provide support to child victims.[91]

8.4. Violence against women and domestic violence

The Istanbul Convention strongly influenced developments relating to violence against women at EU and national levels. While the EU moved towards ratifying the convention, there was also progress at

national level, with Member States either ratifying it or implementing its provisions.

8.4.1. Developments at EU level

In November 2016, the European Commission released the results of a Eurobarometer survey on gender-based violence.[92] Respondents – women and men – were asked about their opinions, perceptions and awareness concerning domestic violence, as well as their views on appropriate legal responses to different forms of gender-based violence.

A clear majority of respondents across the EU considers rape by an intimate partner to be wrong. Nevertheless, under 30 % of respondents in **Bulgaria**, **Italy**, **Lithuania**, **Portugal**, and **Spain** deemed it 'wrong and already against the law', while about half of the respondents in these countries said that rape by an intimate partner is wrong but they believe that it is not illegal.

About two in five respondents in **Malta** (47 %), **Cyprus** (44 %), **Lithuania** (42 %) and **Latvia** (39 %) agree with the statement that 'women often make up or exaggerate claims of abuse or rape'. Latvia, Lithuania and Malta are also the three countries with the highest percentages of respondents who agree with the statement that 'violence against women is often provoked by the victim' (57 %, 45 % and 40 %, respectively).

Awareness of support services listed in the survey ranged from close to 100 % of respondents in **Germany**, **Malta**, and **Sweden** to under 30 % in the **Czech Republic** and **Romania**.

The data were released as part of the Commission's launch of the year of focused actions to combat violence against women.[93] It aims to connect all efforts across the EU and engage and support all stakeholders – Member States, relevant professionals, and NGOs – to collectively combat violence against women. The focused actions involve local, national and EU-level action, with funding for national authorities and grassroots initiatives and complementary and supportive action at the EU level.

Meanwhile, on 24 November 2016, the European Parliament issued a resolution calling on the Council and the Commission to speed up negotiations on the signing of the Istanbul Convention and to ensure that the parliament would be fully engaged in the monitoring process following the EU's accession to the convention.[94]

In its *Fundamental Rights Report 2016*,[95] FRA highlighted the importance of recognising that violence against women constitutes a fundamental rights abuse and supported the Commission's initiative towards the EU's accession to the Istanbul Convention. In March 2016, the Commission proposed that the EU ratify the convention within its competences, and alongside the Member States that have already ratified it.[96] The EU's accession to the convention would ensure accountability for the EU at the international level because it would have to report to the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), the convention's monitoring body. It would also reinforce the EU's role in fighting gender-based violence.

The European Institute for Gender Equality (EIGE) in 2016 published selected good practices aimed at improving the quality of data on violence against women in the areas of police and criminal justice, health and social services, and on female genital mutilation.[97] In addition, EIGE published an analysis of the Victims' Rights Directive from a gender perspective.[98]

8.4.2. Improvements at Member State level

Last year saw significant progress in establishing the monitoring mechanism set out in the Istanbul Convention. In March 2016, the Group of Experts on Action against Violence against Women and Domestic Violence – GREVIO, the independent expert body responsible for monitoring the convention's implementation – adopted the questionnaire that serves as the measure applied when assessing the legislation and implementation measures that already exist as a baseline in countries that are parties to the convention. GREVIO envisages carrying out an initial round of baseline evaluation procedures from 2016 to 2020. As the first EU Member State evaluated and visited by GREVIO, **Austria** submitted a report in September 2016,[99] which Austrian NGOs followed up with a shadow report.[100] GREVIO plans to draw up and adopt its evaluation report on the relevant situation in Austria by the summer of 2017.[101]

Domestic violence can affect both women and men. It is mostly women who fall victim, but there is also recognition of the needs and rights of male victims. An example comes from **Portugal**, where a shelter for male victims of domestic violence opened in September 2016.[102] In the **Czech Republic**, a government working group conducted research on men and violence. The findings indicate that men perpetrate domestic violence in 90–95 % of cases, and that women are victims in 90 % of cases. The authors recommend introducing a sustainable, gender-sensitive educational system, which should enable people to identify gender-based and sexually motivated violence and take appropriate steps when facing it.[103]

In its *Fundamental Rights Report 2016*, FRA called on Member States to sign, ratify and effectively implement the Istanbul Convention. In this respect, 2016 was a good year. The last three Member States signed the convention (**Bulgaria**, the **Czech Republic** and **Latvia**) and two Member States ratified it (**Belgium** and **Romania**).[104] Several Member States – including **Bulgaria**,[105] **Croatia**,[106] **Greece**,[107] **Luxembourg**[108] and **Romania**[109] – established

working groups to identify the precise legislative reforms needed to meet the requirements of the Istanbul Convention, and in **Cyprus** the government has commissioned studies to the same end.[110]

Article 36 of the Istanbul Convention requires that any non-consensual act of a sexual nature be criminalised. **Austria**, **Germany** and **Malta** took initiatives to adapt national legislation to this requirement. In **Austria**, a new criminal law provision entered into force in January 2016, aiming to fill gaps left by previously existing provisions.[111] In **Germany**, as of November 2016, any significant sexual act undertaken against the apparent will of an affected person is treated as a crime.[112] In addition, an offence of 'sexual harassment' was introduced, criminalising bodily contacts for sexual purposes that are unwanted by the affected person. The new provision aims to criminalise, for instance, groping women in public transport.[113] In **Malta**, the government tabled a bill in parliament in November 2016 with the aim of bringing legislation up to the standards of the Istanbul Convention.[114]

Belgium amended its Criminal Code by criminalising the act of indecent assault. Previously, it was punishable only when accompanied by violence or threats.[115]

In **Spain**, parliament approved the establishment of a Subcommittee within the Equality Commission to form a 'State Pact on Gender-Based Violence'. One of the main objectives is to get all political actors involved in combating gender-based violence to agree that they need to take the standards of the Istanbul Convention into account seriously.[116]

A rather singular development happened in **Poland**. The government considered denouncing the Istanbul Convention, motivated by concerns that the convention's definition of 'gender' would run counter to the preservation of the traditional concept of the family. Such concerns already made ratification of the convention difficult.[117] This led to a public debate. The newspaper *Gazeta Wyborcza* reported that the Minister for Family, Labour and Social Policy pronounced herself in favour of denouncing the convention, and the ministry confirmed discussions of this matter.[118] However, on 10 January 2017, the Government Plenipotentiary for Equal Treatment informed the Commissioner for Human Rights that the government does not intend to denounce the convention.

Barring orders: protecting victims from repeat victimisation

In line with the Istanbul Convention and the Victims' Rights Directive, Member States are obliged to ensure that measures are available to protect victims from repeat victimisation. FRA's EU-wide survey on violence against women highlighted both the prevalence and the repetitive nature of intimate partner violence against women. Some of the results underline the importance of providing effective measures against domestic violence. One woman in five who has or has had a partner has experienced physical and/or sexual intimate partner violence since the age of 15, according to the survey.[119] Repeat incidents are also a widespread feature of intimate partner violence. Roughly half of women who have experienced physical or sexual violence by their current partner say that the partner used a particular form of physical or sexual violence more than once.[120]

By now, court orders are available in all Member States.[121] Where court orders are dealt with by civil law courts, specialised family courts are often responsible – for example, in **Austria**, **Belgium**, **Germany** and **Luxembourg**. In **Malta**, it appears that court protection is limited to divorce and separation cases. In July 2016, the Commission issued a reasoned opinion officially urging **Belgium** to communicate the national measures adopted to allow courts to recognise protection orders for victims of domestic violence issued by other Member States, as required by the Directive on the European Protection Order.[122]

Complementing court orders, emergency barring orders issued by the police are a means of immediately protecting victims against domestic violence. The requirement to provide them has gradually developed as a recognised standard and core element of a policy to counter violence against women. Five years after adoption of the Istanbul Convention, it is worth taking stock of what has been achieved in this regard. To date, 15 Member States have adopted relevant legislation enabling the police to swiftly remove a suspected violent offender from the victim's residence.

On closer inspection, the pertinent provisions enacted by Member States reveal significant differences. The time span covered by police barring orders ranges from 72 hours in **Hungary** up to several weeks (for example, in **Austria, Denmark**, **Germany** and **Slovakia**). Several Member States provide two time limits: one restricting the power of the police to issue a barring order without asking for the victim's consent; and a longer time limit for a barring order based on the victim's consent. For instance, in the **Czech Republic**, without the victim's prior consent, the police can remove an offender from the victim's home for 10 days. If the victim applies for a court order within this time period – thereby signalling the victim's wish to extend the time span of the protection granted by the barring order – the order stays in place until the court's decision. In **Slovenia**, the criminal court can extend the barring order from two to 10 days, and for another 60 days at the victim's request.

Table 8.1 maps Member State legislation on emergency barring orders, as required under Article 52 of the Istanbul Convention.[123]

Table 8.1: Emergency barring orders issued by police in cases of domestic violence

Member State	Legislation	Duration (in days)	Year(s) of significant law reform (since 1997)
Austria	Yes	14/28[a]	1997, 2009
Belgium	Yes[b]	10	2012
Bulgaria	No		
Croatia	No		
Cyprus	No		
Czech Republic	Yes	10/until court decision	2008
Denmark	Yes[c]	28	2004, 2012
Estonia	Yes	("temporary")	
Finland	Yes	(7)[a]	1998
France	No[d]		
Germany	Yes	7–14/20–28[e]	2002
Greece	No		2006
Hungary	Yes	3	2009
Ireland	No		
Italy	Yes[b]	10	2013
Latvia	Yes	Until court decision	2014
Lithuania	No		
Luxembourg	Yes[b]	14	2003
Malta	No		
Netherlands	Yes[c]	10/28	2009
Poland	No		
Portugal	No		
Romania	No		
Slovakia	Yes	10/until court decision	2008, 2016
Slovenia	Yes	2/10/72[a]	2005, 2008, 2013
Spain	No		2003, 2004
Sweden	Yes	No explicit limitation	2015
United Kingdom (England and Wales, Northern Ireland)	Yes[c]	No explicit limitation	2014, 2015

Notes: [a] *In several Member States, the duration of the emergency barring order is more or less automatically extended if the victim applies for a court order, to ensure the victim's protection until the court decides. In Finland, the duration of the emergency barring order is not restricted. However, the court is to decide within seven days. If the court cannot decide within that time, it must determine whether or not it remains in force. In Slovenia, the barring order issued by the police lasts for two days, but a judge can extend it to 10 days. If the victim applies for a court order, the duration is extended by another 60 days.*

[b] *In Belgium, Luxembourg and Italy, an emergency barring order requires authorisation by a public prosecutor. However, in Italy, the police can issue the barring order, which is then to be validated by the public prosecutor within 48 hours.*

[c] *In the Netherlands, the mayor, who has authority over the police, issues a temporary restraining order. In Denmark, the police commissioner decides on the emergency barring order. The police have powers to arrest a suspect for up to 24 hours to protect the victim until the police commissioner makes a decision. In England and Wales and in Northern Ireland, a Domestic Violence Protection Notice, issued by a police officer of the rank of superintendent or higher, can prohibit a person from entering premises or coming within a certain distance of premises. A police constable must then apply to the courts for a Domestic Violence Protection Order within 48 hours. As concerns Scotland, see the Joint Protocol between Police Scotland and Crown Office and Procurator Fiscal Service.*[124]

[d] *In France, the police are not authorised to issue a barring order, but other protection mechanisms have been introduced, including authorisations of the public prosecutor and the court to evict the violent spouse.*

[e] *In Germany, police legislation is dealt with by the federal states* (Länder). *Hence, various models exist.*

Source: *FRA, 2016*

Regarding the actual use of barring orders, figures from **Belgium** concerning incidents of partner violence indicate that police are hesitant to ask the public prosecutor to issue a barring order. In 2013 and 2014, 98,093 incidents of domestic violence were reported to the police, but only 65 of these incidents resulted in temporary barring orders.[125] As concerns **Estonia**, it has been claimed that the relevant police powers are rarely used in domestic violence cases.[126] In comparison, in **Austria**, police issued 8,466 barring orders in 2014 and 8,261 in 2015 (with some 8.6 million inhabitants, this amounted to about one barring order issued per 1,000 inhabitants).[127] In **Luxembourg**, 327 barring orders were issued in 2014 (0.6 barring orders per 1,000 inhabitants).[128] In

Hungary, police issued 1,792 barring orders in 2014, and 1,552 in 2015; hence, 0.2 barring orders per 1,000 inhabitants in 2015. However, as the protection offered by the police barring order in Hungary lasts for only 72 hours, NGOs have challenged the effectiveness of this regulation.[129]

Instead of introducing a barring order issued immediately by the police, a small group of Member States allow the police to arrest the potentially violent offender with a view to enabling the court or a public prosecutor to issue a protection order while the defendant is detained. A practice of this type exists in **Bulgaria**, **France**, **Ireland**, **Lithuania**, **Poland** and **Spain**.

8.4.3. Violence against asylum-seeking women

The ongoing reform of the Common European Asylum System includes a Commission proposal to strengthen the provisions on vulnerable applicants. This includes more ambitious provisions for assessing vulnerability and an obligation for Member States to take into account the specific needs of women applicants who have experienced gender-based harm. The strengthened provisions also aim to ensure that asylum applicants have access to medical care, legal support, appropriate trauma counselling and psycho-social care. The proposal for the new Asylum Procedure Regulation advocates gender-sensitive international protection. Women, for instance, should be given an effective opportunity to have a private interview, separate from their spouse or other family members. Where possible, they should be assisted by female interpreters and female medical practitioners, especially if they may have been victims of gender-based violence.[130]

In 2016, FRA provided evidence to GREVIO, focusing on the agency's findings concerning violence against female asylum seekers, both women and girls. That issue is covered in Article 60 of the Istanbul Convention, according to which parties to the convention shall – among others – develop gender-sensitive reception and asylum procedures. A recent field assessment of risks for refugee and migrant women and girls, carried out by the United Nations Refugee Agency (UNHCR), United Nations Population Fund (UNFPA) and the Women's Refugee Commission in Greece and the Former Yugoslav Republic of Macedonia, identified instances of sexual and gender-based violence in the country of origin and during the journey to Europe in 2016. They included early and forced marriage, transactional sex, domestic violence, rape, sexual harassment and physical assault.[131] The report identifies sexual and gender-based violence as both a reason why refugees and migrants are leaving countries of origin, and a reality for women and girls along the refugee and migration route. The report concludes that "the response to the European refugee and migrant crisis is currently not able to prevent or respond to survivors of sexual and gender-based violence in any meaningful way'".

In the same vein, Amnesty International reported in June 2016 that women staying in refugee camps in Greece continue to raise fears of not feeling safe. These fears are due to the mixed populations in the camps, the mixing of men and women in tents, in some cases, and the lack of proper lighting at night.[132] Similarly, the European Women's Lobby published a report indicating that "women and girls fleeing conflicts and travelling to or settling in Europe are at higher risk of suffering from male violence". The report calls for gender-sensitive asylum policies and procedures to help women and girls to escape male violence.[133]

Despite this evidence, there is a significant lack of data at the national level on the extent of violence against women and girls who are newly arrived or are in need of international protection. This lack of data may fuel the perception that violence against women is not a major feature of this crisis.

