

# HIGHLIGHTS 2011



## Fundamental rights: key legal and policy developments in 2011



**FRA**

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS



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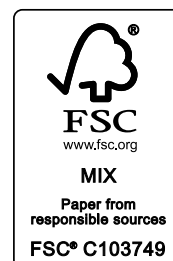
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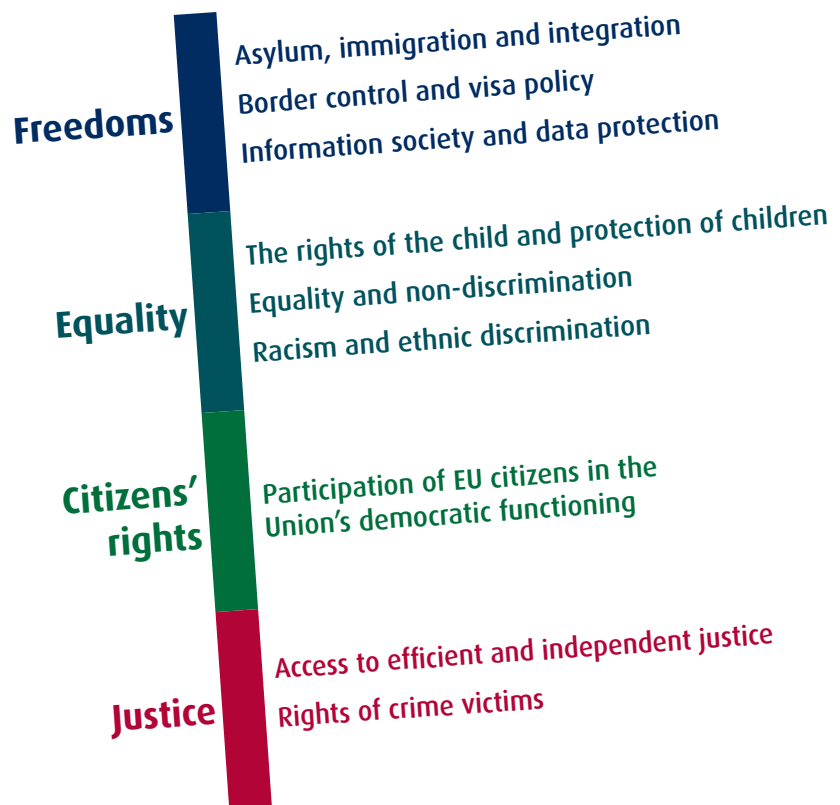
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**Fundamental rights:  
key legal and policy  
developments in 2011**

The Highlights 2011 cover several titles of the EU Charter of Fundamental Rights, colour coded as follows:



In 2011, the fundamental rights landscape evolved further with the complex interplay among multiple protective layers increasingly taking centre stage. More European Union (EU) Member States, for instance, established national human rights institutions, the European Union Agency for Fundamental Rights (FRA) approached its fifth year of existence and, for the first time, the EU itself was directly bound to an international human rights treaty – the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD). In light of this, a report commissioned by the UN Regional Office for Europe recommended that all these various institutions enhance their cooperation to minimise the risk of gaps in fundamental rights protection. Meeting this challenge is essential to making fundamental rights a reality in the daily lives of all those who live in the EU. A closer look at the existing fundamental rights landscape also reveals that it is increasingly important not only to consider the duty bearers – that is, the States – but also the rights holders – the individuals. Their experiences and perceptions must be taken into account to guarantee that the European fundamental rights structure makes a difference on the ground and does not become an end in itself.

In the area of **asylum, immigration and integration**, 2011 witnessed concerns about certain transfers of asylum seekers under the Dublin II Regulation which were articulated before the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). Various EU Member States carried out reforms in the area of asylum procedures. While there was increased recognition at EU level of the special situations of, for example, asylum-seeking children, evidence remains of general shortcomings in asylum procedures, including the lack of efficient remedies. In the context of return proceedings, a large number of EU Member States had not yet established efficient and independent monitoring systems by the end of 2011. Concerning legally resident migrants, a new European agenda for the integration of third-country nationals was adopted. Whereas integration is defined as a shared responsibility requiring engagement from both the receiving society and migrants, evidence from 2011 shows that shortcomings persist in various areas, including healthcare, education, employment and housing.

These highlights put the spotlight on selected key issues of the 2011 Annual report of the European Union Agency for Fundamental Rights (FRA). In the margin throughout, they refer to relevant FRA publications from 2011, all of which can be accessed through the FRA website at <http://fra.europa.eu>.

The FRA Annual report, *Fundamental rights: challenges and achievements in 2011*, is structured along the agency's main thematic work areas for the period 2007-2012. It is divided into 10 chapters, in addition to a focus on the fundamental rights landscape within the European Union.



Bringing rights to life: the landscape of fundamental rights protection within the European Union

1. Asylum, immigration and integration
2. Border control and visa policy
3. Information society and data protection
4. The rights of the child and the protection of children
5. Equality and non-discrimination
6. Racism and ethnic discrimination
7. Participation of EU citizens in the Union's democratic functioning
8. Access to efficient and independent justice
9. Rights of crime victims
10. EU Member States and international obligations

The full report and its individual chapters are available for download at <http://fra.europa.eu>. Bibliographical references are available at the end of each chapter in the main report.

In the area of **border control and visa policy**, the migration pressure on EU Member States bordering the Mediterranean Sea dominated debates on borders and asylum in the EU in 2011. The Arab spring and the Libyan uprising led to a surge in new arrivals to these Member States, fuelling public debate. These new arrivals often travelled onwards to other EU Member States, prompting some of them to intensify police checks at internal Schengen borders. This influx, and the response to it, thrust the Schengen agreements to the centre of many of these debates. Core to the Schengen discussions were the respect for the agreements, cooperation between Member States and delays in new accessions. The situation of persons entering the EU irregularly through its external borders amounts to a fundamental rights emergency.

In the context of the **information society and data protection**, two themes – security and technology – dominated the debate in 2011, a year which marked 10 years since the terrorist attacks of September 11 in the United States. The anniversary stoked debate on how to find the right balance between security, rights to privacy and data protection and centred on topical issues such as the retention of telecommunications data, the collection and analysis of passenger data, the creation of a terrorist finance tracking system and the use of body scanners. Another concern was how to update the data protection framework to cope with technological advances, with interest focusing particularly on social networking sites.

When it comes to the **rights of the child and the protection of children**, 2011 witnessed important progress in EU law and policy towards better protection of the rights of the child. These developments at EU level will affect how EU Member States ensure the prevention of the crimes of child trafficking, sexual abuse, sexual exploitation and child pornography, the protection of children who fall victim to such crimes and the prosecution of offenders. The new EU agenda for the rights of the child establishes priority areas, including increasing knowledge about the situation and needs of the most vulnerable groups of children. Accompanied and unaccompanied migrant children continue to arrive in EU Member States, which requires adequate responses by public authorities, and social and other services.

In 2011, the EU and its Member States took a significant number of legal and policy steps to address issues of **equality and non-discrimination**. These developments were of particular interest to lesbian, gay, bisexual and transgender (LGBT) persons as well as persons with disabilities. Recognition of the reality of multiple and intersectional discrimination grew. Debate also centred on the permissibility of restricting freedom of religion and belief, both at the level of case-law and at that of national legislation.

In the fields of **racism and ethnic discrimination**, the killing of 77 people and injuring of another 242 in Norway in July 2011 sent a stark and tragic reminder of how far the excesses of racism, antisemitism, ethnic discrimination and intolerance can go if left unchecked. The attacks also threw into sharp relief manifestations of racism and ethnic discrimination in the EU in 2011: anti-Roma violence in at least four EU Member States, violent clashes between local residents and asylum seekers, and racially motivated murders all testified to the continuing challenges posed by extreme forms of

intolerance. In addition, and despite the greatest efforts of EU Member States to curb it, ethnic discrimination remains a reality throughout the EU, whether in the areas of healthcare, education, employment or housing. Roma populations in particular continue to face discrimination in these areas, as evidence collected by the FRA and other bodies demonstrates.

Coming to the **participation of EU citizens in the Union's democratic functioning**, 2011 saw some EU Member States undertaking reforms to make elections more accessible to all persons, thereby fostering democratic participation. For instance, by the end of 2011, 19 EU Member States had ratified the UN CRPD, placing themselves under a legal obligation to enhance the right to vote of persons with disabilities. Ever greater levels of abstention in elections to the European Parliament prompted discussions on electoral reform. Beyond elections, 2011 also witnessed developments in the wider context of participation in public life. Further preparatory discussions took place on the European citizens' initiative, a potentially powerful participatory tool at EU level.

The continuing financial crisis also had implications for the protection of fundamental rights. For instance, in the area of **access to efficient and independent justice**, budget reductions posed challenges for key institutions such as courts and bodies with a human rights remit. Still, efforts were made to improve the situation by reducing the length of court proceedings, broadening legal standing before courts and developing e-justice. Pressure for reform is driven by the need to improve access to justice and to further modernisation, with EU legislation and criticism from Council of Europe and UN bodies helping spur the reform push.

Finally, in the area of the **rights of crime victims**, 2011 marked the 10th anniversary of the EU framework decision on the standing of victims in criminal proceedings. The year witnessed progress in the area of victims' rights in the EU, driven by initiatives of the Council of the European Union and European Commission. The

**Table 1: Number of ECtHR judgments in 2011, by country**

| Country          | Number of judgments | Judgments finding at least one violation |
|------------------|---------------------|--|
| AT               | 12                  | 7  |
| BE               | 9                   | 7  |
| BG               | 62                  | 52                                       |
| CY               | 2                   | 1  |
| CZ               | 22                  | 19                                       |
| DE               | 41                  | 31                                       |
| DK               | 6                   | 1  |
| EE               | 3                   | 3  |
| EL               | 73                  | 69                                       |
| ES               | 12                  | 9  |
| FI               | 7                   | 5  |
| FR               | 33                  | 23                                       |
| HU               | 34                  | 33                                       |
| IE               | 2                   | 2  |
| IT               | 45                  | 34                                       |
| LT               | 10                  | 9  |
| LU               | 3                   | 1  |
| LV               | 12                  | 10                                       |
| MT               | 13                  | 9  |
| NL               | 6                   | 4  |
| PL               | 71                  | 54                                       |
| PT               | 31                  | 27                                       |
| RO               | 68                  | 58                                       |
| SE               | 4                   | 0  |
| SI               | 12                  | 11                                       |
| SK               | 21                  | 19                                       |
| UK               | 19                  | 8  |
| <b>Sub-total</b> | <b>633</b>          | <b>506</b>                               |
| HR               | 25                  | 23                                       |
| <b>Total</b>     | <b>658</b>          | <b>529</b>                               |

Source: ECtHR, Annual report 2011, Strasbourg, Council of Europe, 2011

adoption of the Council of Europe Convention on preventing and combating violence against women and domestic violence in April 2011 complemented these reforms. Victims' rights were also addressed in the context of the protection of children and the fight against trafficking.

In other words, the year 2011 witnessed remarkable developments as well as deplorable shortcomings in the field of fundamental rights in the EU and its Member States. Based on these findings, certain challenges for the short-term future have been identified which are addressed in the outlook section.



# Asylum, immigration and integration

## Spotlight on appeals in Dublin II procedures

The EU's Dublin II Regulation aims to streamline asylum procedures by identifying as quickly as possible the Member State responsible for examining an asylum application, establishing reasonable time limits for its review and preventing abuse of asylum procedures in the form of multiple applications.

It appears, however, that Dublin II procedures tend to have the fewest safeguards and the shortest timelines to appeal. Five EU Member States (Belgium, France, Greece, Italy and Slovenia) made changes to their Dublin procedures in 2011. Following the ECtHR judgment in the *M.S.S.* case, for instance, Belgium introduced a mechanism to file a request for suspension of removal to deal with cases of extreme urgency.

At the end of 2011, legislation in five EU Member States lacked the possibility for a reviewing court or tribunal to suspend a transfer (see Figure 1). Moreover, in Denmark a Dublin II decision could not be appealed to a court; and in the United Kingdom an in-country appeal against Dublin II decisions was not possible.

