

ASYLUM AND MIGRATION: PROGRESS ACHIEVED AND REMAINING CHALLENGES

Overview
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Contents

| | |
|--|----|
| Foreword | 3 |
| Introduction | 7 |
| EU external borders: entry from Ukraine facilitated, but fundamental rights violations persist elsewhere | 8 |
| The EU opened its borders to people displaced from Ukraine | 9 |
| People continue to die on the way to the EU | 9 |
| Serious rights violations at the EU external borders persist | 10 |
| Civil society actors working at borders are investigated or intimidated | 11 |
| Victims of rights violations do not find redress in national courts | 11 |
| Safeguards in EU law are starting to be enforced | 12 |
| Human rights monitoring at borders is increasing | 12 |
| Access to asylum: shorter procedures, but legal and practical obstacles persist | 14 |
| People displaced from Ukraine receive temporary protection, but issues persist | 14 |
| Duration of asylum procedures is improving, but challenges remain | 15 |
| People arriving irregularly face more obstacles to applying for asylum | 16 |
| ‘Safe third country’ concept delays access to asylum | 17 |
| Issues with legal and linguistic assistance persist | 17 |
| Dignified living conditions: despite efforts, challenges re-emerge | 19 |
| People displaced from Ukraine have triggered a wave of solidarity, but issues persist | 19 |
| Reception systems in several Member States remain congested | 19 |
| Challenges remain in addressing the needs of vulnerable people | 21 |
| Dignified reception of children has not yet been achieved | 21 |
| Children in migration: progress only in some areas | 23 |
| Children fleeing Ukraine access decent reception conditions relatively easily | 23 |
| Advances are notable in guardianship for unaccompanied children | 23 |
| Challenges in providing education to migrant children are growing | 24 |
| Age assessments have improved, but challenges remain | 25 |
| Some children still go missing | 25 |
| Despite progress, child detention remains a concern | 26 |
| Migrant and refugee integration: strengthened EU legal framework, but challenges remain | 28 |
| Early action on refugee integration is still limited | 28 |
| Search for lasting solutions for people displaced from Ukraine is only beginning | 29 |
| Discrimination and hate crime prevent integration | 29 |
| Administrative barriers hinder refugee integration | 31 |
| Obstacles to family reunification impede social inclusion | 31 |
| EU long-term residence status remains underutilised | 32 |
| Immigration detention: despite robust EU law standards, problems persist | 33 |
| Litigation at European level resolves some cases | 33 |

| | |
|--|----|
| Safeguards against arbitrary detention are not always applied | 33 |
| Lack of specialised detention facilities and inadequate detention conditions persist | 34 |
| Obstacles hinder access to information and asylum procedures for detainees | 34 |
| Alternatives to detention remain underused | 35 |
| Return procedures: procedural safeguards are insufficiently implemented | 36 |
| Gaps remain in assessing risk of return to serious harm (<i>non-refoulement</i>) | 36 |
| People are turned back at EU internal borders | 37 |
| Monitoring of forced returns has become established practice, but gaps remain | 37 |
| Looking ahead | 39 |
| Timeline | 40 |



Foreword

Over the span of nearly eight years, we have seen developments in showing respect for the human rights of those who arrive at the European Union's borders. Russia's war of aggression against Ukraine has shown how a large and sudden influx of people can be managed effectively and respectfully.

The European Union's rapid response by activating the EU Temporary Protection Directive for the first time ever entitled those displaced by the aggression in Ukraine to legal residence and access to work, housing, legal assistance, education and healthcare. But practical challenges remain.

Notwithstanding the improvements, there is still a long way to go before the human and fundamental rights of all asylum seekers and other migrants are honoured. Problems persist in law, policy, practice, and attitude.

Fundamental rights concerns that the Agency has flagged since 2015 remain a grave cause for concern.

The deaths and disappearances at sea are highly disturbing considering that the law could not be clearer. The obligation to save lives requires states to deploy the necessary search and rescue capacities. Where they cannot do this effectively alone, they should support any legitimate efforts of civil society.

The right to seek asylum is a principle of international and EU law. Its corollary should always be the safe and dignified return of those who do not qualify.

Safe and legal pathways to seek asylum in Europe would save lives and greatly reduce the desperate need to resort to smugglers to reach Europe. The EU and its Member States need to do more to provide adequate legal pathways to those seeking asylum.

Serious reports of recurrent and systematic fundamental rights violations at the EU's external borders continue. At the same time, many fundamental rights safeguards that are embedded in secondary EU law are not fully operationalised.

Many allegations of fundamental rights violations could constitute serious crimes. To enhance accountability for crimes and other rights violations, we should put in place or strengthen independent border monitoring and ensure prompt and effective investigations.

In the last of FRA's series of periodic reports on key migration-related fundamental rights concerns across the EU, we suggest ways forward that could both improve migration flows and respect for fundamental rights. Examples include providing adequate legal pathways to those seeking asylum, strengthening EU monitoring of fundamental rights violations, providing victims of human rights abuse meaningful access to justice and creating a fully EU-harmonised asylum procedure.

By identifying key trends, promising practices, emerging patterns, and persistent concerns from 2015 to March 2023, this bulletin serves as a solid basis for legislators and policymakers across Europe to take steps to further improve fundamental rights protection for migrants, refugees and asylum seekers in the EU.

Michael O'Flaherty
Director

Key findings

EU external borders: entry from Ukraine facilitated, but fundamental rights violations persist elsewhere

- ★ The EU opened its borders to people displaced from Ukraine
- ★ People continue to die on the way to the EU
- ★ Serious rights violations at the EU external borders persist
- ★ Civil society actors working at borders are investigated or intimidated
- ★ Victims of rights violations do not find redress in national courts
- ★ Safeguards in EU law are starting to be enforced
- ★ Human rights monitoring at borders is increasing

Access to asylum: shorter procedures, but legal and practical obstacles persist

- ★ People displaced from Ukraine receive temporary protection, but issues persist
- ★ Duration of asylum procedures is improving, but challenges remain
- ★ People arriving irregularly face more obstacles to applying for asylum
- ★ 'Safe third country' concept delays access to asylum
- ★ Issues with legal and linguistic assistance persist

Dignified living conditions: despite efforts, challenges re-emerge

- ★ People displaced from Ukraine have triggered a wave of solidarity, but issues persist
- ★ Reception systems in several Member States remain congested
- ★ Challenges remain in addressing the needs of vulnerable people
- ★ Dignified reception of children has not yet been achieved

Children in migration: progress only in some areas

- ★ Children fleeing Ukraine access decent reception relatively easily
- ★ Advances are notable in guardianship for unaccompanied children
- ★ Challenges in providing education to migrant children are growing
- ★ Age assessments have improved, but challenges remain

- ★ Some children still go missing
- ★ Despite progress, child detention remains a concern

Migrant and refugee integration: strengthened EU legal framework, but challenges remain

- ★ Early action on refugee integration is still limited
- ★ Search for lasting solutions for people displaced from Ukraine is only beginning
- ★ Discrimination and hate crime prevent integration
- ★ Administrative barriers hinder refugee integration
- ★ Obstacles to family reunification impede social inclusion
- ★ EU long-term residence status remains underutilised

Immigration detention: despite robust EU legal standards, issues persist

- ★ Litigation at European level resolves some cases
- ★ Safeguards against arbitrary detention are not always applied
- ★ Lack of specialised detention facilities and inadequate detention conditions persist
- ★ Obstacles hinder access to information and asylum procedures for detainees
- ★ Alternatives to detention remain underused

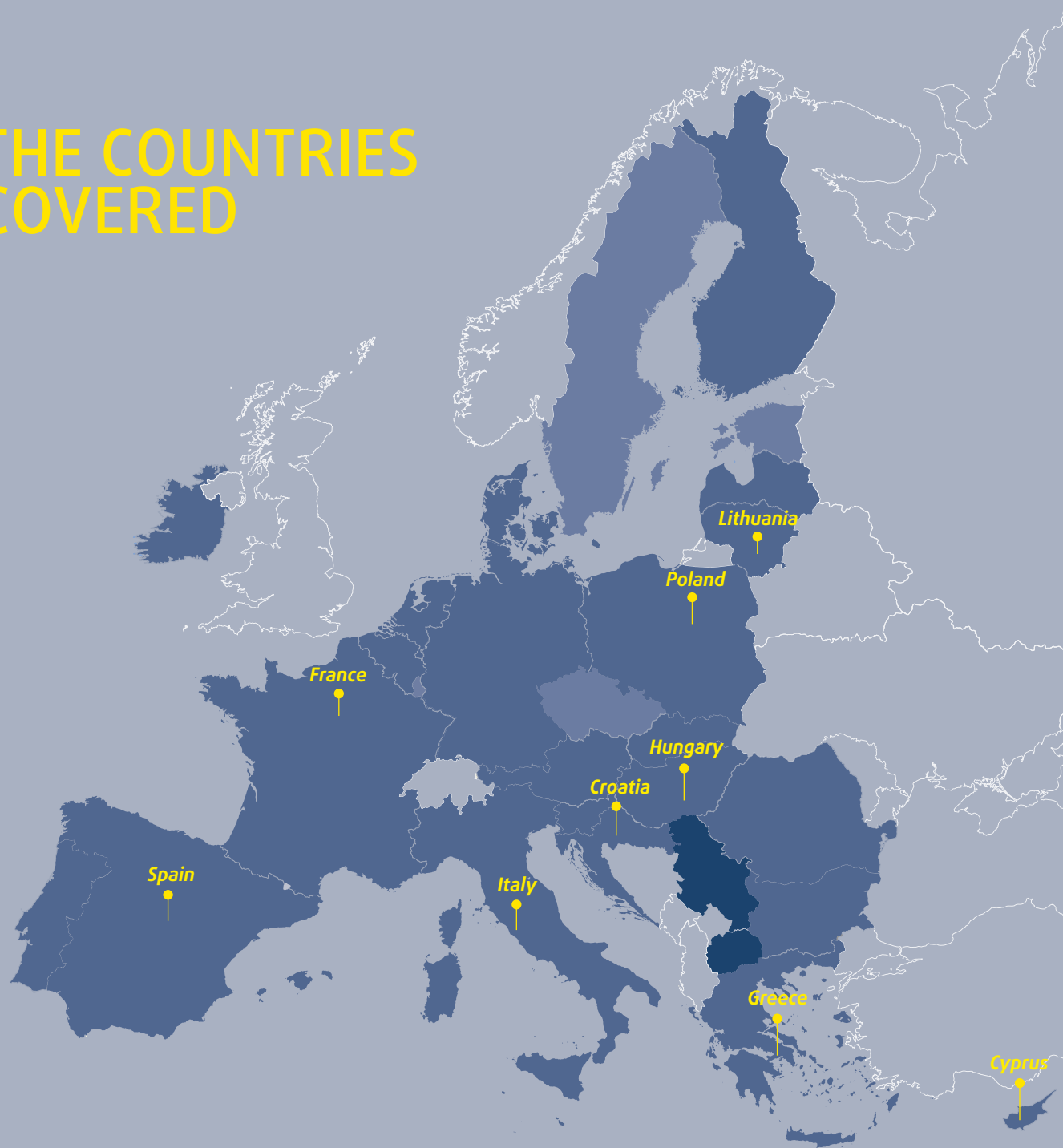
Return procedures: procedural safeguards are insufficiently implemented

- ★ Gaps remain in assessing risk of return to serious harm (*non-refoulement*)
- ★ People are turned back at EU internal borders
- ★ Monitoring of forced returns has become established practice, but gaps remain

The European Union Agency for Fundamental Rights has been regularly collecting data on asylum and migration since September 2015. This report highlights the progress achieved and the remaining fundamental rights challenges at the end of March 2023.

The countries covered are Croatia, Cyprus, France, Greece, Hungary, Italy, Lithuania, Poland and Spain.

THE COUNTRIES COVERED



Introduction

The EU and its Member States continue to face displacement-related fundamental rights challenges. Some relate to the consequences of Russia's invasion of Ukraine. Others concern persistent reports of rights violations at borders, people dying and going missing in the Mediterranean, overcrowded and unfit reception facilities, obstacles to accessing asylum and concerns about safeguards for unaccompanied children.

Over the past eight years, since the onset of the 2015–2016 large-scale arrivals, the European Union Agency for Fundamental Rights (FRA) has been reporting on EU Member States' legal and practical responses to migrants, asylum seekers and refugees with respect to compliance with fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union (the Charter).¹

In this report, FRA aims to take stock of concerns and improvements regarding the fundamental rights of migrants, asylum seekers and refugees. Considering developments during the past eight years, this report highlights the progress achieved and the remaining fundamental rights challenges at the end of March 2023. Changes in policies and practice that occurred in past years since 2015 are reflected in this report where information on these is required to understand the situation in March 2023. A timeline of the most salient legal and policy developments since 2015 can be found at the end of the report.

This report concludes FRA's series of periodic reports on key migration-related fundamental rights concerns across the EU (migration bulletins). It highlights key trends, promising practices, long-standing and emerging patterns, and persistent concerns relating to seven areas:

- borders;
- access to asylum;
- reception;
- integration;
- children in migration;
- immigration detention;
- return.

FRA has been sharing some of these concerns in its regular contributions to the European Commission's Migration Preparedness and Crisis Blueprint Network.

The report was drafted based on information provided by FRA's research network, Franet, covering nine EU Member States (Croatia, Cyprus, France, Greece, Hungary, Italy, Lithuania, Poland and Spain). To gather information on other EU Member States, FRA carried out desk research and used findings from research materials, including previous migration bulletins.

Franet contractors were requested to undertake desk research as well as interviews and written consultations with immigration authorities, ombuds institutions or national human rights institutions, international organisations and relevant civil society actors. Desk research by FRA and references to the applicable EU legal framework complemented Franet's input.

FRA ACTIVITY

People on the move; Their rights – our future The broad fundamental rights impact in the EU

“To best address migration challenges, the EU needs long-term planning offering accessible legal pathways, and effective and innovative integration proposals instead of quick fix solutions,” says FRA Director Michael O’Flaherty in his ‘People on the move’ speech. On 15 March 2023 at the law faculty of the University of Zagreb, FRA Director Michael O’Flaherty delivered a speech proposing some short- and longer-term responses to the migration challenges the EU and Member States face.

EU external borders: entry from Ukraine facilitated, but fundamental rights violations persist elsewhere

Migration has been a constant feature of human history. The International Organization for Migration estimates that in 2020 some 281 million people were living in a country other than their country of birth.² According to Eurostat, approximately 5 % of the 446.7 million people living in the EU on 1 January 2022 were non-EU citizens.³

Hundreds of millions of people cross the external borders of the EU every year. The overwhelming majority come to the EU lawfully, with valid papers, through official border crossing points.⁴ However, for forcibly displaced people other than those fleeing the Russian invasion of Ukraine, legal avenues to safety in the EU remain very limited.⁵ In a context of increasing global forced displacement and in the absence of other alternatives, some try to reach safety in Europe by crossing the border in an unauthorised manner. Other migrants cross the EU external borders in an irregular manner in the hope of creating a better future for themselves and their families.

In 2015, the peak year in an unprecedented surge in arrivals, over 1.8 million people crossed the EU external borders in an unauthorised manner,⁶ a development that triggered FRA’s regular migration bulletins describing the fundamental rights-related challenges in dealing with new arrivals. In response to the increased number of arrivals, the EU and its Member States took several measures. This included the adoption of the EU–Türkiye statement, described in the introduction to Section ‘Access to asylum’, which resulted in a gradual reduction in arrivals.

