

# HIGHLIGHTS 2012



## Fundamental rights: key legal and policy developments in 2012



**FRA**

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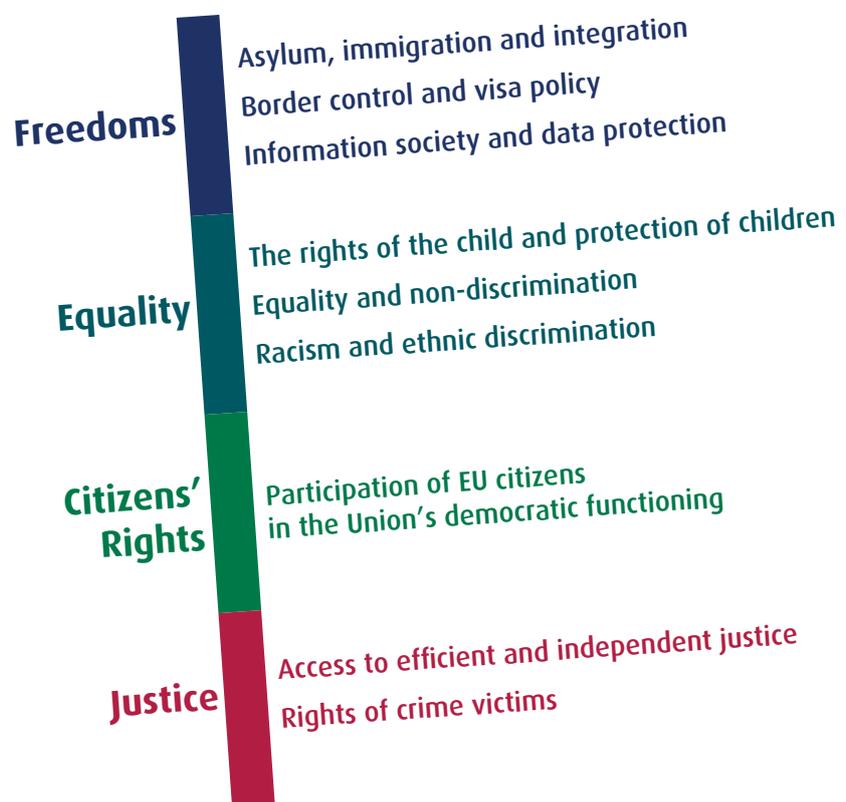
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# Fundamental rights: key legal and policy developments in 2012

Highlights 2012 cover several titles of the EU Charter of Fundamental Rights, colour coded as follows:



*Rising unemployment rates, fiscal consolidation and austerity measures across the European Union (EU), as well as public protest and constitutional conflicts in some EU Member States, all captured headlines in 2012. The crisis that the EU has been facing over the course of the past five years transcends issues of finance. It has implications for democratic legitimacy and the rule of law, and therefore also for the respect of fundamental rights. The seriousness of the situation prompted discussions about the nature, scope and future of the EU. The crisis and its consequences called for action from institutional and policy actors at all levels of governance, civil society organisations and the general public to ensure that the EU and its Member States uphold their fundamental rights obligations.*

In the area of **asylum, immigration and integration**, 2012 saw progress in the negotiation of the EU asylum instruments under review, although no new legislation was formally adopted during the year. Solidarity among EU Member States on asylum issues remained limited, with the United States resettling more refugees from Malta than all European states together. Increased attention was devoted to statelessness, an issue that has so far remained unexplored in many EU Member States. Certain protective provisions of the Return Directive, such as the need to provide for alternatives to detention or forced return monitoring, are, in practice, only slowly being implemented. As of year-end 16 EU Member States have national-level action plans on integration, and nine of those monitored integration via the use of indicators.

In the area of **border control and visa policy**, there was an increased trend in 2012 towards the use of databases and information technology tools for border management and visa processing purposes. Negotiations on the Eurosur Regulation advanced substantially and Visa Information System (VIS) continues to be rolled out. The Frontex Fundamental Rights Officer and the Frontex Consultative Forum both took up work in 2012. Council Decision 2010/252/EU, containing guidance for Frontex operations at sea that are relevant from a fundamental rights perspective, was annulled but will remain in force until it is replaced. During the first half of 2012, the land border between Greece and Turkey continued to be one of

These highlights put the spotlight on selected key issues of the 2012 Annual report of the European Union Agency for Fundamental Rights (FRA). In the margin throughout, they refer to relevant FRA publications from 2012, all of which can be accessed through the FRA website at [fra.europa.eu](http://fra.europa.eu).

The FRA Annual report, *Fundamental rights: challenges and achievements in 2012*, is structured along the agency's main thematic work areas for the period 2007–2012. It is divided into 10 chapters, in addition to a focus section dealing with the socio-economic crisis but also with various elements of political and constitutional crisis that characterised 2012.