In some cases, deadlines for appeal remained extremely short, such as in Romania (two days) or Hungary (three days). With the exception of six EU Member States, an appeal does not automatically suspend the transfer, which must be requested on a case-by-case basis.

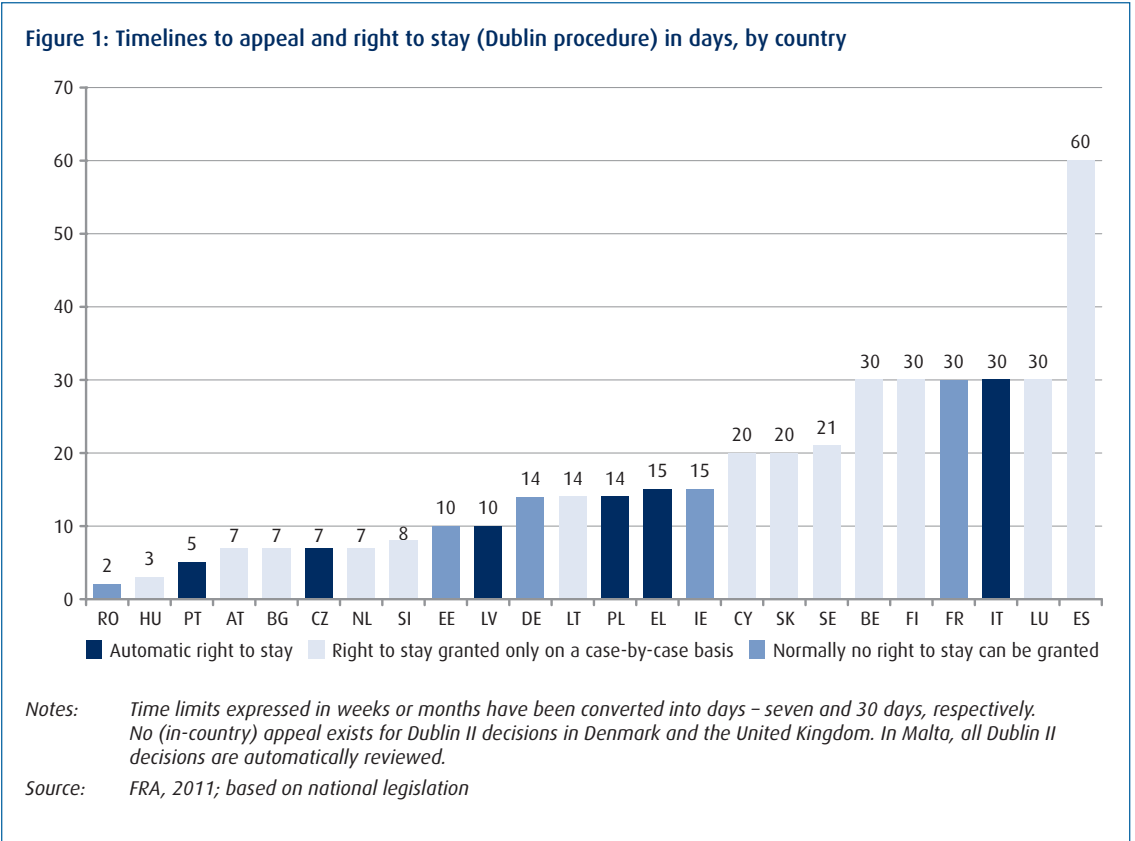
### FRA PUBLICATION

*Fundamental rights of migrants in an irregular situation in the European Union*, November 2011.

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub-migrants-in-an-irregular-situation\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub-migrants-in-an-irregular-situation_en.htm)

## Key developments in the area of asylum, immigration and integration:

- the Court of Justice of the European Union (CJEU) delivers important judgments in the context of family reunification, criminal imprisonment of migrants in return proceedings, right to an effective remedy in the context of an accelerated asylum procedure and the transfers of asylum seekers under the Dublin II Regulation;
- the ECtHR Grand Chamber delivers its judgment in the case of *M.S.S. v. Belgium and Greece* on the application of the Dublin II Regulation;
- the application of the Long-Term Residents Directive is extended to refugees and beneficiaries of subsidiary protection;
- detention remains the most frequent tool used to prevent migrants from absconding, although most EU Member States have introduced alternatives to detention in their legislation;
- the rights of migrants in an irregular situation win greater visibility, for instance the International Labour Organization (ILO) adopts a convention and a recommendation on domestic workers, including those in an irregular situation;
- the European Commission presents new plans for EU funding in the area of home affairs aiming at more effective use of funds for emergencies at borders;
- the European Commission issues the European Agenda for the integration of third-country nationals contributing to the debate on how to understand and better support integration.



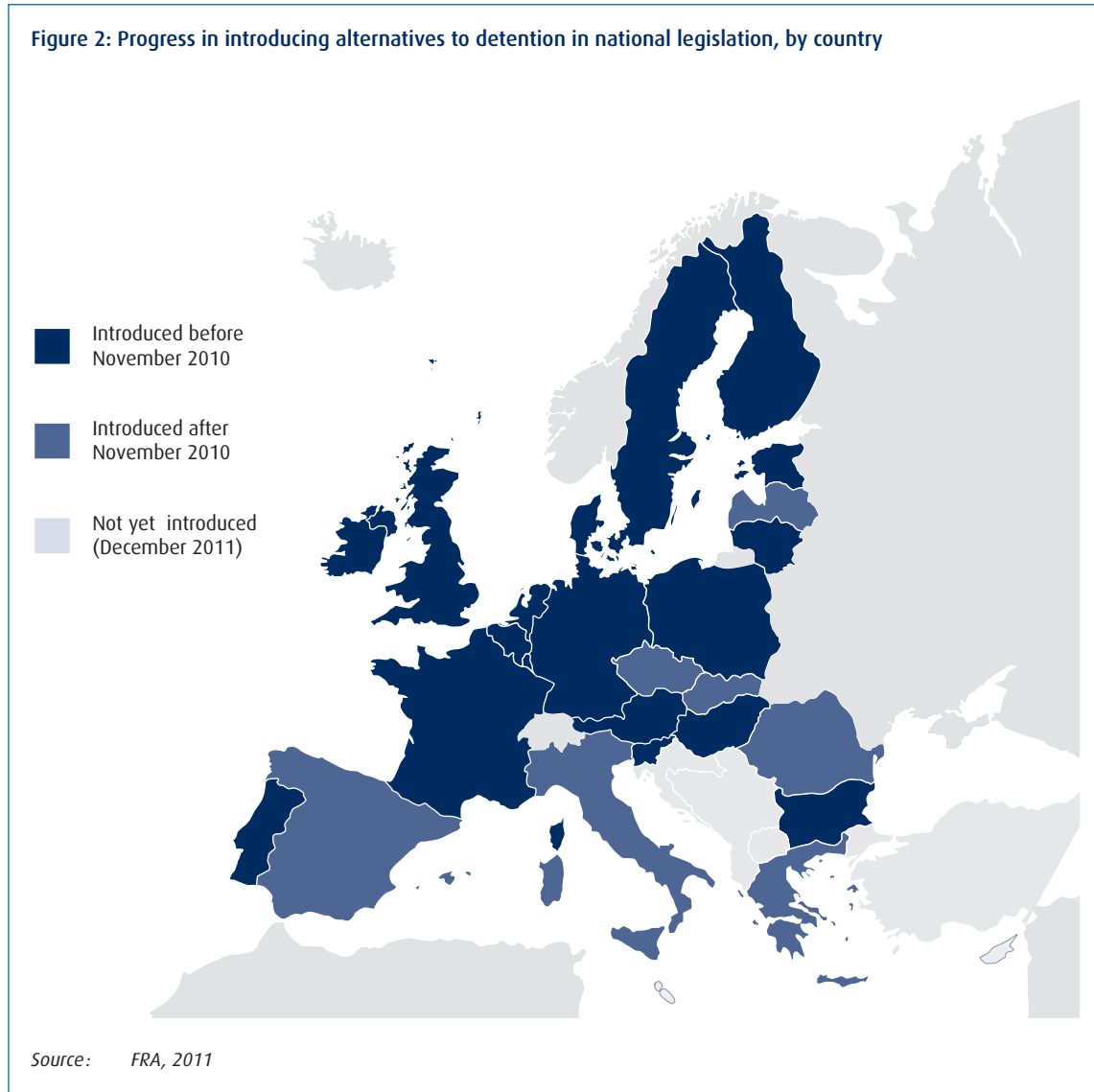
### Spotlight on alternatives to immigration detention

Traditionally used in the criminal justice system, alternatives to detention have acquired increasing importance in the context of procedures aimed at returning irregular migrants to their country of origin (return procedures). In November 2010, only two thirds of EU Member States provided for alternatives to detention in their national legislation. Over the reporting period, this proportion increased and at the end of 2011 only two Member States (Cyprus and Malta) had yet to introduce such alternatives. This development can be explained in two ways – the need to transpose the Return Directive and the desire to reduce immigration detention. No alternatives are provided for in the Croatian legislation, except for Article 100 of the Aliens Act, which provides for the possibility of placing foreigners in an open facility, if they cannot be detained for health or other justified needs or reasons.

#### FRA PUBLICATION

*Migrants in an irregular situation: access to healthcare in 10 European Union Member States, October 2011.*

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub\\_domestic-workers\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub_domestic-workers_en.htm)  
[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub\\_irregular-migrants-healthcare\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub_irregular-migrants-healthcare_en.htm)



The inclusion of alternatives to detention in foreigner or national immigration legislation is not itself a guarantee that alternatives are used in practice. In many EU Member States, statistics on alternatives to detention are not systematically collected, which makes it difficult to assess the extent to which alternatives are applied. It appears, however, that in several EU Member States alternatives are imposed substantially less frequently than detention.

Table 2: Types of alternatives applied, by country

| Country | Duty to surrender documents | Bail/sureties | Regular reporting | Designated residence | Designated residence and counselling | Electronic monitoring |
|---------|-----------------------------|---------------|-------------------|----------------------|--------------------------------------|-----------------------|
| AT      |                             | ✓             | ✓                 | ✓                    |                                      |                       |
| BE      |                             |               |                   |                      | ✓                                    |                       |
| BG      |                             |               | ✓                 |                      |                                      |                       |
| CZ      |                             | ✓             | ✓                 |                      |                                      |                       |
| DE      |                             |               | ✓                 | ✓                    | ✓                                    |                       |
| DK      | ✓                           | ✓             | ✓                 | ✓                    |                                      | ✓                     |
| EE      | ✓                           |               | ✓                 | ✓                    |                                      |                       |
| EL      | ✓                           | ✓             | ✓                 | ✓                    |                                      |                       |
| ES      | ✓                           |               | ✓                 | ✓                    |                                      |                       |
| FI      | ✓                           | ✓             | ✓                 |                      |                                      |                       |
| FR      | ✓                           |               | ✓                 | ✓                    |                                      | ✓                     |
| HU      | ✓                           |               | ✓                 | ✓                    |                                      |                       |
| IE      | ✓                           |               | ✓                 | ✓                    |                                      |                       |
| IT      | ✓                           |               | ✓                 | ✓                    |                                      |                       |
| LT      |                             | ✓*            | ✓                 | ✓                    |                                      |                       |
| LU      |                             |               | ✓                 | ✓                    |                                      |                       |
| LV      | ✓                           |               | ✓                 |                      |                                      |                       |
| NL      | ✓                           | ✓*            | ✓                 | ✓                    |                                      |                       |
| PL      |                             |               | ✓                 | ✓                    |                                      |                       |
| PT      |                             |               | ✓                 | ✓                    |                                      | ✓                     |
| RO      |                             |               | ✓                 | ✓                    |                                      |                       |
| SE      | ✓                           |               | ✓                 | ✓                    |                                      |                       |
| SI      | ✓                           | ✓             | ✓                 | ✓                    |                                      |                       |
| SK      |                             | ✓             | ✓                 |                      |                                      |                       |
| UK      | ✓**                         | ✓             | ✓                 | ✓                    | ✓                                    | ✓                     |

Notes: \* Concerns minors whose guardianship is entrusted to an agency or an individual (Article 115.2.3, Lithuanian law on legal status of aliens; Dutch Aliens Circular paragraph A6/5.3.3.3).