But numbers are increasing again: in 2022, the European Border and Coast Guard Agency (Frontex) detected some 330,000 irregular border crossings at the EU external borders, the highest number since 2016.⁷ It should be noted that not all such arrivals are detected. Among those detected, one in nine (9 %) were children.⁸ Syria (30 %) and Afghanistan (11 %) were the top two nationalities. In 2021, seven out of 10 applicants from these two countries received a positive asylum decision in the EU at first instance and seven out of 10 appellants did so on appeal.⁹ This shows that irregular arrivals at the EU external borders included a significant proportion of people in need of international protection.

The growing number of people crossing or attempting to cross the EU external borders in an unauthorised manner prompted strong determination by the EU institutions and Member States to ensure effective control of the EU external land and sea borders.

The events at the Greek–Turkish border in March 2020 and at the Belarus border in summer 2021, when thousands of people tried to enter the EU by force, and the role that third countries have played in facilitating or orchestrating irregular migration to the EU have resulted in the use of language that focuses on geopolitical considerations and overshadows the humanitarian and human rights aspects of what happens at borders.

In eight years, the total length of border fences at the external borders of the EU and the Schengen area grew from 315 km to 2,048 km. Before 2015, only Bulgaria, Greece and Spain had border fences; by the end of 2022, fences had appeared in 12 Member States. EU law requires that border management must respect the right to seek asylum.¹⁰ How, in these circumstances, can people in need of international protection seek safety in the EU?

Moreover, features such as coil-shaped blades or wires giving dangerous electric shocks put the lives of those trying to cross irregularly at risk or create a risk of disproportionate harm.¹¹ Such high-security features, which may be justified to



protect, for example, critical infrastructure, are not proportionate when used on border fences that people may be forced to cross in the absence of alternative routes to safety.

Against this background, over the past eight years, FRA has observed a gradual deterioration in fundamental rights protection at borders. An exception is the treatment of people displaced from Ukraine. There are, however, emerging initiatives countering this negative trend, as discussed in the last two subsections here.

The EU opened its borders to people displaced from Ukraine

A welcoming attitude towards those fleeing war or persecution has emerged in some neighbouring countries, such as towards political dissidents from Belarus and in particular people fleeing the Russian invasion of Ukraine. FRA surveyed over 14,000 people displaced from Ukraine, mostly women and children; most of them said that entering the EU had been relatively straightforward.¹² Certain groups seeking to enter the EU from Ukraine did not always receive a positive reception at the border; for example, according to the European Roma Rights Centre, Roma fleeing Ukraine were subjected to unlawful profiling based on ethnic origin.¹³

Ukrainian nationals with a biometric passport have the right to enter the EU without a visa.¹⁴ They can stay without a visa for up to 90 days within any period of 180 days. After the start of the Russian invasion of Ukraine, all other people fleeing the country – including third-country nationals and stateless people – were allowed to cross into the EU on humanitarian grounds, pursuant to Article 6 (5) of the Schengen Borders Code, even if they otherwise did not meet the legal requirements under EU law to enter.¹⁵ In the first weeks of the war, non-Ukrainians encountered difficulties in entering the EU at some border crossing points.¹⁶

The swift and unanimous activation of the Temporary Protection Directive on 4 March 2022 showed Member States' willingness and capacity to receive unprecedented numbers of displaced people from Ukraine.

People continue to die on the way to the EU

Between 2014 and the end of February 2023, 26,089 people died or went missing while trying to cross the Mediterranean Sea – on average approximately eight people each day.¹⁷ Since 2021, deaths have also occurred in the English

FRA ACTIVITY

Migration: Fundamental rights issues at land borders



FRA has been regularly collecting data on asylum and migration since September 2015. The 2020 report on land borders looked at fundamental rights compliance at the EU external land borders, including rivers and lakes. It focuses on the correct application of the safeguards in the European asylum *acquis* and the provisions of the Schengen Borders Code (Regulation (EU) 2016/399).

For more information, see FRA (2020), **Migration: Fundamental rights issues at land borders**, Luxembourg, Publications Office of the European Union (Publications Office).

Channel; by the end of 2022, the International Organization for Migration had recorded 57 fatalities in the Channel.¹⁸ During 2022, it recorded 3,168 deaths or disappearances at Europe's land and sea borders.¹⁹

Although the number is smaller than the over 5,000 fatalities recorded in 2016, the largest number of annual deaths during the relevant period, the matter remains a major unresolved fundamental rights issue. Respect for the right to life at borders has also preoccupied the European Court of Human Rights (ECtHR). The ECtHR issued three important judgments against Croatia, Greece and Hungary, clarifying aspects of the right to life under Article 2 of the European Convention on Human Rights (ECHR) in relation to migrants' deaths at borders and failure to take all reasonable measures in the event of a shipwreck.²⁰

The fact that Europe has not managed to find a way to prevent people dying every day on its doorstep is also illustrated by the conclusions of the special European Council meeting on migration of 9 February 2023, which make explicit mention of safeguarding human lives and reinforced cooperation on search and rescue.²¹

Serious rights violations at the EU external borders persist

United Nations (UN) and Council of Europe bodies, national human rights institutions and civil society organisations have been reporting on serious fundamental rights violations against migrants and refugees at the EU external land and sea borders for several years. Since 2020, such allegations have increased.²² For example, a European Parliament briefing refers to the Protecting Rights at Borders initiative recording 1,911 pushback incidents at the EU external and internal borders in only the first three months of 2022.²³

The seriousness and intensity of reported rights violations linked to border management have grown significantly in recent years.

- They concern increasing numbers of border locations in several Member States.
- Incidents described in various reports entail verbal and physical violence, ill treatment, failure to rescue, stripping people of their clothing, stealing their property, forced separation of families and summary expulsion of those seeking asylum.²⁴
- The victims of these violations are sometimes vulnerable people, including unaccompanied children.²⁵

The UN and the Council of Europe, like other monitoring bodies, raise the human rights situation at the EU's borders as a regular feature in their reports.²⁶ Recently, UN bodies have started to examine summary expulsions of apprehended individuals from new human rights angles. Illustrative are reports on Greece, where the matter has been looked at under the UN Convention on Enforced Disappearances and where the UN Working Group on the Use of Mercenaries has referred to reports of "migrants being hired in the Evros region [...] and deployed in violent pushbacks".²⁷

The increase in irregular arrivals to the EU and the ways in which some of these arrivals have occurred has led to other developments that affect fundamental rights protection. Low-ranking staff without full border guard training and military personnel have begun to patrol borders and apprehend new arrivals; in future, this work may also be done by private contractors.²⁸ EU border management standards require that staff have a high degree of specialisation and professionalism, and a diverse skill set.²⁹ It will be necessary to ensure that all personnel – even auxiliary staff – entrusted with border control functions, and particularly those that involve the use of coercive measures, are sufficiently trained on fundamental rights issues.

Civil society actors working at borders are investigated or intimidated

Actors who defend migrants' and asylum seekers' rights and work in the vicinity of borders face increasing pressure from the authorities.³⁰ In Greece, Hungary and Italy, restrictions on the work of non-governmental organisations (NGOs) were significant enough to be mentioned by the European Commission in the relevant country chapters of the 2022 *Rule of Law Report*.³¹ Concerns have also emerged with respect to other Member States.³²

The situation in the Central Mediterranean is illustrative. Since 2014, civil society actors have been deploying search and rescue vessels. In the absence of sufficient state rescue vessels, they seek to reduce fatalities and bring rescued people to safety. As their presence at sea is perceived as encouraging irregular arrivals, they encounter hostile attitudes and face legal proceedings, and the authorities have blocked their ships at ports.³³

On 2 January 2023, Italy enacted further restrictions on such activities, with those breaching them subject to large fines.³⁴ The new rules impose, for example, the obligation to go to the assigned disembarkation port, which may be a port in central or northern Italy that is several days' sailing away from the rescue area.³⁵ Such ports have little experience in applying the standard operating procedures applicable to migration hotspots in Italy.³⁶

Victims of rights violations do not find redress in national courts

Many rights violations reported at the EU borders include allegations of criminal conduct, such as ill treatment, stripping people of their clothes, failure to assist people in danger or stealing personal belongings.

In cases involving alleged violations of Article 2 (on the right to life) or Article 3 (on the prohibition of torture or inhuman or degrading treatment or punishment) of the ECHR, the competent authorities must carry out an effective official investigation. To be effective, an investigation must be prompt, expeditious and capable of leading to the identification and punishment of those responsible.³⁷

In December 2020, FRA pointed out that, despite many alleged rights violations, only a limited number of cases were pending in national courts.³⁸ Where complaints involving allegations of criminal conduct are brought, cases tend to be discontinued, partly because of lack of evidence, as examples from Croatia, Greece and Spain show.³⁹ This situation has not changed. FRA is aware of only one recent criminal case of this sort that resulted in a conviction, adjudicated in Italy in December 2022. The Rome Tribunal found two Italian officers guilty of manslaughter (they were not punished, as the crime has since been declared to be time-barred). They failed to take action in response to a shipwreck in 2013 in which over 200 people drowned.⁴⁰

There are various factors that might explain the small number of national judicial cases (other than administrative proceedings, which are discussed in subsection 'People arriving irregularly face more obstacles to applying for asylum'), despite continuing reports of rights violations on a large scale. These may include limited interest on the part of victims in filing a case, difficulties in producing evidence of events occurring during the hours of darkness in forests or at sea, and other factors that would need to be further explored.

At the same time, the ECtHR is increasingly seized of proceedings regarding rights violations at borders. Between July 2021 and February 2023, the ECtHR issued at least nine judgments finding rights violations at the EU's land or sea borders.⁴¹ In several of these, the Court concluded that there had been no remedy available to the applicants at national level.⁴² Furthermore, the list of pending adjudications is growing.⁴³ Finally, to prevent irreparable harm, the

ECtHR receives many requests to issue interim measures. For example, in connection with the situation in the three EU Member States bordering Belarus, between 20 August 2021 and 18 February 2022, the ECtHR received requests for interim measures in 69 applications (concerning a total of 270 applicants) and granted these in most of them (65 cases).⁴⁴

Safeguards in EU law are starting to be enforced

EU law relating to border management and establishing the set of rules that regulate the functioning of the Schengen area contains many fundamental rights safeguards. The Schengen Borders Code (Regulation (EU) 2016/399), the Schengen Evaluation and Monitoring Mechanism (Regulation (EU) 2022/922) and the main instruments regulating EU funding for border management (Regulations (EU) 2021/1148 and (EU) 2021/1060) contain several safeguards intended to protect fundamental rights.



It is taking time to activate these safeguards to their full extent. For instance, it took almost three years for Frontex to hire the 40 fundamental rights monitors required under the 2019 regulation governing it.⁴⁵ The strengthening of Frontex's internal fundamental rights protection mechanisms did, however, advance as Frontex came under pressure for not taking appropriate measures when operating in locations with persistent reports of serious rights violations.⁴⁶ In addition, it engaged in a structured dialogue with Greece on fundamental rights.⁴⁷

The Schengen Evaluation and Monitoring Mechanism oversees the implementation by Member States of the EU legal rules that constitute the Schengen *acquis*. It was revised in 2022.⁴⁸ The new rules have significantly increased the extent to which

the evaluations cover fundamental rights. FRA has described how, over the past 10 years, the mechanism has gradually begun to pay more attention to fundamental rights.⁴⁹ Two examples illustrate this: as a result of the mechanism's evaluations, Greece must strengthen fundamental rights-related aspects of its border management governance structure and investigate allegations of ill treatment, and Italy needs to address reception gaps in Lampedusa.⁵⁰

The Migration Preparedness and Crisis Blueprint Network, the EU mechanism intended to achieve better monitoring and anticipation of migration movements and to enhance information sharing to facilitate a coordinated response in times of crisis, was set up in September 2020.⁵¹ FRA contributes to it by presenting fundamental rights considerations at its meetings.

Human rights monitoring at borders is increasing

Under their respective mandates, national human rights and ombuds institutions play an increasingly important role in investigating rights violations at borders and/or referring cases to the courts. For example, in May 2022 the Greek Ombudsman was investigating over 50 incidents concerning more than 10,000 people.⁵² The Polish Commissioner for Human Rights has regularly visited the land border with Belarus, intervened on the death of three men close to the Belarus border and referred individual cases to the courts (see subsection 'People arriving irregularly face more obstacles to applying for asylum').⁵³ The Spanish Ombudsman has also issued several recommendations.⁵⁴

In October 2022, at the request of the European Commission, FRA published guidance to assist Member States in setting up national independent mechanisms to monitor fundamental rights compliance at the EU external borders. FRA organised a follow-up meeting with experts from national human rights institutions, representatives from selected EU entities and international organisations. The experts stressed the need for coherence with other national bodies entrusted with the protection of fundamental rights, underlined the important role of national human rights institutions and flagged up the need to develop protocols for accessing information and data relevant to fundamental rights from surveillance assets.⁵⁵



In June 2021, the Croatian authorities established, as a pilot project, a mechanism to monitor respect for fundamental rights during actions by police officers against people having entered Croatia in an irregular manner. During the first year of activity, the monitors focused on border police stations, border crossing points and reception facilities, where they did not detect any irregularities as regards the right to asylum or access to asylum procedures.⁵⁶ This mechanism coexists with other constitutional bodies intended to protect human rights in Croatia, such as the Ombudsperson.⁵⁷ Its advisory board, of which FRA is a member, suggested in 2022 widening the scope of the mechanism, enabling monitors to make unannounced visits to sections of the border other than border crossing points and giving them access to the information systems of the Ministry of the Interior.⁵⁸ The new agreement regulating the mechanism addresses these gaps, at least to some extent, although by the end of March 2023 monitoring missions had not yet resumed following the end of the pilot.⁵⁹ This is so far the only new such monitoring mechanism established in an EU Member State.

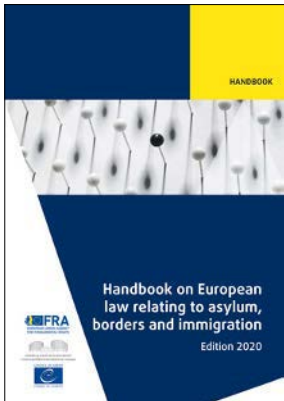
Bright spots

Increasing transparency through incident recording in Greece

As a step towards establishing a national monitoring mechanism, the Greek National Commission for Human Rights set up a mechanism for recording summary returns. During the first months of operation, the mechanism recorded 50 incidents, affecting at least 2,157 people who wished to seek asylum in Greece, of apprehension or interception and subsequent summary return to the Turkish side of the border. Such incidents were often accompanied by ill-treatment, deprivation or destruction of identity documents and other rights violations. Alleged victims include six recognised refugees and five asylum seekers officially registered in Greece. The interim report does not specify if reports on these incidents were forwarded to the competent judicial authorities for criminal investigation.

See *Greek National Human Rights Commission (2023), Recording mechanism of incidents of informal forced returns: Interim report – January 2023.*

Handbook on European law relating to asylum, borders and immigration



Since 2011, FRA, the Council of Europe and the ECtHR have published handbooks on various fields of European law. This handbook provides an overview of the European legal standards relevant to asylum, borders and immigration. It explains both applicable ECHR and EU law, and presents the body of case law by the two European courts in an accessible way.

See FRA and Council of Europe (2020), **Handbook on European law relating to asylum, borders and immigration – Edition 2020**, Luxembourg, Publications Office.