FRA ACTIVITY

Highlighting gender-based violence in the migration context

A number of factors contribute to migrant women and girls not being in a position to report abuse, notes FRA's thematic focus on gender-based violence, published alongside its June 2016 monthly report on the current migration situation in the EU. These include a lack of information on how to report such incidents, a lack of effective procedures to identify cases, and insufficient training of staff in charge of recognising gender-based violence. FRA noted that these shortcomings not only result in underestimation of this phenomenon but also prevent a coordinated and comprehensive response that addresses victims' needs.

Women and girls are also vulnerable to gender-based violence at reception centres and other facilities once they arrive in the EU. While governments, humanitarian actors, EU institutions and agencies, and civil society organisations are making efforts to address these issues, FRA's findings indicate that far more could be done to prevent and address continuing abuses against women and girls.

For more information, see FRA (2016), Thematic focus: gender-based violence, June 2016

FRA opinions

EU and other international actors in 2016 continued to tackle ongoing challenges in the area of justice and, in particular, the rule of law. The rule of law is part of and a prerequisite for the protection of all values listed in Article 2 of the Treaty on European Union (TEU). Developments implicating the rule of law and fundamental rights in Poland for the first time prompted the European Commission to carry out an assessment of the situation in a Member State based on its Rule of Law Framework. This resulted in a formal opinion, followed by recommendations on how the country should address the noted rule of law concerns. After the Polish government rejected these recommendations, the European Commission issued complementary recommendations, taking into account the most recent developments in Poland.

FRA opinion 8.1

All relevant actors at national level, including governments, parliaments and the judiciary, need to step up efforts to uphold and reinforce the rule of law. They all have responsibilities to address rule of law concerns and play an important role in preventing any erosion of the rule of law. EU and international actors are encouraged to strengthen their efforts to develop objective comparative criteria (like indicators) and contextual assessments. Poland should consider the advice from European and international human rights monitoring mechanisms, including the Commission's recommendations issued as part of its Rule of Law Framework procedure.

Many EU Member States continued to propose legislative amendments to comply with the requirements of Directives 2010/64/EU and 2012/13/EU – on the right to translation and interpretation, and to information in criminal proceedings – after the directives' transposition deadlines. Member States also adopted new laws to transpose Directive 2013/48/EU on the right to access to a lawyer. FRA's evidence from 2016 shows, however, that EU Member States still have work to do concerning these directives, particularly in adopting policy measures – such as concrete guidance and training on protecting the rights of suspected and accused persons. There is also untapped potential for the exchange of knowledge, good practices and experience concerning the three directives. Such exchanges could contribute to building an EU system of justice that works in synergy and respects fundamental rights.

FRA opinion 8.2

EU Member States – working closely with the European Commission and other EU bodies – should continue their efforts to ensure that procedural rights in criminal proceedings are duly reflected in national legal orders and effectively implemented across the EU. Such measures could include providing criminal justice actors with targeted and practical guidance and training, as well as increased possibilities for communication between these actors.

In 2016, many EU Member States focused on fulfilling the obligations imposed by the Victims' Rights Directive – such as reaching out to more victims and reinforcing the capacity and funding of victim support services, including specialised services for especially vulnerable victims such as children. A notable positive trend was that over a quarter of Member States increased funding to victim support services, leading to the expansion and improvement of services. Despite progress, one clear gap remains in several EU Member States: the lack of generic victim support services – meaning that not all crime victims across the EU can access support that may be vital for them to fulfil their rights.

FRA opinion 8.3

EU Member States should address gaps in the provision of generic victim support services. It is important to enable and empower crime victims to enjoy effectively their rights, in line with the minimum standards laid out in the Victims' Rights Directive. This should include strengthening the capacity and funding of comprehensive victim support services that all crime victims can access free of charge. In line with the directive, EU Member States should also strengthen specialised services for vulnerable victims, such as children and victims of hate crime.

In 2016, the final three EU Member States (Bulgaria, the Czech Republic and Latvia) signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). Meanwhile, in another Member State (Poland) statements were made on the possible renouncement of its commitments to the convention. When it comes to determining European standards for the protection of women against violence, the Istanbul Convention is the most important point of reference. In particular, Article 52 on emergency barring orders obliges parties to ensure that competent authorities are granted the power to order a perpetrator of domestic violence to leave the premises at which the victim resides. This is in line with the Victims' Rights Directive, which requires EU Member States to ensure that victims are protected against repeat victimisation. However, to date, only about half of the EU Member States have enacted legislation implementing this option in line with the Istanbul Convention. In addition, in Member States that have relevant legislation, assessments concerning its effectiveness are lacking.

FRA opinion 8.4

All EU Member States should consider ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and implementing it. In line with Article 52 of the Istanbul Convention, and to ensure the immediate and reliable protection of domestic violence victims against repeat victimisation, EU Member States should enact and effectively implement legal provisions allowing the police to order a perpetrator of domestic violence to vacate the residence of a victim and stay at a safe distance from the victim. EU Member States that have such legislation should examine its actual effectiveness on the ground.

Index of Member State references

Endnotes

1 For the European Commission's assessment of progress in Romania in this area since the start of the Co-operation and Verification Mechanism in 2012 up until 2016, see European Commission (2017), *Report from the Commission to the European Parliament and the Council on progress in Romania under the Cooperation and Verification Mechanism*, COM(2017) 44 final, Brussels, 25 January 2017.

2 European Commission (2014), 'European Commission presents a framework to safeguard the rule of law in the European Union', Press release, 11 March 2014.

3 European Commission (2016), *Commission adopts Rule of Law Opinion on the situation in Poland*, Brussels, 1 June 2016.

4 European Commission (2016), *Rule of Law: Commission issues recommendation to Poland*, Brussels, 27 July 2016.

5 European Parliament (2016), *Resolution on the situation in Poland, Strasbourg*, 13 April 2016; European Parliament (2016), *Resolution on the recent developments in Poland and their impact on fundamental rights as laid down in the Charter of Fundamental Rights of the European Union*, Strasbourg, 14 September 2016.

6 Poland, 'Ministry of Foreign Affairs (MFA) statement on the Polish government's response to Commission Recommendation of 27.07.2016', Warsaw, 27 October 2016.

7 European Commission (2016), *Commission recommendation regarding the rule of law in Poland - complementary to Commission Recommendation (EU) 2016/1374*, Brussels, 21 December 2016.

8 Council of Europe, *Venice Commission, Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland*, Venice, 11–12 March 2016.

9 Council of Europe, Commissioner for Human Rights, *Erosion of rule of law threatens human rights protection in Poland*, CommDH021(2016), Warsaw, 15 June 2016; United Nations (UN), Human Rights Committee (2016), *Concluding observations on the seventh periodic report of Poland*, CCPR/C/POL/CO/7, Geneva, 31 October 2016.

10 European Parliament, *Establishment of an EU mechanism on democracy, the rule of law and fundamental rights*, 25 October 2016

11 European Commission (2016), *The 2016 EU Justice Scoreboard*, COM(2016) 199 final, Brussels, 11 April 2016.

12 Council of Europe (2016), *Plan of Action on strengthening judicial independence and impartiality*, CM(2016) 36 final, Strasbourg, 21 April 2016.

13 Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, OJ L 65, 11 March 2016, p. 111.

14 Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, OJ L 132, 21 May 2016, p. 1–20.

15 Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, OJ L 297, 4 November 2016, p. 1–8.

16 Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union.

17 Protocol on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice.

18 Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280, 26 October 2010.

19 CJEU, *Criminal Proceedings against István Balogh*, C-25/15, 9 June 2016.

20 Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 294 6 November 2013, p. 1–12.

21 Directive 2012/13/EU of the European Parliament and of the Council of 22 May on the right to information in criminal proceedings, OJ L 142, 1 June 2012, p. 1–10.

22 ECtHR, *Ibrahim and Others v. United Kingdom [GC]*, 50541/08, 13 September 2016.

23 Belgium, Act concerning certain rights of persons subject to a questioning (*Loi relatif à certains droits des personnes soumises à un interrogatoire/Wet betreffende bepaalde rechten van personen die worden verhoord*), 10 November 2016.

24 Hungary, Act XXIX of 2016 on judicial experts (*2016. évi XXIX. törvény az igazságügyi szakértőkről*).

25 Italy, Legislative Decree No. 129 of June 2016 (*Decreto Legislativo n. 129/2016, Disposizioni integrative e correttive del decreto legislativo 4 marzo 2014, n. 32, recante attuazione della direttiva 2010/64/UE sul diritto all'interpretazione e alla traduzione nei procedimenti penali*). See also Eurojus, Novità legislative in tema di assistenza linguistica nel procedimento penale.

26 Ireland, Houses of the Oireachtas, Recognition of Irish Sign Language for the Deaf Community Bill 2016.

27 United Kingdom, HM Government, Home Office (2016), 'Consultation: Revising PACE codes C, D and H', 23 March 2016.

28 Cyprus, Police Regulation No. 5/48 (*Αστυνομική Διάταξη Αρ. 5/48*), 1 February 2016.

29 Letter from the Ministry of Justice and Public Order, 5 October 2016.

30 Finland, Supreme Court, Decision No. R2014/613, 10 February 2016.

31 Greece, Appeals Penal Court of Athens, Decision No. 3242/2016.

32 Lithuania, Kaunas Regional Court, Decision No. 1S-44-593/2016, 5 January 2016.

33 Irish Translators and Interpreters' Association, *ITIA Bulletin, Sign Language Interpreter Shortage in Donegal*, No. 3/2016, pp. 7–8.

34 European Commission (2016), 'November infringements package: key decisions', Fact sheet, Brussels, 17 November 2016.

35 Lithuania, Parliament (*Seimas*) (2016), Draft on the amendments of Art. 8, 71 (1) and 103 of the Criminal Procedure Code (*Baudžiamojo proceso kodekso 8, 71(1) ir 103 straipsnių*), No. 16-13525, 12 December 2016.

36 Latvia, Amendments to the Criminal Procedure Law (*Grozījumi Kriminālprocesa likumā*), 18 February 2016.

37 Cyprus Police, 'Letter of rights for persons arrested and/or detained' (*Έγγραφο δικαιωμάτων προσώπων που συλλαμβάνονται και/ή τελούν υπό κράτηση*), Ref. Form Pol. 129.

38 Malta, Ministry for Justice (2016), 'Launch of quality service charter for persons accessing court services' (*Imniedi*

Quality Service Charter Għal Min Juża L-Qrati F'kuntest Ta' Riforma Li Qed Taħdem), Press release, 28 July 2016.

39 France, Court of Cassation, Decision No. 15-83323, 22 June 2016 (Crim, 22 juin 2016, *non publié au bulletin*).

40 Belgium, Act concerning certain rights of persons subject to a questioning (*Loi relatif à certains droits des personnes soumises à un interrogatoire/Wet betreffende bepaalde rechten van personen die worden verhoord*), 21 November 2016.

41 Finland, *Säädökset alkuperäisinä: 2016*, Criminal Investigation Act (*Esitutkintalaki/förundersökningslagen*), Act No. 805/2011) as amended 28.10.2016/892, Act on the Treatment of Persons in Police Custody (*Laki poliisin säilyttämien henkilöiden kohtelusta/lag om behandlingen av personer i förvar hos polisen*), Act No. 841/2006), as amended 28.10.2016/893, Act on Imposing Fines and Fixed Fines (*laki sakon ja rikesakon määräämisestä/lag om föreläggande av böter och ordningsbot*), Act No. 754/2010) as amended 28.10.2016/894 Summary Penal Judgement Procedure Act (*Laki rangaistusmääräysmenettelystä/lag om strafforderförfarande*, Act No. 692/1993) as amended 28.10.2016/895, Fixed Fine Procedure Act (*Laki rikesakkomenettelystä/lag om ordningsbotsförfarande*, Act No. 66/1983) as amended 28.10.2016/896, Act on Extradition on the Basis of an Offence Between Finland and Other Member States of the European Union (*Laki rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä/lag om utlämning för brott mellan Finland och de övriga medlemsstaterna i Europeiska unionen*, Act No. 897/2016) as amended 28.10.2016/897, Legal Aid Act (*oikeusapulaki/rättshjälpslagen*, Act. No. 257/2002) as amended 28.10.2016/898.

42 Hungary, Act CIII of 2016 on the amendment of acts regulating European Union and international judicial cooperation and certain acts related to matters of criminal law in view of legal harmonisation (*2016. évi CIII. törvényaz európai uniós és a nemzetközi bűnügyi együttműködést szabályozó törvények, valamint egyes büntetőjogi tárgyú törvények jogharmonizációs célú módosításáról*), 1 January 2017.

43 Italy, *Decreto Legislativo n. 184/2016, Attuazione della direttiva 2013/48/UE, relativa al diritto di avvalersi di un difensore nel procedimento penale e nel procedimento di esecuzione del mandato d'arresto europeo, al diritto di informare un terzo al momento della privazione della liberta' personale e al diritto delle persone private della liberta' personale di comunicare con terzi e con le Autorita' consolari*, 18 October 2016.

44 Latvia, Amendments to the Criminal Procedure Law (*Grozījumi Kriminālprocesa likumā*), 18 February 2016.

45 Malta, Ministry for Justice, Culture and Local Government, Strengthening the guarantees of justice for citizens.

46 Slovakia, *Zákon č. 316/2016 Z.z. o uznávaní a výkone majetkového rozhodnutia vydaného v trestnom konaní v Európskej únii a o zmene a doplnení niektorých zákonov*, 29 November 2016.

47 Sweden, Code of Judicial Procedure (*Rättegångsbalk (1942:740)*), 18 July 1942; Sweden, Young Offenders (Special Provisions) Act (*Lag med särskilda bestämmelser om unga lagöverträdare (1964:167)*), 20 March 1964; Sweden, Act on Detention (*Häkteslag (2010:611)*), 10 June 2010.

48 Netherlands, Senate (*Eerste Kamer der Staten-Generaal*) (2016), *Recht op toegang tot een advocaat in strafprocedures*, 31 May 2016.

49 Romania, The challenge filed by the Romanian Government before the Constitutional Court of Romania in relation to Romania, Draft Law no. 555/2015, modifying and adding to Law no. 51/1995 on the organization and conduct of the lawyers profession (*PL-x nr. 555/2015 Proiect de Lege privind modificarea şi completarea Legii nr. 51/1995 pentru organizarea şi exercitarea profesiei de avocat*), 2 November 2016.

50 Cyprus, Bill amending the law on the rights of persons arrested and detained of 2016 (*Ο περί των Δικαιωμάτων Προσώπων που Συλλαμβάνονται και Τελούν υπό Κράτηση (Τροποποιητικός) Νόμος του 2016*), File No. 23.01.057.111-2016, 9 September 2016; Cyprus, Bill amending the law on the European arrest warrant and the procedures of surrender of wanted persons between Member States of the EU of 2016 (*Ο περί Ευρωπαϊκού Εντάλματος Σύλληψης και των Διαδικασιών Παράδοσης Εκζητουμένων μεταξύ των Κρατών Μελών της Ευρωπαϊκής Ενωσης (Τροποποιητικός) Νόμος του 2016*), File No. 23.01.057.112-2016, 9 September 2016.

51 Czech Republic, Draft amendment to the act on international justice cooperation in criminal matters (*Novela zákona o mezinárodní justiční spolupráci ve věcech trestních*), Chamber Print No. 801, approved in third reading in the Chamber of Deputies and currently debated in the Senate (as of 7 January 2017).