\*\* In the United Kingdom, the duty to surrender documents is imposed on all individuals who do not have permission to stay. It is therefore not regarded as an alternative to detention per se.

Source: FRA, 2011; based on national legislation



## Spotlight on migrant integration

Fostering the successful integration of migrants into civil society has been at the centre of EU and national strategies. Next to the European Commission's communication on a *European Agenda for the Integration of Third Country Nationals*, action plans relating to migrant integration have been adopted in a number of EU Member States. These strategies cover the areas of healthcare, education, employment, housing and access to social services. The successful implementation of these action plans will contribute to removing existing barriers to the integration of migrants into the EU.

Migrants, whether third-country nationals or EU citizens, form a significant and increasing proportion of clients using services for homeless people in some EU Member States. The adoption by the European Parliament of a resolution on an EU homelessness strategy in September 2011 becomes particularly relevant in this context. This resolution calls for the development of an integrated EU strategy underpinned by national and regional strategies, with the long-term goal of ending homelessness within the broader framework of social inclusion.



### FRA PUBLICATION

*Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States*, July 2011.

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/pub\\_domestic-workers\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/pub_domestic-workers_en.htm)

# Border control and visa policy

## Spotlight on emergencies at EU external borders

The situation of persons irregularly entering the EU's external border between Greece and Turkey amounted to a fundamental rights emergency. Other EU Member States suspended transfers of asylum seekers to Greece under the Dublin cooperation.

The total number of irregular migrants intercepted crossing the Greek-Turkish land border reached 55,017 persons in 2011, according to Frontex; this corresponds to a 14 % increase over 2010. As part of its Rapid Border Intervention Teams (Rabit) operation, Frontex deployed substantial resources to improve the treatment of individuals subject to procedures at the border with Turkey. This has reduced the risk that migrants who have crossed irregularly into Greece are immediately pushed back to Turkey without any formal procedures. The EU's operational assistance through Frontex, however, covers only initial processing and does not address the most critical fundamental rights concern – the inhuman conditions in which persons are held in facilities near the border. Frontex's mandate does not extend to the reception of persons crossing borders irregularly. Human Rights Watch, in a September report, expressed concerns over Frontex's role which it characterised as facilitator of the transfer of migrants to inhuman and degrading conditions in detention centres in Greece. The report referred to the European Court of Human Rights' (ECtHR) judgment in the *M.S.S. v. Belgium and Greece* case, which found that Greek detention practices violated Article 3 of the European Convention on Human Rights (ECHR).

In the wake of the Arab spring, Italy and Malta received a large number of arrivals over a short period of time. In 2011, almost 63,000 persons crossed

## Key developments in the area of border control and visa policy:

- the emergency situation at the EU's external borders and the large number of new arrivals in EU Member States bordering the Mediterranean Sea, combined with their onward movement to other Member States, triggers a discussion on whether the reintroduction of Schengen border controls calls into question the right to free movement within the EU;
- some EU Member States face increased numbers of asylum applications following the visa waivers, leading the European Commission to propose a clause that would allow suspension of visa-free movement where this has led to significant increases of irregular migration flows or asylum applications;
- the EU agency for the operational management of large-scale information technology systems in the area of freedom, security and justice is established in Tallinn, Estonia;
- the European Commission proposes a common framework for cooperation and information exchange between Member States and Frontex;
- the founding regulation of Frontex is amended, putting more emphasis on fundamental rights.

the Mediterranean as a result of the Tunisian revolution and the war in Libya, according to Frontex information provided to the FRA.

Disagreement among EU Member States on the nearest safe port delayed the disembarkation of rescued migrants. It was reported that in July 2011 more than 100 migrants were stranded for several days on a vessel under the command of the North Atlantic Treaty Organisation, due to a disagreement between Italy, Malta and Spain over where to take the migrants. In another incident, 104 of 112 Tunisian migrants were accompanied back to Tunisian territorial waters after Italian vessels rescued them on 22 August 2011.

A riot against forced returns to Tunisia broke out at the Lampedusa reception facility at the end of September 2011, severely damaging it. As a result, Italy opted to declare the port unsafe. The United Nations High Commissioner for Refugees (UNHCR), among other organisations, commented that this decision “undermined the entire rescue at sea system for migrants and asylum seekers and at the same time could make rescue operations more hazardous and complex”. The facilities in Lampedusa remained unused at the end of the reporting period.

### Spotlight on the right to appeal negative visa decisions

The provisions in the EU Visa Code on the right to appeal entered into force on 5 April 2011, making it mandatory for EU Member States to introduce appeal procedures for persons whose application for a Schengen visa has been refused. The code does not, however, prescribe standards for the independence of the appellate body. Existing appeals bodies can broadly be categorised into three groups: judicial bodies, quasi-judicial bodies and public authorities. The following EU Member States have opted for judicial bodies to act as the appeals body: in Bulgaria, Greece, Italy and Lithuania, the applicant may appeal directly to the Administrative Courts. In Luxembourg, decisions may be appealed to the Administrative Tribunal and further to the Administrative Court. In Austria, a decision on a refused visa may be appealed to the Administrative Court and/or the Constitutional Court. In Cyprus, there is a right to appeal to the Supreme Court. In Latvia, Slovenia and Sweden, the applicant has the right to appeal to the consulate to reconsider the decision and also has the right to further appeal to the Administrative Court. In Germany, the refused applicant can either request that the consulate reconsiders the decision or he or she may submit a further appeal to the Administrative Court in Berlin. Spain applies the same system of appeal and the designated body is the High Court of Madrid. Other EU Member States designate an appeals body within their administrations. In Estonia, Finland, Hungary and Poland, a refused visa can be appealed to the Ministry of Foreign Affairs. After Romania accedes to the Schengen area, the Ministry of Foreign Affairs will

#### FRA PUBLICATION

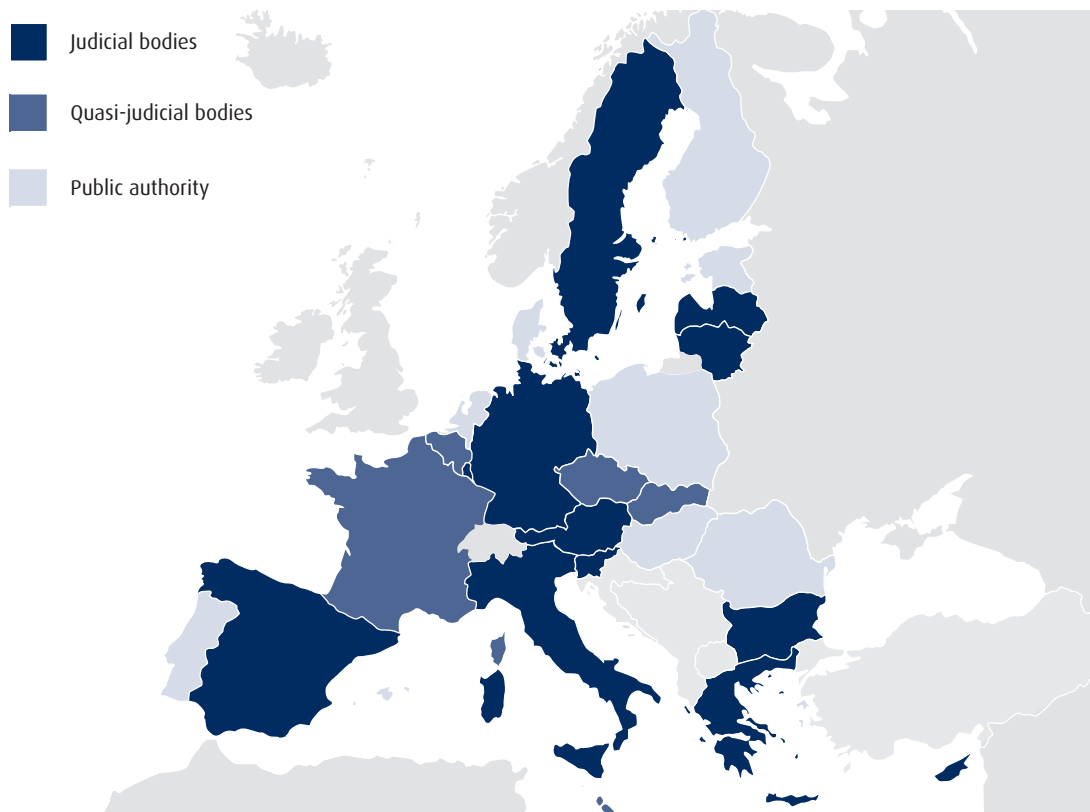
*Coping with a fundamental rights emergency – The situation of persons crossing the Greek land border in an irregular manner, March 2011.*

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub\\_greek-border-situation\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub_greek-border-situation_en.htm)

examine appeals. In Denmark, a refused visa may be appealed to the Ministry of Justice, in the Netherlands to the Ministry of the Interior and Kingdom Relations and in Portugal to the Foreigners and Borders Service (*Serviço de Estrangeiros e Fronteiras, SEF*).

In a number of EU Member States the appeals body is of a quasi-judicial nature. In Belgium, the appeals body is the Council for Alien Law Litigation, in France the Appeals Commission on Visa Refusals, in Malta the Immigration Appeals Board and in Slovakia the Remonstrance Commission. In the Czech Republic, the appeals body is the Appeals Commission on Residence of Foreign Nationals, although the consulate has the option of reconsidering its decision before the formal appeal procedure starts.

Figure 3: Appellate bodies and their degree of independence, by country



Note: Bulgaria, Cyprus and Romania do not issue Schengen Visas; Ireland and the United Kingdom have opted out of the Schengen cooperation.

Source: FRA, 2011; based on information collected from the responsible authorities by the Franet network in 2011 and the websites of the relevant ministries



# Information society and data protection

## Spotlight on the EU-US terrorist finance tracking programme (TFTP)

The EU-United States (US) TFTP agreement, which entered into force in 2010, tasks Europol with verifying whether US requests for transmitting financial messaging data are proportionate and necessary according to the conditions laid down in the agreement. The agreement sets up a periodic joint review mechanism entrusted with the task of monitoring the implementation and effectiveness of the agreement, including Europol's role under the latter. In November 2010, Europol's Joint Supervisory Body (JSB) carried out an inspection and found that the written requests Europol received were not specific enough to allow it to decide whether to approve or deny them. Nevertheless, Europol approved every request received.

When discussing the JSB's report on 16 March 2011 in the European Parliament Committee on Civil Liberties, Justice and Home Affairs, Members of the European Parliament raised serious data protection concerns. The committee's reaction was one of "dissatisfaction, unrest and discomfort" said the committee chair adding that "the EP [European Parliament] has to exert control on the implementation of this agreement". According to the German Federal Data Protection Authority (*Der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit*), most financial messaging data transmitted to the US authorities, where they are stored for many years, are unrelated to international terrorism and risk being used for other purposes. In the view of the Federal Data Protection Authority, Europol, in its role as monitoring authority of the data exchange with the US, is not an appropriate guarantor as it also profits from the data exchange.

The European Commission published the first joint EU-US review of the TFTP, which was carried out according to the agreement in March 2011. The joint review report concluded that Europol had taken its tasks most seriously, and

## Key developments in the area of information society and data protection:

- courts and parliaments in some EU Member States raise concerns about national legislation implementing the Data Retention Directive; the European Commission adopts, in late 2010, an evaluation report on the directive;
- in the context of Passenger Name Records (PNR), the European Parliament endorses the EU-Australia PNR agreement, while parliamentary approval is pending on the EU-US PNR agreement; the European Commission proposes a directive to exchange PNR data amongst EU Member States for law enforcement purposes;
- the EU institutes new rules on the use of body scanners at European airports. Meanwhile, a number of EU Member States test and evaluate the practical use of these scanners;
- the European Commission presents options for a European terrorist finance tracking system, while the implementation of the existing EU-US cooperation, known as the terrorist finance tracking programme, undergoes two reviews, both calling for more transparency.

had put in place the necessary procedures to execute them in a professional manner and in accordance with the agreement. It, however, concurred with the JSB that “there seems to be scope to provide more detailed and targeted justifications for the requests” in order to enable Europol “to perform its functions even more effectively”.