Access to asylum: shorter procedures, but legal and practical obstacles persist

Under EU law, any third-country national has the right to seek asylum, including those who enter or stay in the EU in an irregular manner.⁶⁰ This well-established rule derives from the 1951 Convention Relating to the Status of Refugees and from primary EU law.⁶¹ It is a core safeguard in refugee law, of a customary international law character,⁶² that acknowledges that refugees are often not able to obtain the necessary papers when seeking safety.

Some EU Member States consider that the common European asylum system combined with a low rate of returns constitutes a pull factor for irregular migrants and encourages migrant smuggling.⁶³ The previous section examined the impact of enhanced border control measures to stem irregular migration on respect for fundamental rights. This section focuses on the impact on access to asylum.

In 2015, close to 1.4 million people requested asylum in the EU. In March 2016, arrivals in Greece dropped significantly after the EU-Türkiye statement and changes in policy on the treatment of new arrivals. The statement facilitated the return to Türkiye of people who crossed to the Greek islands in the eastern Aegean Sea without authorisation. For every Syrian returned to Türkiye, another Syrian was to be resettled from Türkiye to the EU.⁶⁴ With the support of the European Commission, procedures in the hotspots on the islands – meaning in the facilities for new arrivals – were changed. Instead of serving as registration and screening centres for new arrivals before their swift transfer to the mainland, the hotspots activated procedures for readmission to Türkiye.⁶⁵ Although overall the number of people readmitted by Türkiye remained limited, the statement continued to be applied until early 2020. Since then, Türkiye has refused to readmit anyone.⁶⁶

The EU-Türkiye statement and other measures to tighten border control, starting from 2016, contributed to reducing the number of asylum applications in the EU. They reached their lowest point during the coronavirus disease 2019 (COVID-19) pandemic in 2020, when fewer than 500,000 applications for international protection were lodged in the EU, Norway and Switzerland.⁶⁷

With the end of the pandemic and in a context of increased global displacement, the number of asylum applications increased again. In 2022, worldwide, the total number of people forced to flee their home was at a record high of more than 100 million.⁶⁸ In the EU, first-time asylum applications reached 966,000 at the end of 2022, a new high since 2016.⁶⁹ As this is almost three times higher than the number of irregular crossings of the EU external borders in 2022,⁷⁰ noted in the previous section, the majority of asylum applicants must have either entered the EU lawfully or crossed the border undetected.

People displaced from Ukraine receive temporary protection, but issues persist

In addition to almost 1 million asylum applicants, nearly 4 million non-EU citizens who had fled from the Russian invasion of Ukraine enjoyed temporary protection in the EU at the end of 2022.⁷¹ The EU's activation of the Temporary Protection Directive on 4 March 2022 allowed for an effective and united response to the arrival of this unprecedentedly large number of displaced people, the majority women and children. In terms of the swiftness, unanimity and efficiency of this response, positive lessons can be drawn for asylum policies and their implementation in the future.

Legal corner

Temporary Protection Directive

The **Temporary Protection Directive (Directive 2001/55/EC)** (applicable to all EU Member States except Denmark, which enacted similar rules) sets out minimum standards for granting immediate temporary protection in the event of a mass influx of displaced people. Temporary protection entitles displaced people to work and study, as well as to receive housing benefits and other social support.



The process of registering nearly 4 million beneficiaries of temporary protection fleeing the Russian invasion of Ukraine – four times the number of asylum applicants – went relatively smoothly. But asylum seekers coming from other parts of the world to the EU face increasing legal and practical challenges in accessing protection in a fundamental rights-compliant manner. This is linked to the fact that temporary protection is granted upon registration, without the need for a lengthy bureaucratic procedure as in the case of asylum applications.

Duration of asylum procedures is improving, but challenges remain

Lengthy asylum procedures remain an issue, but less than was the case in the wake of the 2015–2016 surge in arrivals. Past FRA research in six EU Member States showed that during 2015–2016 reaching a first-instance decision on asylum took between six months and two years.⁷²

Procedures in the past two years have become generally swifter, but not everywhere. In Italy, for example, in 2021 asylum applicants could wait up to three years for a first-instance asylum decision from the moment they applied.⁷³ In 2016, depending on the *questura* (region), waiting times for the completion of an asylum procedure were much shorter – between one week and over six months.⁷⁴ In France and Greece, the average waiting time for processing of an asylum application has decreased. For example, in France the average processing time has decreased from 176 days in December 2021 to 140 days in September 2022,⁷⁵ a level not seen since 2018. Similarly, in Poland the average time spent examining an application at first instance was 136 days.⁷⁶

In Spain and mainland Greece, delays and administrative barriers to getting an appointment to register an asylum claim continued. If they are not registered, people in need of protection are prevented from accessing reception services and legalising their stay, and they remain at risk of detention and possibly expulsion. In Spain, it was practically impossible to get such an appointment following the required online process in 2022.⁷⁷ In mainland Greece, from November 2021 a person could not register an initial asylum application with the Asylum Service if they had not previously undergone reception and identification procedures.⁷⁸ Registrations became more accessible again in September 2022, after the Ministry of Migration and Asylum launched an online platform for the booking of appointments for identification, reception and registration of asylum applicants,⁷⁹ although not all issues have been addressed.⁸⁰

FRA ACTIVITY

The Russian war of aggression against Ukraine — The broad fundamental rights impact in the EU



FRA has produced two bulletins mapping the complexity and scale of the diverse fundamental rights implications right across the EU of Russia's invasion of Ukraine. The bulletins look at the wide array of issues countries need to address to ensure people's fundamental rights are upheld. They also draw attention to the plight of vulnerable groups and identify good practices for other countries to follow. But several pressing human rights issues have come to the fore and remain high on the EU's agenda, such as human trafficking, sexual and gender-based violence, hate crime and hate-fuelled disinformation.

See FRA (2022), **The Russian war of aggression against Ukraine — The broad fundamental rights impact in the EU - Bulletin 2**, Luxembourg, Publications Office.

Legal corner

Length of asylum procedures

The length of asylum procedures can have fundamental rights implications when they are overly lengthy or excessively short.*

Where asylum procedures take a very long time, leaving the applicant in a state of uncertainty, the right to good administration, enshrined in Article 47 of the Charter, can be affected. Excessively speedy procedures, on the other hand, may not allow sufficient time for preparation and to seek legal assistance. They may impact a person's right to asylum and to an effective remedy, as guaranteed in Articles 18, 19 and 47 of the Charter.

Delays at the registration stage, as well as long processing times for asylum applications, leave people in need of protection in uncertainty, and often deprived of rights and services. The **Asylum Procedures Directive (Directive 2013/32/EU)** obliges Member States, with some exceptions, to ensure that the examination procedure is concluded within six months of the lodging of the application.

* See FRA (2019), **Integration of young refugees in the EU: Good practices and challenges**, pp. 25 ff.; *European Council on Refugees and Exiles (ECRE) and Dutch Council for Refugees (2014)*, **The application of the EU Charter of Fundamental Rights to asylum procedural law**, Chapter 7.

EU law allows Member States to apply accelerated procedures in 10 specific situations, such as when an application is considered unfounded because the applicant is from a safe country of origin. Under EU law, basic principles and guarantees remain applicable to accelerated procedures.⁸¹ This is not always the case in practice. On the islands in Greece, the borders procedure is completed within weeks or a few months. This can be considered too fast to enable arrivals to, for example, be adequately informed or communicate effectively with the UN Refugee Agency (UNHCR) or with organisations providing legal advice and counselling – a right guaranteed under EU law.⁸² In France, where accelerated procedures have increasingly been applied since 2015, in 2021 some 45 % of all applications and 37 % of all first-time applications were examined in an accelerated manner.⁸³ The NGO La Cimade has raised concerns about the systematic and, in its view, abusive use of accelerated procedures.⁸⁴

People arriving irregularly face more obstacles to applying for asylum

Since 2015, several countries have introduced or continued to apply laws that make access to asylum systems in a fundamental rights-compliant manner difficult. Legal restrictions concern primarily those people who enter the country in an irregular manner, circumventing border controls.

Four EU Member States – Latvia, Lithuania and Poland in 2021 and Spain (for Ceuta and Melilla) as early as 2015 – have enacted legislation that permits the apprehension and immediate summary return, without individual examination of the person's situation, to a neighbouring country of a person who has entered the state territory in an unauthorised manner.⁸⁵ Latvia, Lithuania and Poland introduced such laws in reaction to the Belarusian practice of actively attracting migrants to Belarus before encouraging or even forcing them to cross the borders into the EU. In Spain, the Aliens Act was amended by the Law on the Protection of Citizens' Security. The aim was to take into consideration the special condition and geographical location of Ceuta and Melilla, in the context of increased migratory pressure in 2014. The amendment legalised the summary returns that had been taking place in Ceuta and Melilla for years.⁸⁶

Estonia may activate similar rules in times of "emergency caused by mass migration".⁸⁷ New legislation enables Finland to limit asylum applications to one or more border crossing points if this is necessary to prevent a serious threat to public order, national security or public health, and if certain other conditions are met.⁸⁸



Reviewing Lithuanian legislation, on 30 June 2022, the Court of Justice of the European Union (CJEU) clarified that legal provisions banning, during periods of large numbers of arrivals of third-country nationals, asylum applications by individuals having entered the country irregularly violate EU law.⁸⁹ In June 2022, the courts in Lithuania obligated the Migration Department under the Ministry of the Interior to accept and register asylum applications also from people having already entered the territory in an irregular manner.⁹⁰ In Poland, in 2022, the courts issued similar decisions.⁹¹

In July 2021, the European Commission referred Hungary to the CJEU for unlawfully restricting access to the asylum procedure in breach of Article 6 of the Asylum Procedures Directive (Directive 2013/32/EU), interpreted in the light of Article 18 of the Charter. According to Hungarian law, before they can apply for international protection in Hungary, non-EU nationals must first make a declaration of intent stating their wish to apply for asylum at a Hungarian embassy outside the EU and be issued with a special entry permit for that purpose.⁹² In March 2023, the infringement case was still active. As a result of this restriction, in 2022 only 46 people submitted asylum claims at the designated Hungarian embassies.⁹³

‘Safe third country’ concept delays access to asylum

EU law allows for Member States to apply the so-called ‘safe third country’ concept.⁹⁴ For example, Greece applies it to Türkiye.

Since June 2021, Greece has considered Türkiye a safe third country for asylum applicants from Afghanistan, Bangladesh, Pakistan, Somalia and Syria.⁹⁵ In 2022, slightly over half of the asylum claims in the EU were made by nationals of these five countries.⁹⁶ As readmissions to Türkiye have not taken place since March 2020, this leaves applicants whose claims are found inadmissible on the basis that Türkiye is a safe third country for them in a situation of legal uncertainty, without access to protection and at risk of detention.

In most cases, the Greek Asylum Service considers that after one year the link to Türkiye is no longer valid, and applications are examined on their merits. Many applicants whose claims were found inadmissible submit a subsequent application. With asylum procedures on the Eastern Aegean islands being rather swift, the initial and the subsequent applications may be rejected within weeks or a few months. The main option available to applicants in this situation to regularise their stay until their asylum claims can be reviewed on their merits is to submit a second subsequent application. However, Greek law imposes a fee of €100 per person for the second and for any further subsequent application,⁹⁷ which many applicants, particularly those with large families, can find difficult to pay.

EU law does not allow Member States to charge asylum applicants who wish to submit a subsequent asylum claim. The European Commission has indicated that the unconditional application of the fee for the second subsequent application raises issues with regard to effective access to the asylum procedure.⁹⁸

In February 2023, the Greek Council of State submitted preliminary questions to the CJEU regarding the application of the safe third country concept, in the absence of readmissions to Türkiye.⁹⁹

Issues with legal and linguistic assistance persist

For years, difficulties in accessing legal aid services have been reported in some Member States. In Lithuania, lawyers holding a government contract prepared appeals without involving the asylum applicant and without informing them of the outcome of the first-instance court procedure.¹⁰⁰ An evaluation of the

Legal corner

‘Safe third country’ and ‘safe country of origin’ concepts

A ‘safe third country’ is a country other than the asylum seeker’s country of nationality where the asylum seeker would receive effective protection and to which it would be reasonable to remove him or her on the basis of a connection between the applicant and the third country concerned (see Article 38 of the Asylum Procedures Directive (Directive 2013/32/EU)).

The ‘safe third country’ concept is to be distinguished from that of the ‘safe country of origin’. The assessment required to conclude that a country is a safe third country makes it possible to fast-track applications for international protection that are likely to be unfounded, as explained in this subsection (and in accordance with Article 31 (8) of the Asylum Procedures Directive).

Lithuanian asylum system raised doubts about the independence of the public procurement exercise through which the provider of legal aid services had been appointed.¹⁰¹ As a result, a new procurement exercise was launched,¹⁰² and a new law firm started providing legal aid to asylum applicants.¹⁰³

In Poland, issues include a lack of information provided to asylum seekers about the status of their case or the possibility of receiving free legal assistance after a negative first-instance decision, and errors in the translation of documents.¹⁰⁴

An interruption in the provision of interpretation services to the Asylum Service in the last quarter of 2022 complicated the processing of asylum applications in Greece, as FRA has observed.

In Spain, a civil society organisation has noted that gaps in interpretation provision contribute to the poor quality of asylum interviews.¹⁰⁵



Dignified living conditions: despite efforts, challenges re-emerge

Following the Russian invasion of Ukraine in February 2022, almost 4 million people received temporary protection in the EU. In addition, the number of asylum seekers increased significantly, as discussed in the section 'Access to asylum'. Before 2022, most Member States had managed to overcome the difficulties that their reception systems experienced in 2015–2016.¹⁰⁶ However, as more people arrived in 2022, substantial challenges in offering dignified reception and living conditions re-emerged.

People displaced from Ukraine have triggered a wave of solidarity, but issues persist

The arrival of millions of people from Ukraine triggered strong solidarity across the EU. Many people who fled the Russian invasion found a place to stay in private accommodation,¹⁰⁷ and not in state-run reception facilities, as is the case for most asylum seekers from other parts of the world.

Yet obstacles to providing suitable and safe accommodation remained in several Member States. There were problems with making long-term arrangements, ensuring access to housing assistance and systematically vetting private accommodation providers.

In 2022, FRA surveyed almost 15,000 people displaced from Ukraine, most of whom had applied for temporary protection. Nearly six out of 10 respondents were at the time of the survey (August and September 2022) staying in a private apartment or house, with 36 % noting lack of privacy as a problem. In addition, more than half of the respondents had to pay fully or partially for their accommodation. The survey results reveal a challenging situation with regard to education for children and access to healthcare, including mental health services.

FRA also asked respondents how incidents, deprivations and hardships experienced before reaching the EU had affected them: two out of three women reported depression, anxiety or panic attacks, difficulties in sleeping and concentrating, or loss of self-confidence or feeling vulnerable, compared with one out of two men (see FRA Activity).

Reception systems in several Member States remain congested

As new arrivals increased in 2022, contingency measures in some Member States proved insufficient. Reception systems became strained. More Member States requested the support of the European Union Agency for Asylum. In early 2023, it provided operational assistance in 13 Member States.¹⁰⁸

Cases of asylum applicants without access to reception systems and of homelessness among applicants appeared in an increasing number of Member States, as the following examples illustrate.

The ECtHR asked Belgium to provide accommodation and material assistance to asylum applicants, including unaccompanied children, through interim measures.¹⁰⁹ The Council of Europe Commissioner for Human Rights pointed out that in Belgium more than 1,500 asylum seekers could not be provided with accommodation in October 2022 alone, with many of them being forced to sleep on the streets.¹¹⁰

Legal corner

Entitlement to adequate reception conditions

Article 17 of the Reception Conditions Directive (Directive 2013/33/EU) entitles asylum seekers to material reception conditions providing an adequate standard of living, which guarantees their subsistence and protects their physical and mental health.

