

# FUNDAMENTAL RIGHTS REPORT — 2023

*The year 2022 brought both progress and setbacks in terms of fundamental rights protection. FRA's Fundamental Rights Report 2023 reviews major developments in the field, identifying both achievements and remaining areas of concern. This publication presents FRA's opinions on the main developments in the thematic areas covered, and a synopsis of the evidence supporting these opinions. In so doing, it provides a compact but informative overview of the main fundamental rights challenges confronting the EU and its Member States.*

## FRA OPINIONS

### 1 **[FOCUS]**

Fundamental rights implications for the EU of the war in Ukraine

### 4

Implementation and use of the Charter at national level

### 7

Equality and non-discrimination

### 10

Racism, xenophobia and related intolerance

### 13

Roma equality and inclusion

### 17

Asylum, visas, migration, borders and integration

### 19

Information society, privacy and data protection

### 22

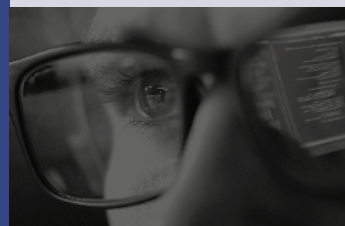
Rights of the Child

### 25

Access to justice: victims' rights and judicial independence

### 27

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



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# FUNDAMENTAL RIGHTS IMPLICATIONS FOR THE EU OF THE WAR IN UKRAINE

*Russia's unprovoked war of aggression against Ukraine has resulted in massive internal and external population displacement. Nearly 8 million people fleeing Ukraine have arrived in Europe. Of these, nearly 4 million have received temporary protection in the EU. This displacement triggered a tremendous wave of support and solidarity from governments, local authorities and society as a whole.*

*The EU activated the Temporary Protection Directive for the first time since its adoption in 2001. In the event of mass influx and unavailability of return, it entitles those displaced because of the war to legal residence and access to work, housing, social assistance, education and healthcare. As the overwhelming majority of those fleeing Ukraine are women – many with responsibilities for caring for children and/or older people – the provision of access to specific services needs to be gender sensitive and targeted. Services also need to include support for those who have experienced sexual violence and exploitation.*

*The EU Agency for Fundamental Rights (FRA) launched a series of activities to identify challenges and propose solutions for all aspects covered by the Temporary Protection Directive and by EU laws on human trafficking, on hate crime and on the rights of crime victims, all of which apply to beneficiaries of temporary protection.*



Beneficiaries of temporary protection – the majority of whom are women and children – must have access to suitable accommodation or, if necessary, be provided with the means to obtain housing, as Article 13 of the Temporary Protection Directive stipulates. In addition, the EU Charter of Fundamental Rights (Charter) protects the right to housing assistance, to ensure a decent existence for all those who lack sufficient resources (Article 34).

In several Member States, however, obstacles remain to providing suitable and safe accommodation. These are notably difficulties in making long-term arrangements, ensuring access to housing assistance and systematically vetting private accommodation providers. The findings of FRA's 2022 *Fleeing Ukraine* survey confirm this: six out of 10 respondents were, at the time of the survey, staying in a private apartment or house. Lack of privacy (noted by 36 % of respondents) and lack of a quiet/separate room for children to study in (noted by 23 % of respondents) were stated as problems. In addition, more than half of the respondents had to pay for their accommodation in full or in part.



## FRA OPINION 1.1

Given the particular needs of displaced people fleeing the Russian invasion of Ukraine, EU Member States should, where possible, prioritise finding suitable accommodation fit for long-term purposes. EU Member States should verify that private housing is affordable, safe and suitable, particularly for women and children. Those offering housing should receive some form of financial or other compensation.

Successful housing solutions for displaced people from Ukraine should also inform long-term strategies to address housing shortages more generally for asylum applicants in many Member States. Guidance and support provided by relevant EU agencies, such as FRA and the European Union Agency for Asylum (EUAA), can help implement such measures in a way that respects fundamental rights.

## FRA OPINION 1.2

Member States should assist beneficiaries of temporary protection in finding employment, with registered employers, suited to their qualifications and skills. This could be carried out by further promoting the EU Talent Pool Pilot, established by the European Cooperation Network of Employment Services (EURES) under the European Labour Authority (ELA). This pilot facilitates matching the skills of beneficiaries of temporary protection with registered employers. To protect displaced people from the risk of exploitation at work, ELA and Member States' labour inspectorates should step up and intensify their cooperation, including through joint inspections in high-risk sectors. Labour inspections should be implemented to improve information provision and as awareness-raising opportunities, alongside monitoring and enforcement actions concerning employment conditions.

According to Article 12 of the Temporary Protection Directive, the general national legislation in Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment must also apply to beneficiaries of temporary protection. Articles 1 and 31 of the Charter guarantee the fundamental rights to human dignity and to fair and just working conditions.

Overall, however, two thirds of respondents to FRA's 2022 *Fleeing Ukraine* survey aged 16+ were not in paid work at the time of the survey. Among those who were in paid work, 3 out of 10 respondents experienced some form of exploitation at work. FRA's past research has found that these infringements are not always adequately punished, and that the Employers Sanctions Directive protects only migrants in an irregular situation against severe exploitation in employment relationships.

## FRA OPINION 1.3

EU Member States should strengthen efforts to ensure displaced children from Ukraine are integrated in ordinary schools and childcare facilities as early as possible with due consideration for their language and culture. Particular attention should be paid to children with disabilities, notably those who were living in institutional facilities, to ensure that their specific needs for accessibility and additional support are duly addressed. This integration would facilitate their socialisation and add normality to their daily life. National and EU funding should be used to provide language classes, to increase numbers of staff and to increase childcare and school capacities.

Under Article 14 of the Temporary Protection Directive, EU Member States are obliged to grant children enjoying temporary protection access to education under the same conditions as their own nationals. However, the school enrolment of children displaced from Ukraine continues to be low owing to lack of school space, insufficient numbers of staff or language barriers.

Almost two thirds of children displaced from Ukraine attend online education provided by Ukrainian authorities, as shown by the findings of FRA's 2022 *Fleeing Ukraine* survey. More than one quarter of those aged 12–15 noted not having a stable place to live as the main reason for not attending school, and one fifth indicated not being accepted to a school as the main reason.

A lack of childcare facilities is also an important obstacle to accessing employment, notably for women, who represent the majority of adults displaced from Ukraine, FRA's 2022 *Fleeing Ukraine* survey confirmed.





The great majority of the 4 million people having fled the Russian war of aggression against Ukraine who registered for temporary protection or similar national protection schemes in the EU by year-end are women – many with responsibilities for caring for children and/or older people. One of the main barriers to accessing employment – alongside insufficient knowledge of the language of the host country – is caring responsibilities, according to the findings of FRA's 2022 *Fleeing Ukraine* survey. Yet, measures by EU Member States have unevenly taken into account this gender perspective and the special needs of displaced women.

Risks of sexual exploitation were also identified across the EU, with a number of cases reported and investigated. Article 20 (equality before the law) and Article 21 (non-discrimination) of the EU Charter of Fundamental Rights require extra efforts and positive targeted action from national authorities to ensure widespread equal access to all rights and services offered by the Temporary Protection Directive for all displaced people fleeing the war.