52 Germany, German Bundestag (*Deutscher Bundestag*) (2016), *Gesetzgebung – Zweites Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren und zur Änderung des Schöffenrechts*.

53 Response from the Ministry of Justice, Transparency and Human Rights (*Υπουργείου Δικαιοσύνης, Διαφάνειας και Ανθρωπίνων Δικαιωμάτων*), to the request for data from the NFP, Prot. No. 85368/15.11.2016.

54 Luxembourg, 6758 Draft law on the strengthening of procedural rights in criminal law (*6758 Projet de loi renforçant les garanties procédurales en matière pénale*), 23 December 2014.

55 Lithuania, Parliament (*Seimas*) (2016), Draft on the amendments of Art. 10, 21, 44, 48, 50, 52, 69, 69 (1), 71 (1), 72, 128, 140, 168, 190, 192, 196, 197 and 233 and the annex of the Criminal Procedure Code (*Baudžiamojo proceso kodekso 10, 21, 44, 48, 50, 52, 69, 69 (1), 71(1), 72, 128, 140, 168, 190, 192, 196, 197 ir 233 straipsnių ir priedo pakeitimo įstatymo projektas*), No. XIIIP-115, 30 November 2016; Lithuania, Parliament (*Seimas*), Draft of the Law amending Art. 14, 23 and 31 and Annex to the Law on the Enforcement of Pre-Trial Detention (*Suėmimo vykdymo įstatymo 14, 23 ir 31 straipsnių ir priedo pakeitimo įstatymo projektas*), 30 November 2016, No. XIIIP-117.

56 Netherlands, Public Prosecution Service (Openbaar Ministerie) (2016), *Raadsman bij verhoor per 1 maart 2016*, Letter of 10 February 2016.

57 Directive Proposal (EU) 2016/0208 of the European Parliament and of the Council of 2 December 2015 on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism, COM (2015) 625 final, 2015/0281.

58 Victim Support Europe (2016), Information on support for victims of 22 March attacks in Brussels.

59 Victim Support Europe, Institut national d'aide aux victimes et de médiation (INAVEM).

60 Croatia, Association for Support to Victims and Witnesses (*Udruga za podršku žrtvama i svjedocima*) (2016), personal communication, 28 September 2016.

61 Latvia, 'Information and support for crime victims or crime witnesses' (*Informēs par atbalsta iespējām nozieguma upuriem*).

62 European Commission (2012), '116006 – Victims of crime', 31 May 2012.

63 France, 'Know your rights' (*Connaître vos droits*).

64 For the content of the forms, see Bulgaria, Ministry of the Interior (*Министерство на вътрешните работи*).

65 Bulgaria, Ministry of the Interior (*Министерство на вътрешните работи*) (2016), 'Forms were approved for complaints about crimes of general nature, available to victims in five languages' (*Утвърдени са типови бланки на сообщения за извършени престъпления от общ характер, достъпни за пострадалите лица на пет езика*), Press release, 29 December 2015.

66 Information obtained from Victim Support (*Rikosuhrispäivystys/Brottsofferjour*).

67 Information obtained from Victim Support Finland, personal communication, 24 October 2016.

68 Information obtained from the website of Victim Support Finland; Victim Support Finland, personal communication, 17 and 25 January 2017.

69 Information from the Ministry of Justice, personal communication, 7 October 2016.

70 Poland, Ministry of Justice (*Ministerstwo Sprawiedliwości*), statement of the deputy Minister of Justice (*Konferencja „Nowe środki ochrony i pomocy dla ofiar" z udziałem wiceministra sprawiedliwości*).

71 Department of Justice and Equality, personal communication, 22 December 2016.

72 France, Minister of Justice (*Ministère de la justice*), Budget 2016.

73 Denmark, Secretariat for the Criminal Injuries Compensation Board, personal communication, 3 October 2016.

74 FRA (2015) *Fundamental rights: challenges and achievements in 2014*, Luxembourg, Publications Office of the European Union, 2015 (Publications Office); and FRA (2015) *Victims of crime in the EU: the extent and nature of support for victims*, Publications Office.

75 Victim Support Europe (2016), Newsletter, 21 June 2016.

76 Victim Support Finland, personal communication, 24 October 2016. See also 'RIKUchat – palvelu verkossa'.

77 *Ibid.* See also FRA (2015), *Victims of crime in the EU: The extent and nature of support for victims*, Luxembourg, Publications Office.

78 FRA (2016), *Ensuring justice for hate crime victims: professional perspectives*, Luxembourg, Publications Office.

79 Ireland, Department of Justice and Equality, personal communication, 22 December 2016.

80 Denmark, Ministry of Children and Social Affairs, personal communication, 6 December 2016.

81 Bulgaria, Alliance for Protection against Gender-based Violence (*Алианс за защита от насилие, основано на пола*) (2016), 'The State Agency for Child Protection and the Alliance for Protection against Gender-Based Violence join efforts in protecting children' (*Държавната агенция за закрила на детето и "Алианс за защита от насилие, основано на пола" обединяват усилия в защита на децата*), Press release, 20 April 2016; Bulgaria, National Network for Children (*Национална мрежа за децата, НМД*) (2016), 'Practices for child-friendly hearing are expanding' (*Практиката за щадящо изслушване на деца се разширява*), Press release, 16 November 2016.

82 Bulgaria, National Network for Children (*Национална мрежа за децата*) (2016), 'Paediatricians will be trained how to recognise violence against children' (*Обучават педиатрите как да разпознават насилие на деца*), Press release, 21 November 2016.

83 For more information, see Portuguese Association for Victim Support (2015), 'Project CARE – Network of specialised support to children and youngsters victims of sexual violence'.

84 Kouyioundas, D. (2016), 'The police acquires special investigative team for investigating cases of sexual abuse of children' (*Η αστυνομία αποκτά Ειδική Ανακριτική Ομάδα για διερεύνηση υποθέσεων σεξουαλικής κακοποίησης παιδιών*), 3 December 2016.

85 Announcement of the Commissioner for the Protection of the Rights of the Child Leda Koursoumba regarding the decision of the Police to set up a special investigating unit to investigate all cases of sexual abuse of minors (*Ανακοίνωση της Επιτρόπου Προστασίας των Δικαιωμάτων του Παιδιού, Λήδας Κουρσουμπά, αναφορικά με την απόφαση της Αστυνομίας για σύσταση ειδικής ανακριτικής ομάδας που θα διερευνά όλες τις υποθέσεις σεξουαλικής κακοποίησης ανηλίκων*), 13 December 2016.

86 United Kingdom, Northern Ireland Department of Justice (2016), *Witness Charter: A charter for witnesses of crime*, 5 July 2016.

87 *Ibid.*

88 United Kingdom, Scottish Government (2016), 'Consultation on the minimum age of criminal responsibility', 18 March 2016.

89 United Kingdom, Victim Support Scotland (2016), 'Young people in the criminal justice system', 11 June 2016.

90 United Nations (UN), Committee on the Rights of the Child (CRC) (2016), *Concluding observations on the combined third to fifth periodic reports of Slovakia*, CRC/C/SVK/CO/3-5, 20 July 2016.

91 Slovakia, Coalition for Children Slovakia (2015), *Implementation of the convention on the rights of the child in Slovakia: Complementary report 2007-2015*, Bratislava, 7 July 2015.

92 For more information, see Eurobarometer survey on gender-based violence, November 2016.

93 See European Commission (2017), 2017 focused actions to combat violence against women.

94 European Parliament (2016), Motion for a Resolution on the EU accession to the Istanbul Convention on preventing and combating violence against women, 16 November 2016.

95 FRA (2016), *Fundamental Rights Report 2016*, Publications Office, p. 175.

96 European Commission (2016), *Proposal for a Council Decision on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence*, COM(2016) 111 final, Brussels, 4 March 2016.

97 European Institute for Gender Equality (EIGE) (2016), 'How can improved data collection help end violence against women?', 30 March 2016.

98 EIGE (2016), An analysis of the Victims' Rights Directive from a gender perspective.

99 Austria, Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) (2016), *Austrian report* (*GREVIO 1. Staatenbericht Österreich*).

100 GREVIO Shadow Report NGO-Coalition, *Austrian NGO-Shadow Report to GREVIO*, Vienna, September 2016.

101 Council of Europe, Istanbul Convention, *Action against women and domestic violence, provisional timetable for the first (baseline) evaluation procedure: 2016-2019*.

102 Portugal, 'Pilot project, shelter for men escaping domestic violence' (*Casa-abrigo para homens vítimas de violência doméstica avança como experiência piloto em setembro*), 29 June 2016.

103 Governmental Council for the Equality of Women and Men (*Rada vlády pro rovnost žen a mužů*), Working Group Men and Equality between Women and Men (*Pracovní skupina muži a rovnost žen a mužů*) (2016), 'Report on men and violence in the Czech Republic' (*Zpráva Muži a násilí v České republice*), 21 October 2016.

104 Council of Europe, *Chart of signatures and ratifications of the Istanbul Convention*.

105 Bulgaria, Ministry of Justice (*Министерство на правосъдието*) (2016), Letter No. 08-00-28/30.09.2016 to the Center for the Study of Democracy (*Писмо № 08-00-28/30.09.2016 г. до Центъра за изследване на демокрацията*), 30 September 2016.

106 Croatia, Government of the Republic of Croatia, Office for Gender equality, personal communication, 7 November 2016.

107 In Greece, a Special Law Drafting Committee was set up in the Hellenic Ministry of Justice, Transparency and Human Rights, with the mandate of adapting the national law to the convention's provisions. *See* GG B/617/28.2.2017, Ministerial Decision 17971/20.2.2017.

108 Luxembourg, Committee for the cooperation between professionals working against violence (*Comitée de coopération entre les professionnels dans le domaine de la lutte contre la violence*).

109 Romania, The National Agency for Equal Opportunities between Women and Men (*Agenția Națională pentru Egalitate de Șanse între Femei și Bărbați*, ANES).

110 Cyprus, Mediterranean Institute of Gender Studies (2016), *Mechanism for risk management and risk assessment* (*Μηχανισμός διαχείρισης και αξιολόγησης Κινδύνου*); Cyprus, Mediterranean Institute of Gender Studies (2016), *Mapping and assessment of legislative needs and requirements rendered necessary as a result of the signature and ratification of the Convention on the prevision and combating of violence against women and domestic violence* (*Χαρτογράφηση και αξιολόγηση νομοθετικών αναγκών και απαιτήσεων που προκύπτουν από την υπογραφή και την κύρωση της Σύμβασης για την πρόληψη και την καταπολέμηση της βίας κατά των γυναικών και της ενδοοικογενειακής βίας*).

111 Austria, Austrian Criminal Code (*Strafgesetzbuch*), Art. 205a.

112 This legislation changed Art. 177 and Art. 179 of the German Penal Code (*Strafgesetzbuch*).

113 See the new Art. 184i of the German Penal Code, according to the 50th Act Amending the Penal Code – Improving Protection of Sexual Self-Determination (*Fünfzigstes Gesetz zur Änderung des Strafgesetzbuches – Verbesserung des Schutzes der sexuellen Selbstbestimmung*), 4 November 2016.

114 Tim Diacono (2016), 'Bill to clamp down on domestic violence, rape tabled in Parliament', *Malta Today*, 22 November 2016.

115 This legislation amends the Criminal Code by introducing a new Art. 371/1, which criminalises 'voyeurism'; see Belgium, House of Representatives, Law amending the Criminal Code concerning the criminalisation of indecent assault (*Loi modifiant le Code pénal en ce qui concerne l'incrimination de l'attentat à la pudeur/Wet tot wijziging van het Strafwetboek wat de strafbaarstelling van de aanranding van de eerbaarheid betreft*), 1 February 2016, Art. 8–9.

116 Spain, 'Equality Committee Proposal mandating a Subcommittee within the Equality Commission in order to form a State Pact on Gender-Based Violence' (*Propuesta de la Comisión de Igualdad, de creación de una Subcomisión, en el seno de la misma, para un Pacto de Estado en materia de Violencia de Género*), Press release, 16 December 2016.

117 Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Poland from 9 to 12 February, para. 133.

118 Grochal, R. (2016), '*Rząd wypowie konwencję o zwalczaniu przemocy wobec kobiet?*', *Gazeta Wyborcza*, 7 December 2016; Kowalski, R. (2016), '*Rząd PiS przygotowuje wypowiedzenie konwencji antyprzemocowej*', *Oko Press*, 2 December 2016.

119 FRA (2014), *Violence against women: An EU-wide survey*, Publications Office, p. 27.

120 *Ibid.*, pp. 42–43.

121 For a detailed presentation and comparison of court orders, see van der Aa, S., Niemi, J., Sosa, L., Ferreira, A. and Baldry, A. (2015), *Mapping the legislation and assessing the impact of Protection Orders in the European Member States*, Oisterwijk, Wolf Legal Publishers.

122 European Commission (2016), *The July infringements package: key decisions*, Fact sheet, Brussels, 22 July 2016.

123 Compare van der Aa, S., Niemi, J., Sosa, L., Ferreira, A. and Baldry, A. (2015), *Mapping the legislation and assessing the impact of Protection Orders in the European Member States*, Oisterwijk, Wolf Legal Publishers.

124 The protocol can be accessed via the website of the Scotland police.

125 The Belgian authorities are currently evaluating the situation on the basis of the National Action Plan on combating all forms of gender-related violence 2015-2019; see the website of the Institute for Equality between women and men.

126 Vadim Poleshchuk, Mapping the legislation and assessing the impact of protection orders in the European Member States (POEMS) – National Report Estonia, p. 7.

127 The figures are based on data of the intervention centres ("*Interventionsstellen*") regarding the issued barring orders. *See* Annual Statistic for 2015, available on the website of Vienna's intervention centre.

128 Compare Suzan van der Aa et al. (2015), Mapping the legislation and assessing the impact of Protection Orders in the European Member States.