Article 13 of the Temporary Protection Directive (Directive 2001/55/EC) entitles those who have fled the Russian invasion of Ukraine and received temporary protection to suitable accommodation.

FRA ACTIVITY

Fleeing Ukraine: Displaced people's experiences in the EU



This report presents the findings of FRA's 2022 online survey of displaced people from Ukraine. It covers the 10 EU countries that host a large number of people under temporary protection – Bulgaria, Czechia, Estonia, Germany, Hungary, Italy, Poland, Romania, Slovakia and Spain. Some 14,685 respondents shared their views of arriving and settling in the EU. These provide a unique insight into their experiences and feelings, including those of violence.

The survey findings also illustrate the challenges inherent in applying an instrument of temporary protection to a situation that is likely to have a long-term impact on people and our societies.

See FRA (2023), **Fleeing Ukraine: Displaced people's experiences in the EU**, Luxembourg, Publications Office.



The ECtHR found that France had failed to execute court decisions ordering the provision of emergency accommodation to homeless asylum seekers.¹¹¹ The judgment of the Court pointed to deficiencies that are ongoing, according to the French Defender of Rights.¹¹² The UN Committee on the Elimination of Racial Discrimination expressed concern about the difficulties that asylum seekers face in accessing accommodation.¹¹³ Informal camps still exist in Calais and Grande-Synthe, despite their regular dismantling. The French Commission for Human Rights described the living conditions there as undignified, inhumane and unacceptable.¹¹⁴

The Irish Refugee Council called for urgent action to address what it described as an accommodation crisis for people seeking protection.¹¹⁵ In the Netherlands, many people stayed for extended periods in emergency reception, while hundreds slept rough outside the Ter Apel registration centre, as the Council of Europe Commissioner for Human Rights noted.¹¹⁶ Austria resorted to providing accommodation in tents in some parts of the country.¹¹⁷

Reception difficulties also continued in the Member States of first entry. In 2022, in Greece¹¹⁸ and Spain¹¹⁹ many people could not be accommodated in those countries' reception systems while waiting for months to register their asylum applications (see section 'Access to asylum'). In Cyprus, the Pournara first reception centre remains overcrowded, with hundreds staying in tents, in areas with no lighting, heating or sewage disposal system. They are also exposed to protection risks, including risks of sexual and gender-based violence.¹²⁰ According to the Cyprus Refugee Council, only 6,500 of approximately 30,000 asylum seekers in the country receive welfare benefits, which, in any case, are not sufficient to cover their basic needs.¹²¹

Conscious of the need to address gaps in their reception systems, several Member States have taken measures. For example, France,¹²² Italy¹²³ and Spain¹²⁴ decided to increase their accommodation places, while Cyprus plans to upgrade the Pournara first reception centre.¹²⁵

Partly because of changes in border management policies resulting in fewer arrivals (see section 'EU external borders'), in Greece, Hungary and Malta the numbers of people in reception facilities have fallen significantly.¹²⁶ In Greece and Malta, people rescued at sea or apprehended upon irregular entry are placed in facilities in which the law allows for automatic deprivation of liberty during registration formalities.¹²⁷ New facilities on the Greek islands of Samos, Kos and Leros have security arrangements similar to those in detention centres.¹²⁸ Hungary closed its 'transit zones' in 2020, after the CJEU found the systematic deprivation of liberty of asylum applicants contrary to EU law (see section 'Immigration detention').¹²⁹ Lithuania stopped using two 'foreign registration

centres' in Medininkai and Kybartai,¹³⁰ where the Ombudsman had found that conditions amounted to degrading treatment.¹³¹ The practice of *de facto* detention of new arrivals in Lithuania started to change following decisions by the country's Supreme Administrative Court in April 2022¹³² and of the CJEU in June 2022.¹³³

Challenges remain in addressing the needs of vulnerable people

The identification of vulnerable people continues to be challenging, as does the provision of support, especially when a person has multiple special needs. Improving how authorities address multiple needs is now a priority for Member States, with work on this being done under the auspices of the European Union Agency for Asylum's Vulnerability Network.¹³⁴

Difficulties in identifying certain, often invisible, vulnerabilities have emerged. For example, the Croatian Law Centre claimed that detecting sexual and gender-based violence was becoming more challenging due to the increasing numbers of people staying in reception facilities for shorter periods of time.¹³⁵ In Greece, insufficient interpretation, medical and psychosocial services, as well as very swift registration and asylum procedures in some locations, were likely to result in failures to identify vulnerable people, as FRA observed during field visits.¹³⁶ The Lithuanian Red Cross noted divergent approaches to the assessment of vulnerability in Lithuania's reception centres.¹³⁷ In Spain, a new decree on reception requires vulnerability assessments to be conducted and appropriate referrals made by trained professionals following guidance from the Ministry of Migration.¹³⁸

Member States also face difficulties in addressing special reception needs, given limited reception capacities in general and a lack of specialised services for victims of torture or for people with physical or mental disabilities. Vulnerable asylum applicants face significant difficulties in accessing accommodation, and in some cases faced the risk of homelessness. In France, for example, the Council of State annulled orders from the Administrative Court of Paris to provide access to emergency accommodation to vulnerable migrants on the basis that even more vulnerable families were hosted in the country's congested reception system and had to be prioritised.¹³⁹ In Greece, a housing scheme offering apartments in urban communities to vulnerable people was discontinued. This resulted in their transfer to camps, where they were exposed to protection risks, and the disruption of their daily lives, including the education of children.¹⁴⁰

Dignified reception of children has not yet been achieved

Although progress has been made on reception conditions for children, many of them continue to stay in inappropriate housing, as this subsection explains. For other child-related matters, see section 'Children in migration'.

The situation in some Mediterranean countries was, once again, particularly difficult. In Cyprus, at the beginning of 2022, groups of unaccompanied children left the Pournara first reception centre to sleep outside on the street in protest against the conditions.¹⁴¹ The Cypriot Commissioner for Children's Rights described the conditions in the camp as unacceptable: the amount of food and water supplied was inadequate, children were sharing beds or sleeping on the floor, there were two toilets and one shower for 300 children, and no activities or education were provided.¹⁴²

In Italy, as arrivals increased, the facility in Lampedusa often became overcrowded, with some 1,200 people staying there at the end of February 2023, more than double its official capacity. Because of the need to identify an appropriate place for them to stay, onward transfer of unaccompanied children is particularly challenging, and they may stay at the facility for several weeks.¹⁴³

Legal corner

Special needs of vulnerable people

Member States must take into account the specific situation of vulnerable asylum applicants (Reception Conditions Directive (Directive 2013/33/EU), Article 21) and provide necessary medical or other assistance to people enjoying temporary protection who have special needs (Temporary Protection Directive (Directive 2001/55/EC), Article 13).

Bright spots

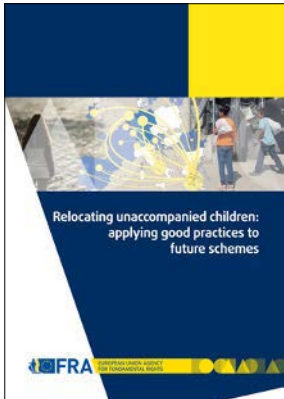
Improving identification and referral of vulnerable people

Functioning referral systems and protocols between stakeholders in reception facilities in some Member States have enhanced the prevention of and responses to incidents of sexual and gender-based violence. For example, in Croatia and Spain relevant protocols have been adopted with the support of UNHCR. In Spain, tools and guidance are provided to professionals working in reception facilities. Guidance on the identification and referral of people with vulnerabilities is being developed also in Italy.

See Croatia, Médecins du Monde, telephone interview conducted on 20 December 2022; Spain, UNHCR (2022), 'Protocolo para la prevención de violencia de género en el sistema de acogida de protección internacional'; Italy (2023), Ministry of the Interior, Vademecum per la rilevazione, il referral e la presa in carico delle persone portatrici di vulnerabilità in arrivo sul territorio ed inserite nel sistema di protezione ed accoglienza (under finalisation).

Bright spots

Relocation of children: EU solidarity in practice



Some 19 EU Member States and four Schengen associated countries agreed in June 2022 on a new voluntary solidarity declaration. In it, states committed to relocating asylum seekers between EU Member States or making financial contributions to the EU countries most affected by migratory challenges in the Mediterranean and on the Western Atlantic route.

The voluntary or mandatory relocation of unaccompanied children, if properly implemented, can result in positive long-term solutions for them, FRA research shows. Member States have often shown limited willingness to accept relocated unaccompanied children or have imposed stringent conditions for relocation. As a result, only 1,400 unaccompanied children were relocated within the EU between 2015 and 2019.

However, under voluntary relocation from Greece, which was initiated in 2020 with a focus on unaccompanied children, 5,001 people had been relocated by October 2022. Among them were 1,021 children with their families and 1,274 unaccompanied children.

See FRA (2020), **Relocating unaccompanied children: Applying good practices to future schemes**; International Organization for Migration (2022), **Voluntary scheme for the relocation from Greece to other European countries**; European Commission (n.d.), 'Relocation: EU solidarity in practice – Voluntary Solidarity Mechanism (VSM)'.

In Spain, the arrival of unaccompanied children in the Canary Islands continued during 2022; reception centres were at full capacity, with around 2,800 unaccompanied children staying in them.¹⁴⁴ A solidarity arrangement between Spanish regions has been agreed, whereby 800 children will be transferred from the Canary Islands and Ceuta to mainland Spain.¹⁴⁵

The accommodation conditions in Greece improved significantly during 2021 and 2022 thanks to measures taken by the national authorities, in particular the creation of a national tracing and protection mechanism (the National Emergency Response Mechanism),¹⁴⁶ and owing to EU solidarity (see 'Bright spots' box). While the number of unaccompanied children in the country in February 2023 (2,516) was only just under the existing capacity (2,519),¹⁴⁷ the situation was not comparable with that at the end of 2020, when almost 1,000 children were staying in insecure housing.¹⁴⁸

Other Member States, not on the Mediterranean route, have also faced reception challenges, as described in the 'Reception systems in several Member States remain congested'. A new law on the protection of children is expected to improve the situation for unaccompanied children arriving in France.¹⁴⁹ It will introduce a respite period before the age assessment phase and will end the accommodation of children in hotels by 2024.



Children in migration: progress only in some areas

All children, regardless of nationality or legal status, are entitled to protection. All EU Member States are bound by the UN Convention on the Rights of the Child (CRC). Under Article 24 of the Charter, “Children shall have the right to such protection and care as is necessary for their well-being.”



In 2019, FRA issued a bulletin focusing on children in migration, taking stock of progress achieved and remaining challenges.¹⁵⁰ It pointed to insufficient reception capacity, particularly for unaccompanied children, and an increase in child detention. Since then, in most areas FRA has observed significant efforts to address existing gaps, although more needs to be done. The reception situation for children remains particularly challenging, as described in the ‘Dignified reception of children’.

The UN Committee on the Rights of the Child has been able since 2018 to review individual complaints from State Parties that ratified the relevant

optional protocol to the CRC (by the end of 2022, 17 EU Member States had done so).¹⁵¹ It is receiving an increasing number of complaints that relate to reception, age assessment or return of migrant children.¹⁵²

Children fleeing Ukraine access decent reception conditions relatively easily

Children displaced from Ukraine were generally provided with access to appropriate accommodation and basic reception conditions (but see subsection ‘Challenges in providing education to migrant children are growing’).¹⁵³

Member States also assisted unaccompanied children from Ukraine arriving on their own, with adults who were not their parents or guardians, or as part of groups of children who had been living in institutions for children without parental care in Ukraine. This last group represented a unique situation and required new approaches by Member States as regards their care and follow-up.

Children arriving in a group from Ukrainian institutions, often with disabilities, were usually accompanied by their own Ukrainian guardian. Member States’ approaches differed. Most Member States kept all children from the same institution in the same reception facility. Some Member States just recognised the legal guardianship of the accompanying Ukrainian guardian (usually a member of the care staff of the institution), while others also appointed a separate additional guardian from the receiving Member State.¹⁵⁴ Member States took most decisions in this regard in coordination with Ukrainian authorities – again, a unique situation.

Advances are notable in guardianship for unaccompanied children

Guardianship is a key element in the protection of unaccompanied children, a principle that is embedded in EU law.¹⁵⁵ In 2022, a FRA report on guardianship analysed legal and policy changes since 2014.¹⁵⁶ It found that legislative changes

FRA ACTIVITY

Guardianship systems for unaccompanied children in the European Union: Developments since 2014



In 2015 and 2016, the numbers of unaccompanied children arriving in Europe increased dramatically, straining national guardianship systems. This FRA report looks at how EU Member States, as well as North Macedonia and Serbia, have adapted their guardianship systems for unaccompanied children since that time.

See FRA (2022), **Guardianship systems for unaccompanied children in the European Union: Developments since 2014**, Luxembourg, Publications Office.

have taken place in 17 Member States, strengthening guardianship systems and making them more independent. States have also taken measures to limit the number of children assigned to each guardian. In recent years, some Member States, such as Germany, Greece and Italy, have substantially reformed their guardianship system.

International and European bodies continue, however, to note weaknesses in guardianship systems. For example, the CRC Committee has recommended in concluding observations the strengthening and/or appointment of guardians in Croatia¹⁵⁷ and in Germany.¹⁵⁸ The committee has also expressed serious concerns about the lack of legal representation in Cyprus¹⁵⁹ and the delays in activating the guardianship system in Greece.¹⁶⁰ The Council of Europe Commissioner for Human Rights identified shortcomings in the system of guardianship for unaccompanied children during her visit to Austria in December 2021.¹⁶¹

Challenges in providing education to migrant children are growing

FRA's research has shown the difficulties that migrant and asylum-seeking children face in relation to education: no capacity in schools, lack of knowledge of the local language and difficulties in continuing their studies beyond compulsory education are some of the challenges that they encounter.¹⁶²

Children displaced from Ukraine also had difficulties in integrating into schools, and many (29 %) followed online schooling from Ukraine rather than attending school in the host country, according to FRA's survey.¹⁶³ Almost one third of the children who took part in the survey had not attended a language course in the host country.

The European Commission has published recommendations to Member States on displaced children from Ukraine in education,¹⁶⁴ which could also apply to asylum-seeking children from other third countries: collect data and assess needs; expand capacity; remove administrative, legal, financial or practical barriers; carry out competence assessments of newly arrived children; create temporary reception classes; and provide access to digital resources. Member States could draw on the resources available under the European Child Guarantee¹⁶⁵ to cater for the educational needs of all third-country national children, as required by the Reception Conditions Directive.¹⁶⁶



Age assessments have improved, but challenges remain

When the age of an undocumented child is disputed, assessing his or her age is a precondition for triggering the child-specific safeguards provided for in EU law.¹⁶⁷

The Committee of Ministers of the Council of Europe adopted a new recommendation on age assessment in December 2022.¹⁶⁸ Among a set of nine principles, it includes the principle of presumption of minority for people undergoing age assessment and requires states to implement multidisciplinary and evidence-based age assessment procedures.

