

HIGHLIGHTS 2013



Fundamental rights: key legal and policy developments in 2013



EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS



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Luxembourg: Publications Office of the European Union, 2014

ISBN 978-92-9239-451-6
doi:10.2811/68926

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Printed in Italy

PRINTED ON PROCESS CHLORINE-FREE RECYCLED PAPER (PCF)



Fundamental rights: key legal and policy developments in 2013

Highlights 2013 cover several titles of the EU Charter of Fundamental Rights, colour coded as follows:

Freedom	Asylum, immigration and integration Border control and visa policy Information society, respect for private life and data protection
Equality	The rights of the child and the protection of children Equality and non-discrimination Racism, xenophobia and related intolerance Roma integration
Justice	Access to justice and judicial cooperation Rights of crime victims

The European Union (EU) and its Member States took a variety of important steps in 2013 to protect and promote fundamental rights by assuming new international commitments, revamping legislation and pursuing innovative policies on the ground. Yet, fundamental rights violations seized the spotlight with distressing frequency: would-be migrants drowned off the EU's coast, unprecedented mass surveillance, racist and extremist-motivated murders, child poverty and Roma deprivation. In response, the EU completed a series of important legal reforms, particularly in asylum, while Member States worked to transpose the EU Victims' Directive into national law and pursued their national Roma integration strategies. Still, new laws on the books do not necessarily transform the situation on the ground. Crisis-driven austerity measures raised some fundamental rights concerns. A persisting gap between law and practice troubled a broad spectrum of human rights observers, particularly in asylum policy, Roma integration and child and victims' rights.

In the area of **asylum, immigration and integration** in 2013: almost 400 migrants died off the Italian island of Lampedusa in October. That underlined how dangerous it can be for those in need of protection to reach the European Union. In response to the tragedy, the European Commission set up the Task Force Mediterranean together with EU Member States. The EU also completed the second phase of the harmonisation of EU asylum laws in 2013, publishing four revised asylum instruments, including two directives on asylum procedures and reception conditions of asylum seekers, and revised Dublin and Eurodac regulations. These new EU laws do not, however, translate immediately into harmonised Member State practices. The chances that an asylum petition will be accepted still vary widely, hinging largely on the Member State in which it is lodged. The challenge is, therefore, to close this gap by identifying and addressing obstacles to common practice. The difficult negotiations that led to the EU asylum framework, for example, have created rules that are often complex, vague or unclear in their relationship to the rights set forth in the EU Charter of Fundamental Rights.

In the area of **border control and visa policy** in 2013, there was a jump in irregular arrivals of third-country nationals at the European Union's southern sea borders, as well as pressure on the Greek and Bulgarian land borders from Syrians fleeing civil war. These made it all the more urgent for the EU to modernise its border control, also in the light of fundamental rights. As part of the overhaul of its legal framework, the EU adopted important pieces of border control and visa policy legislation and began deliberations on another five proposals. Although these instruments primarily seek to manage access to the EU, they all affect fundamental

These highlights put the spotlight on selected key issues of the 2013 Annual report of the European Union Agency for Fundamental Rights (FRA). In the margin throughout, they refer to relevant FRA publications from 2013, all of which can be accessed through the FRA website at fra.europa.eu.

The FRA Annual report, *Fundamental rights: challenges and achievements in 2013*, is structured along the agency's main thematic work areas based on its new Multi Annual Framework 2013–2017. It is divided into 10 chapters, in addition to a focus section and one on the EU Charter of Fundamental Rights and its use before national courts.



An EU internal strategic framework for fundamental rights: joining forces to achieve better results



The EU Charter of Fundamental Rights before national courts and non-judicial human rights bodies

Chapters:

1. Asylum, immigration and integration
2. Border control and visa policy
3. Information society, respect for private life and data protection
4. The rights of the child and the protection of children
5. Equality and non-discrimination
6. Racism, xenophobia and related intolerance
7. Roma integration
8. Access to justice and judicial cooperation
9. Rights of crime victims
10. EU Member States and international obligations

The full report and its individual chapters are available for download at fra.europa.eu. A complete list of endnotes is available at the end of each chapter in the main report.

rights. The EU also continued to deploy modern technologies in the border and visa areas. The risks and benefits, however, that these modern technologies pose for the upholding of fundamental rights remain largely unexplored. The European border surveillance system, originally intended for fighting irregular migration, has the potential, if properly implemented, to save the lives of migrants at sea. The smart borders proposals triggered, for example, fundamental rights concerns over the possibility that the technology might contribute to mislabelling some third-country nationals as overstaying their visas.

In the context of the **information society, respect for private life and data protection**, unprecedented revelations about the United States' and United Kingdom's mass surveillance of global telecommunication and data flows captured international newspaper headlines for weeks in 2013. This put the issue of privacy in the public spotlight and highlighted the gap between rapidly evolving technologies and current laws safeguarding the right to privacy. The revelations occurred while the EU was in the midst of its most important data protection legislation reform in 20 years and, by forcefully underlining the need for a strong data protection framework, marked a turning point in the debate. Disturbed by these revelations, EU and Member State policy makers took immediate steps to shore up data protection rules, while civil society pushed for greater transparency and more effective remedies before data protection authorities and courts. In reaction to the revelations, the EU legislature successfully incorporated significant reforms into the data protection reform package. Despite some progress, the reform had not been finalised by the end of 2013.

When it comes to the **rights of the child and the protection of children**, 2013 witnessed more children at risk of poverty and violence across the European Union. To tackle the pressing and persistent problem of child poverty, the European Commission issued a recommendation setting forth a common approach. EU Member States will need to put this framework into practice. Yet, across many Member States, education budgets that contribute to children's well-being have fallen prey to crisis-driven cuts. Similarly, budget cuts to child protection services may put at risk safety nets needed by children afflicted by violence, even as new technologies, especially the internet, increase the risk of some types of violence. The EU and a number of Member States have taken steps to combat violence and child sexual abuse, as well as other forms of violence affecting children; 2013 marked the deadline for Member States to transpose two related directives. In another high-priority field, the treatment of children was often inappropriate in judicial proceedings, as crime victims or witnesses, and in civil proceedings, although recent legal reforms are expected to improve the situation.

The EU benefits from a solid legal framework with which to counter discrimination, especially on grounds of racial or ethnic origin. The European Commission's proposal for a Horizontal Directive, designed to provide comprehensive protection against discrimination on all grounds equally, remains stalled. Discrimination often excludes those affected, erecting barriers that prevent some from participating in society on an **equal and non-discriminatory** footing. FRA survey results have shown, for example, that many lesbian, gay, bisexual and transgender (LGBT) persons fear holding hands with a partner in public; one in five Jews face discrimination or harassment; and women in the EU regularly experience harassment at work. EU Member States and EU institutions recognise that barriers to full participation exist. Some are adopting measures to tackle the issue, also drawing on EU funds to address discrimination and unequal treatment.

In the fields of **racism, xenophobia and related intolerance** it was observed that the impact of the economic crisis, high unemployment rates, fears relating to the arrival of

migrants and a gradual loss of trust in democratic processes fuel racism, xenophobia and related intolerance in the European Union. Some political rhetoric at local, national and European levels exacerbates an aggressive tone, not least because the media pick up on these messages, which then echo across social media. The EU institutions and Member States must therefore remain vigilant and reinvigorate their efforts to counter the expression of racism, xenophobia and related intolerance in all their forms.

Major European Union institutions and the Council of Europe renewed in 2013 their political resolve and launched initiatives to fight the exclusion of and discrimination against Roma, the EU's largest ethnic minority. EU Member States have pledged to improve the situation of Roma in education, employment, health and housing, developing concrete national strategies on **Roma integration**. There is, however, evidence of ongoing fundamental rights violations, while for many Roma social exclusion and extreme deprivation remain a daily reality. To accelerate progress, the Council of the European Union issued in December 2013 a 'Recommendation on effective Roma integration measures to Member States', which highlights the need for effective monitoring of the implementation of national integration strategies.

The need to improve the efficiency and transparency of national justice systems and enhance the implementation of existing fundamental rights instruments, the search for an effective rule of law mechanism, and further budget cuts extending beyond courts to non-judicial mechanisms – these were some of the main challenges in the area of **access to justice and judicial cooperation** in 2013. Positively, several EU Member States acted to modernise and further develop e-justice to tackle overly long proceedings. They also continued to reform non-judicial bodies with a human rights remit to strengthen their fundamental rights role. At the EU level, a specific tool – a 'Justice Scoreboard' – was introduced to boost the efficiency of national judicial systems, and the European Commission opened the debate on improvements in the area of justice needed in the next five years after the Stockholm Programme.

In the area of the **rights of crime victims**, in 2013, EU Member States worked to transpose the EU Victims' Directive, which was adopted in October 2012, into national law with a view to implementation by the 16 November 2015 deadline. Some Member States made considerable progress in strengthening procedural rights and support provisions for victims in line with the directive. The Czech Republic, for example, guaranteed many of the rights set out in the directive at the legal level, while France stands out as having established a comprehensive victim support service structure across the country. Other Member States, however, need to make a significant effort in the coming months if the targets outlined in the directive, including the provision of victim support services, are to be met on time. The Regulation on mutual recognition of protection measures taken in civil matters upon request of the person at risk, adopted on 12 June 2013, aims to ensure that protection measures in civil matters issued by one Member State will be easily recognised by and applied in other Member States. A number of Member States reformed laws and enhanced victims' rights.

Finally, 2013 saw important developments with regard to the **international obligations of the EU and its Member States**. The EU, underlining its desire to put Europe at the heart of the international human rights framework, pursued its accession in 2013 to such key instruments as the European Convention on Human Rights. At the same time, it encouraged its Member States as well as third countries to engage more with the international human rights machinery. EU Member States assumed a large number of

new Council of Europe and United Nations human rights commitments in 2013 through signatures, ratifications and accessions. Although reluctant to join certain conventions, such as those on access to official documents or on migrant work, a number of Member States took decisive action on more recent instruments, such as those related to violence against women or to the rights of the child. These new commitments offer testimony to the EU's and its Member States' determination to lead the field of fundamental rights from the front, while they also contribute to the ongoing evolution, and ever more tightly interwoven fabric, of international human rights protection.

Asylum, immigration and integration

Spotlight on the EU's challenges in managing sea borders

A boat carrying some 500 migrants capsized near the Italian island of Lampedusa on 3 October. The resulting deaths of 366 persons illustrated an alarming and unresolved gap in the EU's protection of individuals' core rights (see FRA Annual report 2013, [Section 2.1](#), on border control and visa policy).

Although the EU is taking action to combat smuggling and trafficking in human beings, both within the EU as well as to or from third countries, it has so far done little to offer alternative ways to seek safety for those who flee persecution or serious harm. Two comprehensive reports, the first published by FRA in March 2013¹ and the second by the UN Special Rapporteur on the human rights of migrants in April 2013,² describe in detail the fundamental rights challenges linked to the management of sea borders. Both reports note this management's impact on the human rights of migrants and present several suggestions on how to improve the situation.

The Special Rapporteur calls for a human-rights-based approach to border management, whereby the rights of migrants should be the first consideration. Repressive measures alone have been shown to be counterproductive, driving migrants further underground and increasing the power of smuggling rings. As suggested in [Section 2.1](#) of the FRA Annual report 2013, another consequence is that flows simply move from one part of the EU external border to another.

Following the Lampedusa tragedy in October 2013, European leaders discussed what action to take. In a 10 October press release, the UNHCR called for 10 urgent measures to prevent further tragedies and improve burden sharing. They range from strengthening Mediterranean search and rescue capacity, through setting up a predictable mechanism for disembarkation of migrants in a safe place, to reinforcing protection systems in transit countries from where migrants embark. On 18 October,

Key developments in the area of asylum, immigration and integration

- In a Task Force Mediterranean communication, the European Commission proposes a set of actions to reduce the death toll in the Mediterranean sea following a tragic incident near Lampedusa.
- The conflict in Syria creates over 2.2 million refugees, mainly in the Middle East; two EU Member States establish ad hoc admission procedures for Syrians.
- The second phase of the harmonisation of EU asylum policies draws to a close in June 2013 with the publication of four revised instruments of EU law.
- The Court of Justice of the European Union (CJEU) issues seven preliminary rulings relating to asylum. In one of these, the court highlights the importance to be given to Article 24 (2) of the EU Charter on Fundamental Rights regarding the rights of the child and in particular to the best interests principle.
- The European Court of Human Rights clarifies that detention "to prevent an unauthorised entry" under Article 5 (1) f of the European Convention on Human Rights is not allowed where an asylum seeker has the right under EU law to enter and stay in a state pending examination of an asylum request.
- A code of conduct for joint return operations coordinated by Frontex is adopted, which also covers forced return monitoring.
- Negotiations on the draft Seasonal Workers Directive come to an end, with the Council of the European Union and the European Parliament reaching political agreement on the text.
- The European Commission publishes a proposal to review the directive on the admission of students, which also covers au pairs.

Italy started operation *Mare Nostrum*, deploying military vessels to increase its search and rescue capacity in the central Mediterranean. According to the Italian Ministry of Interior, by the end of 2013 *Mare Nostrum* had assisted 4,323 persons in 34 search and rescue operations.

At the EU level, the Justice and Home Affairs Council asked the European Commission to convene a task force to identify the tools which the EU has at its disposal to prevent such tragedies and which could be used in a more effective way.³ The European Council gave it the job of identifying priority actions to be taken in the short term based on the principles of prevention, protection and solidarity.⁴ The European Parliament stressed that the Lampedusa tragedy should be a turning point for Europe.⁵

As requested, the European Commission established the Task Force Mediterranean with EU Member States and relevant agencies, including FRA. The task force presented its results on 4 December, suggesting 38 actions which either had already begun or could start in the short term. These include measures in five areas: cooperation with third countries; reinforced refugee protection; the fight against trafficking and smuggling; better border surveillance; and enhanced solidarity with Member States dealing with high migration pressure.⁶ The actions focus on combating international crime and preventing, in cooperation with third countries, migrants from embarking on perilous crossings. Little reference is made to enhancing rescue at sea (primarily in relation to building capacities in North Africa), although the task force includes actions to strengthen border surveillance. Operational cooperation with third countries must be in full compliance with fundamental rights. On 20 December, the European Council welcomed the task force's proposed actions and called for a full-fledged effort to implement them. It also asked the European Commission to report back to the Council on their implementation.⁷

A number of the task force's actions have the potential to reduce the risk of deaths at sea or otherwise protect migrants' fundamental rights, but the opportunity for a more wide-ranging policy change in external border management was missed. Legal avenues for refugees to reach safety remain very limited, thus keeping them dependent on smugglers in many cases. Similarly, the task force is very cautious in exploring joint asylum processing by EU Member States.

The discussion in the task force raised again the issue of intra-EU solidarity, with Member States at the external borders of the EU calling for more support from other Member States. Mediterranean EU Member States highlighted the particular challenges in dealing with persons who are often traumatised following a perilous sea crossing, stressing that their humanitarian needs differ from those of applicants for international protection arriving by air. According to Eurostat (migr_asyappctza data, extracted on 2 May 2014), 70 % of all asylum applications lodged in the EU in 2013 were registered in five EU Member States. In descending order of applications, Germany, France, Sweden, the United Kingdom and Italy received the lion's share of the total number of applications – an

argument used to counter the southern EU Member States' calls for more solidarity measures. The issue remained largely unresolved, possibly also because the situation in the Mediterranean would require geographically broader international solidarity.

A joint commitment by all Mediterranean states and with the support of other affected or interested countries, both within and without the EU, seems

necessary to address unsafe migration by sea and to reduce the number of tragedies like the one which occurred off Lampedusa in October 2013. With its humanitarian and fundamental rights tradition, the EU would be best placed to initiate a process aiming to achieve this.

FRA PUBLICATION

Fundamental rights at Europe's southern sea borders, March 2013, <http://fra.europa.eu/en/publication/2013/fundamental-rights-eu-ropes-southern-sea-borders>

Spotlight on the CJEU providing authoritative interpretation of EU asylum law

In the field of asylum, EU law has been adopted after long and often difficult negotiations, resulting in compromise texts which are difficult to apply, leaving the task of clarifying these provisions to the courts and practitioners. Furthermore, the law's relationship to fundamental rights enshrined in the Charter may be unclear. Despite all harmonisation efforts to date, there are major differences between how Member States adjudicate asylum claims.

The second phase of harmonisation of the EU asylum *acquis* was completed in June 2013. Although they keep the main building blocks of the *acquis* unchanged, the revisions are important from a fundamental rights point of view. The most important changes include the regulation at EU level of the detention of asylum seekers; access by the police and Europol to the Eurodac database containing fingerprints of all international protection applicants; and the strengthening of safeguards for vulnerable persons requesting asylum. In addition, the revised Dublin Regulation introduces an early warning mechanism to prevent the deterioration or collapse of asylum systems, with EASO playing a key role. The agreed legal texts are complex and often difficult to understand, even for specialists. [Table 1](#) lists the three most important changes relating to fundamental rights for each of the four revised instruments.

Table 1: EU asylum instruments revised in 2013

Revised instrument	Original instrument	Three main changes relating to fundamental rights	Geographical applicability
Dublin Regulation (EU) No. 604/2013 (recast)	Dublin Regulation (EC) No. 343/2003	<ul style="list-style-type: none"> Prohibits transfer of asylum seekers to Member States whose asylum system are facing systemic deficiencies; offers children stronger safeguards; requires personal interview before transfer decisions taken 	All EU Member States and Schengen Associated Countries (SAC)
Eurodac Regulation (EU) No. 603/2013 (recast)	Eurodac Regulation (EC) No. 2725/2000	<ul style="list-style-type: none"> Gives police and Europol access to Eurodac as of 2015 to prevent, detect or investigate serious crimes; strengthens language on the duty to inform data subjects of the purpose of personal data processing; European Commission's Eurodac evaluation must also address whether law enforcement's Eurodac access has led to indirect discrimination against applicants for international protection 	All EU Member States except Ireland, which is not bound by the recast version; all SAC, but further negotiations required with them regarding police access to Eurodac
Reception Conditions Directive 2013/33/EU (recast)	Reception Conditions Directive 2003/9/EC	<ul style="list-style-type: none"> Regulates detention of asylum seekers, introducing safeguards, but allowing detention of children under certain circumstances; requires that asylum seekers be given effective access to the labour market no later than nine months from the date of their application; introduces new safeguards for vulnerable applicants, including a duty to put in place a system to identify vulnerable persons 	All EU Member States, except Denmark. Ireland and the United Kingdom are not bound by the recast version

Revised instrument	Original instrument	Three main changes relating to fundamental rights	Geographical applicability
Asylum Procedures Directive 2013/32/EU (recast)	Asylum Procedures Directive 2005/85/EC	<ul style="list-style-type: none"> To enhance the quality of first-instance asylum procedures, makes new provisions on staff training, gender-sensitive procedures, personal interview and special procedural guarantees for applicants with specific needs; limits application of accelerated asylum procedures; strengthens the right to an effective remedy against a negative asylum decision, requiring that removal be suspended automatically or, in limited exceptions, upon request 	All EU Member States, except Denmark. Ireland and the United Kingdom are not bound by the recast version

Note: Schengen Associated Countries (SAC) are Iceland, Liechtenstein, Norway and Switzerland.