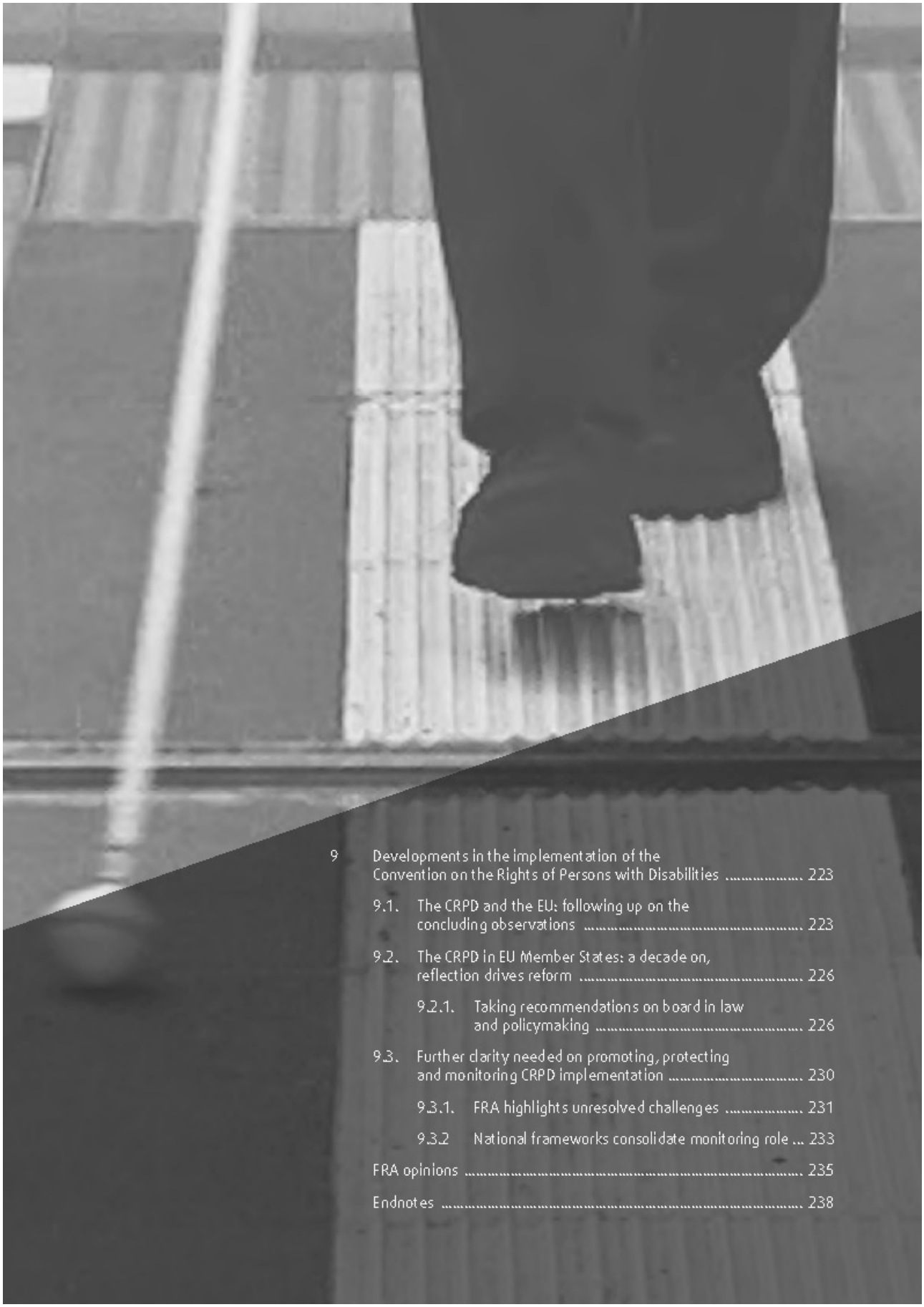
129 Wirth, J. (ed.) (2011), *System failure: Male violence against women and children as treated by the legal system in Hungary today*, Budapest, NANE Women's Rights Association and PATENT Association Against Patriarchy.

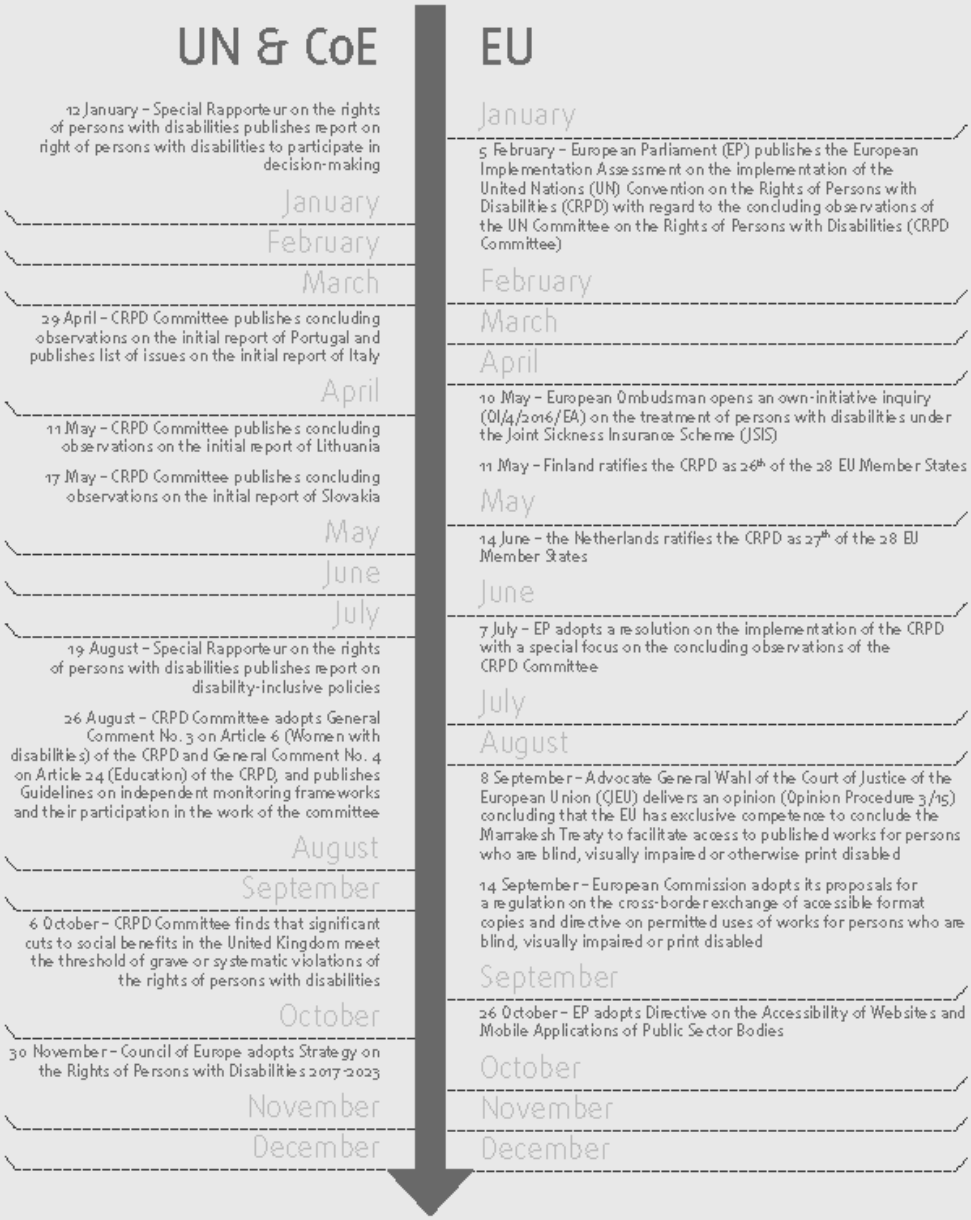
130 The Commission proposal can be accessed via the Commission's website.

131 UNHCR, United Nations Population Fund and Women's Refugee Commission, *Initial assessment report: Protection risks for women and girls in the European refugee and migrant crisis*.

132 Greece, Amnesty International, 'Nowhere safe: Refugee women on the Greek islands live in constant fear', 7 June 2016.

133 European Women's Lobby (EWL) (2016), *From conflict to peace? Women's voices – Recommendations on preventing and combating violence against refugee women and girls on the move*, Brussels, EWL.





9 Developments in the implementation of the Convention on the Rights of Persons with Disabilities

Ten years after the United Nations (UN) General Assembly adopted the Convention on the Rights of Persons with Disabilities (CRPD), the convention continues to spur significant legal and policy changes in the EU and its Member States. As attention gradually shifts from the first wave of CRPD-related reforms to consolidating progress made, the recommendations of review and complaints mechanisms at the international, European and national levels are increasingly important in identifying persisting implementation gaps. Monitoring frameworks established under Article 33 (2) of the convention can be essential tools to drive follow-up of these recommendations, particularly those stemming from reviews by the CRPD Committee – but they require independence, resources and solid legal foundations to carry out their tasks effectively.

9.1. The CRPD and the EU: following up on the concluding observations

In September 2015, the CRPD Committee published its assessment of the EU's progress in implementing the CRPD.[1] Developments at EU level in 2016 focused on efforts to follow up on the committee's wide-ranging recommendations (called 'concluding observations'). These developments highlight that, despite not being legally binding, concluding observations are important interpretative tools and provide clear guidance on fulfilling convention obligations to States parties, on which they can act. Further information on developments relating to discrimination based on disability is provided in Chapter 2 on Equality and non-discrimination.

Of particular importance in 2016 were steps to address the three recommendations on whose implementation the CRPD Committee requested that the EU report back by September 2016. These are the concluding observations on the declaration of competence; on the European Accessibility Act; and on the EU Framework to promote, protect and monitor the implementation of the CRPD (EU Framework) established under Article 33 (2) of the convention. In its response to the committee, sent in January 2017, the European Commission announced that an updated overview of EU legal acts referring to aspects of the CRPD would be published as an annex to the progress report on the European Disability Strategy 2010–2020. It also highlighted the publication of the proposal for the European Accessibility Act in December 2015. However, with discussions continuing in both the Council and the European Parliament, there is as yet no timeframe for its adoption. Section 9.3.1 covers issues relating to the European Commission's withdrawal from the EU Framework.

The CRPD Committee's recommendations, however, reach far beyond the three areas identified for urgent reform. Stretching across the full scope of EU competence, the concluding observations call for wide-ranging legal and policy initiatives that touch on the responsibilities and activities of all the EU's institutions and bodies. Moreover, it is a 'mixed agreement' covering some areas over which the EU has authority and some for which Member States are responsible, so responsibility for implementation rests with both the EU and the Member States, and requires close cooperation between them.[2]

Against this backdrop, a few examples of legislative, policy and complaints-related developments serve to highlight some of the steps EU institutions took in 2016

to respond to the CRPD Committee's recommendations within their respective mandates and activities. These examples underline two key ways in which the CRPD is driving processes of change at both the EU and national levels (see also Section 9.2):[3]

- Many initiatives specifically refer to individual recommendations from the CRPD Committee. This emphasises that the concluding observations can act as a blueprint for what the EU must do to fulfil its obligations under the CRPD.
- The activities and judgments of complaints mechanisms, both judicial and non-judicial, refer to the standards set out in the convention. This helps to clarify the scope of CRPD obligations and how they are to be met.

On the legislative side, the main developments concern accessibility of information and communications. Four years after the proposal was first presented, the EU adopted the Directive on the accessibility of websites and mobile applications of public sector bodies (Web Accessibility Directive) in October 2016.[4] Part of a package including the proposed European Accessibility Act and revision of the Audiovisual Media Services Directive,[5] the Web Accessibility Directive will require websites and apps of public sector bodies – ranging from public administrations and police departments to public hospitals and universities – to meet common accessibility standards.[6]

> *"Today, we have ensured that e-government is accessible to everyone. Just as physical government buildings should be accessible, so should the digital gateways. [...] But the internet is far more than government websites and apps. We need reform also for the private world of services, from banks to television stations to private hospitals. I hope that we can soon adopt the European Accessibility Act, so that both public and private services are accessible to all our citizens."*
>
> ***Dita Charanzová, MEP,*** *Rapporteur for the Directive of the European Parliament and of the Council on the accessibility of the websites and mobile applications of public sector bodies,* ***26 October 2016***

Reflecting concerns about possible implementation gaps, the directive includes a series of measures to ensure that its provisions become reality. Public sector bodies will have to regularly update an 'accessibility statement' on the compliance of their websites and apps with the directive, and establish a feedback mechanism to allow users to report compliance issues and request content that remains inaccessible. Moreover, they must provide a link to an 'enforcement procedure' for complaints about unsatisfactory responses to feedback or requests for information.[7] From its side, the European Commission will adopt implementing acts establishing a methodology for monitoring conformity with the directive. Member States have until 23 September 2018 to incorporate the directive into their national legislation.

In addition, in September the European Commission adopted two legislative proposals focused on helping people with visual impairments access published works, including special format books, audio books and other print material.[8] Part of the Commission's Digital Single Market Strategy,[9] the proposals would create exceptions to copyrights to increase the availability of publications in accessible formats. The explanatory memoranda for both proposals make specific reference to the CRPD and the EU Charter of Fundamental Rights, arguing that these commitments justify restrictions on the property rights of rights holders.

These proposals link directly to moves for the EU to become a party to the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled (Marrakesh Treaty).[10] In September 2015, the CRPD Committee specifically recommended ratifying it.[11] Although the EU signed the treaty in April 2014, seven EU Member States (the **Czech Republic**, **Finland**, **France**, **Hungary**, **Lithuania**, **Romania** and the **United Kingdom**) have opposed ratification, arguing that the EU does not have 'exclusive competence' to accept it.[12] Following a European Commission request to the Court of Justice of the European Union (CJEU) for an opinion, in September 2016 the Advocate General proposed that the court answer the Commission by finding that the EU "has exclusive competence to conclude the Marrakesh Treaty".[13] Should the CJEU follow this proposal in its final opinion, this would give significant impetus to finalising the EU's accession to the treaty, the second disability-related international agreement which the EU itself accepts.

The European Parliament adopted a relevant resolution in July 2016.[14] Although not legally binding, it gave a strong signal of the parliament's commitment to following up on the CRPD Committee's concluding observations. Addressing the full range of the committee's recommendations, the resolution covers both the importance of an overarching approach to CRPD implementation – such as taking measures "to mainstream disability in all legislation, policies and strategies" – and specific actions – for example, to support migrant women and girls with disabilities "to develop skills that would give them opportunities to obtain suitable employment".[15] Section 9.3 covers recommendations concerning the EU Framework. Importantly, organisations that represent persons with disabilities were actively involved throughout the process of preparing the report for adoption, reflecting the 'nothing about us, without us' philosophy enshrined in the CRPD.[16]

Promising practice

Promoting equal access for travellers with disabilities

The European Commission launched a pilot project implementing an EU Disability Card in eight EU Member States: Belgium, Cyprus, Estonia, Finland, Italy, Malta, Romania and Slovenia. The project aims to ensure mutual recognition of disability status between EU Member States, helping to increase access to certain benefits in the areas of culture, leisure, sport and transport for people with disabilities travelling to other EU countries.

For example, in Slovenia, the EU Disability Card project will run for 18 months from February 2016. After this point, all administrative units in Slovenia will begin to issue the card. The Ministry of Labour, Family, Social Affairs and Equal Opportunities is contributing 20 % of the funds, with the remaining costs met by EU Structural and Investment Funds.

For more information, see European Commission, 'EU Disability Card'

In terms of policy, the key focus was on the mid-term review, now termed progress report, of the European Disability Strategy 2010–2020.[17] The progress report was postponed until 2016 to allow it to take the CRPD Committee's concluding observations into account, and had not been published by year end. FRA contributed to the consultation on the review in March, highlighting several issues that could be taken into account in the review, including strengthening mechanisms for involving disabled persons' organisations (DPOs); specific measures addressing violence against women and children with disabilities; and actions targeting disability hate crime.

More broadly, the CRPD Committee's focus on the broad relevance of the convention across EU policymaking was reflected in the Commission's preliminary outline of the proposed European Pillar of Social Rights.[18] Acknowledging the barriers that persons with disabilities face in employment – particularly linked to inaccessible workplaces, tax-benefit disincentives and a lack of support services – the outline highlights the importance of ensuring enabling services and basic income security. While welcoming the outline in principle, several civil society organisations criticised the focus on disability benefits, and called for the rights of persons with disabilities to be mainstreamed throughout the proposed pillar, in line with the CRPD.[19]

EU institutions with a mandate to receive and investigate complaints also used these powers to respond to the concluding observations. These investigations help draw attention to the EU's obligations to implement the provisions of the CRPD within its own workings as a public administration, as well as through its law- and policymaking. For its part, the Committee of Petitions of the European Parliament (PETI Committee) updated its 2015 study on its protection role in the context of implementing the CRPD.[20] Complemented by a public workshop[21] and a PETI Committee debate on petitions about disability issues,[22] both now established as an annual practice, the study underlines the committee's increasing focus on disability issues.