In spite of progress on applying age assessment procedures in a fundamental rights-compliant manner, FRA has noted two issues that require further attention, namely:

- the use of unreliable and intrusive methods, as reported for example in Greece¹⁶⁹ and Cyprus;¹⁷⁰
- the treatment of people undergoing age assessments as adults pending the outcome of the procedure, as reported in Malta in relation to new arrivals¹⁷¹ and in France in relation to those in detention.¹⁷²

Some children still go missing

Poor reception conditions, lack of accommodation opportunities and the presence of relatives or family friends in other countries are factors that contribute to children going missing and to an increased risk of their becoming victims of trafficking in human beings.

For example, in Croatia unaccompanied children remain in the country for three weeks on average before they travel irregularly to another country, with the consequent risk that they will become victims of traffickers or smugglers.¹⁷³ The CRC Committee¹⁷⁴ and civil society¹⁷⁵ point to the persistent practice of placing unaccompanied children – who have not committed a crime – in centres for children in conflict with the law. In 2022, 282 unaccompanied children were registered in Croatia by social services, while by the end of 2022 only 16 remained.¹⁷⁶

In 2021, 263 migrant children were reported missing in the Canary Islands,¹⁷⁷ and the media reported cases of children paying €1,000 to be smuggled to mainland Spain.¹⁷⁸ In Lithuania, 506 children were registered as missing in 2021.¹⁷⁹

In 2022, the Hungarian National Police reported 41 missing third-country national children to the Schengen Information System; 14 of them were under 14 years of age.¹⁸⁰

In Italy, 629 unaccompanied children were registered as missing in December 2022, according to the Ministry of Labour.¹⁸¹ There are no comparable EU-wide data on missing unaccompanied children.¹⁸²

FRA opinions and reports underline that IT systems – if accompanied by other measures – can help in detecting and protecting child victims of trafficking or in tracing unaccompanied children who have gone missing. But IT systems and their interoperability may result in negative consequences for children. For example, fingerprints taken at a young age may not be reliable when used years later. The proposal for a revised Eurodac Regulation suggests lowering the age at which migrants' fingerprints have to be collected from 14 to 6 years. Under the 2013 Eurodac Regulation,¹⁸³ only children over 14 years old are registered in Eurodac.

When a child goes missing, they should be registered in the Schengen Information System. Research shows, however, that this does not always happen

Legal corner

Age assessment in European and national case law

The ECtHR ruled on age assessment in 2022 for the first time in *Darboe and Camara v. Italy* (No. 5797/17, 21 July 2022). According to the Court, the Italian authorities had wrongly assessed the child's age on his arrival with a consequent impact on his reception conditions. The Court found a violation of Article 3 ('Prohibition of torture'), Article 8 ('Right to respect for private and family life') and Article 13 ('Right to an effective remedy') of the ECHR.

In Spain, the Constitutional Court examined a case regarding appealing against age assessment decisions. The court considered that the possibility of challenging an age assessment decision was a requirement for the right to effective judicial protection to be upheld.*

** Spain, Ministry of the Presidency, Relations with the Courts and Democratic Memory, First Chamber, Judgment 130/2022 of 24 October 2022, Appeal No. 2744-2019 (Sala Primera. Sentencia 130/2022, de 24 de octubre de 2022. Recurso de amparo 2744-2019), Official State Gazette, 1 December 2022.*

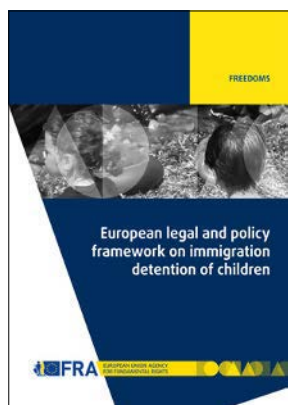
Legal corner

Right to liberty

A person's right to liberty is enshrined in Article 6 of the Charter, in Article 5 of the ECHR and in several UN human rights instruments.

FRA ACTIVITY

European legal and policy framework on immigration detention of children



Up to one third of migrants arriving in the EU since the summer of 2015 have been children. The emphasis on speedier asylum processing and making returns more effective may trigger increased use of immigration detention, possibly also affecting children.

The detention of children implicates various fundamental rights and will only be in line with EU law if limited to exceptional cases. This report aims to support practitioners in implementing relevant policies in line with applicable law by outlining available safeguards against unlawful and arbitrary detention and highlighting promising practices.

See FRA (2017), **European legal and policy framework on immigration detention of children**, Luxembourg, Publications Office.

in practice. In future, as interoperability increases, it will be possible to link the two entries in Eurodac and the Schengen Information System and make better use of such information to protect missing children.

Despite progress, child detention remains a concern

Immigration detention of children remains a fundamental rights challenge. Although EU law does not prohibit immigration detention of children, the strict requirements flowing from the Charter and secondary EU law mean that deprivation of liberty is lawful only in exceptional cases, as the 2017 FRA report shows (see FRA Activity).

Member States' experiences show that it is possible to replace detention of children with alternative solutions. For example, Greece ended the 'protective detention' of unaccompanied children with the adoption of Law 4760/2020.¹⁸⁴ A new system, the National Emergency Response Mechanism, replaced child detention.¹⁸⁵

Immigration detention of children still occurs in the EU and not only in exceptional situations, as human rights bodies at the UN, the Council of Europe and national level have noted. In practice, children may be detained for two different reasons: for identification and registration, and because their removal is pending.

- First, newly arrived children may be held during identification and registration procedures or while age assessment is pending, as is done for example in Malta.¹⁸⁶ The UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment criticised Bulgaria for its practice of 'attaching' unaccompanied migrant children to non-family adults, detaining them together.¹⁸⁷ Deprivation of liberty of asylum-seeking children during first registration and identification has emerged as an issue also in the Pournara camp in Cyprus¹⁸⁸ and in initial reception facilities in Greece.¹⁸⁹ The ECtHR condemned Hungary in 2022 for the unlawful detention of a family with three children and a pregnant mother in the Tompa transit zone.¹⁹⁰
- Second, children with their families are detained pending removal. The CRC Committee has criticised the detention of children in the concluding observations adopted in 2022 and 2023 on Germany,¹⁹¹ the Netherlands¹⁹² and Sweden.¹⁹³ It also criticised Belgium over the pre-removal detention of migrant children in two individual complaints examined in 2022.¹⁹⁴ In both cases, the committee considered that the deprivation of liberty of children for reasons related to their migratory status – or that of their parents – was disproportionate and therefore arbitrary within the meaning of Article 37 (b) of the CRC.

According to the United Nations Children's Fund (UNICEF), more than 33,000 children have been placed in detention in France since 2012, the large majority in Mayotte.¹⁹⁵ Mayotte remains the location with the highest number of children in immigration detention in the EU. In 2021, 3,135 children were detained there before their removal.¹⁹⁶ The French Defender of Rights denounced the practice of assigning children to adults with no parental authority over them, with a view to placing them in administrative detention and removing them from the territory, and reported cases of birth dates being modified to enable the treatment of teenagers as adults.¹⁹⁷ The execution of an ECtHR judgment on child detention in Mayotte is pending.¹⁹⁸ In response to these criticisms, the French Ministry of the Interior announced in December its intention to end the administrative detention of migrant children as part of a proposed immigration law to be discussed in parliament in 2023.¹⁹⁹

Bright spots

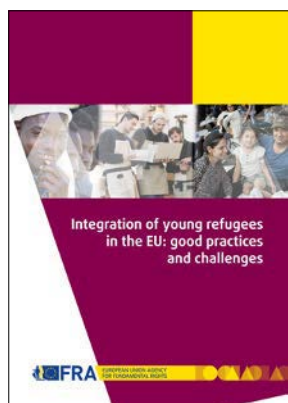
Informing regional courts about the detention conditions for families in guarded centres

In an effort to prevent the administrative detention of children, which remains a regular occurrence in Poland, the Polish Commissioner for Human Rights has written to the presidents of 22 competent regional courts. In the letter, the commissioner details detention conditions and the fundamental rights challenges relating to the detention of families with children and unaccompanied children. He makes several recommendations, including the use of alternatives to detention, treating detention as a measure of last resort and allowing it only for the minimum time necessary, and considering any placement in a guarded centre, even if adapted to children, as placement in a penitentiary unit.

For more information: Polish Commissioner for Human Rights (2022), 'Migrant families with children should not be sent to guarded centres, Marcin Wiącek writes to Polish courts' ('Do strzeżonych ośrodków nie powinny trafiać m.in. rodziny migrantów z dziećmi. Marcin Wiącek pisze do polskich sądów').

FRA ACTIVITY

Integration of young refugees in the EU: Good practices and challenges



Over 2.5 million people applied for international protection in the 28 EU Member States in 2015 and 2016. Many of those who were granted some form of protection are young people, who are likely to stay and settle in the EU. FRA interviewed some of them, as well as professionals working with them in 15 locations across six EU Member States: Austria, France, Germany, Greece, Italy and Sweden.

This report presents the results of FRA's fieldwork research, focusing on young people between the ages of 16 and 24. It looks at the challenges the young people face and highlights good integration practices in the six EU countries covered.

See FRA (2019), **Integration of young refugees in the EU: Good practices and challenges**, Luxembourg, Publications Office.

Migrant and refugee integration: strengthened EU legal framework, but challenges remain

The EU has put in place several legal and financial instruments to support integration efforts. Key EU legal instruments include the Racial Equality and Employment Equality Directives (Directives 2000/43/EC and 2000/78/EC, respectively), and directives related to legal migration, such as the Long-Term Residence Directive (Directive 2003/109/EC) and the Family Reunification Directive (Directive 2003/86/EC).

In its *Action Plan on integration and inclusion 2021–2027*, the European Commission highlighted that integration and inclusion are key for people coming to Europe, for local communities, and for the long-term well-being of European societies and the stability of European economies. At the same time, the Commission recognised the existence of persistent challenges in relation to employment, education, access to basic services and the social inclusion of migrants.²⁰⁰

FRA's research on the integration of young refugees into the EU has shown that successful integration involves multiple interconnected factors. Extended legal uncertainty, being separated from family members, unstable housing conditions, language difficulties, interrupted social support, mental health issues, and limited educational and training opportunities all present hurdles to integration (see FRA Activity).

Early action on refugee integration is still limited

According to the European Commission's *Action Plan on integration and inclusion 2021–2027*, successful migrant integration requires early action and long-term investment. Providing support to migrants and refugees, and their receiving communities, at the earliest possible moment in the migration process is essential.²⁰¹

That accessing rights and services such as employment, housing, social welfare and education from the outset is key for the integration process can be seen from the case of the millions of people displaced from Ukraine and benefiting from temporary protection. For example, nearly six out of 10 respondents to a FRA survey were, a few months after arriving in the EU, staying in a private apartment or house.²⁰² This increases their interaction with the local communities and facilitates social inclusion.

FRA's research findings show that substandard reception conditions upon arrival can have long-lasting consequences and a negative impact on refugees' future integration and that accommodation in private housing can improve integration.²⁰³

The support provided to asylum applicants at reception and during the asylum procedure impacts on their integration prospects, too. Some Member States, for example Greece, have adopted action plans that include pre-integration activities targeting asylum applicants.²⁰⁴ However, asylum applicants still face legal and practical obstacles that significantly delay the start of their integration process.

Waiting periods and other limitations on accessing employment are some of the challenges that applicants for international protection face. Member States apply different practices concerning the access of applicants of international protection to the labour market. For example, in Greece²⁰⁵ and Poland²⁰⁶ access to the labour market is granted six months after the lodging of the asylum application. In Italy,²⁰⁷ it is granted after 60 days, while in Lithuania²⁰⁸ the waiting period is 12 months. On the other hand, in some Member States, for example in Cyprus, Italy²⁰⁹ and Poland,²¹⁰ there are no waiting times for applicants of temporary

protection to access employment. Cyprus allows asylum applicants access to specific sectors of the labour market and to specific occupations within these sectors.²¹¹

Search for lasting solutions for people displaced from Ukraine is only beginning

A significant proportion of the almost 4 million people displaced from Ukraine who benefit from temporary protection in the EU are likely to stay. According to a FRA survey carried out in August and September 2022, about one third of those interviewed intended to stay. Their temporary protection status will expire at the latest in March 2025. As most people displaced from Ukraine are women and children, it is likely that arrivals will increase even further, as male family members may want to join them, depending on the situation in Ukraine. The EU and its Member States have less than two years to decide on what action to take in this regard.

A key question is whether temporary protection status holders should be channelled through asylum procedures, and thus directed towards a protection-based status, or whether other residence permits (e.g. for migrant workers, students, long-term residents) should be used. Becoming asylum applicants would entail significant limitations on their rights, creating further obstacles to their integration. This and the large size of the population mean that applying individual procedures to determine refugee status does not appear to be easily feasible. Regular migration residence permits, such as those granted to students or migrant workers, although available, may in some cases not be accessible – meaning that people displaced from Ukraine may not fulfil all necessary conditions to apply. In addition, other residence options may not be attractive, as in some cases they would result in discontinuation of social benefits, on which many Ukrainians are dependent. There has been no comprehensive research on which national residence permits might provide viable options to offer them a sufficiently secure situation while avoiding too much bureaucracy.

Discrimination and hate crime prevent integration

Article 21 of the Charter and secondary EU law (namely the Racial Equality Directive), which also apply to third-country nationals, protect against discrimination on the grounds of race and ethnic origin in all areas, including employment and access to goods and services. The Council Framework Decision on Racism and Xenophobia (Decision 2008/913/JHA) sets out a common criminal law approach to forms of racism and xenophobia that amount to hate speech and hate crime.

Despite the adoption of anti-discrimination legislation and policies, discrimination on the ground of ethnic or immigrant background, as well as potentially related characteristics, such as skin colour and religion, persist in the EU, the results of FRA's second European Union Minorities and Discrimination Survey show.²¹² Four out of 10 respondents (38 %) had felt discriminated against in the five years before the survey because of their ethnic or immigrant background in one or more areas of daily life, and one in four (24 %) had experienced this in the 12 months preceding the survey.

Visible signs of difference – such as skin colour, physical appearance, or wearing traditional or religious clothing (e.g. a headscarf) in a public space – trigger high levels of unequal treatment for people of African descent, Roma and Muslim women across the EU. Overall, respondents with sub-Saharan or North African backgrounds – and in particular second-generation respondents – experience higher rates of discrimination, harassment and violence based on ethnic or immigrant background.

Legal corner

Infringement procedures on the Reception and Qualification Directives

The European Commission has initiated legal action against Greece, Portugal and Spain for failing to adequately transpose the provisions of the Reception Conditions Directive (Directive 2013/33/EU). The Commission has also opened **infringement procedures** relating to the Qualification Directive (Directive 2011/95/EU) against Finland, Greece and Portugal.

Source: European Commission (2023), 'January infringements package: Key decisions', Press release, 28 January 2023.



Nonetheless, the majority of respondents feel strongly attached to the country they live in and show high levels of trust in their country's public institutions, including its legal system and the police. However, respondents who have experienced ethnic or racial discrimination, hate-motivated harassment or violence show significantly lower levels of trust and feel less attached to the country in which they live. These findings show that a failure to deliver effective protection from discrimination and hate crime can undermine integration and social inclusion policies, affecting the social cohesion of European societies.²¹³

In Italy, of the 1,379 cases of discrimination reported to the national equality body in 2021, 709 (51 %) were on grounds of racial and ethnic discrimination; 499 of the victims were foreigners.²¹⁴ In Belgium, the number of complaints about racial discrimination filed to the national equality body by people of African descent has increased by 20.8 % over the past five years.²¹⁵ The complaints mainly concerned access to employment, goods and services. In Austria, a survey found that two out of five migrants from Afghanistan, Russia, Syria or Türkiye experienced discrimination at least occasionally.²¹⁶ Discrimination in the areas of employment (in the workplace or when looking for work) and education was more widespread, with 33 % of respondents from Serbia and 48 % of respondents from Syria reporting having experienced discrimination.