Source: FRA, 2014

While harmonisation is progressing, overcoming the large differences in practice appears more difficult. Many EU Member States continued to implement training, quality initiatives and other measures, with the support of EASO, the UNHCR and other actors, to enhance the quality of asylum decisions and to bring Member State practices closer together.⁸ Nevertheless, the chances of obtaining asylum still vary considerably depending on the Member State in which an application is submitted.

FRA PUBLICATION

Handbook on European law relating to asylum, borders and immigration, June 2013, available in English, French, German and Italian at: <http://fra.europa.eu/en/publication/2013/handbook-european-law-relating-asylum-borders-and-immigration>

National courts and the CJEU continued to play an important role in clarifying and interpreting EU law. National courts in 2013 submitted eight requests to the CJEU for preliminary rulings relating to the asylum *acquis*.⁹

At the same time, in 2013, the CJEU issued seven judgments, providing guidance on the application of the Dublin Regulation (four), the Qualification Directive (one), the Asylum Procedures

Directive (one) and the possibility of prolonging pre-removal detention under the Return Directive in case a person in return procedures seeks asylum (one).

Outlook

The risk that migrants including children may die in their quest for a better life in the EU has yet to be allayed. The prevention of such tragedies in future is an absolute priority. The Task Force Mediterranean has prepared actions to guarantee rescue obligations as part of surveillance operations; 2014 will show how far they are successful or if more comprehensive steps need to be taken. If more far-reaching decisions are needed, the year will also make clear whether or not there is a political will to take them, such as opening up legal channels for protected entries.

Changes to most pieces of EU legislation in this field are to be finalised. This is only a first step to introducing changes on the ground. The same is true of fundamental rights safeguards, which have often been adopted after difficult negotiations. In its submission on the future of Home Affairs policies, FRA highlights the need to focus on ensuring that legislation is effective and functions well. EU and Council of Europe standards on fundamental and human rights, which are woven into the fabric of EU law, need to be applied in practice. Border guards, consular officials, immigration officers and asylum

officers, as well as other persons taking decisions affecting individuals on a daily basis, need simple and practical tools to help them in their roles.

In the year to come, the different EU bodies and agencies will be called on to contribute to the realisation of EU laws according to their mandate and capacity. It is essential that all those concerned give fundamental rights safeguards a central role: the European Commission when it supervises and assists Member States with the transposition and implementation of EU law; the Council of the European Union when it discusses, for example, the followup actions taken by the Task Force Mediterranean; and the European Parliament when exercising its mandate. Similarly, EU agencies, including Frontex and EASO in particular, will be requested to embed fundamental rights ever more deeply into their daily work with Member States. FRA's expertise will continue to be required. The concerted support of all relevant actors is needed to bridge the yawning gap between law and practice. This must be the focus of work in 2014.

Border control and visa policy

Spotlight on the rise of the number of arrivals in southern Europe

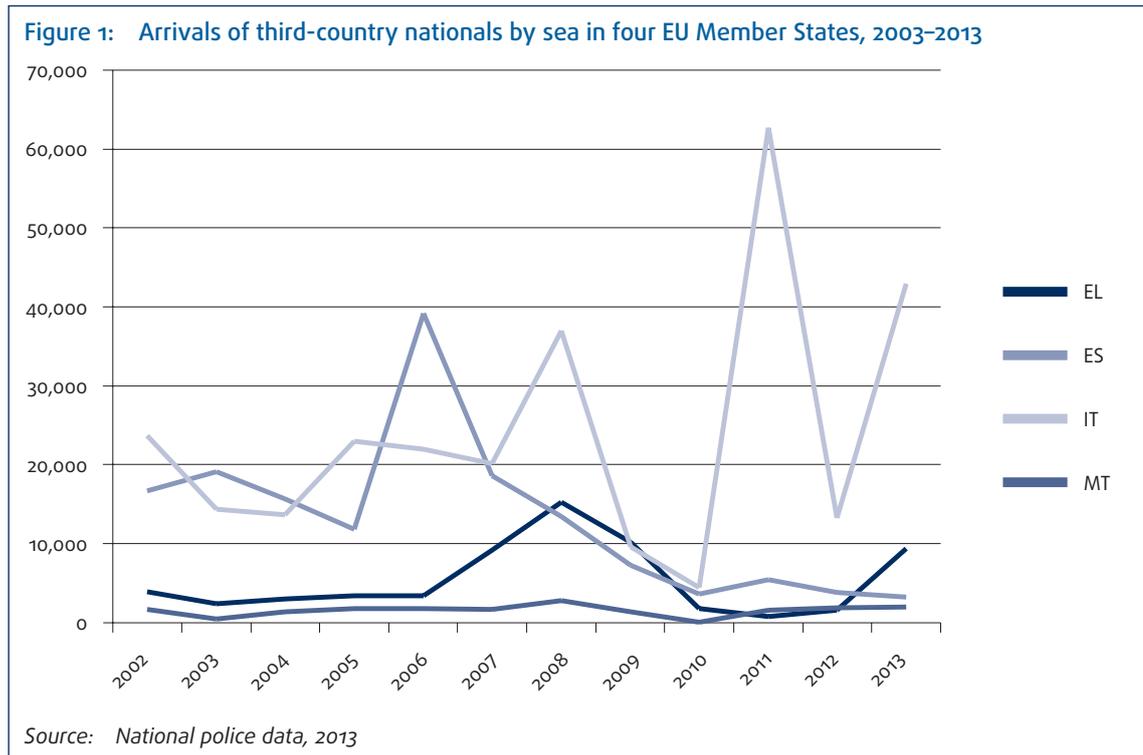
In 2013, an increasing number of persons undertook a perilous journey by sea, seeking safety from persecution and violence or poverty, or to join their families in Europe. As [Figure 1](#) shows, the total number of third-country nationals arriving on Europe's shores increased substantially in 2013, reaching some 57,000 persons. Increases were particularly visible in **Greece** and **Italy**. Arrivals by sea in the eastern and central Mediterranean increasingly include Syrians fleeing domestic conflict. In **Italy** in 2013, the number of arrivals by sea was the second-highest in the last 10 years, after the 2011 events in Tunisia and the civil war in Libya persuaded over 60,000 persons to make the journey. In 2013, 43,000 persons arrived at Italian coasts. The authorities continued to collaborate with international organisations and NGOs which were part of the Praesidium project, a promising practice identified by the FRA report on Europe's sea borders.

As indicated in last year's Annual report, in **Greece**, increased arrivals by sea mirror a substantial reduction of irregular crossings at the **Greek** land border in the Evros region, after the deployment of some 1,800 additional police officers at the border and the December 2012 construction of a 12-kilometre-long fence along the land border with Turkey. Amnesty International and ProAsyl reported collective expulsions of refugees and migrants in the Aegean Sea.¹⁰ Many of those who cross come from refugee-producing countries, such as Eritrea, Somalia and Syria.¹¹

Irregular land crossings shifted from **Greece** to **Bulgaria**.¹² In addition, in 2013 the number of irregular migrants increased substantially, including in **Hungary** (25,000 persons).

Key developments in the area of border control and visa policy

- The EU adopts a regulation on the European border surveillance system, Eurosur, set up to fight irregular immigration, prevent cross-border crime and contribute to the protection of migrants' lives at sea.
- The European Commission tables the smart border package, which suggests the fingerprinting of all short-term visitors to the EU (entry/exit system) and the creation of a programme to facilitate border checks for frequent travellers (Registered Travellers Programme).
- SIS II, an upgraded version of the Schengen Information System which stores biometric data, becomes operational after years of delay.
- The gradual regional roll-out of the Visa Information System (VIS) continues.
- The Schengen rules are amended, introducing a new evaluation and monitoring system, revising rules for the reintroduction of intra-Schengen border controls and strengthening fundamental rights.
- Frontex's Fundamental Rights Officer and Consultative Forum are operational and advise Frontex on fundamental rights issues.
- The European Commission presents a proposal for a regulation establishing rules for Frontex-coordinated sea operations.



Bulgaria followed Greece's example by deploying an additional 1,500 police officers on the border and debated the construction of a 30-kilometre-long border fence,¹³ covering some 12 % of its land border with Turkey. As a result of the actions taken, in December 2013 the number of irregular arrivals fell dramatically. Given that a significant number of persons crossing the Turkish–Bulgarian land border were Syrians, the question arises whether people who could be in need of international protection are at risk of being denied entry.

In 2013, in line with the five-year trend, **Spain** saw another decrease in sea arrivals, while the borders between Spain and Morocco at the cities of Ceuta and Melilla – the only land borders between Europe and Africa – experienced a considerable increase in pressure by both land and sea. As a result, Spanish authorities introduced additional measures to stop entries over the fences by adding a razor-wire barrier to the Melilla fence and reinforcing surveillance.

According to information provided to FRA by the Spanish NGO CEAR (*Comisión Española de Ayuda al Refugiado*), those who manage to reach Ceuta and Melilla include persons from Syria, Somalia or Mali who may be in need of international protection. Only very few applied for international protection, however, and, of these, citizens of Syria, Côte d'Ivoire, Cameroon and Mali are said to have withdrawn their applications.¹⁴ Institutions such as the Ombudsman and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance recommended a policy review to ensure access to asylum and fair and efficient asylum procedures in the enclaves.¹⁵

Border surveillance policies must be implemented with full respect for fundamental rights, including the principle of *non-refoulement* and the prohibition of collective expulsion set forth in Articles 18 and 19 of the Charter of Fundamental Rights. In 2013, the EU strengthened fundamental rights safeguards by introducing a new Article 3a into the Schengen Borders Code. It obliges Member States to apply the code in full compliance with the EU Charter of Fundamental Rights and with "obligations related to access to

FRA PUBLICATION

Fundamental rights at Europe's southern sea borders – Summary, August 2013, available in English, French, German, Greek, Italian and Spanish at: <http://fra.europa.eu/en/publication/2013/fundamental-rights-europes-southern-sea-borders-summary>

international protection". This creates an enhanced opportunity for the EU to monitor and evaluate, through the new Schengen governance system, whether such fundamental rights safeguards are put into practice. It should help to ensure that no EU funds are allocated to policies which undermine such standards. The construction of fences, as undertaken or planned at sections of land borders in Greece, Bulgaria and Spain, limits the ability of persons in need of international protection to seek safety.

Many undocumented asylum seekers who would try to use official border-crossing points would be intercepted by third-country authorities before reaching the external EU border.

Spotlight on large-scale IT systems in the areas of borders and visas

Important steps were taken in 2013 towards the increased use of modern technologies in the field of asylum (for more information on Eurodac, see FRA Annual report 2013, [Chapter 1](#)), visa and border management, making it possible to collect and store information not only on third-country nationals but also on EU citizens.

The new version of the Schengen Information System, SIS II, which contains information on entry bans, became operational on 9 April. The application of the Visa Information System (VIS), storing personal data and biometric identifiers (fingerprints) of visa applicants, was extended to more than 70 states in Africa, Latin America and Asia. It also includes information on the invitees (sponsors of the visa applicant, often EU citizens) but not their biometric information. The worldwide VIS roll-out will continue in 2014.

At the end of 2013, three existing IT systems were operational.

- SIS II holds data on persons and objects (such as banknotes, cars, vans, firearms and identity documents) wanted or missing in the Schengen area, as well as on persons to be denied entry into Schengen.
- VIS collects data on third-country nationals applying for short-term visas.
- Eurodac primarily tracks persons lodging asylum requests.

Fingerprints can be stored in all three databases. Through the Automated Fingerprint Identification System (AFIS),¹⁶ fingerprints can later be compared with those stored in VIS and Eurodac. The EU Member States will also use SIS II in the same way, once this is possible technically.¹⁷

In addition, the creation of two further IT systems was proposed in 2013 as part of a package on 'smart borders'. These are:

- an entry/exit system to record entry and exit data of each third-country national at the external border and to record who are entitled to stay in the EU for a period not exceeding three months (short stay) regardless of whether they are exempted from a visa or not;
- a registered travellers programme to allow pre-vetted third-country nationals who are at least 12 years old and travel frequently to pass through a simplified border check with the use of a token.

In spite of the speed of technological and policy developments, risks and benefits for fundamental rights that modern technologies create are not fully known, particularly in the context of VIS and SIS II. FRA recently reported on the difficulties EU citizens face when accessing remedies for data protection violations. One reason is that only a few civil society organisations are available to support victims of data protection violations in complaints procedures.¹⁸ Because most of the data subjects referred to in the [FRA Annual report 2013, Chapter 2](#), are third-country nationals, they can be expected to have even less access to support organisations.

New technologies may also bring with them opportunities for improved fundamental rights protection. Using biometrics minimises mistakes in identification, which may be an advantage for the person concerned. The risk of being mistakenly identified as a wanted criminal should be close to non-existent. Perhaps there are possibilities to optimise SIS II for identification of missing children, for instance.¹⁹ These are topics which are as yet largely unexplored and affect fundamental rights.

Table 2: Current and planned large EU IT databases including biometric data

	SIS II	VIS	Eurodac	Entry/exit system	Registered Travellers Programme (RTP)
Persons included	Third-country nationals to be refused entry; missing children; witnesses and persons required to appear before a judge (Convention implementing the Schengen Agreement, Articles 96–98)	Third-country nationals who apply for a short-stay visa, valid up to three months (VIS Regulation, Article 9; Visa Code, Article 13)	Asylum seekers and apprehended irregular migrants and refugees (Eurodac Regulation, Articles 9 and 14)	Third-country nationals who stay a maximum of three months, visa free or as visa holders (Entry-exit proposal, Articles 11 and 12)	Frequent travellers who benefit from simplified border checks (RTP proposal, Article 13)
Biometric identifier	Fingerprints (SIS II Regulation, Articles 20 and 22)	10 fingerprints if the applicant is at least 12 years old (VIS Regulation, Articles 5 and 9; Visa Code, Article 13)	10 fingerprints of persons who are at least 14 years old (Eurodac Regulation, Articles 9 and 14)	10 fingerprints of third-country nationals who are at least 12 years old (entry/exit proposal, Article 12)	Four fingerprints of persons who are at least 12 years old (RTP proposal, Articles 5 and 8)
Authorities having access	Law enforcement, judicial authorities and authorities responsible for border controls, customs checks and visas (SIS II Regulation, Article 27)	Visa authorities, authorities responsible for border controls and immigration law enforcement, and authorities responsible for investigating serious criminal offences (VIS Regulation, Articles 3, 6 and 15–22)	Asylum authorities, law enforcement authorities after 2015 (Eurodac Regulation, Articles 5 and 46)	Border, visa and immigration authorities (Entry-exit proposal, Article 7). Law enforcement authorities (following an evaluation two years after entry into force, Entry-exit proposal, Article 46)	Visa and border authorities of any Member State (RTP proposal, Articles 3(8) and 23)
Data retention	Depends on the type of alert, maximum three years and possibility to prolong (SIS II Regulation, Article 29)	Maximum five years (VIS Regulation, Article 23)	Asylum seekers maximum 10 years; irregular immigrants maximum 18 months (Eurodac, Articles 12 and 16)	181 days for exiting persons and five years for over-stayers (Entry-exit proposal, Article 20)	Maximum five years (RTP proposal, Article 34)

Source: FRA, 2014

Outlook

The purpose of Eurosur, the European border surveillance system, includes protecting and saving the lives of migrants. The implementation of the Eurosur Regulation, begun in December 2013, will show whether it will serve only to control immigration or operational, technical and financial aspects will be put in place so that it can live up to its life-saving commitments. These would include concrete guidance comprised in the Eurosur handbook, to be adopted by the European Commission. Statistics on persons rescued at sea will help monitor Eurosur's lifesaving commitments.

An additional challenge for the upcoming years is developing ways for assessing how the use of modern technologies in border management affects fundamental rights. Victims of data protection violations generally face difficulties in accessing remedies, as the FRA report on Access to data protection remedies in EU Member States referred to in this chapter shows. Because thirdcountry nationals have even less access to legal assistance in complaint processes than EU citizens, they are in a particularly vulnerable situation. Provided they can raise the necessary resources, civil society organisations could be expected to focus increasingly on the implementation of fundamental rights safeguards in VIS and SIS II. They might also be expected to act as intermediaries so that victims of fundamental rights violations can make effective use of complaint mechanisms.

Discussions on the smart border proposals will continue, most likely accompanied by calls for an adequate assessment of their impact on fundamental rights in terms of opportunities and risks. Adequate safeguards to ensure fundamental rights are needed, since all thirdcountry nationals coming for a shortstay visit will be included in the EU's largescale databases. Through 'privacy by design', improved technologies may address some concerns. To reduce the risk of wrongly labelling somebody in the entry/exit system as an overstayer, it will be increasingly important that exit registration can function not only at air borders but also at land and sea borders. Safeguards should also ensure that, if the thirdcountry national has legal permission to stay, the system is updated.

FRA PUBLICATION

EU solidarity and Frontex: fundamental rights challenges, August 2013, <http://fra.europa.eu/en/publication/2013/eu-solidarity-and-frontex-fundamental-rights-challenges>

EU Member States will increasingly have to consider fundamental rights implications when implementing visa policies. For example, applicants may more and more demand better explanations of why their visas have been refused, so that they can exercise their right to appeal.

Information society, respect for private life and data protection

Spotlight on the mass surveillance that sparked global concern

Beginning in June 2013, United States National Security Agency (NSA) contractor Edward Snowden leaked documents to several media outlets, revealing operational details of global surveillance programmes carried out by the NSA and by the United Kingdom's Government Communications Headquarters (GCHQ). Of particular interest in the EU, the global programmes targets included EU institutions and Member States' embassies.²⁰

Just weeks before these revelations sent shockwaves across the EU and the globe, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, noting this gap between rapidly evolving technologies and current laws safeguarding the right to privacy, pointed out specific shortcomings, such as a lack of judicial oversight of surveillance measures (see [FRA Annual report 2013, Chapter 10](#)).²¹ The UN General Assembly, echoing the calls of the UN Special Rapporteur, asked member states to review their legislation on such surveillance to ensure that it was aligned with their international human rights obligations. It adopted a resolution on the right to privacy in the digital age in December 2013.²²

As media published the first revelations, the Council of Europe Committee of Ministers adopted a Declaration on Risks to Fundamental Rights stemming from Digital Tracking and other Surveillance Technologies. The declaration said: "legislation allowing broad surveillance of citizens can be found contrary to the right to respect of private life. These capabilities and practices can have a chilling effect on citizen participation in social, cultural and political life and, in the longer term, could have damaging effects on democracy."²³ On 24 October 2013, the Council of Europe Commissioner for Human Rights published a human rights comment²⁴ highlighting the threats to human rights and the right to privacy when secret surveillance spreads. In addition, ministers responsible for media and information society adopted a political declaration in November 2013, underlining that "any [...] surveillance for the purpose of the protection of national security must be done in compliance with existing human rights and rule of law requirements".²⁵

[Table 3](#) details the most publicised surveillance programmes, but subsequent revelations made clear that these represent just the 'tip of the iceberg'.²⁶

Key developments in the area of information society, respect for private life and data protection

- Revelations of mass surveillance reverberate across the areas of information society, privacy and data protection. These revelations cause civil society organisations to protest and call for better protection; they also incite EU and EU Member State policy makers and legislators to adopt more robust measures, tighten legislative protection and propose greater data protection safeguards.
- As a result of the revelations, the UN General Assembly adopts an unprecedented text on the protection of privacy.
- The revelations – which are made while the EU is in the midst of its biggest data protection legislation reform in 20 years – make clear that the fundamental rights protection in the digital world needs greater attention.
- The European Parliament adopts its report on the data protection reform package, but the reform is delayed in the Council of the European Union.