Pursuant to Article 17 of the Temporary Protection Directive, the activation of the temporary protection scheme for displaced people fleeing the war against Ukraine does not prevent those people from exercising their right to apply for asylum. About one third of respondents to FRA's 2022 *Fleeing Ukraine* survey lodged an asylum application. However, the proportion of people applying for asylum varies among EU Member States.

People leaving conflict and violence may be fleeing such situations in circumstances and with certain characteristics that qualify them as refugees or other beneficiaries of international protection under the EU asylum *acquis*. Recital 12 and Article 3 (5) of the directive both confirm that granting temporary protection does not affect the prerogative of the Member States to provide more favourable protection statuses.

The protracted war and the subsequent impossibility of safe return even when the war ends require that Member States implement durable solutions protecting the displaced people once the extended temporary protection expires. If such solutions are not implemented, the displaced people risk ending up in a state of uncertainty and without self-sustaining integration prospects in their host Member States.

## FRA OPINION 1.4

As the majority of those fleeing the Russian invasion of Ukraine are women – many with responsibilities for caring for children and/or older people – the provision of access to specific services needs to be gender sensitive and targeted. Services also need to include support for those who have experienced sexual violence and exploitation. Although the Temporary Protection Directive was drafted in a gender-neutral way, the application by EU Member States of its provisions concerning access to accommodation, employment, education, healthcare and social welfare services should not be 'gender blind'. In their efforts in this regard, Member States should consider seeking the support of relevant EU agencies such as the European Institute for Gender Equality (EIGE) and FRA.

## FRA OPINION 1.5

Member States should ensure that meaningful legal avenues are mobilised to offer a smooth transition from temporary protection status to other protection statuses under either EU or national law, in a sustainable manner, once the EU temporary protection scheme ends. The use of these durable protection statuses, including group-based status determination and channels leading to long-term residence, should also be backed by EU financial support schemes to alleviate the long-term costs of integrating displaced people from Ukraine into host societies.

# 2

## IMPLEMENTATION AND USE OF THE CHARTER AT NATIONAL LEVEL

*The 2020–2030 EU Charter strategy and the related 2021 Council conclusions remain the key documents guiding relevant action at both EU and national levels. At national level, court proceedings continued to refer to the Charter and, sometimes, so did legislative procedures. Otherwise, however, the use of the Charter remains limited.*

*Examples of Charter-focused policies in national, regional and local administrations remain hard to find. The use of EU funds is an exception. The Common Provisions Regulation makes the obligation to observe the Charter very explicit. Another prominent Charter element at national level relates to the newly appointed Charter focal points in national administrations.*

*National human rights institutions in selected Member States provided expert input on the Charter in legislative, administrative or judicial proceedings. However, national human rights institutions and civil society still lack capacity or awareness to use the Charter more actively in their work. The need for continued judicial training on the Charter appears to be increasingly recognised, and the European Commission funds it.*



The Charter applies at federal, regional and municipal levels. The EU Charter Strategy 2020–2030 emphasises promoting the application of the Charter at all levels. Against this background, however, Member States appear to lack a structured engagement with the implementation of the Charter strategy, such as definitions of clear targets, milestones and timelines.

Good examples of regular use of the Charter at national, regional and local levels are limited. They relate mostly to the monitoring of the use of EU funds. There appears to be a lack of mainstreamed action in all levels of the executive, as called for by the 2021 Council Conclusions on strengthening the application of the Charter.

The Charter focal points could be used to promote and coordinate capacity building, the exchange of information and awareness raising on the Charter, the same conclusions note. At the end of 2022, 24 Member States had already nominated Charter focal points. Only, Ireland, Malta and Slovenia were still in the process. However, their potential for knowledge sharing and their coordination role remain to be developed further.

The situation is more positive in the area of training, where Charter-specific training is increasingly provided for justice professionals, evidence shows. However, similar training for civil servants seems to be available in very few Member States.

The situation is worse at regional and local levels. The Charter is equally applicable there but Charter-specific training seems absent. Only few municipalities appear to have a specific focus on fundamental rights, as stated for instance by FRA in the report *Human rights cities in the EU: A framework for reinforcing rights locally*.

The Common Provisions Regulation includes both horizontal enabling conditions (Article 9 (1)) and thematic enabling conditions (Article 15 (1)), such as on disability and Roma inclusion. According to that regulation (Article 8), Member States must organise and implement a comprehensive partnership for implementing relevant EU funds, building on the multilevel governance approach and ensuring the involvement of ‘non-governmental organisations, and bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender equality and non-discrimination’. Member States should take measures to ensure that the design, implementation, monitoring and review of EU funds are conducted in close cooperation with civil society and all other relevant stakeholders, including at regional and local levels.

Only a few Member States started taking measures to enforce the Common Provisions Regulation in line with the Charter in 2022. These measures range from adopting guidelines explaining the Charter obligations when implementing EU funds to more concrete actions, such as establishing monitoring committees and complaint mechanisms. The role of NHRIs and civil society on such committees differs across the Member States, from an active role in *ex ante* Charter checks of all projects and processing complaints, through an advisory function, to no role at all.

Regrettably, so far only one Member State has explicitly considered the UN Convention on the Rights of Persons with Disabilities in the compliance-monitoring process, although the convention is binding upon all EU Member States, and the EU itself. This also appears not to respect the principle of integration of persons with disabilities, in Article 26 of the Charter.



## FRA OPINION 2.1

Member States should enhance the promotion and knowledge of the Charter among all levels of national administration, within the judiciary and in law enforcement. This could include sharing knowledge via the Charter focal point, and training activities for legal practitioners applying EU law at national, regional and local levels. Member States that have not yet appointed Charter focal points should do so and proactively encourage the use of available resources, training tools and material on the Charter for capacity-building and knowledge-sharing purposes.

Municipalities are called on to become ‘human rights cities’ and mainstream the Charter in all their activities. They are invited to use FRA’s framework for reinforcing rights locally, which includes tools for integrating human rights standards – including the Charter – into their work.

EU institutions should make an additional effort to promote the Charter at national and sub-national levels, through targeted funding to Member States, local and regional authorities, and to knowledge multipliers, and by collecting and sharing best practices on capacity building.



## FRA OPINION 2.2

To ensure full respect of the Charter in the implementation of EU funds, Member States should establish monitoring committees that are sufficiently inclusive. Public bodies with a fundamental rights remit, such as national human rights institutions (NHRIs), and civil society organisations should be included in such committees and have at least a formal advisory role. Member States’ competent authorities should report on giving due consideration to their opinions.

To enable NHRIs and civil society to participate effectively in the monitoring process, Member States should provide them sufficient funding and relevant training.

In line with the Common Provisions Regulation, Member States should ensure that their monitoring committees consider, alongside compliance with the Charter of Fundamental Rights, compliance with the UN Convention on the Rights of Persons with Disabilities, as envisaged by the Common Provisions Regulation.





### FRA OPINION 2.3

As part of their action to strengthen the application of the EU Charter of Fundamental Rights and the rule of law, EU institutions and Member States should strengthen all relevant actors in the national human rights systems. This includes regular monitoring of the civic space, closely involving civil society actors and other human rights defenders, drawing on data collected by FRA.

Member States should take measures to ensure proper investigations and sanctions on those who attack, harass or threaten human rights defenders.

Member States and the EU should continue funding operational capacity for civil society that includes specific training on the Charter. Member States are also invited to use the Citizens, Equality, Rights and Values programme to fund Charter-related training and make use of available tools developed by FRA and other institutions.