### Spotlight on the Data Retention Directive

Discussions on the Data Retention Directive, which was adopted in 2006, continued in 2011. At the national level, Cyprus, the Czech Republic, Germany, the Netherlands, Sweden and Romania criticised the Data Retention Directive. On 22 March 2011, the Constitutional Court of the Czech Republic declared certain national provisions implementing the directive unconstitutional, in proceedings initiated by a group of 51 deputies of the Czech parliament. In Cyprus, the Supreme Court also declared certain national provisions implementing the Data Retention Directive unconstitutional.

Two committees of the Senate in the Netherlands expressed their disappointment with the European Commission’s evaluation of the Data Retention Directive in a letter to the Minister of Security and Justice on 31 May 2011. The committees took issue with several points. They said that the evaluation was unsatisfactory because it failed to establish the need for the directive and because it paid insufficient attention to the proportionality of data retention. The committees also raised questions about the methodology used and suggested withdrawing the directive.

In Germany, the research service of the federal parliament said that the Data Retention Directive cannot be implemented in a way that is, beyond all doubt, compatible with the Charter of Fundamental Rights of the EU. These doubts centre on the freedom to conduct business since the directive obliges private enterprises to create and maintain cost-intensive structures for the retention of communication data. Another federal parliament study came to the conclusion that data retention has not significantly increased the rate of crimes solved in any EU Member State. The study pointed out, however, that there are no statistical data available to assess the directive’s effect on the crime clearance rate. The Federal Commissioner on Data Protection and Freedom of Information (*Der Bundesbeauftragte für Datenschutz und Informationsfreiheit*) also argued that there is no proof that data retention has significantly increased crime detection rates. The German federal police have, nevertheless, published evidence of the negative impact the absence of data retention has on criminal investigations.

#### FRA PUBLICATION

*Opinion of the FRA on the Proposal for a Directive on the use of Passenger Name Record (PNR) data, June 2011.*

[http://fra.europa.eu/fraWebsite/research/opinions/op-passenger-name-record\\_en.htm](http://fra.europa.eu/fraWebsite/research/opinions/op-passenger-name-record_en.htm)

# The rights of the child and protection of children

## Spotlight on child-friendly justice

The Council of Europe Committee of Ministers approved the *Guidelines on child-friendly justice* in November 2010 and it has since become a key document in the field. Making justice accessible to children is a goal that was also embedded in a number of EU documents adopted in 2011, including the EU agenda for the rights of the child. The new EU directives on trafficking and on the sexual abuse and exploitation of children and child pornography both provide specific instructions on how to ensure access to child-friendly justice. According to the Trafficking Directive, child victims of trafficking should have access to free legal counselling and representation; in case of a conflict of interest between the parents and the child, a representative should be appointed. The hearing should take place behind closed doors. According to the directive on sexual abuse, interviews should be conducted in purpose-built rooms by professionals trained in interviewing children. The number of interviews should be kept to as few as possible.

The way in which children are granted access to justice, when and by whom they are provided with information regarding court proceedings, as well as the timing of their involvement varies among EU Member States, as well as within regions or among specific courts. The transposition of both directives in 2013 should ensure a more standardised approach to the protection of children in criminal investigations and proceedings. The European Commission and the FRA have initiated two complementary studies in order to gather statistical data, develop indicators, as well as collect qualitative data on the involvement of children in the justice system.

## Key developments in the area of children's rights:

- the EU Agenda for the rights of the child, the directive on preventing and combating trafficking in human beings and protecting its victims and the directive on combating the sexual abuse and sexual exploitation of children and child pornography form a new frame of reference at EU level;
- nine EU Member States are reforming their child protection systems, following reviews of national legislation in the area of child protection. Many EU Member States are also in the process of reforming their family justice systems;
- 11 EU Member States sign the Council of Europe Convention on preventing and combating violence against women and domestic violence which also covers girls; five EU Member States and Croatia ratify the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse;
- in the asylum and migration context issues like constraints relating to age assessment at national level are discussed and the European Commission establishes an expert group on unaccompanied minors.

A number of reforms in family laws and criminal codes have taken the Council of Europe guidelines and other relevant international instruments into consideration. In the Czech Republic, for instance, a proposal for the amendment of the Civil Code reinforces the need to obtain the child's opinion in all proceedings as well as to consider the child's wishes when deciding a case.

Legislation came into force in Poland in August 2011, improving the enforcement of court orders establishing contact between children and their non-resident parent. The law establishes a two-stage enforcement mechanism in the Civil Procedure Code. If one parent prevents the other's contact with a child or children, breaking a contact order, the court can issue a warning notice. If the breach continues, the court can impose financial penalties on the breaching parent, taking into account the scale of the breach and the financial situation of the person concerned. The court can order the parent preventing contact to reimburse the costs incurred as a result of the breach. The Polish Ministry of Justice has also recommended a special protocol for interviewing children in criminal proceedings and published information leaflets for children about their rights in courts, such as: 'I will be a witness in court'.

### Spotlight on the prohibition of child trafficking

In April 2011, the EU adopted a directive on preventing and combating trafficking in human beings and protecting its victims, replacing Council Framework Decision 2002/629/JHA on combating trafficking in human beings. EU Member States are required to comply with the directive by 6 April 2013.

This new directive includes a strong child protection component, addressing the issue in its definition of trafficking. It establishes that in the specific case of child trafficking, requirements normally necessary to determine the existence of an offence, such as the threat or use of force or other forms of coercion, are no longer necessary – which is also in line with the Council of Europe Convention on Action against Trafficking in Human Beings. The directive devotes several articles to the protection of child victims of trafficking, specifically including children in criminal investigations and proceedings and unaccompanied children. It recognises children's greater vulnerability and higher risk of falling victim to trafficking and stipulates that, in such cases of particular vulnerability, the penalty for a trafficking offence should be more severe. The directive incorporates key child protection principles such as the best interest of the child and contains concrete requirements for child protection, such as free legal counselling, appointment of a guardian and, to lower the risk of secondary victimisation, limits to the number of interviews, which should be performed by trained professionals. The directive establishes the possibility of video recording interviews, and specialised education programmes for children 'aimed at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking in human beings'.

The European Commission is preparing a strategy on combating trafficking of human beings, which is expected to be approved in May 2012 and which aims to complement the various measures envisaged under the directive. A number of EU Member States also continued to develop legislation and policies to combat trafficking in 2011, including Austria, Bulgaria, the Czech Republic, Denmark, Greece, Ireland, Malta, Romania, Slovakia, Slovenia, Spain and the United Kingdom.

In February 2011, for instance, Slovakia adopted a national programme to combat trafficking covering the prevention, protection and prosecution of trafficking from 2011 to 2014. In other EU Member States, legal reforms involved expanding legal definitions of trafficking to include new forms of exploitation: Romania, for instance, added child begging to the definition of trafficking in its revised anti-trafficking law. According to the US Department of State's annual *Trafficking in persons* report, Estonia is the only remaining EU Member State without a trafficking law. The Estonian government has taken steps to address this gap, presenting a proposal in August 2011 to review the Penal Code in this regard.

# Equality and non-discrimination

## Spotlight on the UN Convention on the Rights of Persons with Disabilities (CRPD)

In 2011, the CRPD entered into force for the EU. Under Article 33 (2) of the CRPD, the EU is obliged to establish a framework, including one or more independent mechanisms, with responsibility to promote, protect and monitor CRPD implementation. In 2011, the European Commission identified four bodies that would together form the EU framework. The four bodies are: the European Parliament's Petitions Committee, the European Ombudsman, the European Commission and the FRA. To ensure the involvement of persons with disabilities and their representative organisations, the Commission also invited the EU-wide representative organisation of persons with disabilities, the European Disability Forum (EDF) as an observer. Within the framework, the FRA is expected to contribute to promoting the CRPD, to collect and analyse data within the scope of its mandate and, in cooperation with the Commission, to develop indicators and benchmarks to support the monitoring process.

Cyprus, Luxembourg and Romania ratified the CRPD in 2011, with Cyprus and Luxembourg also ratifying its optional protocol. This brings the number of EU Member States which have ratified the treaty to 19, with 16 of these having also ratified its optional protocol.

Discussions and preparatory work regarding implementation remain on-going in the remaining eight EU Member States.

Some EU Member States developed national action plans in the area of disability designed to implement the CRPD and achieve the objectives outlined in the European Commission's European disability strategy 2010-2020,

## Key developments in the area of equality and non-discrimination:

- equality bodies and legal practitioners in EU Member States begin to frame cases in terms of multiple discrimination and to collect data on cases alleging discrimination on a number of grounds in combination;
- various EU Member States launch legislative, institutional and policy initiatives aimed at tackling discrimination based on sex; the gender pay gap in the labour market, however, is decreasing in just half of EU Member States;
- EU Member States make significant efforts to collect data on the situation of lesbian, gay, bisexual and transgender persons and a number of Member States decide to include same-sex partners in the definition of 'family member' for the purposes of free movement and family reunification;
- the European Commission clarifies how the EU is to implement the CRPD and three more EU Member States ratify the convention;
- preparations for the 2012 European Year of Active Ageing begin. Case law provides an important contribution, especially in combating discrimination against older persons, while employment rates for young persons continue to lag those of older persons;
- case law clarifies where restrictions on religious freedom are justified and where they may be considered discriminatory, while some national legislative proposals and their impact on various religious practices of Jews and Muslims remain open to discussion.

including Germany and Sweden. Spain adopted new legislation in August 2011 to bring national law and policy into line with CRPD requirements. The legislation includes the regulation of transport, information society and civil protection.

### Spotlight on multiple discrimination

Multiple discrimination describes situations where discrimination takes place on the basis of more than one protected ground. It is a relatively new concept in the equality field and awareness of it is on the rise. The European Parliament referred to the concept of multiple discrimination in six resolutions it adopted in 2011. The Council of the European Union acknowledged the importance of addressing multiple discrimination in the context of the European disability strategy 2010-2020. And in May 2011, the Council also called for a greater focus on the difficulties faced by Roma women and girls who are at risk of multiple discrimination.

#### FRA PUBLICATION

*The legal protection of persons with mental health problems under non-discrimination law*, October 2011.

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub-legal-protection-persons-mental-health-problems\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub-legal-protection-persons-mental-health-problems_en.htm)

At the level of national legislation, multiple discrimination is covered by six EU Member States: Austria, Bulgaria, Germany, Greece, Italy and Romania. It is, however, not always defined as such in the legislation, which tends to be limited to 'dual' discrimination covering two grounds. In Austria (through legislation) and Germany (through official guidelines), courts and equality bodies are directed to award higher levels of compensation where victims have suffered discrimination on multiple grounds.

In practice, when national equality bodies record data relating to complaints of discrimination that are lodged with them, they do not systematically register all of the grounds of discrimination that could be relevant to these cases; they often only categorise a complaint under one ground of discrimination. When they do report more than one ground, equality bodies usually report cases that combine only two grounds. Equality bodies in seven EU

**Table 3: Ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD), by country**

| Country | Year of ratification | Optional protocol |
|---------|----------------------|-------------------|
| AT      | 2008                 | Yes               |
| BE      | 2009                 | Yes               |
| CY      | 2011                 | Yes               |
| CZ      | 2009                 | No                |
| DE      | 2009                 | Yes               |
| DK      | 2009                 | No                |
| ES      | 2007                 | Yes               |
| FR      | 2010                 | Yes               |
| HU      | 2007                 | Yes               |
| IT      | 2009                 | Yes               |
| LT      | 2010                 | Yes               |
| LU      | 2011                 | Yes               |
| LV      | 2010                 | Yes               |
| PT      | 2009                 | Yes               |
| RO      | 2011                 | No                |
| SE      | 2008                 | Yes               |
| SI      | 2008                 | Yes               |
| SK      | 2010                 | Yes               |
| UK      | 2009                 | Yes               |
| HR      | 2007                 | Yes               |

Note: Data as of 31 December 2011.

Source: FRA, 2011; see: [http://fra.europa.eu/fraWebsite/disability/disability\\_en.htm](http://fra.europa.eu/fraWebsite/disability/disability_en.htm)



Member States (Austria, Belgium, Hungary, Luxembourg, Portugal, Slovenia and the United Kingdom) record cases involving more than one ground of discrimination as a distinct category, thereby giving an indication of the number of cases where multiple discrimination is alleged. The equality bodies in Hungary, Luxembourg, Slovenia and the United Kingdom collect specific data on multiple discrimination, despite a lack of national legal provisions prohibiting it.