The European Ombudsman's mandate is limited to investigating maladministration in the EU's institutions and other bodies. She initiated an own-initiative inquiry and two strategic initiatives explicitly linked to following up on the concluding observations. Such actions can serve as examples for ombudspersons at the national level.

In January and February, the Ombudsman twice wrote to the European Commission asking for information on how it will give effect to two concluding observations: one concerning accessibility for persons with disabilities of websites and online tools managed by the European Commission;[23] and the other concerning inclusive education at European Schools for children of EU staff.[24] In its response on website accessibility, the Commission stated that most of its websites are compliant with the Web Content Accessibility Guidelines, and it highlighted some of the steps it is taking to enhance accessibility.[25] On inclusive education, the Commission reiterated that the European Schools are not part of the EU public administration, but noted some of the additional support available for children with disabilities.[26]

In addition, in May the Ombudsman opened an own-initiative inquiry on whether or not the treatment of persons with disabilities under the EU's Joint Sickness Insurance Scheme (JSIS) complies with the CRPD.[27] The inquiry followed two complaints submitted by EU staff members whose children have disabilities. In writing to the President of the European Commission requesting information on how the Commission will follow up the CRPD Committee's recommendation in this area, the Ombudsman hinted that there is potential for a "more ambitious approach" on this issue than the "marginal scope for improvement" identified with regard to website accessibility and the European Schools.[28] The Commission's response highlighted that the JSIS is only one component of the EU's efforts to implement the CRPD with respect to its workforce, alongside other financial benefits to cover additional costs associated with an impairment.[29] Furthermore, the Commission announced its readiness to examine the application of the JSIS in relation to disability-related health needs, with the involvement of persons with disabilities and/or DPOs.

FRA ACTIVITY

FRA evidence supports UN work on rights of persons with disabilities

In addition to its reports, FRA draws on its body of evidence to provide country-specific and thematic input to the monitoring work and consultations of international bodies. In 2016, FRA submitted three contributions to the UN Special Rapporteur on the rights of persons with disabilities in relation to social protection, the right to participate in decision-making and provision of support to persons with disabilities. FRA also provided written input to the CRPD Committee on the right to live independently and be included in the community, and on national implementation and monitoring; and to the UN Office of the High Commissioner for Human Rights (OHCHR) on equality and non-discrimination for persons with disabilities.

All FRA input to the UN Special Rapporteur is available under the respective 'Issue in focus'; FRA input to the CRPD Committee is available on the committee's website; FRA input to OHCHR is available on the disability section of the OHCHR website.

9.2. The CRPD in EU Member States: a decade on, reflection drives reform

> *"Ten years ago the global community witnessed the adoption of the first international treaty on the rights of persons of disabilities from a human rights-based approach. [...] The Convention has given visibility to the rights of persons with disabilities at a local, national, and international level. However, [...] many persons with disabilities continue to face significant barriers in the enjoyment of their rights, in particular women with disabilities and those belonging to historically discriminated groups."*
>
> *Catalina Devandas Aguilar, UN Special Rapporteur on the rights of persons with disabilities, Speech at 2016 Social Forum, 3 October 2016*

The UN General Assembly adopted the CRPD in December 2006.[30] In the 10 years since then, the convention has consistently spurred significant legal and policy changes across the EU Member States. Evidence from 2016 illustrates that reforms are increasingly drawing on experience gained both nationally and internationally from developing and implementing measures to implement the CRPD. Thus, it reiterates the role of twin drivers of change: guidance from the CRPD Committee, whether as concluding observations, general comments or inquiries; and the growing body of national and European case law that makes reference to the convention.

This is reflected in the most prominent development in 2016: ratification of the CRPD by **Finland** – which also ratified the Optional Protocol to the Convention – and the **Netherlands**, leaving **Ireland** as the only Member State still to do so. Both ratifications mark the end of significant reform processes to bring national legal frameworks in line with the provisions of the CRPD. The Dutch Act implementing the CRPD included a package of legislative amendments in areas as varied as non-discrimination, elections, social support, participation and youth.[31] Similarly, before ratifying the convention, Finland finalised legislative amendments to the Act on special care for persons with intellectual disabilities, to meet the CRPD requirements on the right to liberty and security of the person.[32] This issue was discussed in FRA's *Fundamental Rights Report 2016*.[33]

FRA ACTIVITY

Highlighting barriers faced by migrants with disabilities

Article 11 of the CRPD, on situations of risk and humanitarian emergencies, requires States parties to the convention to "take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict [and] humanitarian emergencies".

Every month, FRA collects data on the fundamental rights situation of people arriving in Member States that are particularly affected by large migration movements. In August, FRA focused specifically on the situation of migrants with disabilities. The findings highlight that there is a lack of formal procedures to identify migrants and refugees with disabilities, with significant knock-on effects for the provision of targeted support and assistance. They also indicate that identification of, and support for, persons with disabilities relies heavily on the expertise and knowledge of individual staff. However, a lack of relevant training can impede the identification of impairments, particularly those that are less immediately visible.

For more information, see FRA's August 2016 Thematic focus on migrants with disabilities and Chapter 5 of the present report

9.2.1. Taking recommendations on board in law and policymaking

More broadly, the trend for reflection is exemplified by looking at reforms in five key areas:

- strategies and action plans for implementing the CRPD;
- education (Article 24);
- participation in political and public life (Article 29);

- accessibility (Article 9);
- living independently and being included in the community (Article 19).

These issues are the subject of existing or forthcoming general comments by the CRPD Committee, and they are increasingly addressed from the perspective of the general principle of non-discrimination.[34] Notably, they have also featured consistently in FRA's annual Fundamental Rights Reports, signifying their place at the heart of national efforts to implement the CRPD. One mainstay of national actions to implement the CRPD is strategies or action plans related to the rights of persons with disabilities. Rather than new national action plans, such as those adopted in **Bulgaria** and **Romania** (see Table 9.1), much activity now focuses on evaluating existing action plans and developing their successors. As part of the **Swedish** Strategy for the implementation of disability policy,[35] the country's Agency for Participation analysed developments in national disability policy across all state authorities during its 2011–2016 implementation period. The evaluation highlighted that, while there has been positive change in the areas of art and culture, media, information technology and transport, progress in improving physical accessibility and access to the labour market has been slow.[36]

One obvious way to take such evaluations further is to feed the results into the development of follow-up strategies. The **German** government built on the findings of the 2014 evaluation of its previous strategy, as well as the CRPD Committee's concluding observations,[37] in developing its second National action plan to implement the CRPD.[38] The plan is built around 175 measures in 13 areas, including work, education, mobility, rehabilitation and health, social and political participation, and – as a new area – awareness raising. The German Institute for Human Rights welcomed it as marking a "quantum leap" forward in conceptual terms. The institute, which is the monitoring body under Article 33 (2) of the convention, did however express concern that the plan lacks sufficient proposals to address issues such as coercion in the psychiatric system, reforms of electoral law – which excludes certain groups of persons with disabilities from the right to vote – and the scaling down of sheltered workshops.[39]

The Council of Europe's 2017–2023 Strategy on the Rights of Persons with Disabilities, adopted in November, can support efforts at the national level.[40] Drawing on the evaluation of the 2006–2015 strategy,[41] its priority areas (equality and non-discrimination; awareness raising; accessibility; equal recognition before the law; and freedom from exploitation, violence and abuse) and cross-cutting issues (participation, cooperation and coordination; universal design and reasonable accommodation; gender equality; multiple discrimination; and education and training) reflect FRA input during the development of the strategy.

Table 9.1: Strategies and action plans relevant to the CRPD adopted in 2016, by EU Member State

Member State	Strategy or action plan
BE	Walloon region, French-speaking community and Brussels-Capital region: Cross-sectional autism plan (*Plan Transversal Autisme*)
BG	National strategy for the persons with disabilities 2016–2020 (*Национална стратегия за хората с увреждания 2016–2020 г.*)
DE	Second National action plan to implement the UN Convention on the Rights of Persons with Disabilities (*Nationaler Aktionsplan 2.0 der Bundesregierung zur Umsetzung der UN-Behindertenrechtskonvention*)
ES	Comprehensive plan for supporting families 2015–2017 (*Plan Integral de Apoyo a la Familia 2015–2017*)
RO	National strategy: a society without barriers for persons with disabilities 2016–2020 (*Strategia națională 'O societate fără bariere pentru persoanele cu dizabilități' 2016–2020*)
SK	Updates to National programme for the development of living conditions for citizens with disabilities 2014–2020 (*Národný program rozvoja životných podmienok občanov so zdravotným postihnutím na roky 2014 – 2020*)
UK	Scottish Government, A fairer Scotland for disabled people – our delivery plan to 2021 for the United Nations Convention on the Rights of Persons with Disabilities
	Northern Ireland physical and sensory disability strategy and action plan extended to 2017 Northern Ireland, Active living: no limits – 2016–2021
	Welsh Government, Together for mental health: delivery plan 2016–2019
	Action against hate: the UK government's plan for tackling hate crime

Source: *FRA, 2016*

Turning to specific articles of the convention, the CRPD Committee strengthened its guidance on obligations under the convention through the publication of two further general comments, on women and girls with disabilities (Article 6)[42] and on inclusive education (Article 24).[43] That on inclusive education reflects an area of persistent concern for the committee, which has repeatedly highlighted ongoing segregation of children with disabilities in the education systems of EU Member States.[44] Of particular note are the concrete measures to implement inclusive education at the national level spelled out by the committee. They include ensuring that responsibility for the education of persons with disabilities rests with the education ministry, rather than social welfare or health; introducing a substantive right to inclusive education within the legislative framework; and the development of an educational sector plan in conjunction with DPOs.[45]

> *"Inclusion involves access to and progress in high-quality formal and informal education without discrimination. [...] States parties should respect, protect and fulfil each of the essential features of the right to inclusive education: availability, accessibility, acceptability, adaptability."*
>
> *CRPD Committee, General comment No. 4 – Article 24: Right to inclusive education, CRPD/C/GC/4, 2 September 2016, paras. 9 and 38*

Ongoing developments within EU Member States reflect several of these measures. Corresponding to the general comment's focus on reasonable accommodation, a proposal by the French Community in **Belgium** aims to clarify how accommodations for pupils with 'special needs' are applied for and reviewed.[46] The country's equality body, however, highlighted that provision of reasonable accommodation is an obligation under the CRPD rather than a possibility, as the current proposal implies.[47] The equality body also expressed concern that that the proposal fails to reflect the human rights-based approach to disability and that it was not subject to accessible public consultation in line with Article 4 (3) of the convention. These reflect recurring criticisms of legislative and policy developments linked to CRPD implementation.[48]

Achieving inclusive education requires more than a robust legislative framework, however. One key task is devising and providing targeted training, a repeated recommendation in the general comment. In this vein, the **United Kingdom** Equality and Human Rights Commission developed an online training kit to help schools fulfil their duty to provide reasonable accommodations for learners with disabilities. Structured in several modules, it includes practical activities to increase knowledge of reasonable accommodation and inclusive teaching strategies.[49] A project in **Croatia** supported by the European Social Fund addresses another crucial element: adequate assistance from qualified staff. For the school year 2016/2017, the project will fund 2,030 teaching assistants supporting 2,268 students with disabilities in primary and secondary schools.[50]

Promising practice

Developing self-advocacy skills of persons with disabilities

The Foundation Institute of Regional Development in **Poland** has launched a project to develop the self-advocacy skills of persons with disabilities in cooperation with US DPOs. Drawing on the US organisations' expertise in strengthening awareness and use of self-advocacy, the project will map current Polish experience and develop two online training modules targeting persons with disabilities and their families.

For more information, see Baza Dobrych Praktyk, 'Rozbudowa ruchu self-adwokatów w Polsce. Doświadczenia polskich i amerykańskich organizacji osób z niepełnosprawnościami'

The potential for general comments to shape national legislation over the longer term is underlined by the ongoing influence of the CRPD Committee's first two comments on legal capacity (Article 12) and accessibility (Article 9), published in 2014. A case in point is reforms related to realising the right to political participation. On legal capacity, the committee forcefully reiterated the importance of ensuring that people deprived of legal capacity do not as a consequence lose the right to vote.[51] Concerning accessibility, it highlighted that people with disabilities cannot exercise the right to political participation without accessible voting procedures, facilities and materials.[52] FRA first looked at the legal capacity side in a 2010 report[53] and has tracked developments in both areas since, in particular through the development of human rights indicators on the right to political participation of persons with disabilities.[54]

Reforms in **Denmark** address both capacity and accessibility concerns. Legal amendments mean that persons under full legal guardianship are now entitled to vote and run for election in municipal, regional and European Parliament elections.[55] The amendment, however, highlights the challenge of severing often long-standing and deeply rooted links between legal capacity and the right to vote: it does not grant the right to vote in elections to the Danish Parliament or referendums, as this would, according to the Ministry of Justice, violate the country's constitution.

Although less likely to come up against such legal barriers, making elections more accessible has also proved a challenge. Further proposed reforms to Danish electoral law provide persons with "immediately ascertainable or documentable physical or mental disabilities" with the right to be assisted in

voting by a person chosen by them, without this being overseen by polling station officials, if they express this wish explicitly and unambiguously. Officials would nevertheless retain the power to judge whether or not persons with disabilities explicitly and unambiguously express this wish.[56] Moreover, one of the reforms tied to **Dutch** ratification of the CRPD obliges local authorities to make polling stations accessible to persons with disabilities.[57] This is an improvement on the previous requirement, highlighted in FRA's 2014 report, for at least one in four polling stations to be "as accessible as possible".[58] However, no detail is given on what makes a polling station accessible or what criteria will be used to assess accessibility.

Away from elections, the range of Member State action to improve accessibility reflects the role of accessibility in realising CRPD provisions across different areas of life. In line with calls from the CRPD Committee to view accessibility in the context of non-discrimination, the end of transitional provisions meant that it has been possible since January to claim compensation in **Austria** if buildings or transport facilities are not barrier-free, with exemptions where the removal of barriers would require disproportionate efforts.[59] In the area of housing, **Hungary** increased the value of the allowance for ensuring accessibility from HUF 150,000 (€ 490), claimable only once, to HUF 300,000 (€ 980), which can be requested every 10 years.[60]

Accessibility is also an area where national jurisprudence is giving further impetus to CRPD implementation. A **Bulgarian** applicant with physical impairments claimed financial compensation for damages suffered as a consequence of inaccessible court premises, which meant he – a wheelchair user – needed the help of two people to enter the building.[61] Again drawing on the principle of equal treatment, the court found that, as there was no way for persons using wheelchairs to enter or move around the building without help, the applicant's right to equal treatment had been violated. However, the court did not make reference to the CRPD, although the applicant explicitly mentioned its provisions concerning discrimination on the grounds of disability and accessibility.