Hate crime incidents also persisted in 2022. For example, in Sweden, Afrophobia is the most common motive for reported hate crimes. These included attacks by strangers, threats and violence at school, harassment from neighbours, hate crime in the workplace and hatred towards black people as a group.²¹⁷

At the very end of 2022, a deadly shooting at a Kurdish cultural centre in Paris resulted in three deaths. The suspect expressed 'hatred for foreigners', which led the prosecutor to investigate a racist motive. The same attacker was awaiting trial for a sabre attack on a migrant camp in Paris a year previously.²¹⁸

In Italy, in July 2022, a Nigerian street vendor was beaten to death in the central region of Marche.²¹⁹ Investigators ruled out a racist motive, citing the suspect's psychiatric problems, yet campaigners continue to contest this decision and argue that prejudice was at play.²²⁰

Two violent attacks were documented in Cyprus through video footage recorded by onlookers, against an African woman holding her baby, as reported by the Ombudsman,²²¹ and against a Pakistani student, as reported in the media.²²²

Administrative barriers hinder refugee integration

To be able to start their lives in a new country, international protection beneficiaries need to have the necessary documentation and complete certain formalities. This can be very challenging when bureaucratic procedures are long, complex and cumbersome.

In Greece, recurrent delays in issuing residence permits and other necessary documentation prevent recognised refugees from having timely access to the labour market,²²³ and complicated administrative procedures impede their access to social benefits. The delays in issuing or renewing permits can reach several months, or even a year in some cases. There are a variety of reasons for this, including a backlog of pending applications and slow processing.²²⁴

Difficulties in opening a bank account have also been reported in Member States. For example, in some Romanian cities, refugees of certain nationalities were declined banking services for security reasons or were required to meet several conditions (e.g. having a residence permit, a passport from the country of origin, proof of a stable income and knowledge of Romanian) to be permitted to open a bank account.²²⁵

The arrivals of Ukrainian nationals attracted renewed attention to long-standing issues concerning recognition of qualifications, which is vital for integration into the labour market.²²⁶ In April 2022, the European Commission issued recommendations on facilitating the recognition of qualifications for refugees from Ukraine²²⁷ and announced a new legislative initiative to facilitate recognition of qualifications more generally. One of the recommendations from the Commission was to reduce formalities to a minimum. FRA research on long-term residents in the EU shows that a lack of information and complex, long and costly procedures are serious obstacles to having qualifications obtained abroad recognised.²²⁸

Obstacles to family reunification impede social inclusion

Family reunification is recognised as one of the key mechanisms for better integration of immigrants. For refugees, the absence of family members and worries about their well-being hinder effective participation in daily life – including language courses, school and training, and finding a job.²²⁹

The Family Reunification Directive (Directive 2003/86/EC) lays down the right for third-country nationals legally residing in an EU Member State to be joined by their family members staying outside the EU. In the light of refugees' special circumstances, refugees can bring family members under more favourable conditions than other third-country nationals.²³⁰

Legal and practical barriers are making family reunification increasingly difficult. In some Member States, such as Cyprus,²³¹ Greece²³² and Malta,²³³ beneficiaries of subsidiary protection are not entitled to bring their family members.²³⁴ Austrian law still provides for a three-year waiting period before beneficiaries of subsidiary protection become eligible to apply for family reunification,²³⁵ although the ECtHR found in 2021 that similar rules violated the right to family unity in a Danish case.²³⁶

Member States take different approaches to what constitutes a family, with some using a narrow definition of 'family member'.²³⁷ Member States including Austria, Cyprus, France, Germany, Hungary, the Netherlands, Romania, Slovenia and Sweden allow reunification only where the family relationship was formed before entry into the country.²³⁸

A lack of information and the long duration and complexity of family reunification procedures are some of the practical obstacles that people face

Legal corner

Right to family life

The EU Charter of Fundamental Rights protects family life and family unity under Articles 7, 9 and 33.

when they want to bring their families. Another major challenge is accessing diplomatic missions in non-EU countries, particularly if there is no diplomatic representation in a particular country.²³⁹ The costs of a family reunification application and of supporting a family on their way to Europe were considered major obstacles to family reunification by young refugees, a FRA report found.²⁴⁰

EU long-term residence status remains underutilised

The Long-Term Residence Directive is a key EU legal instrument supporting the integration of third-country nationals into EU Member States. It gives long-term residents in the EU a secure residence status, grants rights similar to those of EU citizens and enables them, under certain circumstances, to move within the EU.

Although this status should be accessible to immigrants after five years of residence in a Member State, a European Commission evaluation and FRA research have found that various barriers prevent many third-country nationals from obtaining it and, when they succeed, it usually takes significantly longer than five years. Obstacles concern, for example, difficulties in proving income and continuous residence over five years. Long-term residents also experience barriers to enjoying their right to intra-EU mobility.²⁴¹



Immigration detention: despite robust EU law standards, problems persist

According to Article 6 of the Charter, everyone has the right to liberty and security of person. While EU Member States can detain asylum applicants and returnees under certain circumstances, they need to respect their fundamental rights and safeguards, as provided for in the EU asylum and return *acquis*. If this is not done, deprivation of liberty becomes arbitrary and unlawful.

Fundamental rights safeguards relating to immigration detention continued to be undermined in 2022. Problems included lack of individual assessment of the necessity and proportionality of the deprivation of liberty, prolonged detention periods without reasonable prospect of removal, inadequate detention conditions, alleged ill treatment by guards and lack of separation of vulnerable people (on children in detention, see section 'Children in migration').

In addition to numerous reports from international organisations, ombuds institutions and NGOs, Council recommendations on addressing deficiencies identified during Schengen evaluations have also pointed out several detention-related shortcomings in Member States.²⁴² Owing to persistent problems, the European Commission opened infringement procedures in September 2022 against Belgium, Germany, Greece and Spain for failing to comply with the Return Directive.²⁴³

Litigation at European level resolves some cases

In 2022 and early 2023, the ECtHR rendered several rulings that found that the detention of asylum seekers (including families seeking asylum) lacked an appropriate legal basis and hence was unlawful.²⁴⁴ Similarly, since the entry into force of the Return Directive the CJEU has delivered more than 30 rulings interpreting it – many of them concerning detention.²⁴⁵ Some Member States have changed their detention practices, such as Hungary (which has closed down the transit zones at the Hungarian-Serbian border)²⁴⁶ and Lithuania (which is making legislative changes to end automatic detention of new arrivals).²⁴⁷

Safeguards against arbitrary detention are not always applied

European human rights law prohibits automatic immigration detention. An individual examination, with due process guarantees, is required when ordering immigration-related detention. This examination must assess if deprivation of liberty is necessary and proportionate in the individual case.²⁴⁸ In addition, detention pending removal must be maintained only as long as removal arrangements are in progress, and these arrangements must be executed with due diligence.²⁴⁹

Nevertheless, automatic detention of all irregular arrivals without examining its necessity and proportionality continued in Greece (mainly in the Fylakio pre-removal centre for those who have irregularly crossed the Greek-Turkish land border via the Evros River)²⁵⁰ and the Netherlands (where all migrants are deprived of liberty upon arrival for up to two weeks).²⁵¹

At times, domestic judges intervened. For example, the Supreme Court in Cyprus ordered the release of a Syrian asylum applicant who had been detained for reasons of 'national security or public order' based on his activities on social media, arguing that the authorities had failed to prove the necessity of the individual's detention for 14 months.²⁵²

In practice, the main reason for locking up asylum applicants and returnees is to prevent absconding, either upon arrival at the border or during asylum or return

Legal corner

Legal grounds for detention

The Reception Conditions Directive (Directive 2013/33/EU), the Dublin Regulation (Regulation (EU) No. 604/2013), and the Return Directive (Directive 2008/115/EC) provide an exhaustive list of grounds based on which an individual may be detained.

procedures. In recent years, several Member States have resorted to depriving more people of their liberty with the aim of increasing the effectiveness of return policies – even when there is no reasonable prospect of removal. For instance, in Greece, Afghan nationals remained in detention even though returns to Afghanistan have been halted since August 2021.²⁵³

Despite these efforts, actual numbers of forced returns remained low,²⁵⁴ essentially owing to the lack of cooperation by the authorities of the destination countries (e.g. in identifying their own nationals and issuing travel documents) and to COVID-19-related restrictive measures.

Lack of specialised detention facilities and inadequate detention conditions persist



Asylum applicants and returnees must as a rule be placed in specialised detention facilities.²⁵⁵ Yet inadequate conditions have been observed in certain detention and/or pre-removal facilities in several Member States. These include Cyprus (where the authorities started detaining people in police holding cells due to overcrowding in the Menoyia detention facility), France (where people being held in waiting areas in seaports, airports and train stations continued to be a concern),²⁵⁶ Greece (in particular in the Tavros, Amygdaleza and Kos closed facilities)²⁵⁷ and Italy (in Lampedusa and at pre-removal centres on the mainland),²⁵⁸ as well as Lithuania,²⁵⁹ Poland²⁶⁰ and Spain.²⁶¹ Inhumane treatment by the authorities was reported in Spain (together with failure to investigate alleged police violence against detainees)²⁶² and Lithuania,²⁶³ and in Poland inadequate living conditions and prolonged stays in detention centres resulted in several protests and hunger strikes.²⁶⁴

Obstacles hinder access to information and asylum procedures for detainees

Detained asylum applicants and returnees must be provided with information on their rights and obligations,²⁶⁵ including on seeking asylum. To ensure that they have access to justice, they are also entitled to free legal assistance and representation under certain conditions.²⁶⁶

Obstacles to obtaining information and/or legal aid were reported by various sources in Croatia (in the case of a group of around fifty detained Chechens),²⁶⁷ Cyprus (especially in the pre-removal centre at Limnes, to which NGOs and lawyers were also denied entry),²⁶⁸ Greece (where judicial review also remained ineffective, owing in part to flaws in the nature of the remedies against detention),²⁶⁹ Italy (notably in the detention and return centre at Caltanissetta),²⁷⁰ Lithuania (where written detention orders were not even issued, at least not before the CJEU's ruling in *M.A. v. Valstybės sienos apsaugos tarnyba* (C-72/22 PPU)) and Poland.²⁷¹

Issues with accessing the asylum procedure while detained in Centres for the Temporary Assistance of Foreigners emerged in Spain.²⁷² UNHCR has also informed FRA of a related new phenomenon in Cyprus, documented by UNHCR

in hundreds of cases, namely that lawyers who have been assigned to rejected asylum applicants awaiting removal do not turn up at court hearings.²⁷³

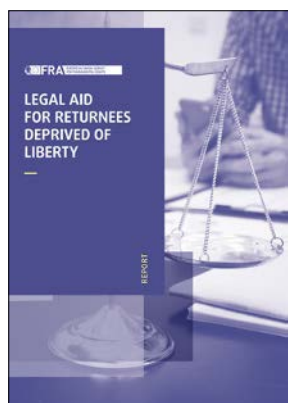
Alternatives to detention remain underused

Detention should always be a measure of last resort, applied after an individual assessment in each case and only if less coercive measures (alternatives to detention) cannot be applied effectively.²⁷⁴ Asylum applicants must not be detained only because they are seeking international protection, as the CJEU confirmed in 2022.²⁷⁵ Less intrusive alternatives to detention reduce the risk of excessive – and hence arbitrary – deprivation of liberty.

Official statistics on the application of such measures and the types of alternatives used are scarce. Available information indicate that several Member States do not frequently use alternatives to detention, owing to fear of migrants absconding. Recommendations made following Schengen evaluations reveal shortcomings in Belgium, Italy and Slovenia.²⁷⁶ In Croatia, alternatives to detention are not applied to migrants in an irregular situation, according to the Ombudsperson;²⁷⁷ rather, they are applied only to asylum applicants, with a view to implementing the ECtHR ruling in *M.H. and Others v. Croatia* (No. 15670/18).²⁷⁸ In Poland, the Human Rights Commissioner has noted that the authorities do not make sufficient use of alternatives to detention for families with minor children, for unaccompanied children²⁷⁹ or for victims of torture.²⁸⁰

FRA ACTIVITY

Legal aid for returnees deprived of liberty



This FRA report outlines to what extent legal aid is available to those held in pre-removal detention in the 27 EU Member States, and in North Macedonia and Serbia, during procedures related to their return. These involve decisions on return, on detention pending removal, the removal itself and bans on entry. The report also examines when people are entitled to free legal aid and how this aid is funded, as well as who provides representation and various factors that limit the scope of legal aid.

See FRA (2021), **Legal aid for returnees deprived of liberty**, Luxembourg, Publications Office.

Return procedures: procedural safeguards are insufficiently implemented

Those who do not have (or no longer have) the right to stay in the EU are often detained in preparation for removal. Individuals in the removal process must be treated in a safe, dignified and humane manner. Article 19 (2) of the Charter (on protection in the event of removal, expulsion or extradition) and the Return Directive (Articles 5 and 9 (1)) require Member States to implement return procedures in full respect of the principle of non-*refoulement*.

Forced returns are mainly regulated by the Return Directive, whereas the Frontex Regulation (Regulation (EU) 2019/1896) governs the return-related activities carried out by that agency and Council Decision 2004/573/EC applies to coordinated joint removals by air. The Return Directive, while giving priority to voluntary departure, requires forced returns to be carried out with due respect for the dignity and the physical integrity of the person concerned.

In an annex to the 2004 Council Decision, the common guidelines on security provisions for joint removals by air also provide guidance on, among other things, medical issues, the training and conduct of escort officers, and the use of coercive measures.²⁸¹ Complementing the internal dimension of EU return policy, work on concluding and/or updating readmission agreements and other non-legally binding arrangements with third countries continues.²⁸²

In addition to numerous reports from international organisations, ombuds institutions and NGOs, Council recommendations on addressing deficiencies identified during Schengen evaluations have also pointed out several return- and detention-related shortcomings. Owing to some persistent problems, the European Commission opened infringement procedures in September 2022 against Belgium, Germany, Greece and Spain for failing to comply with the Return Directive.²⁸³

Gaps remain in assessing risk of return to serious harm (non-*refoulement*)

Together with Article 19 (2) of the Charter (on protection in the event of removal, expulsion or extradition), the Return Directive (Articles 5 and 9 (1)) requires Member States to implement return procedures in full respect of the principle of non-*refoulement*.

Practices and administrative procedures in some Member States do not always guarantee the strict observance of the prohibition of *refoulement*, which is an absolute right under which no derogation is allowed.²⁸⁴ For instance, France stepped up the issuance of return decisions to all migrants apprehended in an irregular situation, without an examination of the individual circumstances and any possible legal or practical bars to removal, including *refoulement* risks.²⁸⁵

Similarly, the principle of non-*refoulement* was not adequately assessed in return procedures in Poland, particularly in the case of Kurds from Iraq, who may fear retribution upon return for their involvement in fighting against the Islamic State of Iraq and Syria.²⁸⁶

Another issue arises when negative asylum decisions are merged with the return decision in one single act, in which case an assessment of the risks of *refoulement* based on general human rights considerations may not take place. Planned legislative reforms in Croatia²⁸⁷ on safe countries of origin may also give rise to a heightened risk of *refoulement*.²⁸⁸

In Hungary, despite a December 2020 ruling of the CJEU,²⁸⁹ the police continued to escort all apprehended migrants back to the outer side of the fence at the southern border. In this judgment, the CJEU ruled, among other things, that

Hungary had failed to fulfil its obligations under EU law in that it had returned third-country nationals without observing the guarantees set out in the Return Directive. In response, Frontex suspended its operational activities in Hungary at the end of January 2021 (except for return operations by air from within the territory),²⁹⁰ and the European Commission referred Hungary back to the CJEU for failing to implement the judgment.²⁹¹

Pursuant to the Return Directive, voluntary departure is preferable to forced return, and not only from a fundamental rights point of view. It is also cheaper and more dignified.