**FRA PUBLICATION**

*EU-MIDIS 5 Data in Focus report: Multiple discrimination*, February 2011.

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub-multiple-discrimination\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub-multiple-discrimination_en.htm)

Equality bodies in six other EU Member States (Bulgaria, Germany, Greece, Italy, Poland and Romania) do not collect data on multiple discrimination, although legislation on multiple discrimination is in place in these Member States. In Greece, the law on transposing the non-discrimination directives does not explicitly prohibit multiple discrimination; however, labour inspectors, who monitor the application of this law in the private sector, are required to take such cases into account.

### Spotlight on discrimination based on age

Research published in 2011 points out that ageism – that is, discrimination or unfair treatment based on age – persisted in EU Member States. In its 2011 European report on preventing elder maltreatment, the World Health Organisation (WHO) notes that “elder maltreatment is pervasive in all countries in the [WHO] European Region”, with at least four million people a year experiencing maltreatment due to their age.

A British charity working for the benefit of older persons, Age UK, published a study on ageism in Europe. The study was based on the findings of the European Social Survey and found that old age is the most widely experienced source of discrimination in Europe. Around 64 % of respondents in the United Kingdom and 44.4 % across Europe considered old-age discrimination to be a serious problem.

At the national level, case-law suggests that discrimination against older persons is a relevant phenomenon in the employment market. The Supreme Court in Spain, for example, issued two decisions abolishing a maximum threshold of 30 years of age when applying for certain posts within the Spanish police. These are the first court decisions to recognise and abolish age-based discrimination in access to jobs in the Spanish central administration. Their importance lies in the influence they could have over a large number of pending legal proceedings on the same issue, namely: alleged age-based discrimination in more than 15 recruitment cases affecting more than 30,000 public sector jobs since 2004.

At the same time, data collected by Eurostat on a quarterly basis suggests that younger persons are disadvantaged in the labour market. According to the Eurostat data, younger persons between the age of 15 and 24 and older persons



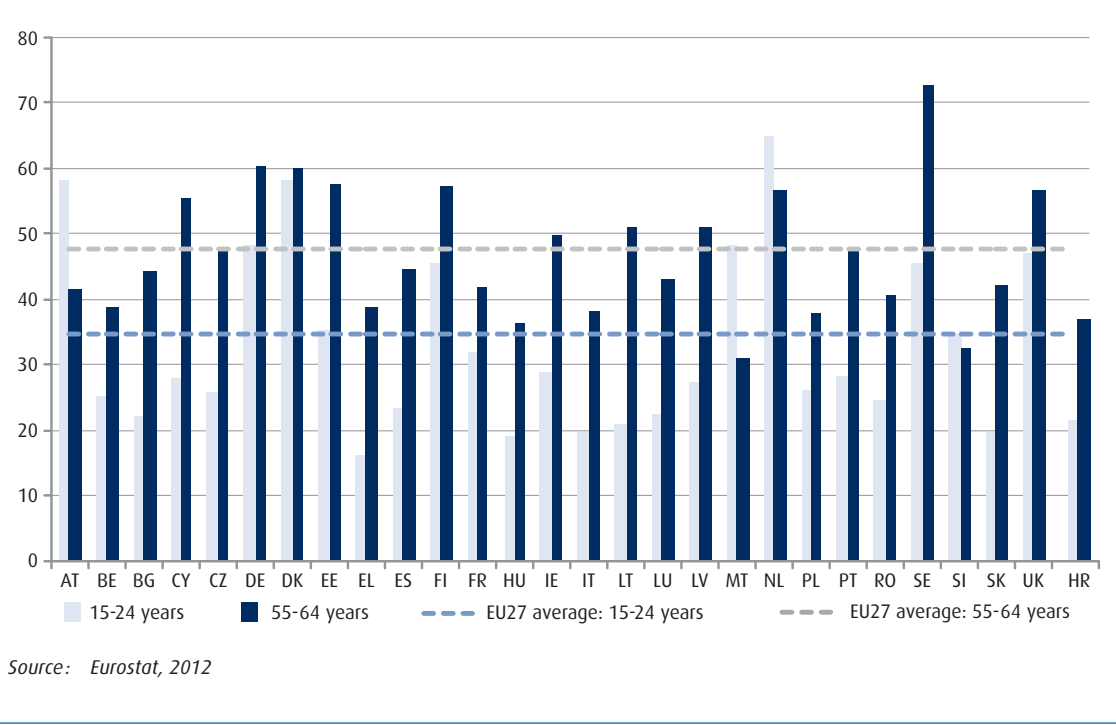
between the age of 55 and 64 have lower rates of employment compared with the active population as a whole (age group 15-64 years). In addition, younger persons have lower employment rates than older persons across most of the EU Member States, with the exception of Austria, Malta, the Netherlands and Slovenia.

**FRA PUBLICATION**

*Respect for and protection of persons belonging to minorities 2008-2010, September 2011.*

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub-respect-protection-minorities\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub-respect-protection-minorities_en.htm)

Figure 4: Employment rates by age groups, by country, fourth quarter 2011 (%)



# Racism and ethnic discrimination

## Spotlight on the collection of official data on racist crime

The regular and continued collection of official data on racist crime by law enforcement agencies, criminal justice systems and relevant ministries is necessary if decision makers are to be provided with a solid base of evidence upon which to formulate effective and targeted policies to combat racist crime. The ready availability of reliable and robust data in the field would make it possible to assess the effectiveness of these policies and fine-tune them as needed.

Most EU Member States record some form of official data on racist crime. There are, nevertheless, important differences as to the scope and transparency of the systems they operate. EU Member States' official data collection mechanisms on racist crime fall into four broad categories:

- no data – no data on racist crime are recorded or published;
- limited – data collection is limited to a few incidents of racist crime, and the data are, in general, not published;
- good – different bias motivations for racist crime are recorded (racism/xenophobia, religion, antisemitism, Islamophobia, (right-wing) extremism) and the data are, in general, published;
- comprehensive – different bias motivations for racist crime are recorded (racism/xenophobia, religion, antisemitism, Islamophobia, (right wing) extremism), as are characteristics of victims and perpetrators, where criminal victimisation has occurred, and which types of crimes were committed, such as murder, assault or threats; the data are always published.

## Key developments in the area of racism and ethnic discrimination:

- incidents of racist crime and violence continue to occur in many EU Member States. While gaps in data collection of such instances remain, some EU Member States are taking steps to improve data collection on racist crime;
- at Member State level studies reveal persisting disadvantages of second-generation migrant school children from particular backgrounds, while Roma children continue to experience disadvantages at school. Discrimination testing in some Member States reveals discrimination in access to employment and housing;
- the Council of the European Union endorses the European Commission's Communication on an EU framework for national Roma integration strategies. In the context of this new framework of cooperation, EU Member States communicate their national integration strategies on Roma inclusion to the European Commission;
- Whereas several Member States begin introducing measures at the national level to improve Roma inclusion, recent data show the situation of Roma remain critical with respect to healthcare, education, employment, housing, poverty and discrimination.

Table 4: Status of official data collection on racist crime, by country, January 2012

| No data   | Limited    | Good           | Comprehensive  |
|---|------------|----------------|----------------|
| Estonia   | Bulgaria   | Austria        | Finland        |
| Romania   | Cyprus     | Belgium        | Netherlands    |
|   | Hungary    | Czech Republic | Sweden         |
|   | Italy      | Denmark        | United Kingdom |
|   | Latvia     | France         |                |
|   | Luxembourg | Germany        |                |
|   | Malta      | Ireland        |                |
|   | Portugal   | Lithuania      |                |
|   | Slovenia   | Poland         |                |
|   | Spain      | Slovakia       |                |
| Greece: data collection system established on 29 September 2011 |            |                |                |
|   | Croatia    |                |                |

Source: FRA assessment of existing data collection mechanisms, 2011

### Spotlight on the results of the FRA and UNDP/World Bank/European Commission household surveys of Roma populations in the EU

In 2011, the FRA and the United Nations Development Programme (UNDP) in association with the World Bank, partly funded by the DG Regional Policy of the European Commission, conducted two household surveys on the situation of Roma populations in the EU. This is the first time such a comprehensive data collection exercise has been attempted through international inter-agency cooperation. The FRA survey comprised 11 EU Member States: Bulgaria, the Czech Republic, France, Greece, Hungary, Italy, Poland, Portugal, Romania, Slovakia and Spain. In total, 22,203 persons who self-identify as Roma (14,925) and non-Roma (7,278) persons living in close proximity to Roma populations were interviewed in the 11 EU Member States, covering 84,287 household members.

The results are representative for Roma living in areas in a higher than national average density. The results for non-Roma persons who were surveyed are not representative for the majority population as a whole, but they serve as a benchmark against which to evaluate the situation of the Roma in the EU Member States under analysis.

#### FRA PUBLICATION

*Human rights education at Holocaust memorial sites across the European Union: An overview of practices*, October 2011.

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub-holocaust-education-overview-practices\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub-holocaust-education-overview-practices_en.htm)

This is possible because the non-Roma persons who were interviewed share the same environment, labour market and social infrastructures with the Roma populations.

The survey results show that the socio-economic situation of Roma in the four key areas of health, education, employment and housing is worse on average than the situation of non-Roma living in close proximity.

The main findings of the surveys are as follows:

- **in health:**
  - one out of three Roma respondents aged 35 to 54 report health problems limiting their daily activities;
  - on average, about 20 % of Roma respondents are not covered by medical insurance or do not know if they are covered.
  
- **in education:**
  - on average, only one out of two Roma children surveyed attend pre-school or kindergarten;
  - during compulsory school age, with the exception of Bulgaria, Greece and Romania, nine out of 10 Roma children aged 7 to 15 are reported to be in school;
  - participation in education drops considerably after compulsory school: only 15 % of young Roma adults surveyed have completed upper-secondary general or vocational education.
  
- **in employment:**
  - on average, fewer than one out of three Roma are reported to be in paid employment;
  - one out of three Roma respondents said that they are unemployed;
  - others said that they are homemakers, retired, not able to work or are self-employed.

**FRA PUBLICATION**

*Migrants, minorities and employment – Exclusion and discrimination in the 27 Member States of the European Union – Update 2003–2008, July 2011.*

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub\\_migrants-minorities-employment\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub_migrants-minorities-employment_en.htm)

- **in housing:**

- on average, in Roma households more than two persons live in one room;
- about 45 % of Roma live in households that lack at least one of the following basic housing amenities, namely indoor kitchen, indoor toilet, indoor shower or bath and electricity.

**FRA PUBLICATION**

*Antisemitism – Summary overview of the situation in the European Union 2001-2010, June 2011.*

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub-antisemitism-summary-update-2011\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub-antisemitism-summary-update-2011_en.htm)

- **poverty:**

- on average, about 90 % of the Roma surveyed live in households with an equivalised income below national poverty lines;
- on average, around 40 % of Roma live in households where somebody had to go to bed hungry at least once in the last month since they could not afford to buy food.

**FRA PUBLICATION**

*The Racial Equality Directive: application and challenges, January 2012.*

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2012/pub\\_racial\\_equal\\_directive\\_synthesis\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2012/pub_racial_equal_directive_synthesis_en.htm)

- **discrimination and rights awareness:**

- about half of the Roma surveyed said that they have experienced discrimination in the past 12 months because of their ethnic background;
- around 40 % of the Roma surveyed are aware of laws forbidding discrimination against members of ethnic minorities when applying for a job.

# Participation of EU citizens in the Union's democratic functioning

## Spotlight on the right to vote of persons with intellectual disabilities and persons with mental health problems

EU Member States differ greatly on how they handle the right to political participation of persons with mental health problems and persons with intellectual disabilities. Three main approaches characterise this participation spectrum: total exclusion, case-by-case consideration and full participation. EU Member States which totally exclude individuals link the right to vote to the legal capacity of the individual. In other Member States, national legislation prescribes an individual assessment of the ability to vote before taking the right away. Countries which have lifted all restrictions enable persons with intellectual disabilities and persons with mental health problems to vote on an equal footing with other citizens. There were few developments in 2011.