The subject of the CRPD Committee's next general comment will be the right to live independently and be included in the community (Article 19). In preparation, the committee held a day of general discussion in April 2016, at which FRA joined a wide range of other stakeholders and presented its work on the transition from institutional to community-based support for persons with disabilities, or de-institutionalisation, and developing human rights indicators on Article 19.[62]

One issue likely to feature prominently in the general comment is appropriate and adequate funding to ensure individualised support in the community. This is particularly salient for the EU, given concerns expressed in a report prepared for the European Parliament that European Structural and Investment Funds (ESIF) have previously "been used to perpetuate the institutionalisation of people with disabilities".[63] The 2014–2020 ESIF funding period introduced ex ante conditions[64] – requirements that must be fulfilled before funds can be disbursed. They provide an important new set of safeguards. The next challenge is to heed the CRPD Committee's call for the Union "to strengthen the monitoring of the use of the ESIF [...] to ensure that they are used strictly for the development of support services for persons with disabilities [...] and not for the redevelopment or expansion of institutions".[65]

An essential aspect of effective monitoring will be thorough and systematic data on how ESIF are used. Several initiatives in 2016 show the range of possible evidence and relevant actors. In its complaints-receiving capacity, the PETI Committee investigated the use of ESIF in **Slovakia** and highlighted key considerations for achieving de-institutionalisation, ranging from close coordination of ESIF-funded projects to improving the accessibility of mainstream services.[66] From the civil society side, the independent initiative Community Living for Europe: Structural Funds Watch monitors the use of ESIF in the transition from institutional care to community-based living, including by collecting information on innovative uses of the funds in this area.[67] For its part, FRA's indicators and fieldwork on Article 19 both look extensively at the use of ESIF in de-institutionalisation.[68]

At the national level, too, funding for independent living remains a concern. Following complaints that cuts to social benefits in the **United Kingdom** disproportionately affected persons with disabilities, the CRPD Committee set up a confidential inquiry under Article 6 of the Optional Protocol to the CRPD, the first such process since the convention entered into force. Following wide-ranging consultations, the committee found that the consequences of welfare reforms enacted since 2010 meet "the threshold of grave or systematic violations of the rights of persons with disabilities".[69] Concerning independent living in particular, the committee found that the benefit cuts and stricter eligibility criteria had "limited the right of persons with disabilities to choose their residence on an equal basis with others" and hindered the de-institutionalisation process.[70] More positively, draft reforms to the law on long-term care insurance in **Luxembourg** aim to simplify current procedures for evaluating individuals' support needs and to better match services offered to the needs of each person, as part of a wider effort to reinforce individualisation at all levels of care.[71]

Promising practice

Preventing violence against persons with intellectual disabilities

The **Portuguese** National Federation of Social Solidarity Cooperatives and the Public Security Police (PSP), in partnership with the National Institute for Rehabilitation and the National Confederation of Social Solidarity Institutions, have developed a programme focused on preventing and responding to violence against people with intellectual disabilities. Under its auspices, security forces and organisations working with people with intellectual disabilities developed tailor-made training modules, which over 600 members of the PSP, professionals working with people with disabilities and disability organisations, have already taken. In addition, 130 police stations and 200 disability organisations have signed local cooperation agreements to improve coordination and develop needs-based responses.

For more information, see National Institute for Rehabilitation (Instituto Nacional para a Reabilitação), 'Ações de Formação no âmbito do Protocolo Significativo Azul'

Looking finally at national case law, two judgments concerning the definition of disability illustrate how interlinkages between national and European jurisprudence and the CRPD help to clarify the scope of the convention's obligations. Both cases concern discrimination based on disability in employment, and they draw directly on the CJEU's interpretation of the Employment Equality Directive in light of the CRPD. In the first, the Employment Appeal Tribunal in the **United Kingdom** relied on the definition of disability set out in Article 1 of the CRPD to interpret the much narrower concept of disability established in the 2010 Equality Act.[72] In his reasoning, the judge referenced the *HK Danmark v. Dansk Almennyttigt Boligselskab* judgment, in which the CJEU asserted that, with regard to the Employment Equality Directive, the "concept of 'disability' must be understood as referring to" Article 1 of the CRPD.[73]

The second case was brought by a man who had been rejected for a position as a driving instructor on account of his weight.[74] A **Belgian** labour tribunal employed the same judgment when ruling. Upholding his complaint, the judge stated that, while obesity is not itself a protected characteristic, the wording of Article 1 of the CRPD means that an employee's obesity can constitute a disability if it results in a limitation, resulting in long-term physical, mental or psychological impairment. That would make it a protected characteristic. Notably, the judge did not make reference to the 2014 *Kaltoft* case, which specifically addressed the question of when obesity can constitute disability for purposes of the Employment Equality Directive.[75] European Commission-funded training for members of the judiciary and legal practitioners on EU disability law and the CRPD builds capacity concerning the interlinkages between UN, EU and national standards.[76]

9.3. Further clarity needed on promoting, protecting and monitoring CRPD implementation

When the CRPD was adopted in 2006, the requirement for national monitoring set out in Article 33 (2) was identified as one of the new convention's most novel features. Understanding and implementing what is required of the bodies tasked under this article with promoting, protecting and monitoring CRPD implementation has long posed a challenge, both to States parties tasked with establishing these frameworks and to the frameworks themselves. Concluding observations consistently highlight issues regarding independence and resources.[77] Other difficulties include the need for a legal basis for frameworks and common understanding of their main tasks, as regularly illustrated in FRA's Fundamental Rights Reports as well as in the agency's legal opinion published in May 2016.[78]

Guidance from the CRPD Committee published in September 2016 sets out responses to many of these questions.[79] On resources and a legal basis, the committee's position is clear: the duty to maintain frameworks set out in Article 33 (2) requires States parties to ensure both that the "monitoring framework has a stable institutional basis which allows it to properly operate over time" and that it is "appropriately funded and resourced (technical and human expertise) through allocations from the national budget".[80]

On other issues, however, the guidelines reflect persistent difficulties in living up to the spirit of Article 33 (2). For example, frameworks should include tasks to promote, protect and monitor the implementation of the CRPD. The guidelines bring together previous suggestions for tasks put forth during the drafting of the convention and others that the Office of the High Commissioner for Human Rights made later (see Table 9.2).[81] These tasks include a wide range of research, scrutiny, complaints-based, advocacy and awareness-raising activities. Carrying them out is likely to prove challenging for frameworks, given the wide scope of the CRPD's provisions.

Similarly, questions remain regarding the requirement for independence. While the convention itself speaks of "a framework" including "one or more independent mechanisms, as appropriate", the guidelines refer

Table 9.2: Tasks of frameworks to promote, protect and monitor implementation of the CRPD

CRPD Committee Guidelines on independent monitoring frameworks and their participation in the work of the committee	
Promote	Raising awareness of the convention, capacity building and training initiatives
	Regular scrutiny of existing national legislation, regulation and practices as well as draft bills and other proposals, to ensure that they are consistent with convention requirements
	Encouraging the ratification of international human rights instruments
	Undertaking or facilitating research on the impact of the convention or of national legislation
	Providing technical advice to public authorities and other entities on implementing the convention
	Issuing reports at their own initiative, or when requested by a third party or a public authority
	Contributing to the reports that States parties are required to submit to United Nations bodies and committees
	Cooperating with international, regional and other national human rights institutions
Protect	Considering individual or group complaints alleging breaches of the convention
	Referring cases to the courts
	Participating in judicial proceedings
	Conducting inquiries
	Issuing reports related to complaints received and complaints processes
Monitor	Maintaining databases of activities undertaken to implementation the convention
	Developing indicators and benchmarks
	Developing a system to assess the impact of implementing legislation and policies

Source: FRA, 2016 (based on CRPD Committee's 2016 Guidelines on Independent Monitoring Frameworks and their participation in the work of the Committee)

throughout to "independent monitoring frameworks" when discussing Article 33 (2) bodies.[82] This shift in terminology seems to move the independence requirement from "one or more mechanisms" to the monitoring framework as a whole. This raises doubts about the composition of existing frameworks in which some but not all members are independent. This departure from the wording of the convention could risk undermining conceptual and operational clarity concerning Article 33 (2), as both FRA and the Global Alliance of National Human Rights Institutions highlighted in their contributions to the consultation on the draft guidelines.[83]

9.3.1. FRA highlights unresolved challenges

In the wake of the concluding observations on the EU, the Article 33 (2) framework at the EU level also faces questions concerning its scope of activities, financing and functioning, and lack of a solid legal basis, as FRA noted in its *Fundamental Rights Report 2016*. These are further exacerbated by the very different mandates and roles of its members: the European Parliament, the European Ombudsman, FRA and the European Disability Forum (EDF). To clarify the "requirements for full compliance with the CRPD as it relates to the status and effective functioning of the EU Framework, taking into account the specificities of the EU", in March the European Parliament requested a FRA opinion on "requirements under Article 33 (2) of the CRPD within the EU context".[84]

Drawing on existing institutional practice in EU Member States, FRA's opinion is clustered around four key areas of concern to Article 33 (2) frameworks: composition, legal basis and involvement of persons with disabilities; status and efficiency of the independent mechanism; framework tasks; and working arrangements (see Figure 9.1 and Table 9.2). Several of its findings are reflected in the European Parliament's resolution on implementation of the CRPD (see Section 9.1), which "calls on the budget authorities to allocate adequate resources to enable the EU Framework to perform its functions independently".[85] While the EU Framework itself could follow up some of the opinions, notably concerning working arrangements, many are reliant on actions by the EU legislature to clarify the framework's scope of activity and resources.

Against this backdrop, the EU Framework met representatives of the EU Member States during a meeting of the Council of the EU's Working party on human rights in July 2016.[86] In addition to highlighting the framework's important role in improving the lives of people with disabilities in the EU, framework members drew attention to two 'enablers' of a strong and impactful EU Framework: resources to perform the promotion,

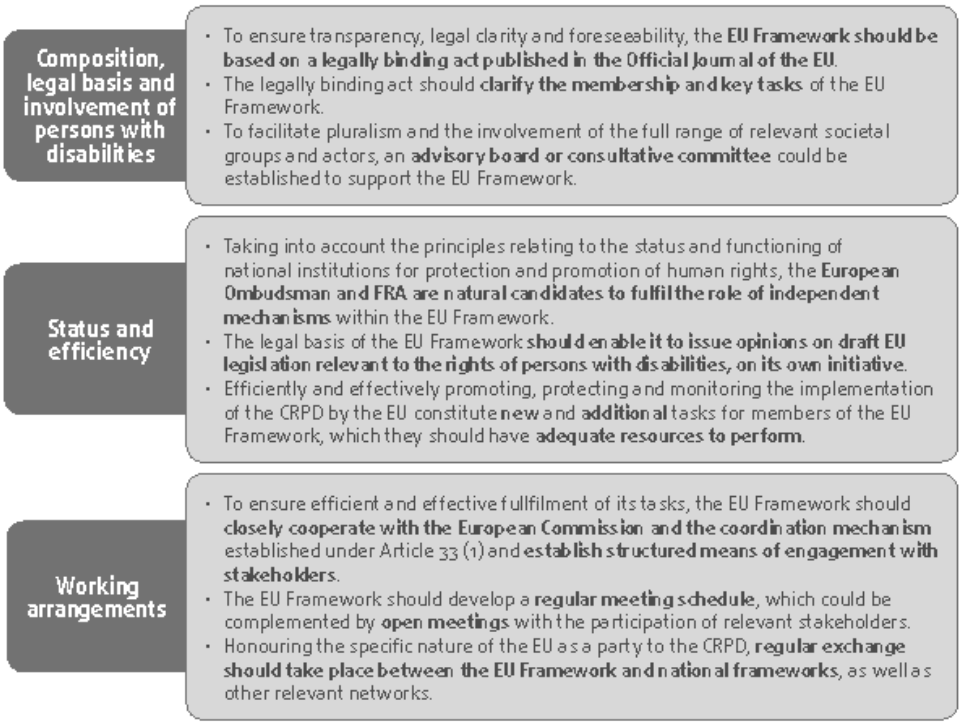
protection and monitoring tasks; and a legal basis to ensure transparency, legal clarity and foreseeability.

The European Commission's reply to the CRPD Committee provides an indication of the Union's response to the concluding observation on the EU Framework. The Council is expected to endorse a revised proposal for the EU Framework in early 2017. That will formalise the Commission's withdrawal but not change the tasks and the requirement that activities be carried out within existing resources. Finding sustainable solutions to the questions raised by the concluding observations and the CRPD Committee's guidelines will require further strengthening the communication between the EU Framework and the EU institutions, in particular the European Commission as the focal point for implementing the CRPD.

Away from these underlying issues, the European Parliament, European Ombudsman, FRA and EDF continued to implement the EU Framework's work programme, in line with their commitment to participate actively in the follow-up of the EU review process within the means provided by their mandates.[87] Examples of four joint activities stemming from the work programme give a flavour of how members collaborate.[88] (Section 9.1 discusses activities of individual members.) These joint activities are:

- Updated EU Framework webpage (see Figure 9.2): the framework's webpage was transferred from the European Commission to FRA and relaunched in June. It includes a section on the EU review process, as well as updated information on the European Commission's withdrawal from the framework and FRA's taking over the chair and secretariat roles on an interim basis. Crucially, it helps to ensure transparency by acting as a depository for important documents, such as the work programme and minutes of framework meetings.[89]
- Events on follow-up of concluding observations on the EU: all EU Framework members took part in an exchange of views with the European Parliament's Committee on employment and social affairs. They gave their input to the preparation of the European

Figure 9.1: Revisiting the EU Framework under Article 33 (2) of the CRPD – key FRA opinions



Note: *Issues related to tasks of the EU Framework reflect those identified by the CRPD Committee and presented in* Table 9.2.

Source: *FRA, 2016 (adapted from its 2016 Opinion concerning requirements under Article 33 (2) of the CRPD within the EU context)*

Figure 9.2: Webpage of the EU Framework to promote, protect and monitor the implementation of the CRPD

Source: *FRA, Webpage on EU Framework for the UN Convention on the Rights of Persons with Disabilities*

Parliament's resolution on CRPD implementation (see Section 9.1).

- Annual meeting between EU Framework and national monitoring mechanisms in EU Member States, organised alongside the European Commission Work Forum: the latest meeting allowed both the EU and national frameworks to give updates on their respective activities and areas of focus, as well as to discuss in more detail challenges they face in their work and how to step up their cooperation.

- Development of work programme 2017–2018:[90] all members agreed the second EU Framework work programme at the end of 2016. It provides for the continuation of ongoing tasks such as awareness raising, complaints procedures and data collection. It also plans greater collaboration in the organisation of events, and development and dissemination of information and training material to increase awareness of the CRPD among the EU public administration.

9.3.2 National frameworks consolidate monitoring role

Four more EU Member States received concluding observations in 2016. Half of the Member States that have ratified the CRPD have now been subject to review by the CRPD Committee (see Table 9.3).

This growing body of country-specific guidance on monitoring coalesces around three recurrent themes: independence, adequate resources, and systematic participation and involvement of persons with disabilities. An overview of developments in 2016 suggests a mixed bag of progress and areas of concern.