Table 3: Main surveillance programmes

Name of the programme	Description of alleged programme
PRISM	Provides the NSA with direct access to the central servers of nine leading United States internet companies, allowing them to collect customer material including search histories, the contents of emails, file transfers and live chats.
XKeyscore	Allows NSA analysts to search, without prior authorisation, through vast databases containing emails, online chats and the browsing histories of millions of internet users, as well as their metadata.
Upstream	Collection programmes operated by the NSA, consisting of warrantless wiretapping of cable-bound internet traffic.
Bullrun	Decryption programme run by the NSA in an effort to break through widely used encryption technologies, allowing the NSA to circumvent encryption used by millions of people in their online transactions and emails.
MUSCULAR	Joint programme operated by the NSA and GCHQ to intercept, from private links, data traffic flowing between major platforms such as Yahoo, Google, Microsoft Hotmail and Windows Live Messenger.
Tempora	Upstream surveillance activity allowing GCHQ to access large fibre optic cables that carry huge amounts of internet users' private communications and then share them with the NSA.
Edgehill	Decryption programme, operated by GCHQ, intended to decode encrypted traffic used by companies to provide remote access to their systems.

Sources: Moraes, C. (2013), *Working Document 1 on the US and EU surveillance programmes and their impact on EU citizens' fundamental rights*, PE524.799v01-00, Brussels, 11 December 2013; Bowden, C. (2013), *The US surveillance programmes and their impact on EU citizens' fundamental rights, study for the European Parliament*, PE 474.405, Brussels, September 2013

The European Parliament, European Commission and Council of the European Union reacted promptly to the Snowden revelations, taking a number of steps that expressed concern about the mass surveillance programme, sought clarification and worked to rebuild trust, for example, in data flows.

Table 4: Key EU documents adopted in the aftermath of the mass-surveillance revelations

Body	Title	Reference
European Commission	10 June 2013 – Vice-President Viviane Reding requests explanations of and clarifications on the PRISM programme	
European Commission	19 June 2013 – Vice-President Viviane Reding and Commissioner Cecilia Malmström send a letter to US authorities expressing their concerns about the consequences of US surveillance programmes for the fundamental rights protection of Europeans	
European Parliament	Resolution of 4 July 2013 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' privacy	P7_TA(2013)0322
European Parliament	Resolution of 23 October 2013 on the suspension of the TFTP agreement as a result of US NSA surveillance	P7_TA(2013)0449
Council of the European Union	<i>Report of 27 November 2013 on the findings by the EU Co-chairs of the ad hoc EU-US Working Group on Data Protection</i>	16987/13
European Commission	<i>Communication from the Commission to the European Parliament and the Council: Rebuilding trust in EU-US data flows</i>	COM(2013) 846 final of 27 November 2013

Body	Title	Reference
European Commission	<i>Communication from the Commission to the European Parliament and the Council on the functioning of the Safe Harbour from the perspective of EU citizens and companies established in the EU</i>	COM(2013) 847 final of 27 November 2013
European Commission	<i>Communication from the Commission to the European Parliament and the Council on the joint report from the Commission and the US Treasury Department regarding the value of TFTP provided data</i>	COM(2013) 843 final of 27 November 2013
European Parliament	<i>Draft report of 8 January 2014 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in justice and home affairs</i>	PE526.085v02-00

Source: FRA, 2013

Spotlight on the fight against cybercrime

The EU adopted a number of policy initiatives in 2013 aimed at strengthening the fight against cybercrime. In a majority of cases, criminal activities conducted online result in infringements of human rights and fundamental freedoms. The EU cybersecurity strategy, adopted on 7 February 2013, sets out as one of its main principles the protection of fundamental rights, freedom of expression, personal data and privacy, and it expresses the view that 'individuals' rights cannot be secured without safe networks and systems'. At the same time, the strategy states that 'cybersecurity can only be sound and effective if it is based on fundamental rights and freedoms as enshrined in the Charter of Fundamental Rights of the European Union and the EU core values'.

Some clear examples of violations of human rights and fundamental freedoms by criminal activities carried out online are the production and dissemination of child sexual abuse content, which is a gross violation of the children's rights, and also intrusions into IT systems, which in most cases has a direct impact on users' privacy and/or result in data breaches.

To step up the fight against cybercrime, with the objective of better protecting citizens' fundamental rights, the EU legislature adopted, on 12 August 2013, a directive on attacks against information systems. This directive complements the already adopted Directive 2011/93/EU of 13 December 2011, which introduced common measures against the sexual abuse and sexual exploitation of children and child pornography.

Furthermore, the European Cybercrime Centre (EC3) was created in January 2013 within Europol, becoming the European focal point in the fight against cybercrime, with the main task of assisting in and coordinating cross-border cybercrime investigations in the following three priority areas: intrusion, child sexual abuse online and payment card fraud.

The findings of three wide-scale FRA surveys on lesbian, gay, bisexual and transgender (LGBT) people, violence against women and antisemitism reveal that online manifestations of hate crime are an increasingly serious problem, as the internet can be used as a platform for hate and harassment. The anonymity the internet affords may lead some users to publish offensive material online.

FRA PUBLICATION

Jewish people's experience of discrimination and hate crime in European Union Member States, November 2013, available in Dutch, English, French, German, Hebrew, Hungarian, Italian, Latvian and Swedish at: <http://fra.europa.eu/en/publication/2013/jewish-peoples-experience-discrimination-and-hate-crime-european-union-member>

FRA ACTIVITY

Tackling cyberhate

The FRA organised its annual fundamental rights conference for 2013 on the subject of hate crime, including a workshop dedicated to cyberhate. The conference workshop, held in Vilnius on 12–13 November 2013, discussed problems related to the rise of cyberhate, the challenges in combating it, good practices and possible solutions. Key points raised include the need to strengthen education, training and cyberliteracy for all actors, including law enforcement, users, companies and governments, as well as enhancing transparency and reporting in order to raise awareness. This could be achieved by reducing the anonymity of users while ensuring data protection. As online hate speech is a global problem, a common approach is needed. The differences in legislation and the criminal codes' definitions should be harmonised, so that victims are all treated on equal terms. Minimum standards on what is absolutely not allowed should also be set. Other suggestions concerned the development of mechanisms to report unwanted content that go beyond the legal prosecution of hate speech. To raise young people's awareness and respond to the challenge of impunity, participants strongly suggested establishing cyber-actors in law enforcement within private services and content and platform providers, such as an ombudsman for Facebook. Good practices reported include child helplines in the **United Kingdom**, dedicated police officers for cyberhate in **Finland**, awareness-raising campaigns in **Denmark** and a **Belgian** Federal Police unit working in schools and engaging with potential victims.

The findings of the FRA EU LGBT survey²⁷ showed that, in the 12 months prior to the survey, one in five (19 %) of all respondents were victims of harassment, which they thought happened in part or completely because they were perceived to be LGBT.²⁸ Almost one in 10 (9 %) of the most recent incidents of hate-motivated harassment and 6 % of the most serious experiences of discrimination happened online.²⁹

Data from the FRA survey on gender-based violence against women³⁰ show that one in 10 (11 %) women in the EU has been a victim of cyberharassment at least once since the age of 15, and 5 % were victims of cyberharassment in the 12 months before the survey. The risk of women aged 18–29 becoming the target of threatening or offensive advances on the internet is twice as high as it is for women aged 40–49 and more than three times higher than it is for women aged 50–59. Based on the FRA survey, 5 % of women in the EU have experienced one or more forms of cyberstalking³¹ since the age of 15, and 2 % did so in the 12 months preceding the survey. Taking the victim's age into consideration, the 12-month rates vary from 4 % among 18–29 year olds to 0.3 % among women aged 60 and over.

The FRA survey on discrimination and hate crimes against Jews³² indicates, similarly, that victims see online antisemitism as a serious problem. Three quarters of all respondents (75 %) view it as either 'a very big' or a 'fairly big problem', and almost as many (73 %) believe it has increased over the past five years. Overall, 10 % of respondents have experienced offensive or threatening antisemitic comments made about them on the internet.

Outlook

The mass surveillance scandal that affected users' confidence in the internet and violated their privacy will influence policy development in 2014. How users' trust in information technologies and communications will be restored will dominate the debates linked to the information society, privacy and data protection. The Snowden revelations will necessarily result in calls for enhanced fundamental rights compliance in any discussions linked to internet governance. Followup initiatives, launched in 2013, will necessitate increased involvement of policy makers and the private sector, with private sector actors needing to engage more in fundamental rights enforcement.

At EU level, the data protection reform package will remain high on the EU legislature's agenda. The Council of the European Union and the postelection European Parliament will need to enter negotiations quickly to make it possible to adopt the reform by the end of 2014. CJEU judgments will also continue to provide guidance on how to amend legislation; those issued on the Data Retention Directive directly affected data protection safeguards and also clarified the independence required of data protection authorities.

The rights of the child and the protection of children

Spotlight on domestic violence and sexual abuse

The EU has taken a step towards better protection of domestic violence victims, including children, by guaranteeing that from January 2015 restraining measures against perpetrators are effective across the EU and not just in the Member State in which they are issued. This new order³³ will complement the 'European protection order', adopted in December 2011, extending its application from criminal to civil matters (see FRA Annual report 2013, [Chapter 9](#)).

A wider ratification of the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, known as the Lanzarote Convention,³⁴ represents another accomplishment. So far, 18 EU Member States have ratified it: **Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France, Greece, Luxembourg, Malta, the Netherlands, Portugal, Romania and Spain** before 2013, as well as **Italy, Lithuania, Slovenia and Sweden** during the year.

The Council of Europe Convention on preventing and combating violence against women and domestic violence, known as the Istanbul Convention,³⁵ has not yet reached the minimum number of ratifications to enter into force. Only three EU Member States have ratified the convention, **Austria, Italy and Portugal**, all during 2013.

The FRA survey, which is based on interviews with 42,000 women across the EU, also highlights children's direct exposure to domestic violence and their risk of victimisation later in life. In connection with this, 41 % of violent incidences against mothers are witnessed by at least one child. Moreover, 7 % of women who had a current or previous partnership and had experienced violence in their partnership reported threats by a partner that they would take the children away. In 3 % of the cases, the partner threatened to hurt the children, and 3 % of the women state that the partner actually did so.

Women's perception of whether violence against women is common in their country is closely

Key developments in the area of children's rights

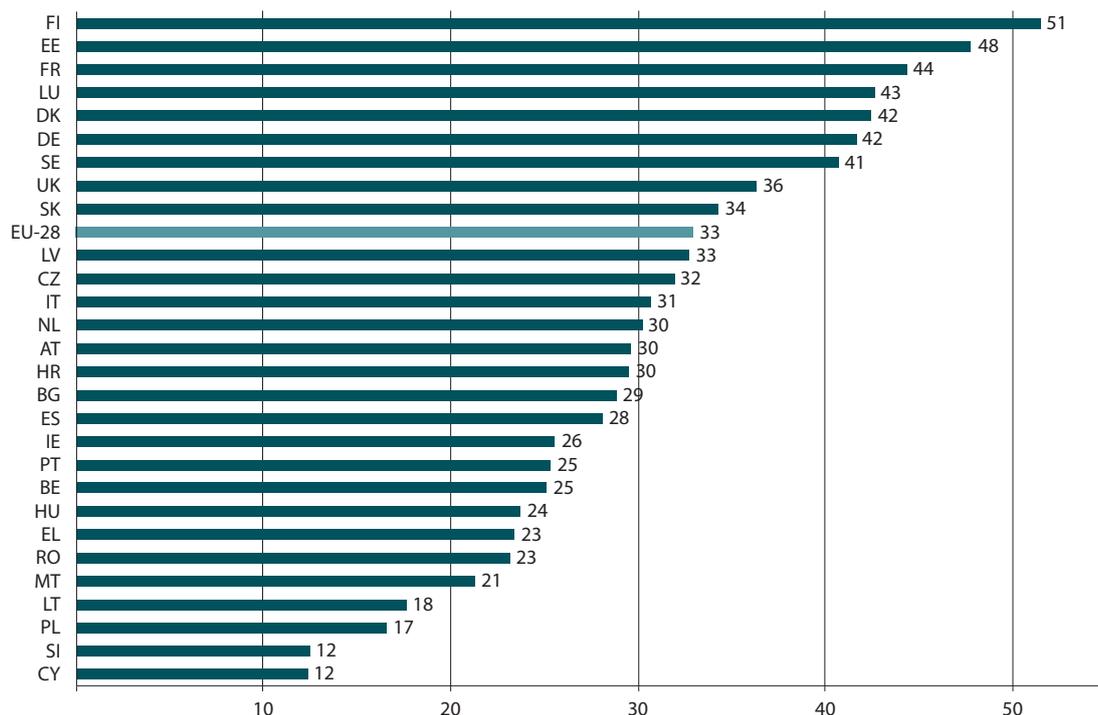
- The European Commission adopts a recommendation providing EU Member States with a common framework to act against child poverty.
- The deadlines for transposing the Human Trafficking Directive and the Directive on sexual abuse, sexual exploitation and child pornography are reached in 2013. During 2012 and 2013, a majority of EU Member States reform civil and criminal law, thereby affecting the way children access justice.
- The EU continues to adopt measures against violence against women and girls, such as the Regulation on mutual recognition of protection measures and the Communication on the elimination of female genital mutilation.
- Justice systems in EU Member States are not properly responding to the specific needs and rights of children in criminal and civil proceedings.

FRA ACTIVITY

Asking women about their experiences of violence during childhood

Women in all EU Member States were asked about their experiences of violence during childhood in a FRA survey. The results show that 27 % of women have experienced some form of physical abuse in childhood at the hands of an adult, and just over one in 10 women (12 %) has experienced some form of sexual abuse by an adult before she was 15 years old. This corresponds to 21 million women in the European Union.

Figure 2: Childhood experience of any physical or sexual violence before the age of 15 (%)



Source: FRA (2012), Gender-based violence against women survey data set

connected to their personal experiences of domestic or non-partner violence, their awareness of other women who are victims of violence, and their awareness of campaigns addressing violence against women. The interplay between these factors needs to be taken into account when interpreting data from the different EU Member States.

December 2013 was the deadline for EU Member States to transpose the Directive on sexual abuse and exploitation and child pornography into national law.³⁶ Thus, 2013 continued to witness criminal law reforms in the area of sexual abuse, domestic violence, child pornography and sex tourism in Member States such as **Austria, Germany, Hungary, Italy, Latvia** and the **Netherlands**. Other Member States, such as **Lithuania, Poland** and **Spain**, are still discussing draft proposals.

Spotlight on bullying

Cyberbullying is another common threat to children’s well-being, with severe effects that can lead to self-harm. Cyberbullying is understood as a form of bullying that takes place using electronic technology. Examples of cyberbullying include mean text messages or emails, rumours sent by email or posted on social networking sites, and embarrassing pictures, videos, websites or fake profiles. During 2013, a few cases of suicide appeared in the media in several EU Member States, such as in **Italy**, where in May 2013 a 14-year-old girl from Novara committed suicide after some offensive videos were posted online. Bullying is not limited to the internet, being widespread also in schools. To raise awareness of the very serious effects of this phenomenon, members of the European Parliament called for the establishment of a European Day against Bullying and School Violence in January 2013.³⁷

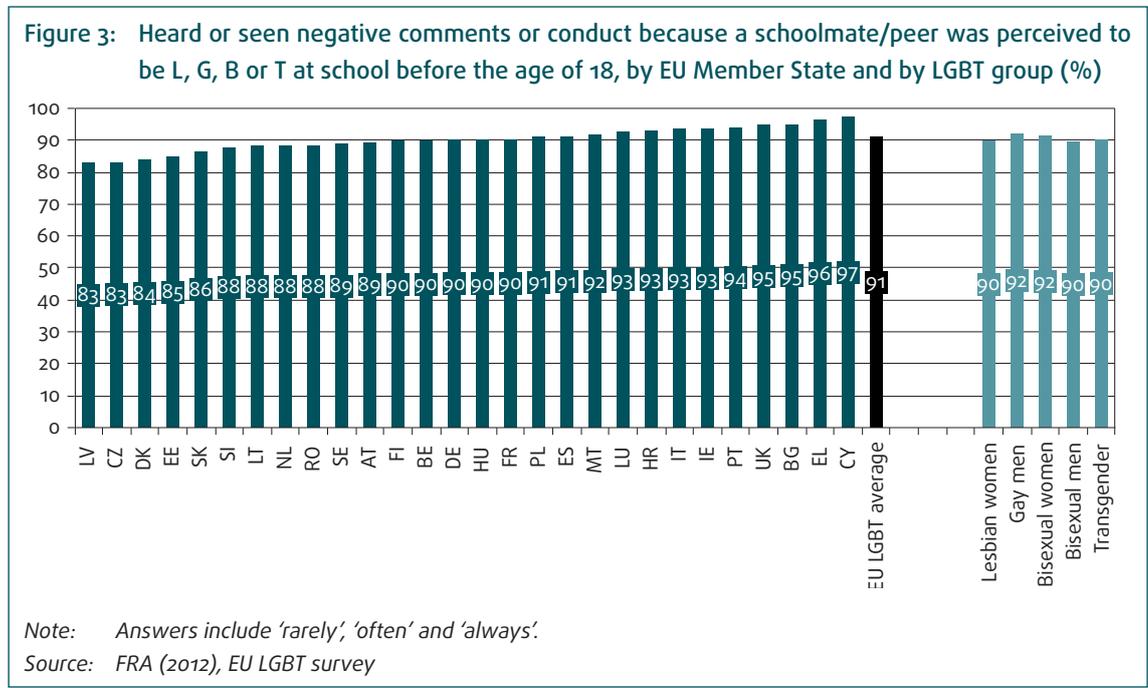
FRA conducted the first ever online EU-wide survey to establish an accurate picture of the lives of lesbian, gay, bisexual and transgender (LGBT) people and their experiences

with regard to fundamental rights.³⁸ A total of 93,079 LGBT persons took part in the survey. Asked about their experiences during childhood, more than eight in 10 respondents in each LGBT subgroup and in each EU Member State have witnessed negative comments or conduct during their schooling because a schoolmate was perceived to be LGBT; in other words, in all EU Member States more than 80 % of LGBT people surveyed have heard or seen negative comments or conduct towards a peer perceived to be lesbian, gay, bisexual or transgender (Figure 3).