Hungary witnessed an important development with the adoption of a new Basic Law which entered into force on 1 January 2012. The new law says that guardianship will no longer serve as the basis for disenfranchisement. A judge must, instead, determine whether an individual should be excluded from voting based on an assessment of his/her 'limited mental ability', a term whose exact meaning is as yet unclear but which a new electoral law is likely to address. Hungary thereby joined the group of EU Member States where an individual judicial assessment is made before a disenfranchisement decision is taken.

A majority of EU Member States still link disenfranchisement to the loss of legal capacity. Croatia also has such a system: Article 2 of the Act on Voter Registers

## Key developments in the area of participation:

- the adoption of the European citizens' initiative provides the basis for participatory democracy at EU level and the European Commission takes various steps to make the new instrument operational;
- whereas public debates on the citizens' initiative remain limited, the creation of the online 'Citizen House' is an example of efforts to make the already existing avenues for participation better known and more accessible;
- the European Commission proposes designating 2013 the European Year of Citizens and the European Parliament discusses electoral rule reforms;
- against the background of the CRPD, the participation of persons with disabilities in elections becomes an issue to be addressed – various EU Member States take steps to facilitate the participation of persons with disabilities in elections, whereas in the case of persons with mental health problems and those with intellectual disabilities a majority of the EU Member States still link disenfranchisement to the loss of legal capacity.

(*Zakon o popisima birača*) stipulates that Croatian citizens 18 years of age or older are listed in the register, except those who have lost legal capacity through a final court decision. Thus, like many EU Member States, Croatia has an automatic exclusion provision. According to the annual statistical report on the application of social welfare rights for 2010, 15,761 persons were without legal capacity on 31 December 2010. This issue stirred public debate in Croatia. In a report published in 2011 the Ombudsperson for Persons with Disabilities warned that the voting rights of persons with intellectual disabilities and persons with mental health problems is an issue of compliance with CRPD requirements.

**Table 5: The right to political participation of persons with mental health problems and persons with intellectual disabilities, by country**

| Country | Exclusion | Limited participation | Participation |
|---------|-----------|-----------------------|---------------|
| AT      |           |                       | ✓             |
| BE      | ✓         |                       |               |
| BG      | ✓         |                       |               |
| CY      |           | ✓                     | ✓             |
| CZ      | ✓         | ✓                     |               |
| DE      | ✓         |                       |               |
| DK      | ✓         | ✓                     |               |
| EE      | ✓         | ✓                     |               |
| EL      | ✓         |                       |               |
| ES      |           | ✓                     | ✓             |
| FI      |           | ✓                     | ✓             |
| FR*     |           | ✓                     | ✓             |
| HU**    |           | ✓                     |               |
| IE      | ✓         |                       | ✓             |
| IT      |           |                       | ✓             |
| LT      | ✓         |                       |               |
| LU      | ✓         |                       |               |
| LV      | ✓         |                       |               |
| MT      | ✓         | ✓                     |               |
| NL      |           |                       | ✓             |
| PL      | ✓         |                       |               |
| PT      | ✓         |                       |               |
| RO      | ✓         |                       |               |
| SE      |           |                       | ✓             |
| SI      |           | ✓                     |               |
| SK      | ✓         |                       |               |
| UK      |           |                       | ✓             |
| HR***   | ✓         |                       |               |

Notes: This table provides an updated summary of the table published in the FRA report *The right to political participation of persons with mental health problems and persons with intellectual disabilities*, published in November 2010. A Member State can be represented in more than one column, as persons with health problems and persons with intellectual disabilities can be treated differently according to the national law of the respective Member State.

\* Due to a legislative amendment, which does not affect the right to vote, the relevant article is now: Article L3211-3 7° Public Health Code

\*\* Hungary, Article XXIII (2) Basic Law

\*\*\* Croatia, Act on Voter Registers, 30 April 1996

Source: FRA, 2011

### Spotlight on the implementation of the European citizens' initiative (ECI)

The Treaty of Lisbon provides for the possibility that one million EU citizens can, through the collection of signatures in various EU Member States, invite the European Commission to initiate specific legislation. The details of this new instrument of democratic participation are laid down in a regulation which in itself requires implementation by an additional regulation. On 1 April 2011, the EU regulation on the citizens' initiative entered into force: it applies as of 1 April 2012. On 17 November 2011, the European Commission adopted the implementing regulation ((EU) No. 1179/2011). On 22 December 2011, it made 'open source software' available. The European Commission is required to maintain "open-source software incorporating the relevant technical and security features necessary for compliance with the provisions of this Regulation regarding the online collection systems. The software shall be made available free of charge" and 'technical specifications' must be 'adopted' for this purpose.

The time between the adoption of the regulation and its application enabled EU Member States to implement various obligations under the regulation including: the certification of the online collection system; the verification of the 'statements of support', including the issuance of a certificate regarding the 'number of valid statements'; data protection issues; and the addressing of questions of liability for damages caused by organisers of an ECI and penalties for false declarations made by organisers of an ECI and the fraudulent use of data provided in the context of an ECI.

With respect to the process of drafting and implementing legislation, Austria, Belgium, Bulgaria, the Czech Republic, Finland, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland and the United Kingdom have taken concrete preparatory steps. In seven of these countries (Austria, Bulgaria, Germany, Finland, Hungary, Latvia and Luxembourg) the process has reached the parliament. In some EU Member States, such as Denmark, France, Greece, the Netherlands, Slovakia, Spain or the United Kingdom, direct applicability of the regulation does not require specific legislation.

Public debates on the ECI were rather limited during the reporting period and it remains to be seen whether public awareness will increase when the first initiatives are launched on 1 April 2012. At least one feature of the legal framework of the ECI should already be highlighted, however: the option to collect signatures online sets a modern standard which could, in principle, enhance civic participation.



# Access to efficient and independent justice

## Spotlight on the length of court proceedings

The length of proceedings continued to represent one of the main obstacles to effective access to justice in the EU as a whole, which is also reflected in the case-law of the ECtHR.

In 2011, several EU Member States undertook specific legislative measures to address the persisting problem of over-lengthy proceedings. In Austria, for example, the civil procedural law was amended to abolish summer and winter recess periods. France reformed its criminal courts, dropping the number of jurors in the first instance to six from nine and on appeal to nine from 12 to enable criminal courts to try more cases per session. In response to a 2010 pilot judgment delivered by the ECtHR (*Rumpf*), Germany adopted a new law in December 2011. It addresses excessive length of proceedings in two stages: those affected by lengthy proceedings must first file a complaint against the proceedings, thereby giving judges an opportunity to accelerate them. If the proceedings continue to be delayed, compensation may be granted.

### FRA PUBLICATION

*Access to justice in Europe: an overview of challenges and opportunities*, March 2011.

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub\\_access-to-justice\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub_access-to-justice_en.htm)

## Key developments in the area of access to efficient and independent justice:

- in light of financial austerity, many EU Member States attempt to streamline various judicial and non-judicial mechanisms, potentially affecting fundamental rights guarantees;
- EU Member States continue work to reduce the length of court proceedings and bring about other court reforms;
- various EU Member States establish and reform independent institutions with a human rights remit that can support and/or provide access to justice; national equality bodies and national human rights institutions (NHRIs) in particular gain further prominence;
- online technological developments that facilitate and modernise justice, known as e-justice, move further up the agenda in several EU Member States, linked both to the need to modernise judicial systems and to improve cost effectiveness;
- with the on-going development of the EU *Roadmap on criminal procedures*, procedures for the rights of the individual in criminal proceedings, particularly as regards access to justice in cross-border situations, are strengthened.

**Table 6: Number of ECtHR judgments in 2011 finding at least one violation, violations of the right to a fair trial and violations of length of proceedings, by country**

| Country      | Judgments finding at least one violation | Right to a fair trial | Length of proceedings |
|--------------|--|-----------------------|-----------------------|
| AT           | 7 (-9)                                   | 0 (-6)                | 5 (-4)                |
| BE           | 7 (+3)                                   | 2 (-1)                | 0 (no change)         |
| BG           | 52 (-17)                                 | 2 (-4)                | 21 (-10)              |
| CY           | 1 (-2)                                   | 0 (no change)         | 1 (+1)                |
| CZ           | 19 (+10)                                 | 13 (+10)              | 2 (+1)                |
| DE           | 31 (+2)                                  | 0 (-2)                | 19 (-10)              |
| DK           | 1 (+1)                                   | 0 (no change)         | 0 (no change)         |
| EE           | 3 (+2)                                   | 1 (+1)                | 0 (no change)         |
| EL           | 69 (+16)                                 | 6 (-2)                | 50 (+17)              |
| ES           | 9 (+3)                                   | 4 (no change)         | 1 (+1)                |
| FI           | 5 (-11)                                  | 0 (-2)                | 2 (-7)                |
| FR           | 23 (-5)                                  | 11 (+1)               | 2 (+1)                |
| HU           | 33 (+12)                                 | 4 (+3)                | 19 (+5)               |
| IE           | 2 (no change)                            | 0 (no change)         | 2 (+1)                |
| IT           | 34 (-27)                                 | 7 (-2)                | 16 (-28)              |
| LT           | 9 (+2)                                   | 3 (no change)         | 5 (+2)                |
| LU           | 1 (-4)                                   | 1 (-1)                | 0 (-3)                |
| LV           | 10 (+7)                                  | 0 (-1)                | 1 (+1)                |
| MT           | 9 (+6)                                   | 3 (+3)                | 3 (+3)                |
| NL           | 4 (+2)                                   | 1 (+1)                | 0 (no change)         |
| PL           | 54 (-33)                                 | 14 (-6)               | 15 (-22)              |
| PT           | 27 (+12)                                 | 1 (-1)                | 13 (+7)               |
| RO           | 58 (-77)                                 | 9 (-21)               | 10 (-6)               |
| SE           | 0 (-4)                                   | 0 (-1)                | 0 (-1)                |
| SI           | 11 (+8)                                  | 1 (+1)                | 6 (+4)                |
| SK           | 19 (-21)                                 | 2 (no change)         | 5 (-24)               |
| UK           | 8 (-6)                                   | 3 (+3)                | 1 (no change)         |
| HR           | 23 (+2)                                  | 8 (+2)                | 3 (-5)                |
| <b>Total</b> | <b>529 (-128)</b>                        | <b>96 (-25)</b>       | <b>202 (-76)</b>      |

Note: The difference in the number of cases to 2010 is in parentheses.

Source: Council of Europe/ECtHR, Annual Report 2011, published in 2012, pp. 155-157

Greece, for example, gave lower first instance courts in civil cases a broader mandate by upping the sums of money which may be handled at this level. They also curtailed the flexibility courts have in postponing criminal proceedings. In Romania, judges may now set shorter terms for hearings and take active measures to compel parties to present evidence and fulfil their obligations without unnecessary delays; documents may be communicated by fax or e-mail, including subpoenas. The Slovenian National Assembly adopted two acts introducing specific measures to accelerate proceedings before courts. These include a mechanism to lower the remuneration of court experts if they cause delays and the option for judges to schedule and hear trials after regular business hours.

#### FRA PUBLICATION

*Handbook on European non-discrimination law*, March 2011.

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub\\_handbook\\_caselaw\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub_handbook_caselaw_en.htm)

### Spotlight on legal standing before courts

Legal standing – the legal possibility to bring a case before a court – is obviously central to accessing justice. Legal standing can be improved in several ways, such as broadening the scope of those eligible to bring a case, or reducing procedural obstacles. On-going FRA research supports the view that complainants avoid accessing justice since the individual challenge of bringing a case is too great. Changing legal standing to allow for collective complaints might be a way forward at both courts and other institutions such as national equality bodies. Collective complaints, also referred to as ‘class action’ or ‘collective redress’, allow for the aggregation of several individual claims into one shared case. The EU undertook a public consultation in 2011 on the introduction of a collective redress mechanism, designed in part to identify related common legal principles.