Member States should ensure that different levels of government communicate and cooperate with rights defenders and civil society organisations.

Member States should ensure that NHRIs and civil society actors work in an enabling environment where their functioning is ensured with adequate operational resources. Where fully independent NHRIs do not yet exist, Member States should establish them.

The European Parliament and the European Commission recognised the crucial role of civil society in promoting and protecting the rights enshrined in the Charter. To ensure that civil society can effectively perform this task, an enabling environment must be put in place.

Civil society organisations across the EU face challenges in access to funding, protection from harassment, threats and attacks, access to justice, participation in political decision-making and communication with public authorities, FRA's evidence shows. Several examples of promising practices are available in Member States and relate mostly to funding opportunities and improved participation.

Alongside a thriving civic space, the Charter strategy also refers to the key role of NHRIs. It underlines that NHRIs' monitor the application, implementation and promotion of the Charter on the ground, provide information and support to victims of fundamental rights violations and cooperate with the national institutions to improve their use and awareness of the Charter'. At the end of the reporting period, 19 Member States had NHRIs with A status accreditation, four had NHRIs with B status, Romania had one with C status, and only Czechia, Italy and Malta did not have an accredited NHRI.

# 3

## EQUALITY AND NON-DISCRIMINATION

*The adoption of the Equal Treatment Directive remains stalled since 2008. The legal framework on hate crime and hate speech still does not provide sufficient protection for lesbian, gay, bisexual, transgender and intersex (LGBTI) people. In 2022, the European Commission proposed legislation aimed at strengthening the mandate and independence of equality bodies.*

*Efforts to promote the rights of lesbian, gay, bisexual, trans, non-binary, intersex and queer (LGBTIQ) people were made at EU and national levels, in particular regarding family status and parenthood. There have been some developments across the EU to cover additional grounds of discrimination, such as socioeconomic status, health status and physical appearance.*



Discrimination on a range of grounds persists across the EU. Article 21 of the EU Charter of Fundamental Rights prohibits discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. However, under EU secondary law, some of the protected characteristics set out in Article 19 of the TFEU – sex and racial or ethnic origin – enjoy wider protection than others – such as religion or belief, age, disability and sexual orientation. This leads to an artificial hierarchy of grounds, which limits the breadth and scope of EU-level protection against discrimination. The proposed Equal Treatment Directive would close this gap, but the unanimity in the Council required to adopt the Commission's proposal of 2008 has still not been achieved.

This year saw renewed attempts to break the stalemate on this crucial instrument, in particular calls for its speedy adoption by the European Economic and Social Committee and in European Parliament resolutions.



### FRA OPINION 3.1

The EU and its Member States should continue exploring all possible avenues to provide comprehensive and consistent protection against discrimination on the grounds of religion or belief, disability, age or sexual orientation in all key areas of life.





## FRA OPINION 3.2

The EU and EU Member States should ensure that equality bodies can achieve their full potential and contribute effectively to the enforcement of all equality directives. This entails ensuring that equality bodies are given sufficiently broad mandates and allocated adequate human, financial and technical resources to perform all their statutory tasks effectively and independently.

The EU should ensure prompt adoption of the two Commission legislative proposals to establish binding standards for equality bodies in the Union in order to promote equal treatment and combat discrimination on all grounds in the fields set out by the equality directives.

Equality bodies promote equal treatment by enforcing the application of EU anti-discrimination law. FRA's evidence consistently shows that discrimination incidents are rarely brought to the attention of the competent authorities set up to help secure access to justice for all victims of discrimination on an equal basis.

Core tasks of equality bodies include providing assistance to victims of discrimination in pursuing their complaints, monitoring of and reporting on discrimination, and raising awareness of people's rights. Despite their essential work, equality bodies continue to face various challenges related to their independence, mandates and powers, as well as to lack of adequate human, financial and technical resources, and limited ability to contribute to policy development. Effective implementation of existing equality legislation requires strong and independent structures and mechanisms to enhance respect of the law, and also to increase public's trust in bodies with the job of ensuring and promoting the value of equality.

In this regard, the role of effective equality bodies is crucial. This is highlighted in the Commission's legislative proposals to strengthen equality bodies, which aim to ensure their independence, resources and powers, so they can protect victims and prevent discrimination more effectively.



## FRA OPINION 3.3

EU Member States are encouraged to continue adopting and implementing specific measures (including national action plans on LGBTIQ+ equality) to ensure that lesbian, gay, bisexual, trans, non-binary, intersex and queer people can fully enjoy their fundamental rights. When doing so, Member States should give due consideration to the *Guidelines for Strategies and Action Plans to Enhance LGBTIQ Equality*, prepared by the LGBTIQ Equality Subgroup and endorsed by the High-Level Group on Non-discrimination, Equality and Diversity.

EU Member States are encouraged to regularly collect and use SOGIESC equality data to develop evidence-based policy and legal responses.

Member States should take all appropriate measures to effectively combat hate speech and address the harmful impact of homophobic and transphobic statements made in public debates, political campaigns and the media, and on the internet.

In 2022, a number of Member States took steps to promote the fundamental rights of lesbian, gay, bisexual, transgender, intersex and queer+ (LGBTIQ+) people by introducing legal changes and policy measures in areas such as the status of same-sex families, adoption and parenthood; simplified procedures for gender recognition on the basis of self-determination; and preventing and punishing hate speech and hate crimes. In several Member States, where the legislative framework was inadequate, courts paved the way for legislative developments or ensured their proper enforcement.

Some Member States have introduced legal and policy measures that jeopardise the fundamental right to equal treatment of LGBTIQ+ persons. That has a tangible impact on the increase in hostility and violence against the LGBTI community, and in fear among them, their families and other citizens who face repression for supporting equality. Hate speech is a particularly worrying phenomenon, as it further incites discrimination. At the same time, regular collection of sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) equality data remains rare in most Member States.

‘Intersectional discrimination’ describes a situation in which several grounds operate and interact with each other at the same time in such a way that they are inseparable and produce specific types of discrimination. Practitioners in the field recognise that addressing discrimination from the perspective of a single ground fails to capture the diversity of how people experience discrimination in their daily lives. However, EU law does not yet fully protect people from intersectional discrimination.

Equinet has indicated the need to expand the list of grounds of discrimination to include social origin and/or socioeconomic status, family status, genetic heritage, health status, physical appearance, etc.



#### **FRA OPINION 3.4**

The EU and Member States should consider including intersectional discrimination in applicable legislation.



# 4

## RACISM, XENOPHOBIA AND RELATED INTOLERANCE

*Discrimination based on racial or ethnic origin, bias-motivated crimes and racist speech remained widespread in 2022. Evidence shows indications of systemic racism, including within law enforcement. Russia's aggression against Ukraine led to emerging instances of hate speech and violent attacks in some EU Member States.*

*The European Commission continued infringement procedures against 12 Member States for not fully or accurately incorporating the Framework Decision on Racism and Xenophobia into national law. At the same time, several Member States amended their legislation to criminalise hate crime and hate speech. The European Parliament also urged Member States to ensure the full implementation and effective monitoring of the Racial Equality Directive.*

*The European Commission called on Member States to adopt national anti-racism action plans by the end of 2022, as the EU Anti-racism Action Plan and the EU Strategy on Combating Antisemitism and Fostering Jewish Life envisage. Only about half of them did so. Some Member States made targeted efforts to facilitate the reporting of racist incidents; they strengthened victims' access to support, protection and justice.*



The Framework Decision on Racism and Xenophobia (2008/913/JHA) sets out a common criminal law approach for forms of racism and xenophobia that amount to hate speech and hate crime. The European Commission continued infringement procedures against 12 Member States that had not fully and correctly incorporated the framework decision into national law. At the same time, several Member States amended their criminal codes to criminalise hate crime and hate speech and they took measures to facilitate reporting of racist incidents.