On the positive side, the CRPD Committee's recommendations are reflected in the monitoring bodies designated by **Finland** (Human Rights Centre, Human Rights Delegation and Parliamentary Ombudsman) and the **Netherlands** (Netherlands Institute for Human Rights), which formally took up their monitoring responsibilities after the countries ratified the CRPD. Both frameworks comprise the independent national human rights institutions and received additional financial and/or human resources to fulfil their Article 33 (2) responsibilities.[91]

Other changes reflect the particular challenges faced by monitoring frameworks in federal states, where different levels of government are responsible for various areas of disability policy. Responding to recommendations from the CRPD Committee, states in **Austria** and **Germany** established their own monitoring bodies in 2016 to complement those already in place at the national level. The province of Salzburg established a monitoring committee, so all nine Austrian provinces now have their own Article 33 (2) bodies.[92] Some German federal states concluded contracts with the German Institute of Human Rights – the national Article 33 (2) body – to establish monitoring mechanisms at the state level. The creation of a body in North Rhine-Westphalia[93] was highlighted as a model for other German federal states.[94] Looking ahead, experience gained in ensuring effective coordination between these different national bodies can inform enhanced cooperation between the EU Framework and national monitoring frameworks, given their similarly complementary roles in monitoring the EU's implementation of the convention.

Nevertheless, familiar concerns remain. At the most basic level, 2016 saw no developments in the four EU Member States (**Bulgaria**, the **Czech Republic**, **Greece** and **Sweden**) still to appoint Article 33 (2) bodies.[95] In other Member States, ongoing parliamentary processes to designate monitoring frameworks continue. Legislation to extend the role of the **Estonian** Gender Equality and Equal Treatment Commissioner to cover the requirements of Article 33 (2) of the CRPD is being drafted and should be submitted to parliament in 2017. This leaves the country without a functioning monitoring framework.[96] Moreover, although the **Romanian** parliament passed legislation on Article 33 bodies in January,[97] doubts persist about their ability to operate effectively in practice. The inaugural president of the Monitoring Council for the implementation of the CRPD resigned her post in July, citing administrative

Table 9.3: CRPD Committee reviews in 2016 and 2017, by EU Member State

Member State	Date of submission of initial report	Date of publication of list of issues	Date of publication of concluding observations
CY	2 August 2013	6 October 2016	April 2017
IT	21 January 2013	29 April 2016	6 October 2016
LT	18 September 2012	1 October 2015	11 May 2016
LU	4 March 2014	March 2017	
LV	29 October 2015	March 2017	
PT	8 August 2012	1 October 2015	18 April 2016
SK	26 June 2012	1 October 2015	17 May 2016
UK	24 November 2011	April 2017	

Note: *Shaded cells indicate review processes scheduled for 2017.*
Source: *FRA, 2017 (using data from OHCHR)*

shortcomings that prevented her from finalising the process of establishing the council.[98] A new president was appointed in October.[99]

Involving DPOs is essential for successful monitoring. Evidence from 2016 also highlights how that is often intertwined with issues of their resources. For example, DPOs frequently struggle to find the resources required to put together their own assessments of CRPD implementation. Those are known as shadow reports and sent to the CRPD Committee alongside State party submissions. **Luxembourg** boosted such efforts by financial support from the country's National Disability Council to a leading DPO, enabling it to conduct interviews and legal analysis in preparation for its shadow report.[100] Less encouragingly, the **Slovenian** monitoring framework – the Council for Persons with Disabilities of the Republic of Slovenia (*Svet za invalide Republike Slovenije*) – a third of whose members are representatives of DPOs, continues to operate without resources to employ any full-time staff.[101] Meanwhile, the **Cyprus** Confederation of Organisations of the Disabled withdrew from the technical committees coordinating implementation of the CRPD in protest at a lack of political will and funding.[102]

The CRPD Committee has scheduled four further reviews (**Cyprus**, **Latvia**, **Luxembourg** and the **United Kingdom**) for 2017, meaning that additional country-specific guidance is forthcoming. This is likely to return to familiar themes of independence and resources, but the wider scope of the CRPD Committee's 2016 guidelines raises new questions for Article 33 (2) bodies. Chief among these could be whether or not they have a mandate to conduct the full range of activities required to promote, protect and monitor the implementation of the CRPD (see Table 9.2). Monitoring frameworks in a number of Member States – such as **Germany**, **Hungary** and **Italy** – are not able to receive complaints themselves, and others lack a mandate to participate in judicial proceedings. Further critical reflection and consolidation is on the cards for 2017.

FRA opinions

Following the 2015 review of the EU's progress in implementing the United Nations Convention on the Rights of Persons with Disabilities (CRPD), EU institutions took a range of legislative and policy measures to follow up on some of the CRPD Committee's recommendations, underlining the Union's commitment to meeting its obligations under the convention. The committee's wide-ranging recommendations set out a blueprint for legal and policy action across the EU's sphere of competence and are relevant for all EU institutions, agencies and bodies.

FRA opinion 9.1

The EU should set a positive example by ensuring the rapid implementation of the CRPD Committee's recommendations to further full implementation of the convention. This will require close cooperation between EU institutions, bodies and agencies – coordinated by the European Commission as focal point for CPRD implementation – as well as with Member States and disabled persons' organisations. Modalities for this cooperation should be set out in a transversal strategy for CRPD implementation, as recommended by the CRPD Committee.

Actions to implement the CRPD helped to drive wide-ranging legal and policy reforms across the EU in 2016, from accessibility to inclusive education, political participation and independent living. Nevertheless, some initiatives at EU- and Member State-level do not fully incorporate the human rights-based approach to disability required by the CRPD, or lack the clear implementing guidance required to make them effective.

FRA opinion 9.2

The EU and its Member States should intensify efforts to embed CRPD standards in their legal and policy frameworks to ensure that the rights-based approach to disability, as established in the CRPD, is fully reflected in law and policymaking. This could include a comprehensive review of legislation for compliance with the CRPD. Guidance on implementation should incorporate clear targets and timeframes, and identify actors responsible for reforms.

EU Structural and Investment Funds (ESIF) projects agreed in 2016 show that in many areas initiatives to implement the CRPD in EU Member States are likely to benefit from ESIF financial support. The ex-ante conditionalities – conditions that must be met before funds can be spent – can help to ensure that the funds contribute to furthering CRPD implementation. As ESIF-funded projects start to be rolled out, monitoring committees at the national level will have an increasingly important role to play in ensuring that the funds meet CRPD requirements.

FRA opinion 9.3

The EU and its Member States should take rapid steps to ensure thorough application of the ex-ante conditionalities linked to the rights of persons with disabilities to maximise the potential for EU Structural and Investment Funds (ESIF) to support CRPD implementation. To enable effective monitoring of the funds and their outcomes, the EU and its Member States should also take steps to ensure adequate and appropriate data collection on how ESIF are used.

Evidence collected by FRA in 2016 shows the important role that judicial and non-judicial complaints mechanisms can play in identifying gaps in CRPD implementation and clarifying the scope of the convention's requirements. Several cases concerning non-discrimination in employment serve to underline the complementarity and mutual relevance of standards at the UN, EU and national levels.

FRA opinion 9.4

The EU and its Member States should take steps to increase awareness of the CRPD among relevant judicial and non-judicial complaint mechanisms to enhance further the important role of the latter in securing CRPD implementation. This could include developing training modules and establishing modalities to exchange national experiences and practices.

By the end of 2016, only Ireland had not ratified the CRPD, although the main reforms paving the way for ratification are now in place. In addition, five Member States and the EU have not ratified the Optional Protocol to the CRPD, which allows individuals to bring complaints to the CRPD Committee and for the Committee to initiate confidential inquiries upon receipt of "reliable information indicating grave or systematic violations" of the convention (Article 6).

FRA opinion 9.5

EU Member States that have not yet become party to the CRPD and/or its Optional Protocol should consider completing the necessary steps to secure their ratification as soon as possible to achieve full and EU-wide ratification of these instruments. The EU should also consider taking rapid steps to accept the Optional Protocol.

Four of the 27 EU Member States that have ratified the CRPD had not, by the end of 2016, established or designated frameworks to promote, protect and monitor the implementation of the convention, as required under Article 33 (2) of the convention. Furthermore, FRA evidence shows that the effective functioning of some existing frameworks is undermined by insufficient resources, the absence of a solid legal basis, and a failure to ensure systematic participation of persons with disabilities, as well as a lack of independence in accordance with the Paris Principles on the functioning of national human rights institutions.

FRA opinion 9.6

The EU and its Member States should consider allocating the monitoring frameworks established under Article 33 (2) of the CRPD sufficient and stable financial and human resources. This would enable them to carry out their functions effectively and ensure effective monitoring of CRPD implementation. As set out in FRA's 2016 legal Opinion concerning the requirements under Article 33 (2) of the CRPD within an EU context, *they should also consider guaranteeing the sustainability and independence of monitoring frameworks by ensuring that they benefit from a solid legal basis for their work and that their composition and operation takes into account the Paris Principles on the functioning of national human rights institutions.*

Index of Member State references

Endnotes

1 United Nations (UN), Committee on the Rights of Persons with Disabilities (CRPD) (2015), *Concluding observations on the initial report of the European Union*, CRPD/C/EU/CO/1, 2 October 2015.

2 European Commission (2014), *Report on the implementation of the UN Convention on the Rights of Persons with Disabilities by the European Union*, SWD(2014) 182 final, Brussels, 5 June 2014, para. 15. See also Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities, OJ L 23, 26 November 2009.

3 For more information on the CRPD as a driver of legislative change in the EU Member States, see FRA (2015), *Implementing the United Nations Convention on the Rights of Persons with Disabilities (CRPD): An overview of legal reforms in EU Member States*, FRA Focus 06/2015, Vienna.

4 Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies, OJ L 327, 2 December 2016.

5 See European Commission (2016), Revision of the Audiovisual Services Directive.

6 European Parliament (2016), 'Online public services to be made more accessible for the disabled and elderly', Press release, 26 October 2016.

7 *Ibid.*

8 European Commission (2016), *Proposal for a Regulation of the European Parliament and of the Council on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled*, COM(2016) 595, 14 September 2016; European Commission (2016), *Proposal for a Directive of the European Parliament and of the Council on certain permitted uses of works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society*, COM(2016) 596, 14 September 2016.

9 For more information, see European Commission (2017), *Digital single market*.

10 World Intellectual Property Organisation (2013), *Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled*, 27 June 2013.

11 UN, CRPD (2015), *Concluding observations on the initial report of the European Union*, CRPD/C/EU/CO/1, 4 September 2015, para. 71.

12 CJEU (2016), *Opinion of Advocate General Wahl*, Opinion procedure 3/15, 8 September 2016, para. 26.

13 *Ibid.*, para. 155.

14 European Parliament (2016), European Parliament resolution of 7 July 2016 on the implementation of the UN Convention on the Rights of Persons with Disabilities, with special regard to concluding observations of the UN CRPD Committee, P8_TA(2016)0318, Strasbourg, 7 July 2016.

15 *Ibid.*, para. 14 and 32.

16 See, for example, European Disability Forum (2016), *New disability agenda agreed by the European Parliament*.

17 European Commission (2010), *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: European Disability Strategy 2010-2020: A renewed commitment to a barrier-free Europe*, COM(2010) 636 final, Brussels, 15 November 2010.

18 European Commission (2016), *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Launching a consultation on a European Pillar of Social Rights*, COM(2016) 127 final, Strasbourg, 8 March 2016.

19 See European Disability Forum (2016), *EDF's initial response to the European Pillar of Social Rights*; European Association of Service Providers for Persons with Disabilities (2016), *EASPD opinion on the draft European Pillar of Social Rights*, Position paper, 15 September 2016.

20 European Parliament, Policy Department for Citizens' Rights and Constitutional Affairs (2016), *The protection role of the Committee on Petitions in the context of the implementation of the UN Convention on the Rights of Persons with Disabilities 2016 update*, Study for the PETI Committee.

21 European Parliament, Petitions Committee (2016), *Workshop on the rights of persons with disabilities*, 9 November 2016.

22 European Parliament, Petitions Committee (2016), *Meeting of 9-10 November 2016*.

23 European Ombudsman (2016), *Accessibility for persons with disabilities of websites and online tools managed by the European Commission*, SI/2/2016/EA, 16 February 2016.

24 European Ombudsman (2016), *United Nations Convention on the Rights of Persons with Disabilities: UN Committee concluding observation about European Schools*, SI/1/2016/EA, 26 January 2016.

25 European Ombudsman (2016), *Reply from the President of the European Commission to the Ombudsman's letter concerning the accessibility for persons with disabilities of websites and online tools managed by the European Commission*, SI/2/2016/EA, 16 February 2016.

26 European Ombudsman (2016), *Reply from Vice-President Georgieva to the Ombudsman's letter concerning the UN CRPD Committee concluding observation about European Schools*, SI/1/2016/EA, 26 January 2016.

27 European Ombudsman (2016), *UN CRPD Convention: The treatment of persons with disabilities under the Joint Sickness Insurance Scheme (JSIS)*, OI/4/2016/EA, 10 May 2016.

28 European Ombudsman (2016), *Letter to the European Commission opening the European Ombudsman's own-initiative inquiry OI/4/2016/EA on whether the treatment of persons with disabilities under the Joint Sickness Insurance Scheme (JSIS) complies with the UN Convention*, Strasbourg, 10 May 2016.

29 European Commission (2016), *Comments of the Commission on an own-initiative inquiry from the European Ombudsman*, Ref. OI/4/2016/EA.

30 UN, General Assembly (2006), *Resolution adopted by the General Assembly on 13 December 2006 – 61/106 Convention on the rights of persons with disabilities*, A/RES/61/106.

31 Netherlands, Bulletin of Acts, Orders and Decrees of the Kingdom of the Netherlands (*Staatsblad van het Koninkrijk der Nederlanden*) (2016), *Wet van 14 april 2016 tot uitvoering van het op 13 december 2006 te New York tot stand gekomen Verdrag inzake de rechten van personen met een handicap*, Volume 2016, No. 215.

32 Finland (2016), Act on special care for persons with intellectual disabilities (*Laki kehitysvammaisten erityishuollosta; lag angående specialomsorger om utvecklingsstörda*; 519/1977), as amended 20 May 2016.

33 FRA (2016), *Fundamental rights report*, Publications Office, pp.163, 165.

34 FRA (2015), *Implementing the United Nations Convention on the Rights of Persons with Disabilities (CRPD): An overview of legal reforms in EU Member States*, FRA Focus 06/2015, Vienna.

35 Sweden, Ministry of Health and Social Affairs (*Socialdepartementet*) (2011), Strategy for the Implementation of Disability Policy 2011-2016 (En strategi för genomförande av funktionshinderpolitiken), S2012.028, 20 June 2011.

36 Sweden, Swedish Agency for Participation (*Myndigheten för delaktighet*) (2016), *Evaluation and analysis of disability policy from 2011 to 2016*, 18 August 2016.

37 UN CRPD (2015), *Concluding observations on the initial report of Germany*, CRPD/C/DEU/CO/1, 13 May 2015.

38 Germany, Federal Ministry for Labour and Social Affairs (*Bundesministerium für Arbeit und Soziales*) (2016), *Unser Weg in eine inklusive Gesellschaft: Nationaler Aktionsplan 2.0 der Bundesregierung zur UN-Behindertenrechtskonvention*, 28 June 2016.

39 *Deutsches Institut für Menschenrechte* (2016), *Kommentar zum Nationalen Aktionsplan 2.0 der Bundesregierung zur Umsetzung der UN-Behindertenrechtskonvention*, July 2016.

40 Council of Europe, Committee of Ministers (2016), *Human rights: a reality for all. Council of Europe Disability Strategy 2017-2023*, CM(2016) 155, 27 October 2016.