FRA PUBLICATION

Factsheet: LGBT persons' experiences of discrimination and hate crime in the EU and Croatia, May 2013, available in 21 EU languages at: <http://fra.europa.eu/en/publication/2013/lgbt-persons-experiences-discrimination-and-hate-crime-eu-and-croatia>

Two thirds (68 %) of all respondents who answered the question say these comments or this conduct has occurred often or always during their schooling before the age of 18. The highest rates are in **Bulgaria, Cyprus, Greece, Ireland, Malta, Spain** and the **United Kingdom**.³⁹ Two thirds (67 %) of all respondents say they often or always hid or disguised the fact that they were LGBT during their schooling.



Outlook

Translating the European Commission's recommendation on child poverty into reality at national level will be a challenge, especially in EU Member States that are still struggling with the impact of the economic crisis. Member States will need to reassess their policies addressing child welfare in all its aspects – material deprivation and access to education, health and social services – to ensure that they are in the best interests of the child, in line with the United Nations Convention of the Rights of the Child and the EU Charter on Fundamental Rights. The economic upturn that may be reaching some Member States should allow policies that improve child welfare provisions, especially for those children in vulnerable situations, such as asylum seekers, irregular migrants and Roma.

EU Member States had to transpose two important directives into national law in 2013, one on trafficking, sexual abuse and exploitation and one on child pornography. These

directives improve the way that justice systems respond to child victims of or witnesses to crimes. The implementation of this new legal framework will require policy and skills training in 2014 and beyond.

The EU Victims' Directive, the eventual adoption of a directive dealing with the protection of children suspected or accused in criminal proceedings and a common framework for child protection will also spark developments at national level. EU Member States will be required to adapt their criminal law provisions and child protection systems while also ensuring that the Council of Europe Guidelines on childfriendly justice are fully taken into account. Several upcoming European Commission and FRA studies on children and justice will help identify challenges and promising practices and will further guide nationallevel improvements. Collecting data regarding children and justice, as well as in other child rights' fields, remains fundamental to effectively address violations of children's rights.

More EU Member States should ratify the third protocol to the Convention on the Rights of the Child, which entered into force in April 2014, to allow children to bring individual claims of human rights violations against their countries.

Equality and non-discrimination

Spotlight on discrimination hindering full participation in society

Discrimination often results in exclusion from active participation in many areas of life, erecting barriers that prevent many people from participating in society on an equal and non-discriminatory footing. This happens to ethnic, religious, national or sexual minorities or migrants, for instance, in the areas of healthcare, education, employment and housing, as FRA evidence consistently shows.⁴⁰

Examples include transgender persons in some EU Member States, who often have to meet a complex and lengthy set of legally prescribed criteria before gender markers in official documents can be changed, as FRA has documented.⁴¹ Such criteria include proof of a medical or psychological diagnosis of transsexual or gender dysphoria/transgenderism. Without such documentation, transgender persons may face difficulties when they want to participate in simple daily activities that require identity documents.

Other barriers to participation stem from stigmatisation and negative stereotyping, leading to fear of verbal or physical attack. Nearly half of all respondents in the EU LGBT survey considered offensive language about LGBT people by politicians to be fairly or very widespread in the country where they live.⁴² Similarly, FRA's survey of Jewish persons in the EU shows that, on average, more than half the respondents consider antisemitic comments made in the media and by politicians to be a problem in the country where they live.⁴³

The survey data also show that many people avoid certain events, places or locations in their local area or neighbourhood because they fear being harassed or attacked. Nearly half of Jewish respondents who have been a victim of an antisemitic incident in the past 12 months say they avoid certain places because they do not feel safe there as a Jew. Similarly, half the LGBT survey respondents said they avoid certain places or locations for fear of assault, threat or harassment because they are LGBT.

"It is important to recognise the legal capacity of persons with disabilities in public and political life. This means that the person's decision-making ability cannot be used to justify any exclusion of persons with disabilities from exercising their political rights."

CRPD Committee (2013), Draft General Comment on Article 12 of the Convention: Equal recognition before the law, 25 November 2013, paragraph 44, available at: www.ohchr.org/EN/HRBodies/CRPD/Pages/DGCArticles12And9.aspx

Key developments in the area of equality and non-discrimination

- The legislative package for the EU Structural Funds is adopted. It includes thematic ex ante conditionality on Roma inclusion and general ex ante conditionality on Member States' administrative capacity for the implementation and application of Union anti-discrimination law and policy.
- The new EU programme for Rights, Equality and Citizenship was adopted in December 2013 for the period 2014–2020. The programme will promote fundamental rights, combating all forms of discrimination and fighting racism. It will also continue to provide funding for Roma inclusion.
- Discussions on the proposed Horizontal Directive continue to stall.
- The European Accessibility Act, covering access to goods and services for persons with disabilities and elderly persons, is still under preparation.
- The European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) argues that the EU lacks a comprehensive policy to protect fully the fundamental rights of LGBT and intersex persons.

FRA PUBLICATIONS

EU LGBT survey – European Union lesbian, gay, bisexual and transgender survey – Results at a glance, May 2013, available in English, French and German, <http://fra.europa.eu/en/publication/2013/eu-lgbt-survey-european-union-lesbian-gay-bisexual-and-transgender-survey-results>

Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism, November 2013, <http://fra.europa.eu/en/publication/2013/discrimination-and-hate-crime-against-jews-eu-member-states-experiences-and>

FRA PUBLICATIONS

Inequalities and multiple discrimination in access to and quality of healthcare, March 2013, <http://fra.europa.eu/en/publication/2013/inequalities-discrimination-healthcare>;

Factsheet: Inequalities and multiple discrimination in access to and quality of healthcare, March 2013, available in 20 EU languages at: <http://fra.europa.eu/en/publication/2013/factsheet-inequalities-and-multiple-discrimination-access-and-quality-healthcare>

EASY READ – How people are treated differently in healthcare, March 2013, <http://fra.europa.eu/en/publication/2013/how-people-are-treated-differently-healthcare>

The European Institute for Gender Equality launched its report on the state of gender equality in the EU (excluding Croatia) in June.⁴⁴ Using the Gender Equality Index, a statistical tool to measure achievements in the area of gender equality over time, the key finding shows that Member States have not managed to overcome gender gaps. On a scale where 1 stands for no gender equality and 100 for full equality, EU Member States scored 54 on average. The EU is still far from being a gender-equal society.

The biggest gender gap is within the area of power, where the EU scores a mere 38, the results show. This means that women are greatly under-represented in decision-making positions, despite the fact that they make up nearly half the workforce and account for more than half of tertiary-level graduates. The second-largest gap identified is in time spent on unpaid caring and domestic activities, where the average score is 38.8, meaning that women spend considerably more time on such activities than men.⁴⁵

For persons with disabilities, evidence collected by FRA in 2013 highlights that the lack of accessible information, the absence of training for public authorities, physical barriers preventing access to and effective use of buildings and services, and the absence of mechanisms through which the voices of persons with disabilities can reach decision makers all serve to create obstacles to participation.⁴⁶

Persons with disabilities also face legal hurdles that prevent them from participating in political and social life. This is particularly the case for those with psychosocial or intellectual disabilities who have been deprived of

legal capacity, that is the law's recognition of a person's right to make decisions for him- or herself. This happens despite the CRPD Committee's insistence that State Parties to the Convention "ensure that persons with disabilities, including persons who are currently under guardianship or trusteeship, can exercise their right to vote and participate in public life."⁴⁷

FRA ACTIVITY

Increasing the participation of persons with disabilities in political and social life – legal capacity and participation in elections

In July 2013, FRA published a report that underlines the gap between the promise of Article 12 of the CRPD, on equal recognition of persons with disabilities before the law, and the reality that persons with disabilities currently face in the EU. The report, *Legal capacity of persons with mental health problems and persons with intellectual disabilities*, shows that, in a majority of EU Member States, legal frameworks allow some persons with disabilities to be deprived of their legal capacity in certain circumstances, despite the shift outlined in the CRPD from substituted to supported decision making. These national legal frameworks are, however, undergoing a transformation, as legal capacity is reframed in terms of the support that persons with disabilities may need to make decisions.

To support reform processes at the national level, FRA brought together legal experts from government ministries across the EU Member States in October to discuss how to give supported decision making a clear and effective legislative basis. The seminar, organised by FRA in partnership with the Irish Department of Justice and Equality, the Irish Human Rights Commission and the Irish Equality Authority, focused on the steps that must be taken to build a coherent legislative agenda to move successfully to supported decision making.

FRA's preliminary findings on the political participation of persons with disabilities indicate that many of them confront legal and practical barriers to exercising the right to vote. This can deprive them of the opportunity to participate in an essential component of democratic societies. FRA's work in this area consists of developing indicators on the political participation of people with disabilities to measure the extent to which they are enabled to participate in political life, particularly through voting and standing for elections.

For more information see: FRA, 2013, *Political participation of persons with disabilities*, <http://fra.europa.eu/en/project/2013/political-participation-persons-disabilities>

FRA PUBLICATIONS

Legal capacity of persons with intellectual disabilities and persons with mental health problems, July 2013, available in English and French at: <http://fra.europa.eu/en/publication/2013/legal-capacity-persons-intellectual-disabilities-and-persons-mental-health-problems>;

EASYREAD – Laws about being able to make important decisions for yourself, September 2013, <http://fra.europa.eu/en/publication/2013/laws-about-being-able-make-important-decisions-yourself>

“The implementation of the priorities financed by the ESF should contribute to countering discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation by paying particular attention to those facing multiple discriminations; discrimination on the grounds of sex should be interpreted in a broad sense so as to cover other gender-related aspects in line with the jurisprudence of the Court of Justice of the European Union. The ESF should support the fulfilment of the obligation under the UN [CRPD] with regard inter alia to education, work and employment and accessibility. The ESF should also promote the transition from institutional to community-based care. The ESF should not support any action that contributes to segregation or to social exclusion.”

European Parliament (2013), Resolution of 20 November 2013 on the proposal for a regulation of the European Parliament and of the Council on the European Social Fund and repealing Regulation (EC) No. 1081/2006, P7_TA(2013)0483, Strasbourg, 20 November 2013

Spotlight on the EU structural funds deployed in countering discrimination

The legislative package for the European Union Structural Funds for the period 2014–2020 was adopted in December 2013.⁴⁸ These funds, totalling €325 billion, are the EU's principal investment tool for delivering Europe 2020 goals, including the reduction of social exclusion and creating economic growth and jobs.⁴⁹

The regulations governing several specific funds make specific reference to furthering equality and non-discrimination. For the first time, the European Social Fund (ESF), which accounts for 23 % of the total Structural Funds budget, will include a specific focus on fighting discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, or those covered by Article 10 of the Treaty on the Functioning of the European Union, in addition to promoting employment and inclusion.⁵⁰

Of the more than €74 billion of ESF funds to be distributed over the seven-year financing period, at least 20 % will be allocated to social inclusion and €3 billion to the Youth Employment Initiative in regions with youth unemployment rates exceeding 25 %.⁵¹

Particularly important to the area of equality and non-discrimination is the inclusion of the requirement for EU Member States to show that they have the relevant legal and

Table 5: Common provisions on European funds: selected general and thematic *ex ante* conditionalities

Area	<i>Ex ante</i> conditionality
Antidiscrimination	Administrative capacity to implement and apply EU antidiscrimination law and policy in the field of European Structural and Investment (ESI) funds
Gender	Administrative capacity to implement and apply EU gender equality law and policy in the field of ESI funds
Disability	Administrative capacity to implement and apply the United Nations Convention on the Rights of Persons with Disabilities in the field of ESI funds in accordance with Council Decision 2010/48/EC
Thematic objective	<i>Ex ante</i> conditionality
Promoting social inclusion, countering poverty and any discrimination	The existence and implementation of a national strategic policy framework for poverty reduction aiming at the active inclusion of persons excluded from the labour market in the light of the employment guidelines
Promoting sustainable and quality employment and supporting labour mobility ESF: Active and healthy ageing	Active ageing policies designed in the light of the employment guidelines

Source: Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Council Regulation (EC) No. 1083/2006, OJ L 347, 20/12/2013, pp. 320–469, Article 19 and Annex XI

policy instruments and measures in place before they can apply for funding, including on antidiscrimination, gender and disability. The move to require such ‘*ex ante* conditionalities’ in these three areas reverses a previous Council of the European Union decision removing them.⁵²

Before funds can be allocated, the European Commission must assess that a number of criteria attached to each conditionality have been fulfilled. Regarding antidiscrimination, for example, EU Member States must meet certain criteria, including arranging that the bodies that promote equal treatment shall be involved in programme preparation and implementation.⁵³ Particularly important in the context of disability, children and older people are the criteria for fulfilment attached to the objective of promoting social inclusion, combating poverty and any discrimination, which include “measures for the shift from institutional to community based care”. Table 5 presents a summary of the relevant *ex ante* conditionalities.

In addition, the Rights, Equality and Citizenship Programme was adopted in December for the period 2014–2020.⁵⁴ The programme will contribute to fighting discrimination on all the grounds listed in Article 21 of the [Charter of Fundamental Rights](#), namely 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. The funds available amount to €439,473,000, merging three programmes: Fundamental Rights and EU Citizenship;⁵⁵ Daphne III;⁵⁶ and two chapters of the Progress programme.⁵⁷

Outlook

The European Commission's report on the implementation of the Employment Equality Directive and the Racial Equality Directive will give new impetus to EU Member States to ensure that they offer adequate protection against discrimination and unequal treatment. This could lead to a revision of national policies and instruments pertaining to equality and non-discrimination.

The impact of the economic crisis will continue to affect the ability of persons in vulnerable situations to participate fully in social life in a number of Member States. The reformed cohesion policy will make available up to €351.8 billion for delivering on Europe 2020 goals, which include reducing poverty and social exclusion. However, the ability of all those living in the EU to participate fully and equally is also likely to be affected by the pace of progress on key legislative and policy developments, such as the Horizontal Directive and the Accessibility Act.

After meeting for the first time in 2013, the EU level CRPD monitoring framework set up under the Convention's Article 33 (2) will build up its activities in 2014. In particular, it will prepare a work programme and take steps to ensure public access to key documents and information about the work of the framework, which is composed of the European Parliament, the European Commission, the European Ombudsman, FRA and the European Disability Forum representing civil society.

FRA PUBLICATION

FRA opinion on the situation of equality in the European Union 10 years on from initial implementation of the equality directives, October 2013, <http://fra.europa.eu/en/opinion/2013/fra-opinion-situation-equality-european-union-10-years-initial-implementation-equality>

Racism, xenophobia and related intolerance

Spotlight on racism, xenophobia and related intolerance again topping political agenda

Black ministers of state compared to apes; a centrist mayor saying in public that maybe Hitler did not kill enough *gens du voyage*; Members of Parliament claiming that Zionists financed and organised the Holocaust; the scapegoating of Roma, asylum seekers, refugees, migrants and members of ethnic and religious minorities for the ills of society; murders motivated by racist and extremist considerations: all these elements contributed to putting racism, xenophobia and related intolerance back on the political agenda of the EU and its Member States in 2013. These issues are increasingly discussed within a broader context of 'hate crime' (see FRA Annual report 2013, [Chapters 5, 7 and 9](#)).

The fight against racism, xenophobia and related intolerance gained political attention at the highest level in January. The Irish Presidency of the Council of the European Union then hosted an informal meeting of Justice and Home Affairs Ministers on EU action to counter hate crime, racism, antisemitism and xenophobia, drawing on FRA evidence presented by FRA's director. This meeting set the stage for the year to come, focusing the attention of political leaders on their duty to counter these phenomena.

The European Parliament further called on "Member States to take all appropriate measures to encourage the reporting of hate crimes and of every racist and xenophobic crime and to ensure adequate protection for people who report crimes and for the victims of racist and xenophobic crime" in March⁵⁸ (see FRA Annual report 2013, [Chapter 9](#), for more information on the rights of victims of hate crime).

Key developments in the area of racism, xenophobia and related intolerance

- Racism, xenophobia and related intolerance return to the top of the political agendas of the EU, its institutions and its Member States.
- Murders motivated by racism and extremism are committed in a number of Member States.
- Elements of racist and extremist ideology are openly expressed in the public sphere in some Member States.
- Member States take steps to ban extremist parties or groups.
- All 28 Member States sign the Rome Declaration on diversity and the fight against racism.
- Discriminatory ethnic profiling continues in some Member States, including in the context of immigration checks.
- Few changes take place in the status of official mechanisms of data collection on racist and related crime.
- The Council of the European Union urges Member States and the European Commission to take more effective action to counter hate crime, including that motivated by racism.

The Council of the European Union focused attention on the need for more concrete actions to be developed to “counter extreme forms of intolerance, such as racism, anti-Semitism, xenophobia and homophobia”⁵⁹ in its June conclusions on fundamental rights and the rule of law.

In July, the European Court of Human Rights (ECtHR) issued a factsheet citing a number of cases where it ruled speech of a racist, xenophobic, antisemitic or aggressively nationalist nature and speech discriminating against minorities and immigrants to be “offensive and contrary” to the European Convention on Human Rights (ECHR).⁶⁰ The court is careful to distinguish in its findings between, on the one hand, genuine and serious incitement to extremism and, on the other hand, the right of individuals (including journalists and politicians) to express their views freely even if they offend, shock or disturb others.

The United Nations Committee on the Elimination of Racial Discrimination (CERD) called upon states to give due attention to all manifestations of racist hate speech and take effective measures to combat them, in its general recommendation on combating racist hate speech issued in September.⁶¹

In a similar development, ministers of 17 EU Member States met in Rome in September to condemn the stream of racist abuse directed at Cécile Kyenge, Italy’s first minister of African origin. Highlighting the special responsibilities of political leaders, they called for pan-European action to fight racism by promoting diversity. All 28 Member States had signed the so-called Rome Declaration on the matter by November,⁶² by which time France’s Minister for Justice, Christiane Taubira, also of African descent, had been the subject of similar racist abuse.

The EU Commissioner for Home Affairs highlighted the dangers of extremism, speaking at the Fundamental Rights Conference on hate crime jointly organised by FRA and the Lithuanian Presidency in November.⁶³ She stressed that:

“We have seen the development of Islamophobic, anti-Semitic and white supremacist ideology in far-right groups. These groups are also anti-democratic, intolerant, and violent. They are divisive, using one another to create suspicion and hatred between communities. These groups are behind a mounting wave of harassment and violence targeting asylum seekers, immigrants, ethnic minorities and sexual minorities in many European countries.”⁶⁴

Finally, the Council of the European Union, in its conclusions on combating hate crime issued in December, called on “the Fundamental Rights Agency to continue assessing in an objective, reliable and comparable manner the extent of racism, xenophobia, anti-Semitism and other forms of hate crime through EU-wide surveys and to work together with Member States to facilitate exchange of good practices and assist the Member States at their request in their effort to develop effective methods to encourage reporting and ensure proper recording of hate crimes.”⁶⁵

Spotlight on racism, xenophobia and related intolerance in politics

Racism and discrimination against foreigners and migrants is often fuelled by the discourse of politicians, as the Commissioner for Human Rights of the Council of Europe points out.⁶⁶ In addition, CERD highlights that “the use of racist discourse by some politicians and in the media [...] vilifies and promotes prejudices against persons of foreign origin”.⁶⁷ FRA evidence also shows that Jews often heard antisemitic statements being made in the context of political events or speeches.⁶⁸

The year 2013 was marked by steady support for political parties with largely xenophobic anti-foreigner, anti-migrant and anti-Muslim agendas in a number of EU Member

“Europe has been experiencing a worrying intensification of activities of racist extremist organisations, including political parties. [...] It worries me deeply that the European community and national political leaders appear not to be fully aware of the serious threat that these organisations pose to the rule of law and human rights. [...] National authorities need to be vigilant and combat racism and extremism at all levels of society.”