Racism continued to pose serious challenges across the EU in 2022. Racist hate crime and hate speech incidents persisted, as official and unofficial data show. Moreover, international and national human rights bodies raised concerns about the growing rate of hate speech online, and often by the media or politicians, targeting Jews, Muslims, migrants and ethnic minorities.

Article 21 of the EU Charter of Fundamental Rights prohibits any discrimination on the grounds of ethnic origin or race. Similarly, the Racial Equality Directive (2000/43/EC) prohibits any discrimination on grounds of ethnic or racial origin in access to education; employment; and services, including housing and healthcare. A number of Member States still do not implement the directive's provisions fully, as reports of national human rights monitoring bodies show.

The Commission continued infringement procedures against three Member States that discriminated against Roma children in education. In 2022, ethnic minorities, including migrants, continued to experience discrimination across different areas of life, as survey and discrimination testing findings reveal.

In view of persistent evidence of systemic racism, European and international bodies called for targeted efforts to address the racism evidenced in wider political and social disadvantages for those with racial and ethnic minority origin.



#### FRA OPINION 4.1

EU Member States should fully and correctly transpose and apply the provisions of the Council Framework Decision on Combating Racism and Xenophobia. This includes Member States taking measures to ensure that a racist or xenophobic motive is considered an aggravating circumstance, or, alternatively, the courts taking such a motive into consideration in determining the penalties.



#### FRA OPINION 4.2

EU Member States should significantly improve the effectiveness of their measures and institutional arrangements for applying fully the provisions of the Racial Equality Directive, in particular as regards the effective, proportionate and dissuasive sanctions in case of breaches of the obligations as required by the Racial Equality Directive. Member States are encouraged to intensify efforts to fight racism in all its manifestations, including systemic racism.



### FRA OPINION 4.3

EU Member States are encouraged to develop as soon as possible dedicated national action plans or strategies to fight racism, racial discrimination, antisemitism, xenophobia and related intolerance. To support and reflect national efforts on the ground, national policies should be translated into concrete measures and action at regional and local levels. Member States should ensure that, when developing, implementing and monitoring national action plans against racism, all actions are guided by a participatory approach and informed by and based on reliable equality data.

At the UN World Conference against Racism, Member States made commitments to strengthened efforts to combat racism. 21 years later, the state of implementation in the EU falls short.

The call to adopt national action plans against racism by the end of 2022, as the EU Anti-racism Action Plan and the EU Strategy on Combating Antisemitism and Fostering Jewish Life envisage, was met only halfway. By the end of 2022, about half of the Member States had dedicated anti-racism action plans or integrated measures in place, and 15 either had a standalone antisemitism strategy or subsumed combating antisemitism under broader strategies. In some countries, targeted efforts took place at local and regional levels, reflecting an increased understanding that racism should be tackled across all levels and through a coordinated and participatory approach.

### FRA OPINION 4.4

EU Member States are encouraged to increase training of law enforcement officials. They should also increase assessment of existing safeguards against racism, including by introducing robust systems of performance review. Member States should ensure that cases of police violence against migrants and ethnic minorities are swiftly and independently investigated and that victims are assisted in reporting police misconduct.

Specific, practical and ready-to-use guidance against discriminatory ethnic profiling by police officers exercising their duties should be issued by law enforcement authorities. Such guidance should be included in standard operating procedures and codes of conduct, and systematically communicated to frontline officers.

European and international bodies have called for action to address racism in law enforcement conduct and discriminatory profiling. Such attitudes contradict the principles of the International Convention on the Elimination of All Forms of Racial Discrimination and other international standards, including those embodied in the European Convention of Human Rights and related jurisprudence of the European Court of Human Rights, as well as the EU Charter of Fundamental Rights. Recommendations of the European Commission against Racism and Intolerance also stress the positive obligation on the police to combat racism and racial discrimination.

In 2022, cases of police violence may have involved racial and xenophobic discrimination. The year also saw evidence of unlawful ethnic profiling. Racist incidents and unlawful ethnic profiling damage trust in the authorities, and can lead to under-reporting of crimes and resistance to public authority. Member States continued to invest in training for law enforcement officials on human rights and anti-racism.





# 5

## ROMA EQUALITY AND INCLUSION



*By 2022, most EU Member States developed action plans and started implementing their national strategic frameworks to meet the 2030 targets of the EU Roma strategic framework for equality, inclusion and participation. In the course of the year, most Member States also drafted the national action plans for the effective implementation of the child guarantee, in which several Member States focus on strengthening education and inclusion of Roma children.*

*FRA presented the results of the Roma survey conducted in 2021. Its findings show very little or no progress since the last survey in 2016 in fighting antigypsyism, and in equal access to education, employment, housing and health.*

*The fundamental rights of Roma and Travellers were still not fully respected in 2022. Antigypsyism, discrimination, poverty and social exclusion, as well as hate crime and hate speech, continue to affect a disproportionate number of Roma and Travellers across the EU. Fatal incidents of police violence with Roma victims in 2022 indicate that institutional racism in law enforcement needs to be tackled.*



## FRA OPINION 5.1

Member States should take urgent measures to provide all Roma living in segregated settlements in conditions of severe housing deprivation with access to decent housing that is accessible, affordable, environmentally safe, healthy and desegregated.

In order to achieve this, they should make use of available EU funds, as foreseen under Article 3 of Regulation (EU) 2021/1058 on the European Regional Development Fund and on the Cohesion Fund, specific objective (iii) promoting the socioeconomic inclusion of marginalised communities, low income households and disadvantaged groups, including people with special needs, through integrated actions, including housing and social services.

FRA Roma survey data published in 2022 show that a large proportion of Roma live in unacceptable housing, segregated and lacking the most basic amenities, often without even access to clean tap water.

In October 2022, the European Parliament resolution on the situation of Roma people living in settlements across the EU called on the Commission and the Member States to urgently address the situation of Roma people living in settlements in a comprehensive and effective manner, with appropriate short- and long-term policies supported by sufficient EU and national funding. The European Parliament also highlights in this resolution that such catastrophic conditions, as well as the negative psychological and sociological impact of segregation, not only affect people living within the settlements, but also have an impact on the wider community.



## FRA OPINION 5.2

Member States are encouraged to establish platforms and build capacity among Roma civil society, including women, children and young people. Member States should consider promising practices in other EU countries and make full use of EU funds to establish platforms for cooperation with civil society organisations and local and regional stakeholders in the implementation, monitoring and review of the national action plans and strategies.

The 2021 EU Council recommendation on Roma equality, inclusion and participation (2021/C 93/01) emphasises the need for Member States to step up meaningful participation by and consultation of Roma people. The 2022 Roma Civil Monitor acknowledged that the intensity and quality of Roma and NGO participation in the preparation of the national Roma strategic frameworks and national action plans has improved compared with the past. Still, the active engagement of civil society participation is entirely missing in several Member States, and only few Member States have started on sustainable and broadly representative Roma platforms and to build capacity among Roma civil society to ensure full participation at all levels.