41 Council of Europe (2015), *Implementation of the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015 – Abridged evaluation report*, Strasbourg, October 2015.

42 UN CRPD (2016), *General comment No. 3 – Article 6: Women and girls with disabilities*, CRPD/C/GC/3, 2 September 2016.

43 UN CRPD (2016), *General comment No. 4 – Article 24: Right to inclusive education*, CRPD/C/GC/4, 2 September 2016.

44 See, for example, UN CRPD (2016), *Concluding observations on the initial report of Lithuania*, CRPD/C/LTU/CO/1, 11 May 2016, paras. 45–48; UN CRPD (2016), *Concluding observations on the initial report of Czech Republic*, CRPD/C/CZE/CO/1, 15 May 2015, paras. 47–48.

45 CRPD Committee, *General comment No. 4 – Article 24: Right to inclusive education*, CRPD/C/GC/4, 2 September 2016, paras. 57–74.

46 Parliament of the French Community (*Parlement de la Communauté Française*), *Proposition de décret relative à l'accueil et à l'accompagnement dans l'enseignement ordinaire obligatoire des élèves présentant des besoins spécifiques*, 3 May 2016.

47 Unia, Interfederal Centre for Equal Opportunities (*Interfederaal Centrum voor Gelijkekansen/Centre interfédéral pour l'égalité des chances*) (2016), *Avis du 6 juin 2016 sur la proposition de décret du 3 mai 2016 relative à l'accueil et l'accompagnement dans l'enseignement ordinaire obligatoire des élèves présentant des besoins spécifiques*, Brussels, Unia, pp. 2–3.

48 See, for example, FRA (2016), *Fundamental Rights Report 2016*, Publications Office, Luxembourg; FRA (2015), *Fundamental rights: challenges and achievements in 2014*, Publications Office.

49 United Kingdom, Equality and Human Rights Commission (2016), 'Commission launches online training kit to help schools unlock opportunity for disabled children', 4 February 2016.

50 Croatia (2015), Ministry of Social Policy and Youth (*Ministarstvo socijalne politike i mladih*); European Social Fund, *Operational Programme efficient human resources 2014-2020*, p. 128.

51 UN CRPD (2014), *General Comment No. 1 – Article 12: Equal recognition before the law*, CRPD/C/GC/1, 19 May 2014, paras. 48–49.

52 UN CRPD (2014), *General Comment No. 2 – Article 9: Accessibility*, CRPD/C/GC/2, 22 May 2014, para. 43.

53 FRA (2010), *The right to political participation of persons with mental health problems and persons with intellectual disabilities*, Luxembourg, Publications Office.

54 *Ibid.* The indicators are also available on FRA's website: *Indicators on the right to political participation of people with disabilities.*

55 Denmark, Act No. 381 of 27 April 2016 amending the Act on Election of Danish Members to the European Parliament and the Act on Municipality and Regional Elections (*Lov nr. 381 af 27. April 2016 om ændring af lov om valg af danske medlemmer til Europa-Parlamentet og lov om kommunale og regionale valg*), 27 April 2016.

56 Denmark, Act No. 175 of 21 February 2017 amending the Act on Election for the Parliament, the Act Election of Danish Members to the European Parliament and the Act on Municipal and Regional Elections and other acts (*Udkast til forslag til lov om ændring af lov om valg til Folketinget, lov om valg af danske medlemmer til Europa-Parlamentet, lov om kommunale og regionale valg, lov om offentlige veje m.v. og lov om private fællesveje*), 21 February 2017, para. 1, no. 6 og 13, og para. 3, no. 4 og 11.

57 Netherlands, Bulletin of Acts, Orders and Decrees of the Kingdom of the Netherlands (*Staatsblad van het Koninkrijk der Nederlanden*) (2016), *Wet van 14 april 2016 tot uitvoering van het op 13 december 2006 te New York tot stand gekomen Verdrag inzake de rechten van personen met een handicap*, Volume 2016, No. 215.

58 FRA (2010), *The right to political participation of persons with mental health problems and persons with intellectual disabilities*, Luxembourg, Publications Office. See in particular the indicator on legal accessibility standards for polling stations.

59 Austria, Federal Equal Opportunities Act [...]for people with disabilities (*Bundes-Behindertengleichstellungsgesetz*), BGBl. I No. 82/2005, last amendment BGBl. II No. 59/2014, Art. 10 (2) and (3).

60 Hungary, Government Decree 12/2001 (I.31.) on state housing allowances (*12/2001. (I. 31.) Korm. Rendelet a lakáscélú állami támogatásokról*), 1 June 2016.

61 Bulgaria, Gabrovo Administrative Court (*Административен съд – Габрово*), Decision No. 64 of 20 July 2016 on administrative case No. 82/2016 (*Решение № 64 от 20.07.2016 г. на Адм.С – Габрово по адм. д. № 82/2016 г.*), 28 July 2016.

62 FRA's indicators are available at FRA, *Rights of persons with disabilities (The right to independent living*. All submissions are available at UN OHCHR, *Call for submissions: Day of General Discussion (DGD) on the right of persons with disabilities to live independently and be included in the community, to be held on 19 April 2016, (Conference room XIX, Palais des Nations)*, Geneva.

63 European Parliament (2016), *European Structural and Investment Funds and people with disabilities: focus on the situation in Slovakia*, Policy department C: citizens' rights and constitutional affairs p. 8.

64 For further information on the *ex ante* conditionalities, see FRA (2015), *Annual Report 2014 – Fundamental rights: challenges and achievements in 2014*, Luxembourg, Publications Office, Ch. 1.

65 UN CRPD (2015), *Concluding observations on the initial report of the European Union*, (CRPD/C/EU/CO/1), 4 September 2015, para. 51.

66 European Parliament, (2016), *European Structural and Investment Funds and people with disabilities: focus on the situation in Slovakia*, Policy department C: citizens' rights and constitutional affairs. These issues are also covered by FRA, *Human rights indicators on Article 19 CRPD*.

67 For more information, see Community Living for Europe – Structural Funds Watch, 'About the initiative'.

68 See FRA (2014), *Rights of persons with disabilities (The right to independent living)*.

69 UN CRPD (2016), *Inquiry concerning the United Kingdom of Great Britain and Northern Ireland carried out by the Committee under article 6 of the Optional Protocol to the Convention: report of the Committee*, CRPD/C/15/R.2/Rev.1, para. 113.

70 *Ibid.*, para. 95.

71 Luxembourg, Ministry of Social Security (*Ministère de la Sécurité sociale*) (2016), *Présentation de la réforme de l'Assurance dépendance*, Press release, 6 July 2016.

72 United Kingdom, Employment Appeal Tribunal, *Banaszczyk v. Booker Ltd 2016*, WL 312341, 1 February 2016, para. 37-38.

73 CJEU, *HK Danmark, acting on behalf of Jette Ring v. Dansk almennyttigt Boligselskab and HK Danmark, acting on behalf of Lone Skouboe Werge v. Dansk Arbejdsgiverforening acting on behalf of Pro Display A/S*, Joined cases C-335/11 and C-337/11, 11 April 2013, para. 22.

74 Belgium, Labour tribunal of Liège, decision of 20 June 2016, R.G. 15/167/A, 20 June 2016.

75 CJEU, *Fag og Arbejde v. Kommunernes Landsforening*, C-354/13, 18 December 2014.

76 For more information, see the Academy of European Law's webpage on the issue.

77 See, for example, UN CRPD (2016), *Concluding observations on the initial report of Lithuania*, CRPD/C/LTU/CO/1, 11 May 2016, para. 67–68; UN CRPD (2013), *Concluding observations on the initial report of Austria*, CRPD/C/AUT/CO/1, 30 September 2013.

78 FRA (2016), *Opinion concerning requirements under Article 33 (2) of the UN Convention on the Rights of Persons with Disabilities within the EU context*.

79 UN CRPD (2016), *Guidelines on independent monitoring frameworks and their participation in the work of the Committee*.

80 *Ibid.*, para. 9.

81 See FRA (2016), *Opinion concerning requirements under Article 33 (2) of the UN Convention on the Rights of Persons with Disabilities within the EU context*, based on: Secretariat for the Convention on the Rights of Persons with Disabilities, Draft Article 25 – Monitoring – National Implementation Framework, footnote 114 cited by MDAC (2011), p. 15; Discussion Text proposed by the Chair on Monitoring, 7th session, 16 January – 3 February 2006, cited in MDAC (2011), p. 15; General Assembly, Human Rights Council (2009), *Thematic study by the Office of the United Nations High Commissioner for Human Rights on the structure and role of national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities*, A/HRC/13/29, 22 December 2009, as reproduced in Conference of States Parties to the Convention on the Rights of Persons with Disabilities (2014), *National implementation and monitoring: note by the secretariat*, CRPD/SCP/2014/3, 1 April 2014.

82 UN CRPD (2006), *Convention on the Rights of Persons with Disabilities*; UN CRPD (2016), *Guidelines on independent monitoring frameworks and their participation in the work of the Committee*, para. 8.

83 All submissions to the consultation are available at United Nations (UN), Committee on the Rights of Persons with Disabilities, *Draft guidelines on the establishment of independent monitoring frameworks and on their participation in the work of the Committee*. For more information on the Global Alliance of National Human Rights Institutions, see its website.

84 See FRA (2016), *Opinion concerning requirements under Article 33 (2) of the UN Convention on the Rights of Persons with Disabilities within the EU context*.

85 European Parliament (2016), Resolution of 7 July 2016 on the implementation of the UN Convention on the Rights of Persons with Disabilities, with special regard to concluding observations of the UN CRPD Committee, P8_TA(2016) 0318, Strasbourg, paras. 153, 154 and 156.

86 See FRA (2016), 'FRA Director presents Agency's perspective on key topics at COHOM meeting', 25 July 2016.

87 See FRA (2015), *High-level meeting of EU Framework to promote, protect and monitor the implementation of the CRPD*, Minutes, 4 March 2015. Agendas and minutes of all meetings of the EU Framework are available at FRA, *EU-CRPD Framework – resources*.

88 FRA (2015), *EU Framework to promote, protect and monitor the implementation of the CRPD, Work programme 2015-2016*.

89 See FRA, *EU Framework for the UN Convention on the Rights of Persons with Disabilities*. Agendas and minutes of all meetings of the EU Framework are available at FRA, *EU CRPD Framework – resources*.

90 EU Framework to promote, protect and monitor the implementation of the CRPD (2017), *Work programme 2017–2018*. See also EU Framework to promote, protect and monitor the implementation of the CRPD (2017), *Review of work programme 2015-2016*.

91 See FRA (2016), *Opinion concerning requirements under Article 33 (2) of the UN Convention on the Rights of Persons with Disabilities within the EU context*, FRA opinion 3/2016.

92 Austria, Salzburg, Law amending the Salzburg Equality Act (Gesetz vom 8. Juni 2016, mit dem das Salzburger Gleichbehandlungsgesetz geändert wird), LGBl. No. 49/2016.

93 Germany, State Assembly of North Rhine Westphalia (*Landtag Nordrhein-Westfalen*) (2016), *Gesetzentwurf der Landesregierung eines 'Ersten allgemeinen Gesetzes zur Stärkung der Sozialen Inklusion in Nordrhein-Westfalen'*, Printed document 16/9761. For the final version see: Printed document 16/12130.

94 *Deutsches Institut für Menschenrechte* (2015), *'Inklusionsstärkungsgesetz in NRW hat Vorbildcharakter für andere Bundesländer'*, Press release, 17 November 2015.

95 An overview of all Art. 33 bodies is available on FRA's website.

96 Estonia, Parliament (*Riigikogu*), *Võrdse kohtlemise seaduse muutmise seadus 196 SE*, 24 May 2016.

97 Romania, Law No. 8 on the establishment of the mechanisms provided by the Convention on the Rights of Persons with Disabilities (*Legea nr. 8 din 18 ianuarie 2016 privind înființarea mecanismelor prevăzute de Convenția privind drepturile persoanelor cu dizabilități*), 18 January 2016.

98 Elena Georgiana Pascu, Resignation request files with the Romanian Senate (*Cerere de eliberare din funcție*), No. h760, 18 July 2016.

99 Romania, Senate Decision No. 143/2016 on the appointment of the President of the Council for monitoring the implementation of the Convention on the Rights of Persons with Disabilities (*Hotărâre nr. 143 din 24 octombrie 2016 privind numirea președintelui Consiliului de monitorizare a implementării Convenției privind drepturile persoanelor cu dizabilități*), 24 October 2016.

100 Luxembourg, Luxembourg National Disability Council – Info Handicap (*Conseil National Luxembourgeois des Personnes Handicapées – Info Handicap*). See also Luxembourg, Only with us (*Nemme mat eis*).

101 Slovenia, 'Prime Minister of the Republic of Slovenia Miro Cerar met with a delegation from the Council for persons with disabilities of the Republic of Slovenia' (*Predsednik Vlade Republike Slovenije dr. Miro Cerar je sprejel delegacijo Sveta za invalide Republike Slovenije*) Press release, 22 June 2016.

102 Cyprus, Letter and Memorandum of KYOSA to the Director of Social inclusion of persons with disabilities.

Country codes

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

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FRA
EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

Diverse efforts at both EU and national levels sought to bolster fundamental rights protection in 2016, while some measures threatened to undermine such protection. For refugees and migrants, legal avenues to reach Europe remained elusive, with authorities focusing on return policies, information technology systems to combat irregular migration, and on restricting family reunification. Racist and xenophobic reactions towards refugees and migrants persisted, prompting the introduction of diverse measures to counter hate speech and hate crime.

EU Member States once again did not reach agreement on the proposed Equal Treatment Directive, but several continued to extend protection against discrimination to different grounds and areas of life. Meanwhile, little progress was visible in achieving the ambitious goals set by national Roma integration strategies.

The year's terrorist attacks sparked both intensified debates and legislative developments, including on surveillance. The adoption of new EU-level data protection measures constituted a crucial step towards a modernised and more effective data protection regime.

The rate of children at risk of poverty or social exclusion remained high, and the continued arrival of migrant and asylum-seeking children posed additional challenges. The EU adopted several new directives introducing further safeguards for persons suspected or accused of crime, including children. Member State efforts to improve the practical application of the Victims' Rights Directive sought to bring effective change for crime victims, including in terms of support services. The Istanbul Convention also triggered diverse legislative initiatives at Member State level.

Ten years after adoption of the Convention on the Rights of Persons with Disabilities (CRPD), attention gradually shifted from the first wave of CRPD-related reforms to consolidating progress made. Meanwhile, courts, parliaments and governments continued to make only limited use of the EU Charter of Fundamental Rights, but awareness of the need to train legal professionals on Charter-related issues appeared to be growing.

FOCUS

This year marks the 10th anniversary of the EU Agency for Fundamental Rights. Such a milestone offers an opportunity for reflection on 10 years of fundamental rights in the EU – both on the progress that provides cause for celebration and on the remaining shortcomings that must be addressed.

The EU's commitment to fundamental rights has grown tremendously during the past decade, but recent developments underscore how quickly progress can be undone. Across the EU, the fundamental rights system is increasingly under attack – dismissed as political correctness gone awry, as benefitting only select individuals, or as hampering swift responses to urgent challenges. This year's focus section further explores these issues, providing a thorough review of the past decade's highlights and persisting shortfalls.

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