Council of Europe Commissioner for Human Rights (2013), Europe must combat racist extremism and uphold human rights, Human Rights Comment, 13 May 2013, available at: <http://humanrightscomment.org/2013/05/13/racist-extremism/>

FRA ACTIVITY

Assessing the effectiveness of responses to racism, discrimination, intolerance and extremism

Crimes motivated by racism, xenophobia and related intolerances persist throughout the European Union, as do the mainstreaming of elements of extremist ideology in political and public discourse, and ethnic discrimination. Growing alarm was expressed at the national, EU and international levels concerning violent manifestations of racism and intolerance. An additional important concern is the substantial parliamentary representation of parties that use paramilitary tactics or are closely associated with paramilitary groups and use that extremist rhetoric to target irregular migrants in Greece, and the Roma and Jews in Hungary.

In this context, FRA took the initiative to collect data and compile a thematic situation report that examines the effectiveness of responses by public authorities, statutory human rights bodies, civil society organisations and others to counter racism, discrimination, intolerance and extremism. The report takes Greece and Hungary as case studies to develop concrete and practical proposals for action.

The identification of barriers to counter such phenomena is, however, relevant to the EU as a whole. The proposals contained in the report on issues such as tackling racist and related crime, increasing trust in the police and countering extremism are, therefore, useful in all EU Member States.

FRA PUBLICATION

Racism, discrimination, intolerance and extremism: learning from experiences in Greece and Hungary, December 2013, available in English, Greek and Hungarian at: <http://fra.europa.eu/en/publication/2013/racism-discrimination-intolerance-and-extremism-learning-experiences-greece-and>

Magyar Hajnal takes inspiration. *Magyar Hajnal's* mission is to “revive the White and ethnic Hungarian identity”⁷² and its members are screened to establish the ethnic roots and religious background of their families, effectively checking their ‘racial purity’. The court rejected the application on the grounds that it was incomplete, but *Magyar Hajnal* continued its efforts to be recognised as a political party, including through seeking to rename an existing party.

States including **Austria, Bulgaria, the Czech Republic, France, Greece, Hungary** and the **Netherlands**.

Groups campaigning on ultra-nationalist and xenophobic platforms initiated steps to be recognised as political parties in their own right, sometimes with success. The rhetoric of these groups and parties often accuses European integration of further eroding national sovereignty; highlights what they consider as the negative impact of social integration on national identity, particularly as regards accommodating the needs of religious minorities, such as Muslims; and makes a case for national preference, including when it comes to access to the social welfare system.

One example is the application, in November, by the newly formed Nationalist Party of **Bulgaria** to be officially recognised as a party, which would allow it to benefit from public funding. Stated aims of this party are to “smash the Gypsy terror with an iron hand” and to “demolish social policies that stimulate the birth rate of minorities and parasitism”.⁶⁹

In a development reminiscent of the events in Gyöngöspata in **Hungary** in 2011 (see FRA Annual report 2011, p. 156), the Nationalist Party in **Bulgaria** formed civil groups with the cooperation of the Bulgarian National Union to patrol areas with large migrant populations and where refugee camps are located.⁷⁰ In response, the National Centre for Roma Development announced that it would establish its own groups to protect Roma from such patrols.⁷¹

The reach of ultra-nationalistic and xenophobic ideology in the EU is also illustrated by the efforts of the newly formed **Hungarian Dawn** (*Magyar Hajnal*) group to be recognised as a political party. ‘Dawn’, here, is a direct reference to **Greece's** Golden Dawn party. Golden Dawn claimed 7 % of the vote in the 2012 elections, is the fourth-largest party in the Hellenic Parliament and has an extreme nationalist agenda, from which

Outlook

The Stockholm Programme, which aims to deliver on an area of freedom, security and justice for Europe's citizens, draws to a close in 2014. EU institutions and Member States are expected to follow up the Stockholm programme, in particular concerning the fight against all forms of racism, xenophobia and related intolerance within the EU.

The publication of the European Commission's report on the implementation of the Framework Decision on Racism and Xenophobia in 2014 will provide important information about how EU Member States have transposed provisions on incitement to racist and xenophobic violence and hatred, the racist and xenophobic motivation of crimes, the liability of legal persons and jurisdiction across the EU. The full and correct transposition of the existing Framework Decision will constitute a first step towards effectively fighting racism and xenophobia by means of criminal law in a coherent manner across the EU. Bilateral dialogue between the European Commission and Member States will play a key role in this process.

The collection of reliable, comparable and comprehensive data on racist and related crime would contribute to the Framework Decision's effective implementation. Public authorities in Member States will be increasingly called on to collect and publish data on such crime, including details of prosecutions and the sentences handed down. Public authorities in Member States will also look to find ways to provide more effective remedies to combat racist abuse perpetrated online or through social media platforms.

FRA PUBLICATION

Antisemitism: Summary overview of the situation in the European Union 2002–2012, November 2013, <http://fra.europa.eu/en/publication/2013/antisemitism-summary-overview-situation-european-union-2001-2012>

Roma integration

Spotlight on European institutions renewing political commitment to Roma inclusion and integration

In the face of incidents illustrating the discrimination and exclusion Roma⁷³ people face, the European Commission, the Council of the European Union, the European Parliament and the Council of Europe renewed their political resolve to fully integrate and include Roma in European society. Nonetheless, in some EU Member States Roma settlements were destroyed and Roma EU citizens forcibly evicted from their homes or returned to their countries of origin. In others, political parties and extremist groups openly expressed anti-Roma feelings, while media attention on alleged child abductions stoked negative Roma stereotypes. With the Member States' action plans in place, EU institutions turned their attention to effective implementation and monitoring.

The European Commission focused in a June Communication on the structural preconditions for more effective implementation of integration strategies. It called on Member States "to adopt or further develop a comprehensive approach to Roma integration and endorse a number of common goals", covering the areas of education, employment, health and housing.⁷⁴ It also concluded that more effort should be made to develop robust monitoring and evaluation frameworks. This includes comparing data and impact indicators to measure progress on the ground and ensuring that necessary funds are allocated to Roma inclusion efforts.

The European Commission also issued a proposal for a Council Recommendation aimed at reinforcing the EU Framework "with a non-binding legal instrument in order to make it easier for Member States to turn their commitments into reality".⁷⁵

The Council of the European Union adopted a recommendation⁷⁶ that provides guidance to Member States on enhancing the implementation of their measures to achieve Roma

Key developments in the area of Roma integration

- The Council of the European Union issues a Recommendation on Roma integration, providing guidance to EU Member States on enhancing the effectiveness of their national Roma integration strategies and policies.
- The Council Regulation on Structural Funds is adopted including the *ex ante* conditionality concerning national Roma integration strategies. It is the first time that one specific investment priority focusing on the inclusion of Roma and other marginalised communities is included as a requirement in the Structural Funds.
- Forced evictions and segregation in education remain major concerns.
- In the run-up to the European Parliament elections, some political parties and extremist groups in a number of EU Member States express anti-Roma feelings that can endanger Roma integration efforts.
- Spikes in media attention are related to reports of alleged child abductions, reinforcing negative stereotypes of Roma.

integration. The recommendation, adopted on 9 December 2013, establishes the first EU legal instrument for Roma integration.

The European Parliament called on the European Commission and Member States to ensure sufficient funding for Roma integration. The resolution, adopted on 12 December, also focused on EU-wide monitoring of the fundamental rights of Roma, anti-Roma actions and hate crime against Roma. It called for an end to segregation in education and aimed at tackling discrimination, particularly that faced by Roma women.

The Council of Europe has also taken positive measures. Romed, which ran for two years in 22 countries, with more than 1,000 trained mediators, entered its second phase in 2013.⁷⁷ The Council of Europe and the European Commission's DG Employment launched a new project in **Bulgaria, Hungary, Italy, Romania and Slovakia** to strengthen political will and build local authorities' ability to draft and implement Roma inclusion plans and projects.⁷⁸ The initiative is supported by the European Alliance of Cities and Regions for Roma Inclusion and draws on the four thematic reports that were produced by the Council of Europe Ad hoc Committee of Experts on Roma Issues (CAHROM) in 2013 (on education,⁷⁹ housing⁸⁰ and anti-Gypsyism⁸¹ and on Roma policy implementation (latter report from 2012).

With positive political commitments in place and measures taken by the European institutions, a powerful framework has been established to encourage and support EU Member States in improving the situation of the Roma in education, employment, health and housing and in respecting human rights and non-discrimination.

Spotlight on Member States beginning the implementation of national Roma integration strategies

Each EU Member State developed a national Roma integration strategy or corresponding set of policy measures within its broader social inclusion policies in response to the European Commission's Communication for an EU Framework for national Roma Integration Strategies from May 2011. Many built upon previous or existing Roma integration policies or action plans. By 2013, nearly all Member States had developed and approved their national Roma integration strategies and national action plans; however, progress on implementation of the strategies varied. Many Member States are still working on developing institutional infrastructure and monitoring and evaluation mechanisms for implementing the strategies. In most cases, the Member States implemented few actions in 2013, often hindered by budgetary cuts and limited financial resources.

The European Commission communication and the Council of the European Union recommendation highlighted the need for monitoring Roma-targeted interventions. Additionally, the European Parliament urged EU Member States:

"to produce disaggregated data with the assistance of FRA, the UNDP and the World Bank on the socio-economic situation of Roma, the degree to which Roma experience discrimination on the grounds of ethnic origin, and hate crimes committed against them, while fully respecting data protection standards and the right to privacy, and to develop, in cooperation with the Commission, the baseline indicators and measurable targets that are essential for a robust monitoring system [...]"⁸²

The challenge remains the limited progress in monitoring. With many action plans still under development, few have been monitored or evaluated to date. Data collection on Roma is fragmented in many EU Member States, making it even more difficult to monitor the progress of implementation. Fundamental questions – such as how to statistically define the population collectively labelled as 'Roma' – remain open. With incomplete official data on Roma, and with some Member States prohibiting data collection by ethnicity,

progress reports often rely on unofficial sources, such as the media, academic studies and NGO reports. FRA's work on Roma integration in 2014 will focus on developing more robust and effective approaches to data collection.

Several EU Member States established special steering groups or committees to monitor the implementation of their national strategies, for example in **Croatia**⁸³ and **Finland**.⁸⁴ In **Estonia**, an informal working group was established to collect data and information on Roma and to raise public awareness of Roma culture.⁸⁵ **Finland's** steering group on Roma policy implementation published its first monitoring report at the end of 2013, as did that of the **Netherlands**, whose report will serve as a baseline qualitative study to be conducted every two years.⁸⁶ In **Hungary**, a set of indicators developed by the Department of Strategic Planning of the State Secretariat for Social Inclusion together with independent experts were piloted and were fed into the first government monitoring report on the Government Action Plan for Social Inclusion.⁸⁷ **France** developed a set of indicators to monitor implemented actions. **Austria** is carrying out several studies to monitor the inclusion of Roma in education, employment, housing and access to healthcare. **Bulgaria** implemented a project on the integration of marginalised communities with a focus on Roma, including two nationally representative surveys to support data collection and monitoring.⁸⁸

FRA ACTIVITY

Ad-hoc Working Party on Roma Integration

In 2013, FRA held the third meeting of its ad-hoc working party on 26 June in Brussels. It discussed EU Member States' progress and experiences in setting up monitoring mechanisms. Working party members saw the local level as an area of potential improvement.

FRA also introduced plans to pilot an indicator framework that will help chart progress in Roma integration across the EU.

To address the particular situation of Roma women, the **Finnish** Ministry of Social Affairs and Health published a study⁸⁹ on domestic violence against Roma women, which found that women under-report these crimes, often leaving such violence hidden. FRA's new study on violence against women shows, unfortunately, that Roma women share this experience of violence and related fears with many other women in the EU.

Furthermore, data collection broken down by ethnicity may verge on illegality if data protection standards are not rigorously adhered to. In September, it was discovered that police in southern **Sweden** had kept a register with the names of thou-

sands of Roma Swedes, including children and some deceased persons. An investigation determined that the register had several illegal aspects, even though it was not based on ethnicity.⁹⁰

Outlook

EU institutions and the Council of Europe will continue to support Member States' efforts to improve the socioeconomic situation of Roma and to protect them from fundamental rights violations. This will be particularly important in view of the ongoing economic crisis, which affects social solidarity and adds 'austerity' arguments to anti-Gypsy rhetoric.

Evidence has shown that the successful implementation and sustainability of Roma integration actions depend on the political will and commitment of local and regional authorities, because they are responsible for translating national strategies into specific actions. Learning from past experience, these authorities are expected to rely less on oneoff projects and rather target Roma explicitly in their mainstream activities against poverty and social exclusion, one of the seven flagship initiatives of Europe's 2020 strategy. They should also focus on gaining the trust of Roma communities through systematic efforts to ensure that they can participate actively in an equitable and meaningful way in actions that concern them. Successes on the ground would, in turn, help win over greater public support for Roma integration.

The social and economic integration of Roma, who for centuries have been socially excluded and marginalised, will be a gradual process. It is, nevertheless, important to show positive achievements and gradual progress over time. In this regard, it is expected that EU institutions and Member States will focus on developing and implementing more effective monitoring and evaluation processes.

FRA PUBLICATION

Analysis of FRA Roma survey results by gender – Working & discussion paper September 2013, <http://fra.europa.eu/en/publication/2013/analysis-fra-roma-survey-results-gender>

Regular monitoring and evaluation of individual interventions and of the broader national Roma integration strategies is needed. To this end, FRA will support the Member States through its working party on Roma integration developing and testing appropriate tools and methods, and a common indicator framework to measure progress in guaranteeing the fundamental rights of Roma.

Access to justice and judicial cooperation

Spotlight on the EU and other international actors taking steps to strengthen the rule of law and justice systems

International and European actors focused in 2013 on strengthening the rule of law, specifically on the quality, independence and efficiency of judicial systems (see FRA Annual report 2013, [Focus](#) and [Chapter 10](#)).

The EU's Justice and Home Affairs Council adopted specific conclusions on fundamental rights and the rule of law on 7 June 2013. Drawing upon the related discussion at the Ireland's EU Presidency conference 'A Europe of equal citizens: Equality, fundamental rights and the rule of law', jointly organised with FRA, the Irish Equality Authority and the Human Rights Commission,⁹¹ the council emphasised that respecting the rule of law is a prerequisite for the protection of fundamental rights and that any work in this context shall "make full use of existing mechanisms and cooperate with other relevant EU and international bodies, particularly with the Council of Europe, in view of its key role in relation to promotion and protection of human rights, democracy and the rule of law."

In the follow-up report on the rule of law recommendations made to Romania under the Co-operation and Verification Mechanism in 2012,⁹² the European Commission welcomed steps taken to restore respect for the constitution and the decisions of the Constitutional Court, yet noted that the "lack of respect for the independence of the judiciary and the instability faced by judicial institutions remain a source of concern".⁹³

In June 2013, the Council of Europe expert body, the Venice Commission, issued an opinion on **Hungary** on the compatibility of constitutional amendments with the principle

Key developments in the area of access to justice and judicial cooperation

- The rule of law and the issue of overall accessibility of justice for all persons in the EU, including a full understanding of one's rights and the means to realise them in times of ongoing austerity measures, remain high on the EU agenda in 2013.
- The European Commission starts a debate on the shape of the EU's justice policy after the Stockholm Programme in the area of justice and home affairs, which comes to a close at the end of 2014.
- The evolving 'Justice Scoreboard' tool, which aims to enhance the effective functioning of national justice systems across the EU, is introduced.
- The criminal procedure roadmap of the EU takes another step forward with the adoption of the Directive on the right of access to a lawyer.
- EU Member States continue to introduce initiatives to restructure national justice systems, including through the use of e-justice tools.
- The UN General Assembly takes a landmark step, issuing a resolution calling for a strengthened role for national human rights institutions within the UN system.

of the rule of law. The Venice Commission examined the Fourth Amendment to the Fundamental Law of Hungary, adopted in March 2013⁹⁴ – an adoption preceded by a critical statement issued jointly by the President of the European Commission and the Secretary General of the Council of Europe, raising concerns about just that compatibility. The Venice Commission opinion raises new concerns with respect to the rule of law and independence of the judiciary.⁹⁵ It pointed in particular to the dominant position of the President of the National Judicial Office compared with the National Judicial Council, to the court case transfer system and to the limitations imposed on the role of the Constitutional Court. The European Parliament⁹⁶ and the UN High Commissioner for Human Rights,⁹⁷ among others, subsequently reiterated these concerns and urged the Hungarian government to address all of the issues the Venice Commission had raised over the last few years. The Hungarian Parliament responded by adopting the Fifth Amendment to the Fundamental Law of Hungary on 16 September 2013 to address some of the controversial elements of the previous amendment. It repealed, for example, the rules on court case transfers.⁹⁸

According to the European Commission 2013 Flash Eurobarometer Survey on Justice in the EU,⁹⁹ public perceptions about justice and the rule of law across the EU are consistently low in the **Czech Republic, Greece, Italy** and **Spain**. Most respondents think there are large differences between national judicial systems in terms of quality (58 %), efficiency (58 %) and independence (52 %). Majorities in **Bulgaria** (71 %), **Slovenia** (70 %) and **Romania** (69 %) think their justice system is worse than others in the EU.

In addition to the rule of law discussion, the issue of overall accessibility of justice for all persons in the EU, including a full understanding of one's rights and the means to realise them in times of ongoing austerity measures, also continued to be high on the agenda in 2013. A trend of cutting legal aid or justice budgets in general continued across the EU Member States, including **Ireland**,¹⁰⁰ **Portugal**¹⁰¹ and the **United Kingdom**.¹⁰²

On 4 December 2013, the Council of Europe Commissioner for Human Rights pointed out that national decisions on austerity measures should not have a disproportionate impact on the human rights protection system. The commissioner stressed the need to grant effective access to justice to all during economic downturns by maintaining an effective and independent judiciary and a legal aid system.¹⁰³

'Justice for growth' issues aim to support the economy and its growth. They include the effectiveness of justice systems, the independence of justice and the European area of justice based on mutual trust. Such issues and the rule of law were at the heart of discussions on the future of EU justice policy. These discussions, held at the 'Assises de la Justice'¹⁰⁴ hosted by the European Commission in November 2013, are meant to feed into the European Commission's new plan for EU justice policy, after the present EU programme for justice and home affairs, the Stockholm Programme, concludes. FRA contributed to the discussions by submitting a paper and following up the ensuing consultation process with a more detailed document on the future role of fundamental rights in EU justice and home affairs policies.