Several EU Member States took steps in 2011 to broaden the group of those eligible to bring complaints by allowing collective actions in areas where such mechanisms did not exist before. In Belgium, the Flemish Bar Association (*Orde van Vlaamse Balies*) is working on a bill to allow a ‘class action’ procedure under Belgian law. The law would create the possibility for several complainants, or ‘supportive plaintiffs’ who are not individually identified, to join forces behind one representative plaintiff. In Estonia, the new Code of Administrative Procedure (*Halduskohtumenetluse seadustik*), effective from 1 January 2012, includes legal standing for environmental NGOs and groups of activists who represent the opinions of a significant number of local residents. The government in Lithuania adopted a resolution approving collective complaints. Parallel developments are also under way in Croatia.

#### FRA PUBLICATION

*Opinion on the draft Directive regarding the European Investigation Order (EIO) in criminal matters*, February 2011.

[http://fra.europa.eu/fraWebsite/research/opinions/op-eio\\_en.htm](http://fra.europa.eu/fraWebsite/research/opinions/op-eio_en.htm)

# Rights of crime victims

## Spotlight on the EU victims' package and the victims' roadmap

The European Commission submitted on 18 May 2011 a package which seeks to grant victims a uniform level of rights across the EU and covers access to justice, protection, support and recompense. It emphasises the needs of specific groups of victims, including child victims and victims of terrorism. The victims' package consists of a communication on strengthening victims' rights, a proposal for a directive establishing minimum standards for victims' rights and a proposal for a regulation on the mutual recognition of protection measures in civil matters. In the area of criminal law, the European Protection Order (EPO), which will complement this last measure on mutual recognition, was initiated by several EU Member States under the auspices of the Council of the European Union and was adopted by the European Parliament on 13 December 2011.

## Key developments in the area of the rights of crime victims:

- at the EU level various measures are proposed that aim to grant victims a uniform level of rights across the EU both in the area of civil law as well as in the area of criminal law and a roadmap for strengthening the rights and protection of victims is adopted;
- a new European Pact for gender equality for the period 2011-2020 reaffirms the EU's commitment to combating all forms of violence against women and some EU Member States carry out reforms relevant for protection against domestic violence;
- while several EU Member States make significant progress in their efforts to combat violence against women, complaints surface about the lack of sufficient resources for victim support services for women victims of domestic violence;
- the EU steps up efforts to combat trafficking in human beings and protect its victims; policy development at national level shows a tendency to look beyond trafficking for sexual exploitation and to pay more attention to other areas of exploitation.

### FRA PUBLICATION

*Gender-based violence against women – an EU-wide survey (factsheet), October 2011.*

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub-vaw-survey-factsheet\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub-vaw-survey-factsheet_en.htm)

The Council of the European Union, building on the European Commission's victims' package, adopted in June the roadmap for strengthening the rights and protection of victims.

**Table 7: The roadmap for strengthening the rights and protection of victims and its five components**

|                  |  |
|------------------|--|
| <b>Measure A</b> | the European Commission has drafted a proposal for a directive replacing the Council framework decision on the standing of victims in criminal proceedings;  |
| <b>Measure B</b> | a recommendation or recommendations on practical measures and best practices that would provide guidance to EU Member States when implementing the new directive as outlined in Measure A;   |
| <b>Measure C</b> | the European Commission has proposed a regulation on mutual recognition of protection measures for victims in civil matters, which would complement the directive on the European Protection Order;  |
| <b>Measure D</b> | a review of Council Directive 2004/80/EC on compensation to crime victims, with a view to simplifying procedures for compensation requests;  |
| <b>Measure E</b> | recommendations, similar to Measure B, relating to the specific needs of certain groups of victims, such as victims of trafficking in human beings, child victims of sexual exploitation, victims of terrorism and victims of organised crime. |

### Spotlight on Lesbian, Gay, Bisexual and Transgender (LGBT) persons as victims of bias-motivated crime

Although the EU framework decision on hate crime covers racist and xenophobic discrimination only, many EU Member States have extended criminal law definitions to cover other protected characteristics.

As concerns definitions of incitement to violence or hatred, some EU Member States, including Denmark, Ireland, Sweden and the United Kingdom, have over time introduced definitions covering sexual orientation, as has Croatia. A number of other EU Member States – Austria, Belgium, Estonia, Finland, Lithuania, Luxembourg, the Netherlands, Portugal, Romania, Slovenia and Spain – have enacted definitions that cover an even wider range of protected grounds, evidence that the majority of EU Member States recognise some form of 'hate speech' beyond racism and xenophobia. Although EU Member States may have adopted more comprehensive definitions of 'hate speech' and related crimes, this is not always reflected in increased numbers of victims reporting crime or higher rates of prosecution for such offences.

**FRA PUBLICATION**

*Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the EU Member States – Synthesis report, June 2011.*

[http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/fra\\_homophobia\\_synthesis\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/fra_homophobia_synthesis_en.htm)

This trend to including a larger number of characteristics in criminal law provisions protecting individuals from severe forms of discrimination and in particular against bias-motivated violence corresponds to emerging political consensus and legal parameters. This is most evident with regard to the protection of LGBT groups and individuals. In recent resolutions, the European Parliament has asked EU Member States to ensure that LGBT persons are protected from homophobic hate speech and violence. In these resolutions, the European Parliament has also called on the European Commission to combat homophobia through legislation similar to the Council framework decision on racism. In December 2011, the European Parliament adopted a resolution with regard to Croatia's application to become a member of the EU. This resolution expresses deep concerns about the violence against participants in the LGBT pride march in Split in June 2011 and the inability of the Croatian authorities to protect participants. The resolution calls on Croatia to firmly address cases of hate crime directed against LGBT minorities.

## Outlook: upcoming challenges

The FRA Annual report *Fundamental rights: challenges and achievements in 2011* identifies various challenges for the immediate future in the areas of asylum and immigration, border control and visa policy, information society and data protection, the rights of the child and protection of children, equality and non-discrimination, racism and ethnic discrimination, participation in democratic life, access to justice, and the rights of crime victims.

In the area of **asylum, immigration and integration**, the EU will need to have established a common European asylum system by the end of 2012. The European Asylum Support Office will play an increasingly important role at the practical level, supporting national asylum systems with information and tools.

The finalisation of the recast asylum package will remain a challenge, given the persistent diversity of views among the European Parliament, the Council of the European Union and the European Commission.

A mechanism will be required to assess whether the fundamental rights of asylum seekers who are transferred to another EU Member State in accordance with the Dublin II Regulation are at risk.

The exposure of migrants in an irregular situation to exploitation and abuse will remain a cause for concern and policy makers, including at EU level, are likely to pay particular attention to the situation of those who are not removed for legal, humanitarian or practical reasons.

With respect to the rights of migrants in an irregular situation, experience gained from the implementation of the Employers Sanctions Directive will show whether existing mechanisms are effective, at least as regards the right to claim withheld wages. The adoption of the Seasonal Workers Directive would facilitate non-skilled labour migration into the EU. This instrument could reduce the demand for the labour force of persons staying illegally on the territory of EU Member States who typically are at risk of being exploited.

With regard to the integration of migrants in the societies of EU Member States, a future challenge will be to ensure that integration continues to be seen as a two way process, combating discrimination while also recognising the benefits of diversity for the receiving society. Continuous monitoring, based on agreed indicators of integration, including in the areas of political, cultural and social participation, is required to promote further the integration of legally-resident third-country nationals.

With regard to **border control and visa policy**, there is a clear risk that the challenges the EU faced in 2011 will persist in years to come. Unless changes are implemented, the arrival of large numbers of persons at the EU's external borders will continue to pose a real test regarding respect for fundamental rights. Such arrivals expose existing gaps in national reception capacities and highlight the complexity of guaranteeing protection at borders and providing efficient referral mechanisms.

Political will and decisive measures alone will improve organisational capacities. Accessing EU funding and using it effectively to strengthen reception capacities in line with fundamental rights will be essential in this regard.

Fundamental rights principles covered by the Schengen Borders Code and the Visa Code will need to be implemented in practice. Future evaluations of the Schengen agreements will need to devote adequate attention to the application of these principles. The revised Frontex Regulation and the implementation of its fundamental rights strategy are likely to raise expectations in the field.

Fundamental rights concerns related to data protection and privacy will remain in focus in the visa policy field. New systems for border surveillance and for storing personal data are either already in use or under continued development: VIS is being implemented; SIS II is under preparation; the European Commission has tabled its proposal for Eurosur; and smart border concepts are under discussion. Such technological advances in the field will continue to raise concerns about issues of necessity and proportionality with respect to the data collected and stored, as well as about how they affect the privacy of persons whose personal data are collected and stored.

In the area of **data protection**, striking a balance between fundamental rights obligations and security concerns will continue to pose a challenge for EU institutions and EU Member States. The on-going discussion on the Data Retention Directive will be one facet of this wider debate.

EU institutions will continue to debate the EU framework in the area of data protection. The European Commission tabled proposals in January 2012 to reform the existing framework. They consist of a proposal for a regulation replacing the 1995 data protection directive and a proposal for a new directive setting out rules on the protection of personal data processed for the purposes of the prevention, detection, investigation or prosecution of criminal offences and related judicial activities.

The attitude towards data protection of both users and providers of social platforms and other online tools will continue to fuel public debate and is likely to increasingly become the subject of court deliberations. The availability and uptake of redress mechanisms will need to be examined closely to ensure that fundamental rights are fully respected in the use of new information and communication technologies.

The CJEU is likely to once more address another area of concern, the independence of data protection authorities.

Regarding the **rights of the child and the protection of children**, the prompt EU Member State ratification of the Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention, would ensure better protection for girls as victims of



gender-based violence and children witnessing domestic violence. Similarly, on-going reforms of child protection systems in several EU Member States should improve both the access to social services for children and the response to reports of violence against children.

The effect of the new directive on combating the sexual abuse and sexual exploitation of children as well as child pornography will begin to be felt as soon as it is transposed into national legislation. It should improve the protection of children against sexual abuse and exploitation, and lead to more effective prosecution of offenders.

In parallel, efforts to combat the sexual exploitation of children and child pornography on the internet will continue to require the full attention and vigilance of EU institutions and bodies, and of EU Member States.

Children who are victims of trafficking should benefit from higher levels of protection as the new directive on preventing and combating trafficking in human beings and protecting its victims gains influence and extends its reach in EU Member States over time.

The EU Council regulation concerning jurisdiction as well as the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility will continue to influence the way in which EU Member States deal with children in the context of cross-national divorce and parental separation cases. It will also continue to bear on the right of children to be heard in these and other judicial matters. As a result, on-going developments in rendering justice more child-friendly will be of particular interest. Research on child-friendly justice carried out by the European Commission and the FRA will provide relevant information for national authorities when transposing the directives on trafficking and on sexual abuse and exploitation.

In the areas of **equality and non-discrimination**, EU institutions, national courts and equality bodies are expected to increasingly recognise and use the concept of multiple discrimination – a trend that would allow policymakers to elaborate measures tailored to addressing the obstacles facing those most vulnerable to discrimination on several grounds.


Whereas the adoption of the European Commission's proposal for a horizontal directive prohibiting discrimination beyond employment on the grounds of sexual orientation, age, disability and religion or belief risks further delays, it is crucial that its primary aim – namely, to engage in a more all-encompassing fight against discrimination – is put into practice.

At national level, legislative measures taken to fully implement the CRPD and to combat discrimination on grounds of sexual orientation or gender identity will provide guidance to policy makers as they strive to combat all forms of discrimination more effectively. Also, the growing national-level emphasis on measures to promote accessibility for persons with disabilities may enhance

the chances of achieving more inclusive education and independent living. There needs to be vigilance, however, to ensure that the impact of the economic crisis does not unduly affect the provisions of services to persons with disabilities.

The 2012 European Year of Active Ageing and Solidarity between Generations will offer an opportunity for policy makers to address and redress discriminatory treatment and the exclusion older people experience in some EU Member States.

Legal developments relating to health and safety, security issues or the protection of consumers that could adversely affect persons who follow religious practices in accordance with their beliefs will need close monitoring, so as to avoid situations of indirect discrimination on the grounds of religion or belief.



With regard to **racism and ethnic discrimination**, existing structural inequalities between ethnic minorities and majority populations are likely to persist. To address this challenge, sustained efforts on the part of policy makers and civil society are required. Moreover, there is a need for more systematic and comprehensive data collection practices to ensure better understanding of the scale and nature of ethnic discrimination and racist violence and crime in the EU.