The 2021 EU Council recommendation on Roma equality, inclusion and participation (2021/C 93/01) asks EU Member States to monitor and evaluate the implementation of the national strategic frameworks. The EU Anti Racism Action Plan calls on Member States, in full respect of their national contexts, to move towards the collection and use of equality data based on racial or ethnic origin, in order to capture both subjective experiences of discrimination and victimisation and systemic aspects of racism and discrimination.

Still, available equality data are fractional and not harmonised across countries, data sources and data collectors. This can also be seen in the lack of data on Roma fleeing Russia's war of aggression against Ukraine. In 2022, several Member States stepped up in developing new data collections or improving the data collected through the national censuses to include equality characteristics.

Some Member States mandated new or existing human rights bodies to collect data and document antigypsyist incidences. However, not all data collection efforts complied yet with the UN OHCHR human rights principles for data collection and the recommendations of the EU High Level Group on Non-discrimination, Equality and Diversity outlined in the EU guidance note on the collection and use of equality data based on racial or ethnic origin.



Article 14 of the EU Charter of Fundamental Rights (the Charter) enshrines the right to education. One of the four sectoral objectives of the EU Roma strategic framework is that children from all racial or ethnic backgrounds must have equal access to education. That is also in line with the Racial Equality Directive.

In the European Care Strategy, the Commission called on Member States to provide equal opportunities for Roma children. So did the Council in its recommendation establishing a European Child Guarantee.

The education gap between Roma children and children from the general population remains significant, with high dropout rates after lower secondary school, FRA's Roma Survey 2021 shows. Segregation in education has even increased since 2016.



### FRA OPINION 5.3

EU Member States should continue to make all efforts to ensure efficient monitoring through the regular collection and use of equality data. Such efforts should monitor the use of funds, as well as measures and programmes to reach the 2030 targets for Roma equality, inclusion and participation.

Member States are encouraged to ensure that their data collection, including national censuses, comply with the human rights-based approach to data. They should take due consideration of the EU guidance on the collection and use of equality data based on racial or ethnic origin.

Member States should encourage and actively foster cooperation between civil society, academia, equality bodies and statistical offices to facilitate reporting and regular monitoring of discrimination, antigypsyism and hate crime.



### FRA OPINION 5.4

EU Member States should end any segregation of Roma in education and collect evidence of it to fully implement the Racial Equality Directive.

Member States should prioritise and make use of national and EU funds to provide quality education and more training opportunities for Roma children, engaging Roma civil society in the design, implementation and monitoring of their national measures.

## FRA OPINION 5.5

EU Member States should strengthen their efforts to tackle poverty and social exclusion among Roma. This will require targeted measures combining gainful employment and allocation of social transfers to achieve the 2030 target to close the poverty gap between Roma and the general population, as required by the EU Roma strategic framework.

Member States should specifically address Roma children in their national action plans until 2030 for the EU Child Guarantee. In doing so, they should take into account the findings and recommendations of the specific country studies developed by the United Nations Children's Fund and the European Commission.

Member States, in close cooperation with Roma civil society organisations and communities, should identify, plan and implement effective measures to attract Roma women to the labour market in order to enhance their economic independence and protect them from poverty.

Reducing poverty and social exclusion and closing the socioeconomic gap form one of the three horizontal objectives of the EU Roma strategic framework. The European Child Guarantee is the EU's flagship initiative to ensure that every child in Europe at risk of poverty or social exclusion has access to the most basic of rights, such as healthcare and education. It identifies Roma children as specifically disadvantaged and calls on Member States to address their needs.

The European Parliament's resolution in July 2022 calls for an end to women's poverty, and names Roma women as a particularly vulnerable group. The EU's headline target in the European Pillar of Social Rights action plan is to reduce by at least 15 million the number of people at risk of poverty or social exclusion. That must be ensured for everyone through living wages and adequate minimum income benefits for those lacking sufficient resources.

In 2021, four in five (80 %) Roma, including their children, still live in households at risk of poverty and in severe material deprivation (48 %), FRA's most recent data from 10 EU Member States show. National Roma strategies and action plans largely do not address poverty and social protection, the Roma Civil Monitor 2022 concludes.





# 6

## ASYLUM, VISAS, MIGRATION, BORDERS AND INTEGRATION

*The onset of the Russian war of aggression against Ukraine resulted in the registration of nearly 4 million displaced people across the EU, as the focus chapter of this report describes. At the same time, increased global mobility after the COVID-19 pandemic led to an increase in irregular border crossings into the EU.*

*Serious and persistent rights violations have been reported at several points along the EU's external border. Combined with the lack of prompt and effective investigations, they pose serious challenges to the rule of law. Fundamental rights violations at borders worsened and impunity for unlawful action continues as violations are unaddressed.*

*Pressure on civil society organisations from state authorities and other actors defending migrants' and refugees' rights at borders is increasing. EU rules to reform asylum policies remain pending with the EU co-legislator. The mechanism to oversee the application of Schengen rules is being revised, with more attention given to fundamental rights. The legal instruments establishing information technology systems in the area of freedom, security and justice contain several fundamental rights safeguards; now the main challenge is to apply them in practice.*

For refugees other than those fleeing the Russian invasion of Ukraine, legal avenues to reach safety in the EU remain limited. Against the background of increasing global forced displacement, some try to reach safety by coming in an irregular manner. When they unlawfully cross, or try to cross, the EU's external borders, they experience rights violations in several EU Member States.

Such fundamental rights violations are serious, recurrent and widespread. Many reports involve conduct by officials that may constitute serious crimes under national law. Nevertheless, the national justice systems take up few cases. That can lead to a sense of impunity.

Civil society is a key component of Europe's fundamental rights architecture and plays a crucial role in upholding people's rights. Conflict between civil society organisations defending migrants' and refugees' rights, on the one hand, and state authorities and non-state actors, on the other, is increasing.



### FRA OPINION 6.1

The Schengen Council and the Commission's annual 'State of Schengen' reports should devote one agenda item or heading to the fundamental rights situation at borders.

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



## FRA OPINION 6.2

The European Commission should continue efforts to mainstream fundamental rights compliance through Schengen evaluations. When reviewing EU Member States' national programmes, the European Commission should apply all fundamental rights safeguards embedded in the EU legal instruments setting up the Asylum, Migration and Integration Fund and the Border Management and Visa Instrument under the Integrated Border Management Fund.

Secondary EU law in the field of asylum, borders and immigration contains important fundamental rights safeguards. In 2022, there was increased focus on operationalising these. The revision of the Schengen evaluation and monitoring mechanism illustrates this. So do the procedures to receive EU funds. Practitioners still do not sufficiently know, mainstream and act on these safeguards.

## FRA OPINION 6.3

The EU should consider establishing a mechanism for independent review of its large-scale IT systems. Such a mechanism would ensure a continuous, independent and expert review of the impact of EU large-scale IT systems in the area of freedom, security and justice on the fundamental rights and the dignity of people. The experience of the Independent Reviewer of Terrorism Legislation in the United Kingdom could serve as an inspiration for a robust and sustainable mechanism that is independent from the European Commission and from the EU agencies involved in managing or supporting the operation of these IT systems.

Work on EU-level large-scale information technology (IT) systems continued, to facilitate border management, support asylum procedures and mitigate internal security risks. Personal data, including biometric data, about almost all third-country nationals staying in or travelling to the EU will be processed through six large-scale EU IT systems.