In the context of its 'justice for growth' agenda, the European Commission – drawing mainly on

FRA ACTIVITY

Promoting the rule of law

The 2013 FRA Symposium, which focused on promoting the rule of law, found that any potential assessment should look not only at available laws and institutions (structures) or policies (processes) but also, and especially, at the situation on the ground (outcome). Participants considered that the rule of law should be measured not only in EU Member States but also in the EU and its institutions. These and other conclusions from the symposium were also issued as a Council document to further inform the discussions of the Council of the European Union on the rule of law.

FRA PUBLICATION

FRA Symposium report – Promoting the rule of law in the EU, July 2013, <http://fra.europa.eu/en/publication/2013/promoting-rule-law-europe-an-union-fra-symposium-report>

“[Calls] on governments to pursue all the necessary measures to ensure access to justice for all, with a particular focus on people living in poverty, who need to have a full understanding of their rights and the means to realise them.”

European Parliament (2013), Resolution on the impact of the financial and economic crisis on human rights, 18 April 2013

the expertise of the Council of Europe Commission for the Efficiency of Justice¹⁰⁵ – also introduced its new tool, the ‘Justice Scoreboard’ (see FRA Annual report 2013, [Focus](#)). Through this tool, the European Commission aims to enhance the effective functioning of EU national justice systems.

It will do so by regularly bringing together a variety of data – in particular, data available about civil and commercial cases – to identify any shortcomings and hence support reforms in national justice systems.¹⁰⁶ The 2013 Justice Scoreboard’s data include the business-friendliness of each country’s justice system; justice resources, including budget allocation, human resources, workload, use and accessibility of justice such as length and cost of proceedings; and the use of simplified and alternative dispute resolution procedures. The EU Justice Scoreboard is intended to be a tool that will gradually extend over more areas.

Spotlight on the ECtHR and the CJEU providing guidance on effective access to justice

Both the CJEU and the ECtHR delivered rulings on numerous access to justice-related cases in 2013. The rulings included cases, as in 2012, addressing various fair trial aspects and defence rights in relation to criminal proceedings. The courts also provided important guidance on safeguarding the right of access to courts through effective access to legal aid and legal representation.

In the *Radu* judgment,¹⁰⁷ the CJEU provided further guidance in the area of judicial cooperation in criminal matters under the EAW procedure, specifically on the person’s right to be heard in line with the standards of the Charter of Fundamental Rights on judicial remedy and fair trial. The CJEU confirmed that a violation of the requested person’s right to be heard is not among the grounds available to Member States to refuse to execute an EAW. This does not render the Framework Decision incompatible with the fundamental rights as set out in the Charter, in particular the right to an effective judicial remedy and to a fair trial. Articles 47 and 48 of the Charter do not *require* “that a judicial authority of a Member State should be able to refuse to execute a European arrest warrant issued for the purposes of conducting a criminal prosecution on the ground that the requested person was not heard by the issuing judicial authorities before that arrest warrant was issued”. According to the CJEU, such a conclusion would run counter to the objective of the EAW system to simplify and speed up extradition proceedings between EU Member States. In any case, executing Member States observe the right to be heard.

The CJEU maintained the same line of thought in its *Melloni* judgment.¹⁰⁸ According to the CJEU, the judicial authorities cannot make the execution of an EAW conditional upon a fresh hearing just because the warrant was issued without the accused’s presence at court. Although the right of the accused to appear in person at the trial is an essential component of the right to a fair trial, this right is not absolute. The accused may waive this right, provided such waiver meets required safeguards and does not run counter to any important public interest. The EAW framework decision therefore disregards neither the right to an effective judicial remedy and to a fair trial nor the rights of the defence guaranteed by Articles 47 and 48 (2) of the Charter, respectively.

In the *Åklagaren v. Hans Åkerberg Fransson* case, Swedish tax authorities accused Mr Åkerberg Fransson of breaching his tax declaration obligations, which resulted in a loss of state revenue from various taxes.¹⁰⁹ The CJEU was asked if criminal charges must be dismissed on the ground that the accused had already faced tax penalties for the same acts. The CJEU concluded that the principle preventing a person from being punished twice under the Charter does not preclude an EU Member State from imposing, for the same acts of evading declaration obligations in the field of value-added tax, a combination of criminal penalties and non-criminal penalties.

In *DAS Nederlandse Rechtsbijstand Verzekeringsmaatschappij NV*, the CJEU provided guidance on how to interpret an insured person's right to choose a lawyer on legal expenses insurance under Article 4(1) of Directive 87/344. In this case, Jan Sneller was dismissed from his job. He wanted to bring an unfair dismissal claim in the Netherlands against his employer using his DAS legal expenses insurance. The CJEU held that the insured's freedom to choose legal representation took precedence over the insurance contract's restrictions, which attempted to impose the use of the insurance company's own staff lawyers over that of an outside lawyer chosen by the insured person.¹¹⁰

The ECtHR also provided guidance on states' obligations regarding access to justice under the ECHR. In *Anghel v. Italy*, the applicant complained that delays in granting him legal aid had infringed his right to appeal against the decision of the national court, denying him an effective remedy as required by the ECHR.¹¹¹ The ECtHR held that the deficient and contradictory information given by the Council of the Bar Association and the Ministry of Justice about which remedy was available and which time limit was applicable contributed substantially to the applicant's unsuccessful attempt to appeal. As for the errors made by the appointed legal aid lawyers in respect of procedural formalities, the ECtHR held that "such errors may, when critical to a person's access to court, and when incurable in so far as they are not made good by actions of the authorities or the courts themselves, result in a lack of practical and effective representation which incurs the State's liability under the Convention". The ECtHR concluded that the applicant was effectively prevented from exercising his right of access to a court through a legal representative appointed under the national legal aid system. There was accordingly a violation of Article 6 of the ECHR.

Another case brought before the ECtHR, *Del Río Prada v. Spain*, concerned the postponed release of a prisoner convicted of terrorist offences. Based on a new approach adopted by the Spanish Supreme Court (*Tribunal Supremo*), under which reductions in sentences were applied to individual offences rather than to the entire time served,¹¹² the applicant's release was postponed by nine years. The ECtHR (Grand Chamber) considered that the applicant could not have foreseen either that the Supreme Court would depart from its previous case law in February 2006, or that this change in approach would be applied to her and would result in the postponement of her release by almost nine years. Accordingly, there was a violation of the right to no punishment without law (Article 7 of the ECHR) as well as a violation of unlawful detention (Article 5 of the ECHR).

Outlook

Many new legislative and standard setting measures in the area of access to justice and judicial cooperation are expected to be adopted in 2014 at both the EU and national levels, including measures to finalise the criminal procedures roadmap or the currently pending proposal for a creation of the European Public Prosecutor's Office. The main focus of EU policy, however, will undoubtedly be on the implementation of existing measures.

This implementation problem, that is how to ensure that existing legislation and case law in the area of justice are effective and function well in practice, will represent one of the biggest challenges for the EU in the postStockholm period. Another challenge will be to develop an effective rule of law mechanism for the EU in close collaboration with national, European and international actors.

EU Member States will continue searching for the right balance between the need to restructure national justice systems and cut unnecessary costs and ensuring that remedies are accessible in practice to everyone, including through effective and independent non-judicial structures or innovative tools. The overall role of national human rights structures is expected to be further enhanced beyond the national level by their increased integration in the work of all UN organs.

Rights of crime victims

Spotlight on measures to enhance protection of women from domestic violence

Some EU Member States have focused reforms on further improving the protection of women against domestic violence. The **Luxembourg** Act on Domestic Violence of 30 July 2013 extended the powers of the police, public prosecutors and courts to ban an offender from the victim's home and extended the time frames of protection measures.¹¹³

The **United Kingdom** rolled out Domestic Violence Protection Orders and the Domestic Violence Disclosure Scheme nationally in June 2013, following a successful 2012 pilot.¹¹⁴ In July, the **French** government brought forward draft legislation aimed at furthering gender equality and including improvements to protection orders, mainly by speeding up proceedings, extending the time frame from four to six months and making it a rule that it is the victim who is allowed to stay in the home previously shared with the offender.¹¹⁵

A new **Italian** law gives the local police commissioner the power to issue an official restraining injunction and to temporarily revoke a perpetrator's driving licence in cases of severe aggression or verbal threats. It also makes it possible for police, subject to a public prosecutor's authorisation, to remove the perpetrator from the home as a precautionary measure in cases of severe forms of aggression.¹¹⁶ The law also introduces a legal obligation, in cases of violent crime, to inform social services and the victim's lawyer, or the victim personally if they are not represented by a lawyer, about a judge's decision to

Key developments in the rights of crime victims

- The European Parliament and the Council of the European Union adopt a Regulation on mutual recognition of protection measures taken in civil matters upon request of the person at risk, aiming to ensure that all protection measures taken in civil matters in one Member State can be applied throughout the European Union.
- Member States continue efforts to implement Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (EU Victims' Directive) by amending criminal legislation to include measures that protect and empower victims and by strengthening victim support structures. Many gaps remain, however, such as a lack of coordinated support structures and inadequate funding of support organisations.
- The deadline for transposing Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (Trafficking Directive) is reached on 6 April 2013.
- Three EU Member States ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). A further three Member States signed the Convention in 2013, bringing the total number of EU signatories to 17.
- The JHA Council adopts conclusions on combating hate crime in the EU, inviting Member States to ensure that bias motives are taken into consideration throughout criminal proceedings; to take appropriate measures to facilitate victims' reporting of hate crimes; to look at measures to build trust in police and other state institutions; and to collect and publish comprehensive and comparable data on hate crime.

withdraw or revise restrictive measures applied to the offender.¹¹⁷ In addition, judicial police can order the offender to leave the family home immediately in cases of sexual exploitation, sexual abuse, personal injury, domestic violence and stalking. Electronic devices can be used to monitor whether the perpetrator adheres to the injunction to leave the house.¹¹⁸

In a second reading in June, the **Latvian** parliament adopted amendments to the law on the police, allowing police to ban a presumed offender from the victim's home for up to eight days. This power is, however, dependent on the victim's written application.¹¹⁹

Given the rapid legislative developments in protection measures against domestic violence in many Member States, a thorough assessment of the practical effectiveness of such measures is good practice. An evaluation in the **Netherlands** found that restraining orders correlate with a lower rate of recidivism in domestic violence cases, in part at least because victims are provided with better support following the issuing of a restraining order.¹²⁰

In **Poland** in July, the Supreme Audit Office published the results of an audit assessing the steps taken by public authorities to address domestic violence. According to the findings, the legal reform enacted in 2010 and 2011, which introduced the so-called 'Blue Card' procedure, failed to significantly improve the situation of domestic violence victims, in part because the procedure was overly bureaucratic.¹²¹ A monitoring report published in **Romania**, assessing the initial implementation of its 2012 legal reform, revealed certain shortcomings, including lengthy proceedings and a lack of public awareness of the protection orders available to domestic violence victims.

In **Lithuania**, some particularly disturbing homicides sparked debates on the effectiveness of protection measures. In March, a woman called the police's emergency response centre for help, saying that her violent husband had returned in violation of a restraining order. Six hours later, the victim's brother called again to inform the police that his sister was dead. A number of similar cases occurred. NGOs held a press conference stressing that protection does not work in practice.¹²² On a similar note, NGOs in **Hungary** voiced frustration that, despite legislative reforms, little progress has been achieved. They pointed out that victims often complain that police officers' attitudes fail to live up to the police service's brief, and that this discourages victims from seeking their help.¹²³

In **Slovenia**, recent legislative changes resulted in the criminal offence of threatening another person in cases of domestic violence being prosecuted only on the basis of a motion made by the victim. Victims must also pay for legal representation if they wish to prosecute offenders for such offences.¹²⁴ **Bulgaria, Latvia and Slovenia** also stipulate, in certain cases, that protection measures, investigation or prosecution depend on the initiative of the violent crime victim. In contrast, an amendment to the **Lithuanian** criminal code ensures that domestic violence offences can be investigated and prosecuted even without the victim's consent.¹²⁵

Following the institution of legislative reforms relating to the EU Victims' Directive, Member States have an obligation to assess whether the victims' situation has improved, by monitoring the reforms' impact and looking at how victims have accessed the rights set out in the directive.¹²⁶ The conclusions of the Council of Europe hearing on 'Access to Justice for Women Victims of Violence' on 9 December 2013 emphasised that lengthy criminal proceedings, high levels of attrition, corruption, low conviction rates and discriminatory practices constitute serious barriers to women victims of violence seeking justice and that Council of Europe member states should continue to address these issues.

FRA ACTIVITY

Surveying violence against women

In March 2014, the FRA launched the results of its survey on violence against women, covering all 28 EU Member States. The survey is based on face-to-face interviews with a representative sample of 42,000 women. The interviews were carried out in 2012 by trained interviewers, who asked respondents questions concerning their personal experiences of violence, including physical and sexual violence, psychological violence by a partner, stalking, sexual harassment and violence in childhood. To ensure comparability, the same questions were asked in all Member States, using a structured questionnaire developed by the FRA and translated into the national languages.

The FRA report on the survey results presents a comprehensive overview of women's experiences of violence from the age of 15 and in the 12 months before the interview. Overall, the survey found that one woman in three (33 %) surveyed had experienced physical and/or sexual violence by a (current or previous) partner or non-partner since the age of 15. The survey also showed that 8 % had experienced this type of violence in the 12 months before the survey.

The results highlight the vulnerability and special needs of victims of sexual violence. Women who have experienced sexual violence indicate a number of psychological consequences. They were also more likely to say – compared with victims of physical violence – that they felt ashamed, embarrassed or guilty about what had happened, which can result in victims of sexual violence not reporting these incidents to the authorities. Depending on the type of violence and perpetrator, some 61 % to 76 % of women did not report the most serious incident of physical and/or sexual violence to the police or contact any other support services. The survey compared the experiences of victims who contacted some service or organisation for support. Victims were least satisfied with the assistance they received from the police, compared with other services such as healthcare, social support or victim support services, particularly in relation to crimes of sexual violence. The FRA opinions refer to the need for multi-agency cooperation, involving police and other services providers, to address violence against women, as well as further specialised victim support services in line with the EU Victims' Directive and the Council of Europe Istanbul Convention.

See: <http://fra.europa.eu/en/publication/2014/vaw-survey-main-results>

Spotlight on the EU focusing on enhancing rights of hate crime victims

Starting with the informal meeting of JHA ministers on 17–18 January 2013 in Dublin, EU action countering hate crime, racism, antisemitism, xenophobia and homophobia was in focus throughout 2013 (see [FRA Annual report 2013, Chapter 6](#)). In March, the European Parliament called on the European Commission, the Council of the European Union and the Member States to strengthen the fight against hate crime and discriminatory attitudes and behaviour, and called for a comprehensive strategy for fighting hate crime, bias violence and discrimination.¹²⁷ Similarly, the European Parliament urged Member States to act against hate crime and to promote antidiscrimination policies, if necessary by strengthening their national antidiscrimination bodies and promoting training within public authorities.¹²⁸

On 6 June, the JHA Council adopted conclusions on fundamental rights, the rule of law and the European Commission's 2012 *Report on the application of the Charter of Fundamental Rights of the European Union*, which refers to hate crimes and the need to assess the effectiveness of the EU legal norms in fighting hate crimes.¹²⁹

In October 2013, at the request of the Council of the European Union, FRA submitted an *Opinion on the Framework Decision on Racism and Xenophobia – with special*

attention to the rights of victims of crime. The following month, following discussions on the legal and policy framework and in view of the decision's revision, scheduled for the end of 2013, FRA used its Fundamental Rights Conference in November 2013 to explore effective strategies to combat hate crime. The conference, organised in cooperation with the Lithuanian Presidency, brought together over 400 decision makers and practitioners from across the EU. In December 2013, acknowledging the important role of FRA in providing expert independent analysis, the Council of the European Union adopted its conclusions on combating hate crime in the EU, inviting Member States to ensure that bias motives are taken into consideration throughout criminal proceedings; take appropriate measures to facilitate the reporting of hate crimes by victims, including looking at measures to build trust in police and other state institutions; and collect and publish comprehensive and comparable data on hate crime.¹³⁰ The Council conclusions call on FRA to facilitate the exchange of good practices amongst Member States (Action 19). FRA will hold a seminar on hate crime in 2014, designed to set up a community of practice. The seminar, which will take place on 28–29 April 2014 in Thessaloniki in cooperation with the Greek Presidency, will aim at promoting continuous engagement with Member State authorities, mandated national human rights institutions and civil society organisations.

FRA PUBLICATION

FRA opinion on Framework Decision on Racism and Xenophobia, October 2013, <http://fra.europa.eu/en/opinion/2013/fra-opinion-framework-decision-racism-and-xenophobia-special-attention-rights-victims>

FRA ACTIVITY

Going further in combating hate crime

At the request of the Council of the European Union, FRA submitted, in October, an *Opinion on the Framework Decision on Racism and Xenophobia – with special attention to the rights of victims of crime.*

In its opinion, FRA suggested that:

- legislation adopted at Member State level should deal with all forms of discrimination on an equal footing;
- due attention should be paid to making the bias motivation underlying hate crimes visible throughout criminal proceedings, including to the public;
- legislation allowing courts to deal with bias-motivated offences on the basis of increased penalties is a particularly reliable means of ensuring that discriminatory motives are taken into account;
- Member States are encouraged to facilitate the reporting of hate crimes and to encourage victims and witnesses to report such crime, such as by looking into measures that could simplify bureaucratic procedures and reporting;
- on the basis of clear and comprehensive guidelines, Member States together with Eurostat should, on an annual basis, collect and publish data pertaining to crimes committed with a discriminatory motive.

Outlook

Member States have an obligation to victims of crime to ensure that the EU Victims' Directive is implemented in practice by November 2015. Developments in 2013 have been positive, but much remains to be done if fundamental rights are to become a reality for victims of crime. The true test of the effectiveness of this legislation will be whether victims and legal professionals are aware of it and can apply it in practice.

The Istanbul Convention is set to enter into force in 2014, with, as of the end of 2013, just two further ratifications needed. Its entry into force will have a positive effect on

the enforcement of the rights and protection of women across those Council of Europe member states that ratify the convention. The publication of findings from the FRA

survey on violence against women on 5 March 2014 sheds light on women's experiences of physical, sexual and psychological violence across Europe. It provides valuable comparable data on violence against women as a basis for developing evidence-based policy responses at national and EU level.