In some instances, the line between offering advice on voluntary departure and pressurising individuals to sign up for return is blurred, as reported to FRA by UNHCR and the Cyprus Refugee Council in relation to people staying in the Pournara camp.²⁹² Similar coercive practices have been reported by Amnesty International in Lithuania with regard to those who are detained and pushed into returns labelled ‘voluntary’.²⁹³

People are turned back at EU internal borders

EU Member States in southern Europe and along the Balkan route increasingly used intra-EU bilateral readmission agreements²⁹⁴ to pass back to a neighbouring Member State people whom they have apprehended in connection with their irregular crossing of an internal border. Article 6 (3) of the Return Directive allows this for migrants in an irregular situation (provided that a readmission agreement existed before 2009²⁹⁵). In contrast, for asylum applicants the transfer procedure set out in the Dublin Regulation must be used.

In the recent past, some national courts – for example in France, Italy and Slovenia²⁹⁶ – have issued decisions reaffirming the duty to respect the right to asylum and the prohibition of *refoulement* in intra-EU situations. These rulings show the importance of respecting individuals’ right to be heard and to be formally notified of decisions taken against them – as general principles of EU law require.

Proposed amendments to the Schengen Borders Code seek to introduce the possibility of transferring irregular migrants apprehended at an internal border to a neighbouring Member State as part of cross-border police cooperation.²⁹⁷ This entails potential risks of *de facto* detention pending the transfer of apprehended migrants and of possible harm after transfer, if there is no possibility for the person in question to request that the implementation of the transfer be suspended until it has been reviewed by a judge. The proposal also envisages the removal of the standstill clause on the use of bilateral intra-EU readmission agreements for such transfers, which meant that no new instruments could be applied after the entry into force of the Return Directive.²⁹⁸

Monitoring of forced returns has become established practice, but gaps remain

The Return Directive requires forced returns to be carried out with due respect for the dignity and the physical integrity of the person concerned (Article 8 (4) and (5)).

Pursuant to Article 8 (6) of the Return Directive, Member States must provide for an effective forced return monitoring system. Since 2014, FRA has been publishing an annual update on forced return monitoring systems in EU Member States.²⁹⁹ Although all EU Member States have some form of forced return monitoring by law, in practice gaps persist. When the main monitoring entity is closely connected to the authority responsible for returns, as in Germany and Sweden, oversight may not be sufficiently independent. In Belgium, Bulgaria,

Bright spots

Cooperation between Italy and Georgia on forced return monitoring

The forced return monitoring body in Italy, the National Guarantor for the Rights of Person Detained or Deprived of Liberty, and its counterpart in Georgia signed a cooperation agreement to enable monitoring of the entire journey of removed individuals, including the post-arrival phase in the destination country. The first joint monitoring mission took place in April 2022.

See *National Guarantor for the Rights of Persons Detained or Deprived of Liberty (2022)*, ***'Rimpatri forzati: firmato accordo di cooperazione con l'organismo di garanzia della Georgia'*** and ***'Effettuato per la prima volta monitoraggio "a staffetta" di un rimpatrio forzato'***.

Cyprus, Estonia, Lithuania, Portugal and Romania, monitoring predominantly covers the pre-return phase and not the in-flight and post-return phases.³⁰⁰

Developments over the years have also revealed gaps in the implementation of national monitoring systems, particularly where they are project-based or based on temporary agreements between authorities and monitoring entities. Problems can arise when the funding or the agreement ends. Such monitoring gaps caused by a lack of sustainable financing have occurred in Bulgaria, Italy and Lithuania in recent years.

Major issues observed by forced return monitors include a lack of interpreters, a lack of female escorts, no fit-to-fly assessment and irregularities relating to information materials.

As Frontex is becoming an ever more prominent actor in implementing removals, the agency has set up a pool of forced return monitors.³⁰¹ This helps to reduce the risk of rights violations. By the end of 2022, the pool included 60 monitors, all but two affiliated with the national entity in charge of forced return monitoring and formally appointed to the Frontex-governed pool. Last year, the pool, coordinated by the Frontex Fundamental Rights Officer, monitored some 56 % of all Frontex-coordinated forced return operations by charter flight; 100 % of collecting return operations, 71 % of joint return operations and 36 % of national return operations were monitored, according to information from Frontex.³⁰² As these figures show, not all Frontex-coordinated return operations are monitored, despite the requirement that this be done under Article 50 (5) of the Frontex Regulation.



Looking ahead

This is the last migration bulletin in the series. FRA will continue to closely monitor the migration- and asylum-related fundamental rights situation in the EU and provide evidence-based advice to the EU institutions.

One avenue through which FRA will share data and information will be the EU Migration Preparedness and Crisis Management Network, established by the European Commission in September 2020. The network involves EU institutions, the EU's relevant justice and home affairs agencies and Member States. It collects timely and adequate information to ensure situational awareness and better preparedness.

Over the span of nearly eight years, there have been developments in terms of showing respect for the human rights of those who arrive at our borders. Reception conditions in some countries have improved, child protection is now taken more seriously and the child guardianship systems of some countries have been reformed. Asylum procedures have sped up. Independent human rights monitoring at the borders is being developed in some locations. And, in the light of the Russian aggression against Ukraine, we have all shown how a large and sudden influx of people can be managed effectively and respectfully.

Notwithstanding the achievements, in some locations across the EU we confront deplorable practices, such as the pushback of asylum seekers, inadequate search and rescue capacities on the high seas, bad reception conditions, dysfunctional asylum procedures, and poorly designed and implemented integration measures.

FRA makes five suggestions for better dealing with the opportunities and challenges that migration brings:

- First, save lives.
- Second, access to asylum is and must remain a keystone of common European legal heritage.
- Third, open legal pathways for those in need of protection.
- Fourth, strengthen EU monitoring of fundamental rights violations at borders.
- Fifth, use accountability avenues to address allegations of serious violations of fundamental rights.

Timeline

1

September to November

2015

Six EU Member States – Austria, France, Germany, Hungary, Slovenia and Sweden – reintroduce border checks within the Schengen area, mainly due to large numbers of arrivals of asylum applicants; some EU Member State extend the checks until 2023.

18

March

2016

The EU adopts the EU-Türkiye statement, enabling the return to Türkiye of asylum applicants who reach the Greek islands after 20 March.

12

July

In a series of judgments – *A.B. and Others v. France* (No. 11593/12), *R.M. and M.M. v. France* (No. 33201/11), *A.M. and Others v. France* (No. 24587/12), *R.K. and Others v. France* (No. 68264/14) and *R.C. v. France* (No. 76491/14) – the ECtHR holds that France violated the prohibition of inhumane and degrading treatment when detaining children (Article 3 of the ECHR).

9

November

The Council of the EU adopts conclusions on the integration of third-country nationals legally residing in the EU.

30

March

2017

In *Chowdury and Others v. Greece* (No. 21884/15), the ECtHR condemns Greece for not preventing the trafficking and forced labour of 42 Bangladeshi migrants in an irregular situation in Manolada, for not protecting them as victims and for not conducting an effective investigation.

12

April

The European Commission issues a communication on the protection of children in migration.

6

September

In *Slovak Republic and Hungary v. Council of the European Union* (joined cases C-643/15 and C-647/15), the CJEU dismisses the actions brought by Hungary and Slovakia against a mandatory relocation mechanism for asylum seekers from Greece and Italy.

17

November

The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families and the CRC Committee adopt two joint general comments (No. 3 and No. 4) on the human rights of children in migration, calling for a ban on immigration detention of children.

30

November

The EU adopts Regulations (EU) 2017/2226 and (EU) 2017/2225 on the registration of entry and exit data of third-country nationals at border crossing points (EU Entry/Exit System).

7

February

The UN Working Group on Arbitrary Detention adopts its Revised Deliberation No. 5 on deprivation of liberty of migrants.

26

February

The Council of Europe Special Representative on Migration and Refugees publishes a first activity report.

23

March

The Global Migration Group and the UN Office of the High Commissioner for Human Rights publish UN principles and guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations, endorsed by the UN Human Rights Council.

28

June

Conclusions of the European Council set out actions to reduce irregular migration and improve orderly processing of migrants rescued at sea.

12

September

The EU adopts Regulation (EU) 2018/1240 establishing a European Travel Information and Authorisation System.

11

December

A UN intergovernmental conference adopts the UN Global Compact for Safe, Orderly and Regular Migration, which is then endorsed by the UN General Assembly on 19 December.

17

December

The UN General Assembly endorses the Global Compact on Refugees, prepared by UNHCR.

20

May

The EU adopts regulations establishing a framework for interoperability between large-scale EU information technology systems in migration and security (Regulations (EU) 2019/817 and (EU) 2019/818).

13

November

The EU adopts a new regulation on Frontex, further strengthening its powers and creating Frontex fundamental rights monitors (Regulation (EU) 2019/1896).

21

November

In *Ilias and Ahmed v. Hungary* [GC] (No. 47287/15), the ECtHR finds a violation of Article 3 of the ECHR for not adequately assessing the risk of returning a person to Serbia from a Hungarian transit zone.

13

January

2020

In *N.D. and N.T. v. Spain* [GC] (Nos. 8675/15 and 8697/15), the ECtHR finds that the applicants – who had no arguable claim under Article 3 of the ECHR – did not use other means to seek legal entry into Spain. Therefore, the lack of individual removal decisions was because of their own culpable conduct and did not violate the prohibition on collective expulsion under Article 4 of Protocol No. 4 to the ECHR.

25

January

The World Health Organization (WHO) publishes interim guidance on refugee and migrant health in relation to COVID-19 in the WHO European region.

1

February

With the withdrawal of the United Kingdom from the EU, its citizens become third-country nationals.

16

March

The European Commission issues COVID-19 guidelines on border management to protect health and ensure the availability of goods and essential services.

16

April

The European Commission presents guidance on implementing EU rules on asylum, return and resettlement procedures during the COVID-19 pandemic.

23

September

The European Commission presents a new Pact on Migration and Asylum, a package of hard-law proposals and soft-law instruments. It sets out a new approach to migration and asylum, with a stronger focus on border procedures.

17

December

In *European Commission v. Hungary* [GC] (C-808/18), the CJEU finds that the Hungarian law on and practice of escorting apprehended migrants in an irregular situation back to the outer side of the border fence with Serbia, without issuing a return decision or respecting other safeguards, are in breach of the Return Directive (Directive 2008/115/EC). Restricting access to asylum and unlawfully detaining applicants in transit zones constitute infringements of the EU asylum *acquis*.

1

March

2021

The Frontex Management Board Working Group on Fundamental Rights and Legal and Operational Aspects of Operations publishes a report examining alleged incidents of pushbacks in the Aegean Sea.

7

July

The EU adopts new regulations establishing the Asylum, Migration and Integration Fund (Regulation (EU) 2021/1147) and the Border Management and Visa Instrument (Regulation (EU) 2021/1148).

15

July

The European Commission refers Hungary to the CJEU for unlawfully restricting access to the asylum procedure, in breach of the Asylum Procedures Directive, interpreted in the light of Article 18 of the Charter.

27

August

The Frontex Fundamental Rights Officer publishes a first annual report.

16

November

In *European Commission v. Hungary* (C-821/19), the CJEU finds that Hungary infringed EU law by criminalising the actions of any person who provides assistance to individuals lodging an asylum application in its territory.

14

December

The European Commission tables proposals on addressing situations of ‘instrumentalising’ migrants and asylum seekers and amending the Schengen Borders Code (Regulation (EU) 2016/399).

15

December

The EU adopts a regulation establishing a European Union Agency for Asylum (Regulation (EU) 2021/2303).

21

February

UNHCR warns of increasing reports of violence, ill-treatment and pushbacks at Europe’s land and sea borders.

2022

4

March

The EU activates the Temporary Protection Directive (Directive 2001/55/EC) with respect to people fleeing the Russian war of aggression against Ukraine.

30

June

In *M.A. v. Valstybės sienos apsaugos tarnyba* (C-72/22 PPU), the CJEU finds that the measures banning asylum applications by people who entered Lithuania in an unauthorised manner following the declaration of a state of emergency owing to a mass influx of migrants are contrary to the Asylum Procedures Directive (Directive 2013/32/EU) and that the placement of someone in detention for the sole reason that the person is staying irregularly in the territory of a Member State is contrary to the Reception Conditions Directive (Directive 2013/33/EU).

6

July

The EU adopts Regulation (EU) 2022/1190, which extends the type of alerts to include in the Schengen Information System.

7

July

In *Safi and Others v. Greece* (No. 5418/15), which concerns a search and rescue operation of a sinking boat by Greek authorities, the ECtHR rules that the authorities did not take every reasonable measure to comply with their positive obligations under Article 2 (right to life) of the ECHR. They also violated the procedural facet of the right to life owing to the absence of an effective investigation.

1

August

In *I and S v. Staatssecretaris van Justitie en Veiligheid* (C-19/21), the CJEU clarifies that an unaccompanied asylum-seeking child – but not his/her relative – has a right to a judicial remedy against the refusal of a take charge request under the Dublin Regulation.

22

September

In *H.K. v. Hungary* (No. 18531/17), the ECtHR rules that the applicant's subsequent entry to the transit zone does not make the applicant's earlier summary removal upon an irregular entry compliant with Article 4 of Protocol No. 4 to the ECHR (prohibition of collective expulsion).

22

September

The Council of Europe (CoE) Committee of Ministers urges Hungary to reassess the legislative presumption of safe third country in respect of Serbia, in line with the requirements of the *Ilias and Ahmed v. Hungary* judgment (No. 47287/15), and to terminate the practice of collective expulsions, as required in *Shahzad v. Hungary* (No. 12625/17).

6

October

In *B.Ü. v. the Czech Republic* (No. 9264/15), the ECtHR finds a violation of the procedural aspect of Article 3 (prohibition of ill-treatment) of the ECHR due to the ineffective investigation into an asylum seeker's allegations of ill-treatment by the authorities during pre-removal detention.

12

October

The CoE Parliamentary Assembly adopts a report and a resolution on Pushbacks on land and sea: illegal measures of migration management.

1

December

UNHCR publishes a note summarising key legal principles and states' obligations under international refugee, human rights and maritime law relevant to rescue at sea and disembarkation affecting people who are in need of international protection.

15

December

In *W.A. and Others v. Hungary* (Nos. 64050/16, 64558/16 and 66064/16), the ECtHR rules that Hungary breached the implicit non-*refoulement* obligation in Article 3 (prohibition of ill-treatment) of the ECHR by removing a group of Syrian nationals to Serbia – based on the safe third country notion – before assessing their individual situation.