Numerous safeguards embedded in EU law are intended to mitigate the risks of fundamental rights violations, provided they are adequately implemented. However, the EU IT systems are just coming into operation, and we are still discovering how several aspects work together. Their potentially vast impact on fundamental rights therefore remains partly unknown.



# 7

## INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION

*From the use of artificial intelligence (AI) to online content moderation, retention of data, facial recognition technologies, and access to/use of electronic evidence in criminal investigations, 2022 continued to pose a recurring question. How can we best use all the available data to their fullest potential while complying with data protection and other fundamental rights safeguards?*

*Discussions on the appropriate safeguards for the many uses of AI intensified at EU level. Increasing attention was paid to fundamental rights.*

*Both international institutions and national governments debated how much police and judicial authorities may access personal data. Initiatives authorising the use of modern surveillance technologies and access to data for security purposes intensified. In parallel, so did related concerns of courts, civil society organisations and public authorities.*



Negotiations on the Artificial Intelligence Act (AIA) progressed steadily in 2022. A high number of suggested amendments were tabled in the European Parliament, and the Council adopted its common approach in December. Both co-legislators have shown an inclination to introduce stronger fundamental rights safeguards in the proposed text. However, fundamental rights safeguards could still be strengthened further, for example in the conformity assessment procedure (proposed Article 43 and Annex VII).

Discussions on the definition of AI are ongoing, with some tendencies to substantially limit its scope. This would leave a number of AI applications and uses that may negatively affect fundamental rights outside the proposed law's framework.

In parallel to these legislative efforts at EU level, some Member States have taken specific steps in 2022 to ensure safe and fundamental rights-compliant use of AI at national level, such as introducing a dedicated AI supervisor or a fundamental rights impact assessment for AI.



### FRA OPINION 7.1

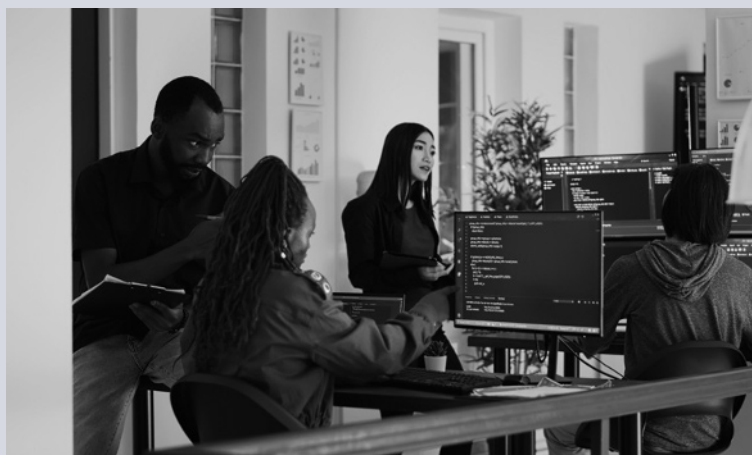
The EU co-legislators should ensure appropriate reference to fundamental rights safeguards in the proposal for the AI Act. The generic definition of AI should avoid narrowing down its scope, as this may unduly narrow the Act's scope of protection. Existing laws, such as data protection and non-discrimination laws, should also be used to address fundamental rights challenges posed by the use of AI, as these laws apply both online and offline.

## FRA OPINION 7.2

The European Commission should ensure in its implementing guidance that providers of online services interpret and implement the obligations laid down in the DSA in a fundamental rights-compliant manner, for example in relation to the risk of over-removal and the freedom of expression.

The landmark Digital Services Act (DSA) was adopted in 2022. This marked an important step towards a safer online environment in which users' fundamental rights are better protected. At the same time, some civil society organisations (CSOs) have expressed concerns about the room it leaves providers of online services to implement it in ways that may be detrimental to fundamental rights, mostly the freedom of expression, by erring on the side of caution and over-removing content to avoid negative sanctions.

The DSA includes several provisions that aim to increase the protection of fundamental rights. It requires that very large online platforms regularly assess fundamental rights risks and come up with mitigating measures. It also provides for better access to data that online platforms hold or generate. This will allow oversight bodies and independent, vetted researchers to assess risks to fundamental rights.



## FRA OPINION 7.3

EU Member States should align their legislation on data retention with the CJEU jurisprudence to avoid general and indiscriminate retention of data by telecommunication providers. Moreover, Member States should ensure that national law includes strict proportionality checks, as well as appropriate procedural safeguards to effectively guarantee the fundamental rights to privacy and the protection of personal data.

In 2022, national governments worked on legal initiatives aiming to reinforce law enforcement authorities' access to data for the detection and investigation of criminal activities. The Data Retention Directive was annulled in 2014, and the Court of Justice of the EU (CJEU) has since reaffirmed in several judgments the unlawfulness of general and indiscriminate data retention. Nonetheless, several EU Member States are still proposing reforms of their legislation to allow for data retention in compliance with the CJEU ruling. Provisions of draft or adopted laws that would not comply with the CJEU requirements led to complaints from some CSOs and public authorities in several Member States.



In 2022, governments and law enforcement authorities remained interested in using technologies for surveillance purposes and accessing data that can identify criminal activity and security threats. Although different in context and nature, such technologies could seriously affect individuals' fundamental rights.

On the one hand, the Pegasus revelations highlighted that some public authorities and governments may use untargeted, widely used spyware. On the other hand, the steady interest from governments and law enforcement authorities in broadening and legalising surveillance technologies that rely on widespread collection of sensitive personal data (such as facial recognition) is a concern for public bodies and CSOs with regard to the legality, necessity and proportionality of these technologies. In several Member States, CSOs, public authorities and courts drew attention to the fundamental rights risks associated with advanced surveillance technologies, and notably the use of surveillance cameras in public spaces.



## FRA OPINION 7.4

EU institutions and Member States should ensure that any new legal initiatives proposed to foster individuals' security through surveillance technologies respect fundamental rights. Notably, laws adopted to use biometric data or facial recognition technologies should ensure that appropriate safeguards are implemented to protect the rights to data protection and privacy.

These safeguarding measures should be prescribed by law, necessary and proportionate. Independent oversight mechanisms should ensure that the application of these measures is regularly scrutinised. Individuals should be able to complain about such measures when they are not compliant with fundamental rights, and they should have access to effective remedies.



# 8

## RIGHTS OF THE CHILD

*The number of children at risk of poverty and social exclusion continued to increase in 2022. High energy costs and rising inflation placed additional burdens on the households in which families with children are struggling to cover basic needs. EU Member States are trying to address the needs of children and families who are struggling, including through the European Child Guarantee.*

*Alongside the arrival of children fleeing Ukraine, the arrival of other non-EU asylum-seeking children continued to increase. As a result, several Member States struggled to provide basic reception conditions, and some continued to detain children in the migration context. The European Commission issued several legislative proposals on victims' rights. Member States have thus taken numerous legislative steps in the protection of children involved in justice systems as victims, as witnesses or when in conflict with the law.*



### FRA OPINION 8.1

The European Commission should guide and support EU Member States in implementing their national plans for the European Child Guarantee. This should include EU funding, such as the ESF+, technical assistance and sharing of good practice. The implementation of the national plans should be scrutinised through the European Semester and relevant monitoring outcomes should be included in country-specific recommendations.