FRA PUBLICATION

Fundamental Rights Conference 2013 'Combating hate crime in the EU': Conference conclusions, December 2013, <http://fra.europa.eu/en/publication/2014/fundamental-rights-conference-2013-combating-hate-crime-eu-conference-conclusions>

The 2013 Council of the European Union conclusions on combating hate crime provide a new impetus to the EU, its institutions and Member States to ensure that the values enshrined in Article 2 of the Treaty

on European Union are fully respected in line with the EU Charter of Fundamental Rights. As a followup, a seminar organised under the aegis of the Greek Presidency, will look to identify actions and exchange good practices that EU institutions and Member States can implement to combat hate crime in policy and practice. The onus will be on increasing acknowledgement and recognition of hate crime among law enforcement agencies, public authorities and local authorities, and ensuring that victims can access justice and seek redress. In view of the upcoming European Parliament elections in May 2014, the seminar, together with other initiatives, offers an opportunity to engage directly with political actors in relation to their roles and responsibilities in combating hate crime in the EU.

EU Member States and international obligations

Spotlight on Member States accepting new Council of Europe instruments

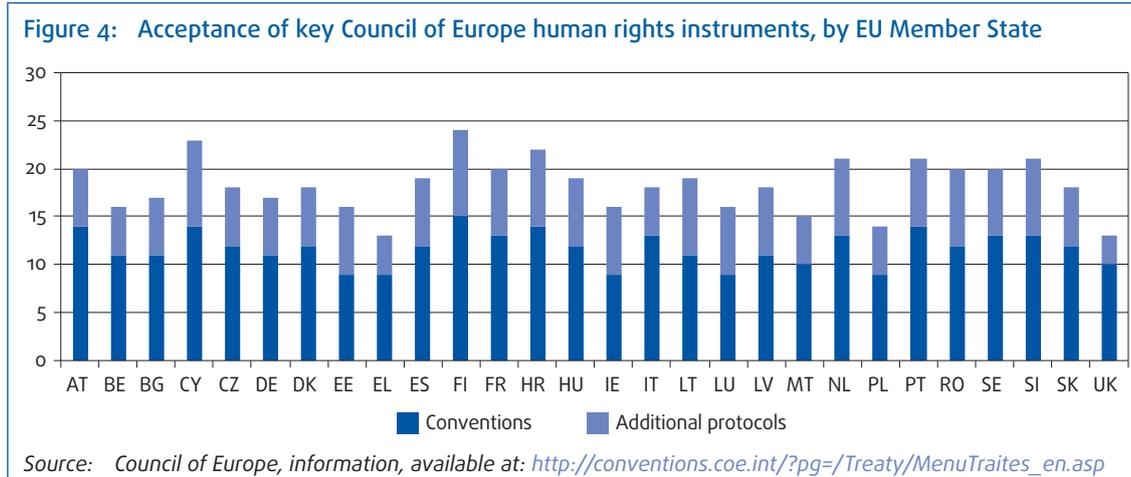
EU Member States demonstrate their commitment to human rights by, for instance, signing and ratifying human rights treaties – making it publicly clear to which standards they want to be held accountable and to which monitoring mechanisms they choose to submit. [Figure 4](#) provides an overview of EU Member States' acceptance of key Council of Europe instruments, including additional protocols. For more details on Member State acceptance of Council of Europe instruments, see also the table on acceptance of selected Council of Europe instruments, at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>. For the corresponding information on UN instruments, see [Figure 5](#) and the table on the acceptance of selected UN instruments, available at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>.

In 2013, 60 years after the ECHR entered into force, several developments occurred in relation to Council of Europe conventions and protocols. Notably, many EU Member States signed the ECHR Additional Protocols 15 and 16 (see the table on acceptance of selected Council of Europe instruments, available at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>). These instruments have been adopted as a result of the work carried out on the reform of the ECtHR, which was initiated at the third summit of heads of state and government of the Council of Europe in Warsaw in 2005. It was shaped particularly by the high-level conferences in Interlaken (2010), Izmir (2011) and Brighton (2012). The reform process gradually introduces changes to the ECHR that intend to adjust the ECtHR's work to evolving circumstances and reduce its workload.

Ireland signed and ratified and 17 additional EU Member States signed ECHR Additional Protocol 15 in 2013, which adds a reference to the subsidiarity principle and the ECHR doctrine of margin of appreciation. It also amends the admissibility criteria (see [FRA](#)

Key developments

- The 2012 EU Strategic Framework and Action Plan on Human Rights and Democracy, which runs until 2014, pays increased attention to the ratification of human rights instruments in the EU.
- The EU and Council of Europe member states reach in April 2013 an agreement on the negotiations of the Union's accession to the European Convention of Human Rights.
- The individual complaints mechanism under the third optional protocol to the United Nations Convention on the Rights of the Child is set to enter into force, with just one ratification outstanding at the end of 2013.
- The European Court of Human Rights finds violations regarding the length of court proceedings in a large number of EU Member State cases.
- The European Committee on Social Rights delivers decisions on five cases initiated by Greek pensioners' organisations regarding pension cuts driven by austerity measures. The committee finds violations.
- Of the 16 cases the committee considers in 2013, nine centre on corporal punishment of children and children's social rights.
- No EU Member States sign or ratify the core United Nations Convention on the Rights of Migrant Workers, nor are there any changes in the accreditation of national human rights institutions under the Paris Principles in 2013.



Annual report 2013, Chapter 8). Six EU Member States also signed ECHR Additional Protocol 16, which enables the State Parties' highest courts to request ECtHR advisory opinions on key questions regarding the interpretation and application of the ECHR and its protocols.¹³¹

Furthermore, a number of EU Member States accepted some key Council of Europe instruments in 2013 (in parentheses are shown the total numbers of ratifications and additional signatures by EU Member States, thereby showing the situation at the close of 2013).

- **Latvia**, which is already a contracting party to the original European Social Charter (1961) (23 ratifications and an additional two signatures by EU Member States), also ratified the European Social Charter (1996) (19 ratifications and an additional nine signatures by EU Member States).
- **Belgium, Italy, Lithuania, Slovenia** and **Sweden** ratified the 2007 Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, and it was signed by **Latvia**; this leaves the **Czech Republic** as the last EU Member State that has yet to sign the document (18 ratifications and an additional nine signatures by EU Member States).
- **Austria, Italy** and **Portugal** ratified the 2011 Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), and it was signed by **Croatia, Denmark** and **Lithuania**. In the 2.5 years since its adoption, 32 of the Council of Europe's 47 member states have signed the convention, with eight of these states also ratifying it (three ratifications and an additional 20 signatures by EU Member States).
- **Hungary** ratified the 2005 Convention on Action against Trafficking in Human Beings; the **Czech Republic** is the last EU Member State that has yet to sign the convention (25 ratifications and an additional two signatures by EU Member States).¹³²
- The **Czech Republic** ratified the 2001 Cybercrime Convention (23 ratifications and an additional five signatures by EU Member States).
- The **Czech Republic** and **Spain** signed the 2003 Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, which aims to enhance cross-border

police and judicial cooperation (12 ratifications and an additional 11 signatures by EU Member States).

- The **United Kingdom** accepted the applicability of the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as amended by its two 1993 protocols, to its sovereign base areas in Cyprus (ratified by all EU Member States).
- All EU Member States except **Poland** are party to Protocol 13 to the ECHR, on “the abolition of the death penalty in all circumstances”. Poland signed in 2002 when the instrument was adopted but has yet to ratify it. The Committee of Ministers of the Council of Europe brought up the issue at its meeting on 10 April 2013, where Poland declared that the process of ratification was under way.¹³³

The Council of Europe also released a number of human rights monitoring and evaluation reports on EU Member States in 2013 (see [Table 6](#)) containing information on a range of issues including the rights of minorities, the conditions in prisons and other places of involuntary confinement, and racism and intolerance.

Spotlight on Member States accepting UN treaties

As mentioned earlier, one way to assess states’ commitment to human rights is the extent of international human rights treaties, and additional features under them, that bind the states. [Figure 5](#) provides an overview of EU Member States’ acceptance of key UN instruments, including additional protocols and acceptance of additional features such as individual complaints. For a detailed overview, see the table on acceptance of selected UN instruments at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>. For the corresponding information on Council of Europe treaties, see [Figure 4](#) and the table on acceptance of selected Council of Europe instruments at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>.

Championing human rights

The Council of the European Union emphasises the EU’s and its Member States’ commitment to set an example in ensuring respect for human rights within their respective areas of competence, according to the EU Annual report on human rights and democracy in the world in 2012. In that report, published in 2013, the council also says the EU and its Member States seek to promote human rights and the rule of law worldwide through their relations with third countries. EU Member States as well as the EU itself made a number of pledges in this field at the UN High-Level Conference on the Rule of Law in 2012, concerning issues ranging from the ratification of various human rights instruments to adopting specific national laws, programmes or action plans.

For more information, see Council of the European Union, 9431/13, 13 May 2013, pp. 174–175, and the UN voluntary pledge site on the rule of law, available at: www.unrol.org/article.aspx?article_id=170

Nine of the UN conventions are labelled core human rights conventions.¹³⁴ These nine and their related features, the optional protocols and elective mechanisms built into the actual conventions, are displayed in shades of blue in [Figure 5](#). Other UN treaties and their additional protocols are shaded in red.

Table 6: Council of Europe monitoring reports released in 2013, by EU Member State

	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	
CPT	Reports									✓				
	Visits		✓		✓		✓			✓				
ECRML						✓								
FCNM														
ECRI	✓	✓				✓		✓		✓	✓	✓		
GRETA		✓								✓		✓		
Total	1	3	0	1	0	3	0	1	1	3	1	2	0	
CPT	(European) Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment													
ECRML	Committee of Experts of the European Charter for Regional and Minority Languages													
FCNM	Advisory Committee on the Framework Convention for the Protection of National Minorities													
ECRI	European Commission against Racism and Intolerance													
GRETA	Group of Experts on Action against Trafficking in Human Beings													

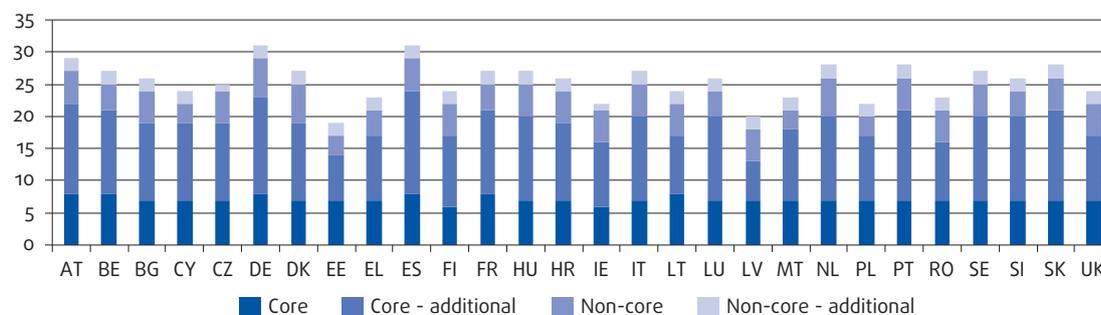
Note: For the European Committee for the Prevention of Torture, the visits to EU Member States during 2013 are also included in a separate row.

Source: Council of Europe, available at: www.coe.int/t/dgi/default_en.asp

The following list highlights key developments related to the acceptance of UN human rights instruments in 2013.

- The 2008 Optional Protocol on individual complaints to the International Covenant on Economic, Social and Cultural Rights (ICESCR-OP), which was adopted in 2008, came into force in May 2013.¹³⁵ **Portugal** ratified it in 2013, joining **Spain** and **Slovakia**, which had become parties earlier.
- **Latvia** in 2013 was the second-last of the EU Member States to become a party to the 1989 Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) on the abolition of the death penalty (ICCPR-OP2). **Poland** is the remaining signatory EU Member State yet to ratify it.

Figure 5: Acceptance of key UN human rights instruments, by EU Member State



Note: For more details, see the table on acceptance of selected UN instruments, available at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>.

Sources: United Nations, information available at: <https://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en>; International Labour Organization, information available at: www.ilo.org/global/standards/lang--en/index.htm

Table 6: (continued)

	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	Total
			✓			✓	✓			✓			✓		✓	7
	✓					✓		✓	✓	✓				✓		10
					✓								✓		✓	4
				✓		✓		✓	✓							4
		✓					✓	✓	✓	✓					✓	13
		✓				✓	✓		✓	✓						8
	1	2	1	1	1	4	3	3	4	4	0	0	2	1	3	46

- **Lithuania** signed and ratified the 2006 International Convention for the Protection of All Persons from Enforced Disappearance (CPEd), including Article 31, which provides for individual complaints. **Poland** signed the convention.¹³⁶
- Two EU Member States, **Italy** and **Portugal**, ratified in 2013 the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), bringing the total number of EU Member States party to this instrument to 21.¹³⁷
- In 2013, the 2011 Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (CRC-OP3) received a large number of acceptances from EU Member States. **Germany**, **Portugal**, **Slovakia** and **Spain** ratified the protocol, while **Croatia** and **Poland** signed it. The protocol was set to come into force in early 2014. There are still 13 EU Member States that have not yet signed the protocol.¹³⁸
- The **Czech Republic** ratified the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (CRC-OP2) in 2013, leaving **Ireland** as the sole EU Member State yet to ratify it.
- The **Czech Republic** ratified the United Nations 2000 Convention against Transnational Organized Crime (UNTOC) in 2013, meaning that all EU Member States are now parties. The Czech Republic also ratified the 2000 Optional Protocol to UNTOC on the Smuggling of Migrants by Land, Sea and Air, leaving Ireland as the sole EU Member State yet to ratify it.
- **Italy** and **Germany** are the first two EU Member States to become parties to the 2011 ILO convention No. 189 concerning decent work for domestic workers (see earlier in relation to EU action on 'authorising' the Member States in this regard). They join nine others worldwide. ILO conventions cannot be signed in a separate stage indicating commitment before ratification. The convention entered into force on 5 September 2013.

The UN Convention on the Rights of Persons with Disabilities (CRPD) deserves particular attention as a relatively new instrument that already boasts a large number of State Parties, including the EU itself. EU Member States continued to implement the CRPD in 2013. The number of EU Member States that have ratified the CRPD remains unchanged at 25, of which 20 have also ratified its Optional Protocol, enabling individual complaints to be made to the CRPD monitoring committee.

The three EU Member States yet to ratify the CRPD – Finland, Ireland and the Netherlands¹³⁹ – took further steps towards ratification. In **Ireland**, the major obstacle to ratification remains the reform of legal capacity legislation in line with the supported decision-making model required by Article 12 of the CRPD on equal recognition before the law.¹⁴⁰ On 15 July 2013, the Irish government published the Assisted Decision-Making (Capacity) Bill, which aims to provide a statutory framework that maximises individual autonomy.¹⁴¹ The bill also provides for the establishment of a new statutory office, the Office of the Public Guardian, which will supervise those who provide support for decision making. The bill is expected to be passed in 2014, paving the way for ratification of the CRPD.¹⁴² In **Finland**, the working group set up to prepare for the convention’s ratification was, at the end of 2013, preparing a report outlining the revisions needed to bring existing legislation into line with the CRPD. The report, currently out for consultation, will incorporate the consultation’s comments into the legislative proposal for ratification, to be presented to parliament during 2014.¹⁴³

Table 7: Reports released under UN monitoring procedures in 2013, by EU Member State

	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	
CERD				✓										
CESCR	✓	✓					✓							
HRC (CCPR)					✓						✓			
CEDAW	✓			✓					✓					
CAT								✓						
SPT						✓								
CRC														
CMW														
CRPD	✓													
CED										✓		✓		
UPR	Report				✓	✓						✓		
	Review					✓						✓		
Total	3	1	0	2	2	3	1	1	1	1	1	3	0	
Committee	Convention		Committee name in full											
CERD	ICERD		Committee on the Elimination of All Forms of Racial Discrimination											
CESCR	ICESCR		Committee on Economic, Social and Cultural Rights											
HRC (CCPR)	ICCPR		Human Rights Committee											
CEDAW	CEDAW		Committee on the Elimination of Discrimination Against Women											
CAT	CAT		Committee Against Torture											
SPT	OP-CAT		Sub-Committee on prevention of torture (including advisory visits for National Preventive Mechanisms)											

Source: Compiled by FRA using data from United Nations, OHCHR, 2014

Following impact assessment studies conducted in 2012, the Ministry of Health, Welfare and Sport in the **Netherlands** published two draft bills on the ratification of the CRPD for online consultation: a Ratification Act¹⁴⁴ and an Implementation Act defining the legal reforms necessary to implement the CRPD.¹⁴⁵ Details of the respective monitoring bodies required at national level under the CRPD are provided in [Section 10.5.2](#) of the FRA Annual report 2013 and the table on CRPD data at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>.

FRA PUBLICATION

Factsheet: *Legal capacity of persons with intellectual disabilities and persons with mental health problems*, October 2013, available in 22 EU languages at: <http://fra.europa.eu/en/publication/2013/legal-capacity-persons-intellectual-disabilities-and-persons-mental-health-problems-factsheet>

Table 7: (continued)

	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	Total of reports
					✓							✓		✓		4
																3
																2
	✓														✓	5
						✓		✓	✓	✓					✓	6
																1
					✓									✓		2
																0
																1
																2
					✓		✓				✓					6
					✓		✓				✓					5
	1	0	0	0	4	1	2	1	1	1	2	1	0	2	2	32
	Committee	Convention	Committee name in full													
	CRC	CRC	Committee on the Rights of the Child (including monitoring of the optional protocols)													
	CMW	ICMW	Committee on Migrant Workers													
	CRPD	CRPD	Convention on the Rights of Persons with Disabilities													
	CED	CPED	Committee on Enforced Disappearances													
	UPR		Universal Periodic Review													

Outlook

Developments in 2013 show that the EU Member States generally – but also the EU itself – continue to accept new commitments stemming from Council of Europe and UN standards and monitoring mechanisms. This is particularly true of some of the more recent instruments, such as the Istanbul Convention related to violence against women or the third optional protocol of the Convention on the Rights of the Child, providing for an individual complaints procedure.

The eagerly awaited accession of the EU to the ECHR lies currently in the hands of the CJEU. It is expected to deliver a comprehensive opinion on the legal elements of this groundbreaking step. Although it is not generally assumed that the CJEU's response will be negative, it is important that it tackle the issues raised by legal professionals on the draft accession agreement, as EU accession will have significant implications for the fundamental rights landscape in Europe.

The EU has the potential to become one of the leading actors in promoting emerging issues, such as the notion of human rights and business. Commitment and followup by

EU Member States will also be essential. Similarly, Member State action on Paris Principles compliant NHRIs in the EU will indicate progress. However, the EU itself may also take action on minimum standards for NHRIs and similar entities, such as equality bodies and data protection authorities.

EU action has continued to underline its determination to become a more active player in the field of human rights and one that is fully integrated in the

international system. Besides pursuing its own accession to key instruments such as the ECHR or the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, the EU motivates not only its Member States, but also, through various tools, third countries to enhance their participation in the international human rights system, thus fulfilling its role of contributing to the protection of human rights both internally and worldwide. This is projected to increase in intensity.