The enforcement of existing legislation, greater rights' awareness and ease of access to courts and other complaints bodies will continue to be essential tools in the battle against ethnic discrimination in healthcare, education, employment and housing.

Measuring the success of policy measures to combat ethnic discrimination and to promote the integration and social inclusion of disadvantaged groups will require periodic collection and analysis of data using fundamental rights indicators.

The EU framework for national Roma integration strategies up to 2020 provides the EU and its Member States with an opportunity to improve the social inclusion of Roma populations. If they are successful, these strategies could act as models for the better inclusion and integration into society of other disadvantaged groups.

Overcoming entrenched challenges – such as segregation in education or housing – will, however, require a long-term and sustained commitment. In addition to national authorities, the role of local and regional authorities will be crucial. There is a strong need to strengthen their capacity for Roma inclusion policies, as was recognised by the Council of Europe Summit of Mayors on Roma in September 2011, which agreed to set up a European Alliance of Cities and Regions to this end. The ability to track the impact of policies over time and tailor them as necessary will be key to the success of strategies implemented at EU and national levels to tackle racism and ethnic discrimination.

Coming to the **participation of citizens in the Union's democratic functioning**, increasing participation in EU elections and reforming the European Parliament's electoral system remain challenges to be addressed in the run up to the next elections in 2014. Reforms of electoral systems at the national level are also likely to remain on the agenda, including as regards the right to vote from abroad.

Ensuring that persons with disabilities are able to vote in a manner equal to that of any other citizen will continue to pose concerns and challenges in many EU Member States. Progress in this area is even more pressing after the ratification of the CRPD and the adoption of a recommendation setting high standards in this area by the Committee of Ministers of the Council of Europe.

Active participation of EU citizens in the democratic life of the EU remains a major challenge also outside the context of elections. Following the launch of the European citizens' initiative on 1 April 2012, the EU's democratic functioning should be enhanced. It remains to be seen how EU citizens will seize the opportunity provided by this tool.

In the area of **access to efficient and independent justice**, reforms initiated in 2011 merit commendation for striving to tackle lengthy judicial proceedings as well as to streamline court systems, both of which will make access to justice at European and national levels more practical and effective. However, some measures taken risk reducing access to justice by introducing or increasing obstacles to access courts or other redress mechanisms.

The search for increased efficiency has driven pioneering work in the use of e-justice tools. EU Member States are expected to expand and develop their work in this area, though caution is needed to avoid marginalising those without access to the internet. The area of legal standing also saw progress in 2011, with the scope of those eligible to make a claim widening. The development of institutions with a human rights remit is also helping to make justice more accessible. And, as EU law continues to evolve, the judicial systems of EU Member States will need to adapt and harmonise in order to effectively handle cross-border issues and ensure that fundamental rights are sufficiently guaranteed.

Looking ahead, 2012 will be the year that the EU adopts the criminal procedure roadmap's Measure B – the letter of rights – and substantial progress is also expected on other measures. The financial situation will quite likely continue to play a major role in priorities and efforts to make the justice system more effective. A trend towards strengthening NHRIs and their roles as non-judicial 'access to justice' mechanisms will most likely continue in the coming period, as will the role of the monitoring mechanisms under international human rights conventions.

In the area of the **rights of crime victims**, the swift ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence, or the Istanbul Convention, by EU Member States would constitute an important step in addressing persisting challenges in tackling violence against women, particularly domestic violence.

Ratification of this convention will require that EU Member States enact legislation to ensure effective and immediate protection of women against repeat victimisation. Many EU Member States, for instance, lack an adequate definition of stalking, which is necessary to tackle it effectively, as per Article 34 of the convention.

The Anti-trafficking Directive, which must be transposed into national law by 6 April 2013, is likely to bring improvements to the situation of victims of forced labour and severe forms of labour exploitation, while the Employers' Sanctions Directive is expected to improve the situation of victims in difficult working conditions.

The political relevance of bias-motivated crimes and relevant case-law will challenge legislators at both the EU and Member State levels. Differences among EU Member States as to the scope of criminal law provisions are likely to remain considerable, despite common obligations under the European Convention on Human Rights to highlight the bias-motivation aspect of crimes in criminal proceedings.

Legal and practical measures will need to be taken to encourage victims to report their victimisation to the authorities and to build trust in these authorities. Individuals and groups at risk of victimisation must feel confident that authorities are able and willing to react to reports of crimes in a respectful and professional manner. Otherwise, difficulties will persist in closing the gap between what is penalised in law and what is investigated and prosecuted in practice.

The adoption of a proposed Directive establishing minimum standards on the rights, support and protection of victims of crime will generate important progress at EU level, because it will ensure minimum standards across the EU for victims and their family members. At Member State level, the new legislation will improve victim support services, victims' participation in proceedings and the identification of especially vulnerable victims.

Table 8: Overview of monitoring reports released under UN and Council of Europe monitoring procedures in 2011, by country

| Country      | UN reports |          |          |          |          |          |           |          |          | Council of Europe reports |          |          |          | Total     |
|--------------|------------|----------|----------|----------|----------|----------|-----------|----------|----------|---------------------------|----------|----------|----------|-----------|
|              | CERD       | HRC      | CESCR    | CEDAW    | CAT      | CRC      | CRC-OP-SC | CRPD     | UPR      | ECPT                      | ECRML    | FCNM     | ECRI     |           |
| AT           |            |          |          |          |          |          |           |          | ✓        |                           |          | ✓        |          | 2         |
| BE           |            |          |          |          |          |          |           |          | ✓        |                           |          |          |          | 1         |
| BG           |            | ✓        |          |          | ✓        |          |           |          |          |                           |          |          |          | 2         |
| CY           |            |          |          |          |          |          |           |          |          |                           | ✓        |          | ✓        | 2         |
| CZ           | ✓          |          |          |          |          | ✓        |           |          |          |                           |          | ✓        |          | 3         |
| DE           |            |          | ✓        |          | ✓        |          |           |          |          |                           |          |          |          | 2         |
| DK           |            |          |          |          |          | ✓        |           |          | ✓        |                           |          | ✓        |          | 3         |
| EE           |            |          | ✓        |          |          |          |           |          | ✓        |                           |          | ✓        |          | 4         |
| EL           |            |          |          |          |          |          |           |          | ✓        |                           |          |          |          | 1         |
| ES           | ✓          |          |          |          |          |          |           | ✓        |          | ✓                         | ✓        |          | ✓        | 5         |
| FI           |            |          |          |          | ✓        | ✓        |           |          |          |                           | ✓        |          |          | 3         |
| FR           |            |          |          |          |          |          |           |          |          |                           |          |          |          | 0         |
| HU           |            |          |          |          |          |          |           |          | ✓        |                           |          |          |          | 1         |
| IE           | ✓          |          |          |          | ✓        |          |           |          | ✓        |                           |          |          |          | 4         |
| IT           |            |          |          | ✓        |          | ✓        |           |          |          | ✓                         |          |          |          | 2         |
| LT           | ✓          |          |          |          |          |          |           |          | ✓        | ✓                         |          |          | ✓        | 4         |
| LU           |            |          |          |          |          |          |           |          |          |                           |          |          |          | 0         |
| LV           |            |          |          |          |          |          |           |          | ✓        | ✓                         |          |          |          | 2         |
| MT           | ✓          |          |          |          |          |          |           |          |          | ✓                         |          |          |          | 2         |
| NL           |            |          |          |          |          |          |           |          |          | ✓                         |          |          |          | 0         |
| PL           |            |          |          |          |          |          |           |          |          | ✓                         | ✓        |          |          | 2         |
| PT           |            |          |          |          |          |          |           |          |          |                           |          |          |          | 0         |
| RO           |            |          |          |          |          |          |           |          |          | ✓                         | ✓        |          |          | 2         |
| SE           |            |          |          |          |          |          |           |          |          |                           | ✓        |          |          | 1         |
| SI           |            |          |          |          | ✓        |          |           |          |          |                           |          | ✓        |          | 2         |
| SK           |            |          |          |          |          |          |           |          |          |                           |          |          |          | 0         |
| UK           | ✓          |          |          |          |          |          |           |          |          |                           |          | ✓        |          | 2         |
| HR           |            |          |          |          |          |          |           |          |          |                           |          |          |          | 0         |
| <b>Total</b> | <b>6</b>   | <b>1</b> | <b>2</b> | <b>1</b> | <b>5</b> | <b>4</b> | <b>0</b>  | <b>1</b> | <b>9</b> | <b>8</b>                  | <b>6</b> | <b>6</b> | <b>3</b> | <b>52</b> |

✓ = Participation in monitoring cycles in 2011

|           |   |
|-----------|---|
| CERD      | Committee on the Elimination of All Forms of Racial Discrimination  |
| HRC       | Human Rights Committee (Monitoring body of the International Covenant on Civil and Political Rights, ICCPR) |
| CESCR     | Committee on Economic, Social and Cultural Rights   |
| CEDAW     | Committee on the Elimination of Discrimination against Women  |
| CAT       | Committee against Torture   |
| CRC       | Committee on the Rights of the Child  |
| CRC-OP-SC | Committee on the Rights of the Child (Monitoring the Optional Protocol on the Sale of Children)             |
| CRPD      | Convention on the Rights of Persons with Disabilities   |
| UPR       | Universal Periodic Review   |
| ECPT      | European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment           |
| ECRML     | Committee of Experts on Regional and Minority Languages   |
| FCNM      | Advisory Committee on National Minorities   |
| ECRI      | European Commission against Racism and Intolerance  |

Source: FRA, 2011; data extracted from: UN bodies – <http://tb.ohchr.org/default.aspx>;  
Council of Europe bodies – [www.cpt.coe.int/en/states.htm](http://www.cpt.coe.int/en/states.htm), [www.coe.int/t/dg4/education/minlang/Report/default\\_en.asp](http://www.coe.int/t/dg4/education/minlang/Report/default_en.asp),  
[www.coe.int/t/dg4/monitoring/minorities/3\\_FCNDocs/Table\\_en.asp](http://www.coe.int/t/dg4/monitoring/minorities/3_FCNDocs/Table_en.asp), [www.coe.int/t/dg4/monitoring/ecri/activities/countrybycountry\\_en.asp](http://www.coe.int/t/dg4/monitoring/ecri/activities/countrybycountry_en.asp)



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## Country codes

|    |                |    |                |
|----|----------------|----|----------------|
| AT | Austria        | IT | Italy          |
| BE | Belgium        | LT | Lithuania      |
| BG | Bulgaria       | LU | Luxembourg     |
| CY | Cyprus         | LV | Latvia         |
| CZ | Czech Republic | MT | Malta          |
| DE | Germany        | NL | Netherlands    |
| DK | Denmark        | PL | Poland         |
| EE | Estonia        | PT | Portugal       |
| EL | Greece         | RO | Romania        |
| ES | Spain          | SE | Sweden         |
| FI | Finland        | SI | Slovenia       |
| FR | France         | SK | Slovakia       |
| HU | Hungary        | UK | United Kingdom |
| IE | Ireland        | HR | Croatia        |

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## HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

To secure and safeguard the fundamental rights of everyone in the European Union (EU), the EU and its 27 Member States pressed forward with a number of initiatives in 2011. The EU adopted key legislative and policy measures in, for example, the areas of victim protection, human trafficking and the integration of Roma, and, for the first time, was itself directly bound to an international human rights treaty – the UN Convention on the Rights of Persons with Disabilities. Various Member States, among other steps, reformed their child protection systems and made efforts to combat violence against women and shorten the length of court proceedings.

Challenges, however, remain. The areas of racism, equality and non-discrimination will continue to be core concerns. The year 2012 will also be crucial to the finalisation of the Common European Asylum System and the debate on the new EU data protection framework.

This year's summary of the FRA Annual report – Highlights 2011 – chronicles the positive developments made in 2011 as well as the challenges facing the EU and its Member States in the field of fundamental rights, drawing on objective, reliable and comparable socio-legal data. It presents selected key issues in the fundamental rights field, covering the following topics: asylum, immigration and integration; border control and visa policy; information society and data protection; the rights of the child and protection of children; equality and non-discrimination; racism and ethnic discrimination; participation of EU citizens in the Union's democratic functioning; access to efficient and independent justice; and rights of crime victims.



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