EU Member States should continue and scale up, whenever necessary, the ongoing initiatives to address the impact of the energy crisis and high inflation on poor households, with a particular focus on more vulnerable people, such as those in single-parent, Roma and migrant families. Temporary measures, if successful, could be mainstreamed into social policies, including when implementing the European Child Guarantee national plans.

Almost 1 in 4 children live at risk of poverty or social exclusion in the EU (24.4%). There had previously been a downward trend, with 22.2 % of children at risk of poverty or social exclusion in 2019, but the COVID-19 pandemic disrupted this. The persistently high rates of child poverty are relevant to the obligations of EU Member States to ensure the rights and well-being of children (Article 24 of the Charter of Fundamental Rights of the European Union and Article 3 of the Treaty on European Union) and the social policy objectives of the EU (Article 151 of the Treaty on the Functioning of the European Union).

The implementation of the European Child Guarantee started in 2022. All Member States appointed national coordinators, and 18 Member States developed national action plans. The national coordinators have various levels of authority within national administrations. In addition, the action plans differ in nature and content, but many Member States have allocated at least 5 % of their European Social Fund Plus (ESF+) funding to implement actions under the European Child Guarantee.

Under the 2022 European Semester, eight Member States received country-specific recommendations related to early childhood education and care.

The energy crisis and the high inflation rates in 2022 increased the number of children living in poor households. Several Member States have taken social policy measures to address the situation, such as increasing child benefits, providing one-off payments or helping with heating bills.



Migrant and asylum-seeking children continued to arrive in Europe, often in dangerous circumstances. The number of children who applied for asylum increased substantially in 2022, with a total of 222 100, of whom 39 520 arrived unaccompanied. Migrant children are entitled to protection under the UN Convention on the Rights of the Child, the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union and other EU legislation, such as the Reception Conditions Directive.

Several EU Member States have had difficulties in providing adequate reception conditions, including accommodation, as required by the Reception Conditions Directive. Some countries detained children with their families or unaccompanied children, mainly in the context of return or for identification and age assessment purposes. European and international bodies raised serious concerns about the poor reception conditions in the EU. The European Union Agency for Asylum increased its operational support for Member States.

In 2022, 18 Member States agreed on a voluntary solidarity mechanism to support the relocation of asylum seekers in the Mediterranean and along the western Atlantic route. Between the start of the relocations in 2020 and December 2022, some 5 040 people, including 1 021 children with their families and 1 313 unaccompanied children, were relocated from Greece.

Guardianship of unaccompanied children, a key safeguard in the Reception Conditions Directive (Article 24) and the Asylum Procedures Directive (Article 25), has evolved in recent years through national legislative developments, according to FRA research. However, some challenges remain: the mandate of the guardian is often limited to legal representation, the appointment of a guardian can take more than a month, guardians might be assigned a large number of children and there is insufficient training for newly appointed guardians.



## FRA OPINION 8.2

EU Member States should dedicate sufficient EU and national resources to ensure the protection of asylum-seeking and migrant children, whether with their families or unaccompanied. Allocating sufficient resources should ensure that the reception conditions respect the minimum standards set out in the Reception Conditions Directive, especially for providing adequate accommodation, and avoiding detention through the implementation of alternatives to detention. In particular, Member States should strengthen their efforts to swiftly appoint trained and resourced guardians for every child who arrives unaccompanied in the EU and ensure that they attend school.



### FRA OPINION 8.3

EU co-legislators should ensure that existing rights and procedural guarantees for children who are victims of crime already covered by the Victims' Rights Directive, the Human Trafficking Directive and the Child Sexual Abuse Directive are strengthened through the European Commission's proposals and beyond.

EU Member States should strengthen their efforts to ensure that children in conflict with the law have access to a fair trial with all the guarantees provided for in the Procedural Safeguards Directive. This includes providing mandatory multidisciplinary training to all involved legal and social professionals.

The European Commission has introduced several legislative initiatives that will have a great impact on the rights of children involved in justice systems as victims or witnesses of crime: new rules to prevent and combat child sexual abuse online, a new directive on domestic violence and a revised Human Trafficking Directive. Several EU Member States adopted new legislation in the area of child victims, focusing on responding to sexual offences, including online; improving procedural safeguards; and removing limitation dates.

Article 48 of the Charter of Fundamental Rights of the European Union provides important safeguards for the presumption of innocence and the right of defence. Article 24 requires that primary consideration be given to the best interests of the child.

The Procedural Safeguards Directive establishes a number of safeguards for children in conflict with the law. FRA research into its practical implementation points out a number of challenges, such as lack of child-appropriate information, weaknesses in the implementation of individual assessments, leaks to the media of private information, and reports of police mistreatment or violent behaviour. The research also shows that training is available to a certain extent, but only on a voluntary basis.



# 9

## ACCESS TO JUSTICE: VICTIMS' RIGHTS AND JUDICIAL INDEPENDENCE

*In 2022, there was some improvement in the area of victims' rights, particularly concerning the protection of victims with specific needs. Significant legislative and policy developments took place in the area of women as victims of gender-based violence, at both EU and national levels in some EU Member States. This included the publication of an EU proposal for a new directive on combating violence against women and domestic violence.*

*Serious concerns remained as to the rule of law and the independence of the judiciary in certain EU Member States. The Court of Justice of the European Union delivered its first judgment concerning the general conditionality mechanism. This mechanism is a general regime of conditionality that protects the EU budget in the event of breaches, by Member States, of the rule of law principles relating to implementing the EU budget. The judgment confirmed the mechanism's conformity with primary EU law.*



Article 22 of the EU Victims' Rights Directive and related recitals provide for a victim's right to an individual needs assessment. Accordingly, Member States are obliged to individually assess victims' specific protection needs and to determine whether and to what extent they would benefit from special measures during criminal proceedings.

In 2022, a few Member States adopted practical measures to facilitate the identification of victims with special needs. These measures included guidance on the treatment of different groups of vulnerable victims and an information campaign focused on specific groups of victims.

However, challenges remain. The European Commission's evaluation of the Victims' Rights Directive identified several shortcomings in relation to the protection of victims' individual needs. These shortcomings affected the quality of treatment the victims received after a crime and during criminal proceedings. The Commission's evaluation links these shortcomings to lack of knowledge of specific needs among professionals, which in turn may result in insufficient consideration given to victims. The evaluation pointed out the lack of specific guidelines for conducting individual assessments, lack of awareness among practitioners of the importance of the assessments and lack of training for practitioners.



### FRA OPINION 9.1

EU Member States should ensure that victims receive an individual assessment to identify specific protection needs. This assessment should determine their needs for special protection measures during criminal proceedings, due to their particular vulnerability. In addition, Member States are encouraged to provide specific guidelines and training for professionals in order to underpin a victim's right to an individual assessment.





## FRA OPINION 9.2

All EU Member States that have ratified the Istanbul Convention should criminalise sexual violence using consent-based definitions of rape and other forms of sexual violence. Member States should also ensure that any intentional sexual acts committed without the consent of the victim are effectively investigated, prosecuted and penalised.

By the end of 2022, all EU Member States had signed the Council of Europe Convention on preventing and combating violence against women (Istanbul Convention), although six have yet to ratify it. Under Article 36 of the convention, States Parties are required to criminalise any acts of a sexual nature that take place without the consent of one of the people involved. The criminalisation of sexual acts based on such consent-based definitions is also required by Articles 3 and 8 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights. This is in line with contemporary understandings of sexual violence, which do not rely on force or similar features.