FRA PUBLICATION

Fundamental rights-based police training – A manual for police trainers, December 2013, <http://fra.europa.eu/en/publication/2013/fundamental-rights-based-police-training-manual-police-trainers>

The EU Charter of Fundamental Rights before national courts and non-judicial human rights bodies

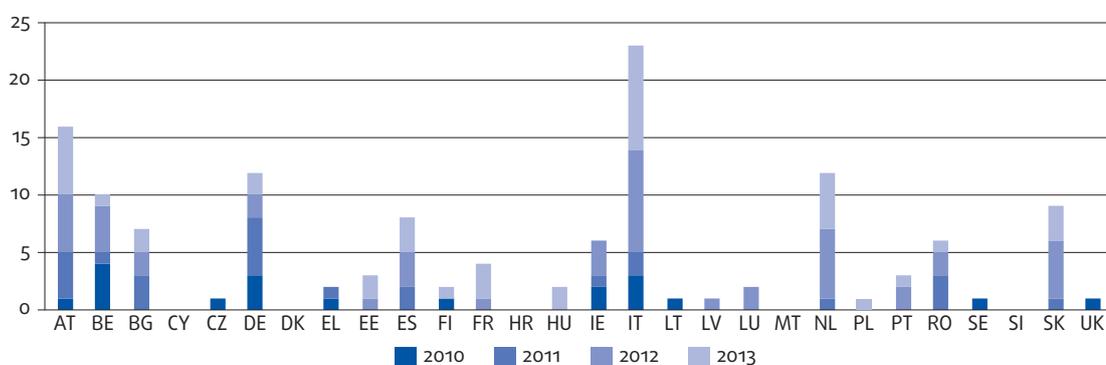
The Charter of Fundamental Rights of the European Union (Charter), the EU's human rights bill, expresses the values at the heart of the Union which all Member States have pledged to uphold. Although a new instrument, it is gaining in use and prominence. As the Charter approaches its fifth anniversary as a binding document in December 2014, it is timely to explore its impact. Much is already known about how the Charter works at the level of the EU. Indeed, the Charter primarily addresses the EU, including its institutions and bodies. However, there is more to the Charter, namely its use at national level. The Charter binds the EU Member States and thereby all its authorities at various levels of governance, including regions or municipalities when they are acting in the scope of EU law. One indicator of how the Charter penetrates national legal systems is its use in national court rooms. For the first time, the FRA Annual report looks at national court judgments and the use of the Charter by national bodies with a human rights remit such as national human rights institutions, equality bodies and Ombudsperson institutions, thereby throwing light on a lesserknown side of the Charter's life.

When looking at the EU Member States' courts and how often they refer to the Charter when approaching the CJEU for a preliminary ruling, no overall trend appears. As shown in [Figure 6](#), **Austria** shows a definite rise in Charter-related requests, but most Member States do not display such a clear-cut trend (e.g. **Belgium, Bulgaria, Ireland and Italy**). Some Member States' courts have yet to make a single reference to the Charter in their requests for preliminary rulings by the CJEU since the Charter entered into force. Besides **Croatia**, which joined the EU only in July 2013, this applies to **Cyprus, Denmark, Hungary and Slovenia**.

FRA PUBLICATION

The European Union as a Community of values: safeguarding fundamental rights in times of crisis, September 2013, available in English and French at: <http://fra.europa.eu/en/publication/2013/european-union-community-values-safeguarding-fundamental-rights-times-crisis>

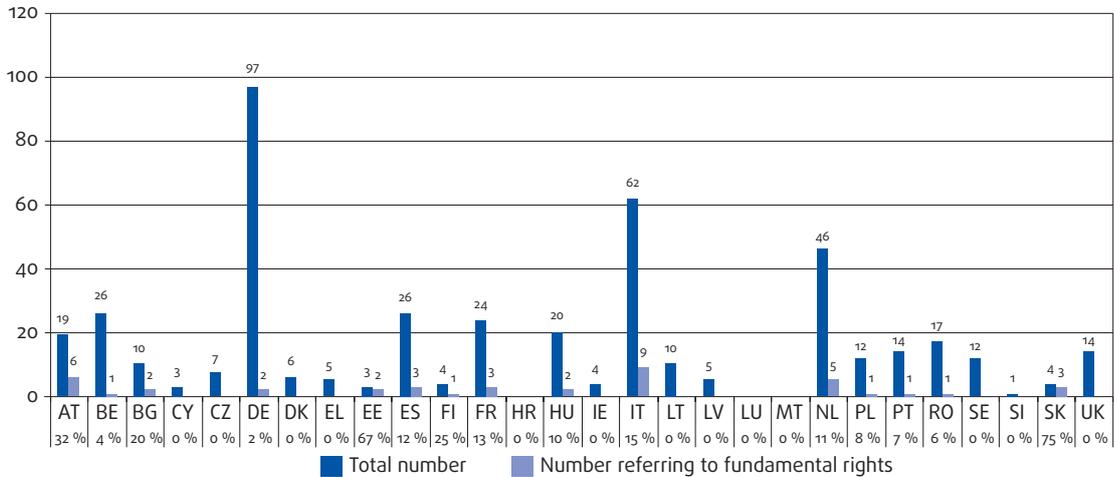
Figure 6: Number of requests for preliminary rulings in which national courts mention the Charter, by EU Member State, 2010–2013



Note: Croatia is included as from the date it joined the EU, 1 July 2013.

Source: Data available with the European Commission

Figure 7: Requests for preliminary rulings: total number and number referring to the Charter, by EU Member State, 2013



Note: The percentage figure below the country code corresponds to the share of requests for preliminary rulings referring to the EU Charter of Fundamental Rights.

Source: FRA 2014; CJEU (2014), Annual Report 2013

However, national courts also use the Charter beyond requests to the CJEU for preliminary rulings. Indeed, only a fraction of cases in which national courts refer to the Charter reach the CJEU. The Charter is regularly used in national courtrooms. Nevertheless, so far the attention has been focused on the EU institutions' Charter use, for instance before the CJEU.¹⁴⁶ Less light has been thrown on how national courts use the Charter.¹⁴⁷

Given that EU law is mainly implemented at national level through national institutions, the national judiciary's use of the Charter is an important facet to examine. Every judge at national level serves two masters, the national and EU systems, and has hence to apply – where appropriate – EU law, including the Charter. In fact, national courts began using the Charter before it became legally binding. In some of these cases, they even used the Charter to prevent the application of contradictory national norms.¹⁴⁸ It thus appears timely and important to take up the Council of the European Union's recent call and follow the Charter's use in national courtrooms.

To examine national developments, FRA asked its Franet contractors to provide key information across the 28 EU Member States on national case law referring to the Charter. More specifically, FRA requested information on up to five national judgments, preferably from the highest courts, including constitutional courts, supreme courts and the highest administrative courts, that used the Charter in their reasoning.

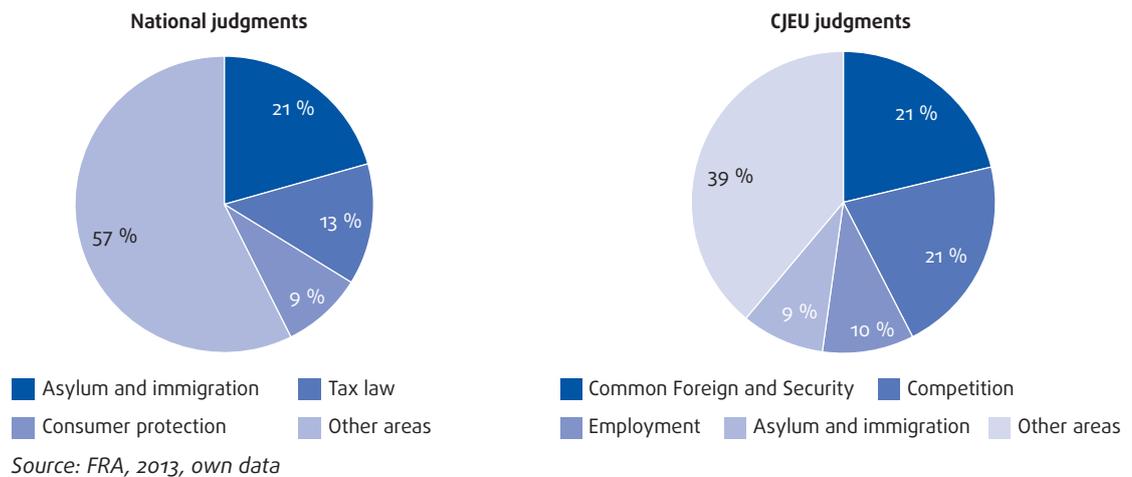
Of the relevant judgments that national courts handed down in 2013, the most prevalent substantive areas were on asylum and immigration. Out of the 70 judgments analysed for the year 2013, the largest group, namely 14 judgments, concerned these two fields.

Other prominent areas for the year were tax law (nine judgments) and consumer protection (six judgments). There were also four judgments in each of the following fields: employment, social security, expropriation/compensation and administrative procedures. These findings are similar to those of 2012, when FRA looked into

“The Council considers it important to follow developments in evolving case-law and notes the Fundamental Rights Agency's work in publishing regular updates in this regard.”

Council of the European Union (2013), Council conclusions on fundamental rights and rule of law and on the Commission 2012 Report on the Application of the Charter of Fundamental Rights of the European Union, Justice and Home Affairs Council meeting Luxembourg, 6 and 7 June 2013, Point 2, available at: www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/137404.pdf

Figure 8: Charter-related judgments, national or CJEU, by policy area (%)



240 national judgments by 15 EU Member States' courts and found that half dealt with asylum and immigration issues.¹⁴⁹ Asylum and immigration unsurprisingly comprise the lion's share of rulings, because they are defined principally by EU secondary law and are highly sensitive from a fundamental rights point of view.

The patterns of reference to the Charter differ between national and CJEU judgments. For the CJEU, 114 decisions referred to the Charter in 2013;¹⁵⁰ in contrast to national courts, these judgments dealt principally with the EU Common Foreign and Security Policy, as well as with competition policies. The EU plays a strong role in both these fields, with competition policy a prime example of an area in which the EU is also entrusted with implementation. Other very prominent areas – again, similar to the situation before national courts – included employment (particularly employment at EU institutions), and asylum and immigration.

Spotlight on the standing of the Charter in the national legal system

In many cases analysed, the Charter was used to add (additional) legal heft to the interpretation of a national law provision, including cases dealing with national constitutional law. To give an example from **Spain**, the Constitutional Court referred to its standing case law when stating that treaties and international agreements including EU law may constitute “valuable interpretive criteria of the meaning and scope of the rights and freedoms recognised by the Constitution”. The court underlined that these “valuable interpretive criteria” also includes the interpretation developed by the organs established in those treaties and international agreements.¹⁵¹ Such judgments reveal that the Charter's guiding function is not necessarily limited to cases where EU law in general and the Charter in particular apply.¹⁵²

Less frequent were judgments using the Charter to interpret EU secondary law, although there is an example from **France** in the context of the Free Movement Directive (2004/38/EC). There are also cases where the Charter, secondary law and national law implementing EU legislation are looked at from the perspective of a triangular relationship, as a **German** judgment did. At stake was the scope of Article 2 (2) of the Employment Directive (2000/78/EC), which says that the directive “shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of

criminal offences, for the protection of health and for the protection of the rights and freedoms of others.” The case concerned alleged age discrimination in a regional provision, which required house inspectors to be no older than 70. The national court admitted that the provision did indeed compromise Article 21 of the Charter, but it argued that this intrusion was justified in accordance with Article 52 (1) of the Charter. The justifications for interference under that article are, the court said, “for the very same reasons” as those justifying interferences with fundamental rights under national constitutional law.¹⁵³

In the **United Kingdom**, the standing of the Charter in the national legal system was addressed explicitly in some judgments and consequently picked up in the political debate. In a case concerning an asylum seeker who was returned to his country of origin, the claimant argued that the UK government interfered with his rights under Article 7 of the European Charter, among others, by causing private information to be disclosed to his home country’s authorities. In the end, the claim was dismissed. However, the judge referred to the judgment of the CJEU in the case *N. S. v. Secretary of State for the Home Department*,¹⁵⁴ stressing that:

“The constitutional significance of this decision can hardly be overstated. The Human Rights Act 1998 incorporated into our domestic law large parts, but by no means all, of the European Convention on Human Rights. Some parts were deliberately missed out by Parliament. The Charter of Fundamental Rights of the European Union contains, I believe, all of those missing parts and a great deal more. Notwithstanding the endeavours of our political representatives at Lisbon it would seem that the much wider Charter of Rights is now part of our domestic law. Moreover, that much wider Charter of Rights would remain part of our domestic law even if the Human Rights Act were repealed.”¹⁵⁵

In another judgment, a national court in the **United Kingdom** took a more operational approach to the standing of the Charter. The case concerned two applicants: a cook at the Sudanese embassy and a member of the domestic staff of the Libyan embassy. Both had made claims arising out of their employment and were met with pleas of state immunity. These pleas were upheld by two separate employment tribunals and both parties appealed. The claimants invoked Article 47 of the Charter and argued that the State Immunity Act 1978 (SIA), which provides for state immunity in UK law, should be disapplied to the extent the claims fell within the material scope of EU law. The employment appeal tribunal addressed the question whether a direct application of the Charter implies that national law contrary to the Charter must be disapplied in a claim litigated between private individuals. The Court stated that the claims relating to discrimination, harassment and breaches of the Working Time Regulations were subject to Article 47 of the Charter, but those for unfair dismissal and minimum wages were not. The Court concluded that, whereas the Human Rights Act “does not permit the disapplication of any statutory provision, [...] EU law requires it where it concerns the material scope of EU law”; thus, for the claims covered by EU law, certain provisions of the SIA were “to be disapplied”.¹⁵⁶ The discussions that were sparked by these judgments led the European Scrutiny Committee in the House of Commons to prepare a report on the application of the Charter in the UK, which will be presented in 2014.

The sample of cases analysed here does not contain cases where the standing of the Charter was addressed in other Member States, but this should not lead to the conclusion that national courts in other countries did not address the Charter’s legal standing. A look back to 2012 is instructive in this regard. The Constitutional Court in **Austria** had referred to a principle of equivalence and concluded that the rights of the Charter can be invoked as constitutional rights and, within the scope of the Charter, constitute a standard of review in the proceedings of constitutional complaints, in particular pursuant to specific provisions of the Austrian Constitution (Articles 139 and 149).¹⁵⁷ In the same year, the Constitutional Court of **Romania** said that Charter provisions are applied when checking constitutionality, basing this Charter role on the Romanian constitution’s integration

clause in Article 148.¹⁵⁸ In 2013, a national court in **France** stressed, in a case concerning the lack of suspensive effect of an appeal against expulsion orders, that the national judge does not have the power under the Code of Administrative Justice to rule on the compatibility of such laws with the provisions of an international convention or reject their application under the European Union law. However, the court added that the situation is different where these legal dispositions appear to be manifestly incompatible with European Union law requirements, which was – according to the national court – not the case.¹⁵⁹ In a case in **Cyprus**, the parties referred in their argumentation to the Charter as higher-ranking law. The court, however, limited itself to establishing that Articles 20 and 21 of the Charter are largely identical to the national constitution’s provisions and “for that reason” there was no need to refer a question of interpretation to the CJEU.¹⁶⁰

Conclusion

It is in the fields of asylum and immigration that national courts most often refer to the Charter of Fundamental Rights of the European Union. More than one in five of the cases analysed deal with these policies (21 %). The Charter right that national courts most commonly refer to is the right to an effective remedy and a fair trial (Article 47). Together with the right to good administration (Article 41), these rights formed a quarter of all the references to the Charter in the 2013 judgments analysed. This reflects the situation before the CJEU, which invokes Articles 41 and 47 in half of all the cases in which it refers to the Charter.

Of all the cases in which national courts referred to the Charter, 22 % were devoted to the Charter’s horizontal provisions, encompassing its scope (Article 51) and interpretation (Article 52). Despite these provisions’ prominence before national courts, their judgments rarely analyse the Charter’s reach in detail. The Charter is often rather superficially referred to as a means of interpretation, without the question of whether or not the Charter applies being addressed.

Occasionally, national courts also refer to the Charter in their reasoning in cases that clearly fall outside the scope of EU law. As an expression of the values on which the Union is built and to which all Member States adhere, the Charter thus reverberates beyond EU law.

National courts tend to cite in parallel the Charter, which is the EU human rights bill, and the ECHR, the Council of Europe’s human rights treaty. In nearly two thirds of the judgments analysed, the courts paired references to the Charter and the ECHR.

The Charter is also used and referred to before bodies with a human rights remit, including NHRIs, Ombudsperson institutions and equality bodies. However, given the diversity of these institutions, the role of the Charter is more mixed and less pronounced than before national courts. Just like the national courts, the bodies with a human rights remit often refer both to the Charter and to human rights treaties, although the latter see more use than the former. Many of the bodies are specialised equality bodies, which tend to draw on the Charter’s equality title. However, other rights, including to data protection and to good administration, are also highlighted before such bodies. Nevertheless, there remains potential for much greater use of the Charter before bodies with a human rights remit.

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- 32 The FRA survey on discrimination and hate crimes against Jews was conducted online in eight EU Member States – Belgium, France, Germany, Hungary, Italy, Latvia, Sweden and the United Kingdom – in September and October 2012. The survey covered 5,847 self-identified Jews aged 16 and over. FRA (2013), *Discrimination and hate crime against Jews in EU Member States: Experience and perceptions of antisemitism*, Luxembourg, Publications Office, http://fra.europa.eu/sites/default/files/fra-2013-discrimination-hate-crime-against-jews-eu-member-states_en.pdf.
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HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

The EU and its Member States took a variety of important steps in 2013 to protect and promote fundamental rights by assuming new international commitments, revamping legislation and pursuing innovative policies on the ground. Yet, fundamental rights violations seized the spotlight with distressing frequency: would-be migrants drowning off the EU's coast, unprecedented mass surveillance, racist and extremist-motivated murders, child poverty and Roma deprivation.

In response, the EU completed a series of important legal reforms, particularly in asylum, while Member States worked to transpose the EU Victims' Directive into national law and pursued their national Roma integration strategies. Still, new laws on the books do not necessarily transform the situation on the ground. Crisis-driven austerity measures raised some fundamental rights concerns. A persisting gap between law and practice troubled a broad spectrum of human rights observers, particularly in asylum policy, Roma integration and child and victims' rights.

This year's summary of the FRA Annual report – Highlights 2013 – puts the spotlight on key legal and policy developments in the field of fundamental rights in 2013, covering the following topics: asylum, immigration and integration; border control and visa policy; information society, respect for private life and data protection; the rights of the child and the protection of children; equality and non-discrimination; racism, xenophobia and related intolerance; access to justice and judicial cooperation; rights of crime victims; EU Member States and international obligations. It also features fundamental rights-related developments in two new areas: Roma integration, following the drawing up of the national Roma integration strategies, and the use of the EU Charter of Fundamental Rights before national courts as it approaches its fifth anniversary as a binding document.

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Publications Office

ISSN 1831-0184
ISBN 978-92-9239-451-6