Endnotes

- 1 For more information, see FRA (European Union Agency for Fundamental Rights) (n.d.), **'Regular overviews of migration-related fundamental rights concerns'**.
 - 2 International Organization for Migration (IOM) (2021), **World Migration Report 2022**.
 - 3 Eurostat (n.d.), **'Statistics explained: Migration and migrant population statistics'**, data extracted March 2023.
 - 4 No official statistics on third-country nationals crossing the Schengen borders are available. The European Commission forecasts for 2025 some 887 million regular border crossings, of which around one third are expected to be by third-country nationals travelling to Schengen countries for a short-term visit. See European Commission (2016), **Impact assessment report on the establishment of an EU Entry Exit System**, SWD(2016) 115 final, Brussels, 6 April 2016.
 - 5 As an illustration, in 2021, the EU Member States accepted only some 22,000 refugees for resettlement. See Eurostat (n.d.), **'Resettled persons – Annual data'**, data extracted 2 February 2023; data for 2022 not yet available. See also FRA (2015), **Legal entry channels to the EU for persons in need of international protection: A toolbox**.
 - 6 European Border and Coast Guard Agency (Frontex) (2016), **Risk analysis for 2016**.
 - 7 Frontex (2023), **'EU's external borders in 2022: Number of irregular border crossings highest since 2016'**, 13 January 2023.
 - 8 *Ibid.*
 - 9 Eurostat (2023), MIGR_ASYDCFSTA and MIGR_ASYDCFINA, data extracted 23 February 2023. The recognition rate for Afghans in 2021 (total positive) was 71 % at first instance and 64.7 % on appeal; for Syrians, it was 72 % at first instance and 72.4 % on appeal.
 - 10 Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders, OJ 2016 L 77 (*Schengen Borders Code*), Art. 4; Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, OJ 2019 L 295 (*Frontex Regulation*), Art. 80.
 - 11 On where border fences have been erected in the EU, see European Parliament (2022), **Walls and fences at EU borders**, briefing, 13 October 2022. On the fundamental rights implications, see FRA (2020), **Migration: Fundamental rights issues at land borders**.
 - 12 FRA (2023), **Fleeing Ukraine: Displaced people's experiences in the EU**, Section 1.
 - 13 European Roma Rights Centre (2023), **Roma rights under siege: Monitoring reports from one year of war in Ukraine**.
 - 14 European Commission (2017), **'European Commission welcomes the Council adoption of visa liberalisation for the citizens of Ukraine'**, statement, 11 May 2017.
 - 15 FRA (2022), **The Russian war of aggression against Ukraine – The broad fundamental rights impact in the EU – Bulletin 2**, p. 14. See also, for more detail, European Commission, **Providing operational guidelines for external border management to facilitate border crossings at the EU-Ukraine borders**, C(2022) 1404 final, Brussels, 2 March 2022.
 - 16 United Nations (UN) (2022), **'UNHCR chief condemns "discrimination, violence and racism" against some fleeing Ukraine'**, 21 March 2022; FRA (2022), **The war in Ukraine: Fundamental rights implications within the EU – Bulletin 1**, p. 19.
 - 17 IOM (n.d.), **'Missing Migrants Project'**, data extracted 7 March 2023.
 - 18 See IOM (2022), **'Migration within Europe'**. There were 44 fatalities in 2021 and 13 in 2022.
 - 19 IOM, data provided on 17 February 2023.
 - 20 European Court of Human Rights (ECtHR), **M.H. and Others v. Croatia**, Nos. 15670/18 and 43115/18, 18 November 2021; **Safi and Others v. Greece**, No. 5418/15, 7 July 2022; and **Alhowais v. Hungary**, No. 59435/17, 2 February 2023.
 - 21 European Council (2023), **Special meeting of the European Council (9 February 2023) – Conclusions**, 9 February 2023, para. 23f.
 - 22 These reports are described in FRA's **regular overviews of migration-related fundamental rights concerns**, starting from September 2015. Most recently, see Council of Europe, Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2023), **32nd general report of the CPT**, paras. 80–107.
 - 23 European Parliament (2022), **'Addressing pushbacks at the EU's external borders'**, briefing, October 2022.
 - 24 For UN sources, see, for example, UN Refugee Agency (UNHCR) (2022), **'UN Refugee Agency warns of increasing violence and human rights violations at European borders – UNHCR Northern Europe'**, 21 February 2022; UN Human Rights Council (2021), **Report on means to address the human rights impact of pushbacks of migrants on land and sea – Report of the Special Rapporteur on the human rights of migrants**, 12 May 2021; UN Working Group of Experts on People of African Descent (2022), **'UN experts urge more action to ensure dignity, equity and justice for migrants, refugees and asylum seekers of African descent'**, statement on the International Day for People of African Descent, 30 August 2022; United Nations Security Council (UNSC) (2023), **United Nations operation in Cyprus**, 3 January 2023, para. 42; UN Committee on the Rights of the Child (CRC Committee) (2022), **Concluding observations on the combined fifth and sixth periodic reports of Cyprus**, 24 June 2022, paras. 37 and 38; **Concluding observations on the combined fourth to sixth periodic reports of Greece**, 28 June 2022, paras. 39 and 40; UN CRC Committee (2018), **Concluding observations on the combined fifth and sixth periodic reports of Spain**, 5 March 2018, paras. 44 and 45; UN Human Rights Council (2022), **Human rights violations at international borders: Trends, prevention and accountability**, 26 April 2022; United Nations Office of the High Commissioner for Human Rights (UN Human Rights) (2022), **'Poland: Human rights defenders face threats and intimidation at Belarus border – UN experts'**, press release, 15 February 2022, **'UN expert to assess situation of migrants and refugees in Poland and Belarus'**, press release, 13 July 2022, and **'Greece: Migration policy having "suffocating effect" on human rights defenders says UN expert'**, press release, 22 June 2022; and UN Committee on Human Rights (2023), **Views adopted by the Committee under Article 5 (4) of the Optional Protocol, concerning Communication No. 3017/201**, 3 February 2023.
- For Council of Europe sources, see for example, Council of Europe, CPT (2021), **Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 14 August 2020**, 3 December 2021; Council of Europe, CPT (2020), **Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 March 2020**, 19 November 2020; Council of Europe, CPT (2022), **Report to the Greek Government on the ad hoc visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 November 2021 to 1 December 2021**, 2 September 2022; Council of Europe, CPT (2018), **Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 20 to 26 October 2017**, 18 September 2018; Council of Europe, Group of Experts on Actions against Trafficking in Human Beings (2023), **Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece**, 23 March 2023, paras. 135ff; Council of Europe, Commissioner for Human Rights (2022), **2nd quarterly activity report 2022: 1 April to 30 June**, 5 October 2022; Council of Europe, Commissioner for Human Rights (2022), **'Commissioner seeks clarification on investigations into alleged pushbacks of migrants trying to cross the border into Bulgaria'**, 13 December 2022, and **'Letter to Kristaps Eklons, Minister of the Interior of Latvia'**, 29 July 2022; Council of Europe, Commissioner for Human Rights (2021), **'Letter to the Prime Minister of Lithuania'**, 10 August 2021. See also the commissioner's intervention before the ECtHR in a case concerning the situation of asylum seekers and migrants stranded at the border between Poland and Belarus: Council of Europe (2022), **Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights: R.A. and others v. Poland (No. 42120/21)**, 27 January 2022.
- Examples of reports by national human rights institutions include Greek National Human Rights Commission (2023), **Recording mechanism of incidents of informal forced returns: Interim report – January 2023**; Greek Ombudsman (2021), **The Greek Ombudsman's annual report**

for 2021; Greek Ombudsman (2020), *Alleged pushbacks to Turkey of foreign nationals who had arrived in Greece seeking international protection: Interim report*; Ombudswoman of the Republic of Croatia (2021), *National report on the situation of human rights of migrants at the borders*.

For recent civil society reports, see, for example, Border Violence Monitoring Network (2022), *Statewatch | EU: The 'Black Book of Pushbacks': testimonies of pushbacks affecting over 12,000 people*; Protecting Rights at Borders (2023), *Beaten, punished and pushed back*; Human Rights Watch (2022), *'Violence and pushbacks at Poland-Belarus border'*, 7 June 2022; Danish Refugee Council (2022), *'PRAB reports'*; Protecting Rights at Borders (2022), *When there's a will, there's a way to protection*; Greek Council for Refugees (2023), *At Europe's borders: Between impunity and criminalization*; Greek Council for Refugees (2022), *Briefing: Systemic breaches of the rule of law and of the EU asylum acquis at Greece's land and sea borders*, 24 June 2022 (the annex contains a list of interim measures granted from March to June 2022 by the ECtHR on incidents at the Greek land border); Médecins sans Frontières (2022), *'Alarming violence occurring at Hungary-Serbia border'*, press release, 5 August 2022.

See also European Parliament, Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee) (2021), *Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations*; European Parliament (2022), *'Addressing pushbacks at the EU's external borders'*, briefing, October 2022. See also European Commission (2023), *'European Citizens' Initiative: Commission decides to register a new initiative on safeguarding fundamental rights at the EU's borders'*, press release, 12 January 2023.

- 25 Save the Children (2022), *Wherever we go, someone does us harm: Violence against refugee and migrant children arriving in Europe through the Balkans*; United Nations Children's Fund (UNICEF) (2021), *'UNICEF deeply concerned about instrumentalization and pushbacks of children on Europe's borders'*, statement, 9 November 2021.
- 26 See the illustrative sources listed in note 24. In addition, the UN Committee against Torture will review Cyprus, Greece, Latvia and Poland in 2023; for all four, it requested clarifications on respect for human rights at borders. See UN Committee against Torture (2022), *List of issues prior to submission of the sixth periodic report of Cyprus*, 19 December 2022, para. 8 (including questions on investigations of incidents at sea) and *List of issues prior to submission of the eighth periodic report of Greece*, 15 June 2022, para. 7 (including on ill treatment and investigations), *List of issues prior to submission of the seventh periodic report of Latvia*, 25 November 2022, para. 7 (with specific questions on the emergency legislation) and *List of issues prior to submission of the eighth periodic report of Poland*, 8 June 2022, para. 7 (including on the 2021 amendments to the Border Protection Act).
- 27 See UN Committee on Enforced Disappearances (2022), *Concluding observations on the report submitted by Greece under article 29 (1) of the Convention*, 12 May 2022; UN Human Rights Council (2022), *'End-of-mission statement by Sorcha MacLeod and Carlos Salazar Couto, members of the UN Working Group on the use of mercenaries and private military and security companies on their visit to the Hellenic Republic'*, press release, 16 December 2022.
- 28 See, for example, the plan to hire 300 special police officers for the Green Line in Cyprus and the staff hired by the Hellenic Police in Evros without full border guard training: Cyprus, UNSC (2023), *United Nations operation in Cyprus*, 3 January 2023, and UNSC (2022), *United Nations operation in Cyprus*, 5 July 2022; Greece, Ministry of Citizen Protection and Hellenic Police, *'Notice of call for tender relating to the fixed-term recruitment of 250 border guards' ('Προκήρυξη διαγωνισμού για την πρόσληψη διακοσίων πενήντα (250) Συνοριακών Φυλάκων Ορισμένου Χρόνου στην Περιφερειακή Ενότητα Έβρου')*, 6 May 2022, and Ministry of Citizen Protection, *'Takis Theodorikakos announced the deployment of 400 additional border guards in 2023 – 250 of those will take up duty in February' ('Την τοποθέτηση 400 επιπλέον συνοριοφυλάκων εντός του 2023 ανακοίνωσε ο Τάκης Θεοδωρικάκος- οι 250 αναλαμβάνουν υπηρεσία τον Φεβρουάριο')*, press release, 13 January 2023. See also Hungary (2022), *Government Decree No. 244/2022. (VII. 8.)*; Council of Europe, Secretariat of the Committee of Ministers (2022), *Communication from an NGO (Hungarian Helsinki Committee) (05/08/2022) in the case of Ilias and Ahmed v. Hungary (Application No. 47287/15)*, 17 August 2022, p. 2. Furthermore, Lithuania's draft legislation envisages support from 'volunteers' in guarding the borders in case of emergency: Lithuania, Amendment to Arts. 1, 2, 4, 10, 11, 14, 15, 16, 18, 23 and 26 of the Law on the State Border and its Protection No. VIII-1666 and supplementing the law with Article 21 and a new Chapter IX (*Valstybės sienos ir jos apsaugos įstatymo nr. VIII-1666 1, 2, 4, 10, 11, 14, 15, 16, 18, 23, 26 straipsnių pakeitimo ir įstatymo papildymo 21 straipsniu ir nauju IX skyriumi įstatymas*), 2022; Schengenvisa News (2023), *'Lithuanian government approves amendments to law on state border, protection and legal status of foreigners'*, 12 January 2023.
- 29 European Commission (2022), *Policy document developing a multiannual strategic policy for European integrated border management in accordance with Article 8(4) of Regulation (EU) 2019/1896*, COM(2022) 303 final, Brussels, 24 May 2022.
- 30 See in this context, Council of Europe, Commissioner for Human Rights (2022), *Pushed beyond the limits: Four areas for urgent action to end human rights violations at Europe's borders*, April 2022, pp. 36 and 37.
- 31 European Commission (2022), *2022 rule of law report: Country chapter on the rule of law situation in Greece*, SWD(2022) 508 final, Luxembourg, 13 July 2022, *2022 rule of law report: Country chapter on the rule of law situation in Hungary*, SWD(2022) 517 final, Luxembourg, 13 July 2022, and *2022 rule of law report: Country chapter on the rule of law situation in Italy*, SWD(2022) 512 final, Luxembourg, 13 July 2022.
- 32 See, for example, Council of Europe, Commissioner for Human Rights (2022), *'Latvian authorities should put an end to pushbacks and safeguard the human rights of people seeking protection at the border with Belarus'*, 6 February 2023.
- 33 For an overview of these measures, see FRA's regular updates, most recently FRA (2022), *'June 2022 update – Search and rescue (SAR) operations in the Mediterranean and fundamental rights'*, 20 June 2022. See also reports of ongoing legal proceedings relating to the vessels *SeaWatch 3* (report dated 21 December 2022), *Iuventa* (report dated 19 December 2022) and *Aurora* (report dated 24 June 2022).
- 34 Italy, Decree-Law No. 1 of 2 January 2023 on urgent provisions for the management of migration flows (*Decreto-Legge 2 gennaio 2023, n. 1, Disposizioni urgenti per la gestione dei flussi migratori*). See also Council of Europe, Commissioner for Human Rights (2023), *'The Italian government should consider withdrawing Decree Law which could hamper NGO search and rescue operations at sea'*, 2 February 2023. For reactions from civil society, see Association for Juridical Studies on Immigration (ASGI) (2023), *'Decree Law 1/2023 – ASGI position and updates' ('Decreto Legge 1/2023 – Posizione ASGI e aggiornamenti')*, 15 February 2023; Human Rights Watch (2023), *'Italy's anti-rescue decree risks increasing deaths at sea'*, press release, 9 January 2023.
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PROMOTING AND PROTECTING YOUR FUNDAMENTAL RIGHTS ACROSS THE EU —

Over the span of nearly eight years, there have been developments in showing respect for the human rights of those who arrive at the EU's borders. Russia's war of aggression against Ukraine has shown how a large and sudden influx of people can be managed effectively and respectfully. Notwithstanding the improvements, the growing number of people crossing or attempting to enter the EU pose a wide range of fundamental rights challenges.

In this bulletin, FRA takes stock of concerns and improvements regarding the fundamental rights of migrants, asylum seekers and refugees. It highlights the EU Member States' legal and practical responses. It identifies key trends, promising practices, long-standing and emerging patterns, and persistent concerns.

This is the last bulletin in the series. After eight years of regular migration updates, FRA will continue to closely monitor the migration and asylum related fundamental rights situation in the EU and provide evidence-based advice to the EU institutions.

For FRA's work on migration, please see:

<https://fra.europa.eu/en/themes/asylum-migration-and-borders>

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