The adoption of consent-based definitions of sexual violence in EU Member States is progressing. In 2022, new legislation and legislative proposals in this respect were adopted in a few Member States.

## FRA OPINION 9.3

The EU and its Member States are encouraged to further strengthen their efforts and collaboration to maintain and reinforce the independence of the judiciary as an essential component of the rule of law and mutual trust. In this context, the Member States are encouraged to swiftly follow up on recommendations and measures. These include those adopted in the context of the European rule of law mechanism and under the new EU conditionality mechanism.

An independent judiciary is the cornerstone of the rule of law and of access to justice (Article 19 of the Treaty on European Union, Article 67 (4) of the Treaty on the Functioning of the European Union and Article 47 of the EU Charter of Fundamental Rights).

Challenges in the area of justice persisted in several EU Member States, for example regarding perception of judicial independence in the EU Member States, as shown by the 2022 EU Justice Scoreboard.

The European Commission issued its third annual rule of law report in 2022. The issue of justice systems and their independence was one of the four focus areas covered by the report. While welcoming important reforms to strengthen judicial independence, the report refers to structural concerns persisting in a few Member States as regards judicial independence.

The year also saw the adoption of the first-ever implementing decision under the General Conditionality Regulation. This decision imposes measures for the protection of the budget against the consequences of breaches of the principles of the rule of law. It also concerns public procurement, the effectiveness of prosecutorial action and the fight against corruption in Hungary.





# 10

## DEVELOPMENTS IN THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

*The EU legislator took action to provide fair minimum wages, including for people with disabilities. The European Parliament made several new proposals to facilitate the EU's implementation of the Convention on the Rights of Persons with Disabilities (CRPD), including in EU electoral law, ahead of the 2024 European elections. However, the use of EU funds for institutionalisation remains of concern.*

*At national level, significant gaps persist between the level of participation of people with disabilities in the labour market and that of others in the labour market and in the education system. EU Member States have made limited progress in providing relevant assistance and in ending segregated approaches.*

*The implementation of EU accessibility directives, and national accessibility programmes, has advanced. But Member States have missed transposition deadlines, and progress remains uneven. States have made significant efforts to welcome people fleeing Ukraine, including those with disabilities. The Committee on the Rights of Persons with Disabilities (CRPD Committee) requested answers to a wide range of questions to the EU in a list it sent to the European Commission.*

*The Swedish national monitoring framework started work, so all Member States and the EU now have the framework that Article 33 (2) of the CRPD requires.*



Article 27 of the CRPD requires that people with disabilities should be able to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to people with disabilities. The CRPD Committee clarified this obligation in General Comment No. 8 (2022), including by noting that sheltered employment is, with one limited exception, not acceptable as a measure to promote the employment of people with disabilities under the CRPD.

EU-level and national-level statistics show that the employment gap for people with disabilities persists, and now stands at 23.1 percentage points. In addition, despite reforms aimed at improving participation in the open labour market, segregated employment is still promoted and insufficient support is provided to people with disabilities to ensure that they have access to the labour market. This is particularly the case for women and older people. The Minimum Wage Directive will help improve the situation of people with disabilities but will not by itself shift national employment practices.



### FRA OPINION 10.1

EU Member States should take effective action to address the employment gap for people with disabilities through comprehensive and targeted measures in all sectors of the economy to achieve full employment inclusion. The European Commission should monitor the implementation of the new Minimum Wage Directive including as it relates to people with disabilities. Member States should in this regard pay particular attention to people with disabilities following the guidance by the CRPD Committee.

Member States should phase out sheltered employment in line with the CRPD. They should put in place effective measures to integrate individuals working there in the open labour market. In doing so, they should pay particular attention to promoting work opportunities for women and older people with disabilities.

## FRA OPINION 10.2

To facilitate the transition from education to the labour market, EU Member States should provide sufficient assistance to students with disabilities at all levels of education. They should ensure that all learning environments in primary, secondary and tertiary education are inclusive and fully accessible.

Article 24 of the CRPD recognises the right of people with disabilities to education and requires the realisation of this right without discrimination and on the basis of equal opportunity. States Parties are required to ensure an inclusive education system at all levels and lifelong learning.

However, people with disabilities continue to face significant burdens in accessing education systems. They are less likely to complete their secondary education and get diplomas that are useful for full participation in the job market, and also less likely to enrol in or complete higher education. There are also challenges in the transition between education and the labour market.

Buildings and other aspects of the learning environment are insufficiently accessible for people with disabilities. Member States continue to use segregated learning environments instead of investing in a full and inclusive regular education system.



## FRA OPINION 10.3

EU Member States should fully implement existing EU legislation in the area of disability, including the European Accessibility Act and the Web Accessibility Directive. In areas such as public transport and infrastructure, they should fully implement their obligations under Article 9 of the CRPD. The European Commission could consider proposals for the extension of the accessibility directives to other areas.

Article 9 of the CRPD requires that people with disabilities have full access to society, including the physical environment, transportation, information and communications, including information and communications technologies and systems, and other facilities and services open or provided to the public, both in urban areas and in rural areas. The EU has adopted relevant directives in this area, such as the European Accessibility Act and the Web Accessibility Directive, and progress has been made in incorporating them into national law and implementing them. However, a significant number of Member States have missed the deadline for incorporating the European Accessibility Act into national law, and progress still needs to be made in coming years to ensure full implementation.

A European Commission evaluation also found significant remaining challenges in incorporating the Web Accessibility Directive into national law. They are also visible in national reports. Despite some progress, challenges persist in other areas of accessibility too, such as the broader accessibility of infrastructure and the area of public transport. The EU has issued legislation in some areas.





The year 2022 brought both progress and setbacks in terms of fundamental rights protection. FRA's *Fundamental Rights Report 2023* reviews major developments in the EU between January and December 2022, and outlines FRA's opinions thereon. Noting both achievements and remaining areas of concern, it provides insights into the main issues shaping fundamental rights debates across the EU.



This year's focus looks at the fundamental rights implications for the EU of the war in Ukraine. The remaining chapters discuss the EU Charter of Fundamental Rights; equality and non-discrimination; racism, xenophobia and related intolerance; Roma integration; asylum and migration; information society, privacy and data protection; rights of the child; access to justice; and developments in the implementation of the Convention on the Rights of Persons with Disabilities.



# PROMOTING AND PROTECTING YOUR FUNDAMENTAL RIGHTS ACROSS THE EU —

For the full FRA *Fundamental Rights Report 2023* – see  
<https://fra.europa.eu/en/publication/2023/fundamental-rights-report-2023>

See also related FRA publications:

- FRA (2023), *Fundamental Rights Report 2023 – FRA opinions*, Luxembourg, Publications Office,  
<https://fra.europa.eu/en/publication/2023/fundamental-rights-report-2023-fra-opinions>  
(available in all 24 official EU languages)
- FRA (2023), *Fundamental rights implications for the EU of the war in Ukraine*, Luxembourg, Publications Office,  
<https://fra.europa.eu/en/publication/2023/frr-2023-focus-war-in-ukraine>

Previous FRA Annual reports on the fundamental rights challenges and achievements in the European Union remain available on FRA's [website](https://fra.europa.eu).

FURTHER INFORMATION



## FRA – EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Schwarzenbergplatz 11 – 1040 Vienna – Austria

T +43 158030-0 – F +43 158030-699

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