The European Union as a Community of values: safeguarding fundamental rights in times of crisis

Chapters:

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

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

the main entry points for persons crossing the external EU land border in an irregular manner. Visa applicants increasingly made use of the right to appeal a negative Schengen visa decision.

In the context of the **information society and data protection**, the European Commission launched a drive in 2012 to modernise the EU's data protection framework, the most far-reaching reform of EU data protection legislation in 20 years. The importance of personal data protection, an area of EU responsibility, to key business sectors and third countries across the globe has made this reform package one of the most important EU legislative files in the civil liberties area. The Court of Justice of the European Union (CJEU) contributed to the reform package by elaborating case law on a key aspect of the package: the requirement of independence for data protection authorities. Work originating in previous years in two other important areas remained on the EU's agenda in 2012: balancing security and privacy, especially in the context of data retention, Passenger Name Records (PNR) and biometric passports; and on-going debates about the fundamental rights implications of developments in information and communication technology, including with respect to the Anti-Counterfeiting Trade Agreement (ACTA), social media and internet-based services.

When it comes to the **rights of the child and the protection of children**, 2012 witnessed more children at risk of poverty or social exclusion. This is a result of the economic crisis, a topic that continued to be at the forefront of EU policy debates in 2012. EU Member States had to take measures to address cases of malnutrition, as well as make budgetary cuts that had an impact on education, healthcare and social services, which are important for children. Despite EU and Member State efforts, domestic violence, sexual abuse and trafficking continued to affect children living in the EU. In addition, children continued arriving in the EU as asylum seekers with or without their families. Almost one out of three asylum seekers arriving in the EU in 2012 was a child and there is concern in some Member States that their protection remains a challenge.

In 2012, the EU and its Member States took concrete steps to promote **equality and non-discrimination** in the EU. Several EU Member States ratified the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD), and the Council of the European Union adopted a framework for EU-level monitoring of the convention's implementation. The 2012 Year of Active Ageing highlighted the challenges and obstacles faced by older persons, including those with a disability, and policies were initiated to address these challenges. The European Parliament repeated its call to the European Commission for more comprehensive action regarding the fundamental rights of Lesbian, Gay, Bisexual and Transgender (LGBT) persons. The proposed Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, known as the Horizontal Directive, continued to be discussed. Finally, governments, civil society and equality bodies in many EU Member States continued their efforts to promote equality and non-discrimination despite the challenges of austerity measures.

In the fields of **racism and ethnic discrimination** it was observed that crimes motivated by racism, xenophobia and related intolerances, the mainstreaming of elements of extremist ideology in political and public discourse and ethnic discrimination in healthcare, education, employment and housing persist throughout the EU. Roma populations in particular continue to face discrimination, as evidence collected by FRA and other bodies demonstrates. EU Member States made efforts to develop comprehensive approaches to Roma integration. Nevertheless, more still needs to be done when it comes to securing sufficient funding for Roma inclusion and ensuring that it benefits the targeted groups, putting robust and effective monitoring mechanisms in place, and fighting discrimination and segregation, the European Commission concluded in its assessment of National Roma Integration Strategies.

Coming to the **participation of EU citizens in the Union's democratic functioning**, 2012 saw the European Parliament and the Council of the European Union preparing for the 2014 European Parliament elections. They adopted a European Commission proposal to amend EU law governing the participation of non-national Union citizens in European Parliament elections. The European Commission assessed the implementation of EU citizens' electoral rights at municipal level. Enhanced participation and the identification of difficulties in effectively participating in civic and political life were issues discussed ahead of the European Year of Citizens 2013. Several citizens' groups embraced the European Citizens' Initiative, a new tool of participatory democracy at EU level, with the European Commission registering a number of initiatives after the 1 April 2012 start date. EU Member States also undertook reforms to make elections more accessible for persons with disabilities, thereby acknowledging the importance of the standards set by the CRPD.

In the area of **access to efficient and independent justice**, concerns for the rule of law – in particular judicial independence – in some EU Member States cast a shadow on access to justice in 2012, a fundamental right that has been adversely affected by the financial crisis. Events in some Member States called into question the basic principle of the rule of law, tainting cross-border justice developments. In part as a reaction to this, EU Member States stepped up efforts to follow more closely the rule of law, ensure trust in justice systems and monitor developments where needed. More specifically, overly lengthy proceedings remained a major stumbling block for access to justice, but EU Member States took steps to remedy this and other shortcomings. To do so, they launched a number of initiatives, including: broadening legal standing, ensuring effective access to legal aid, enhancing e-justice and establishing and extending the mandates of non-judicial mechanisms.

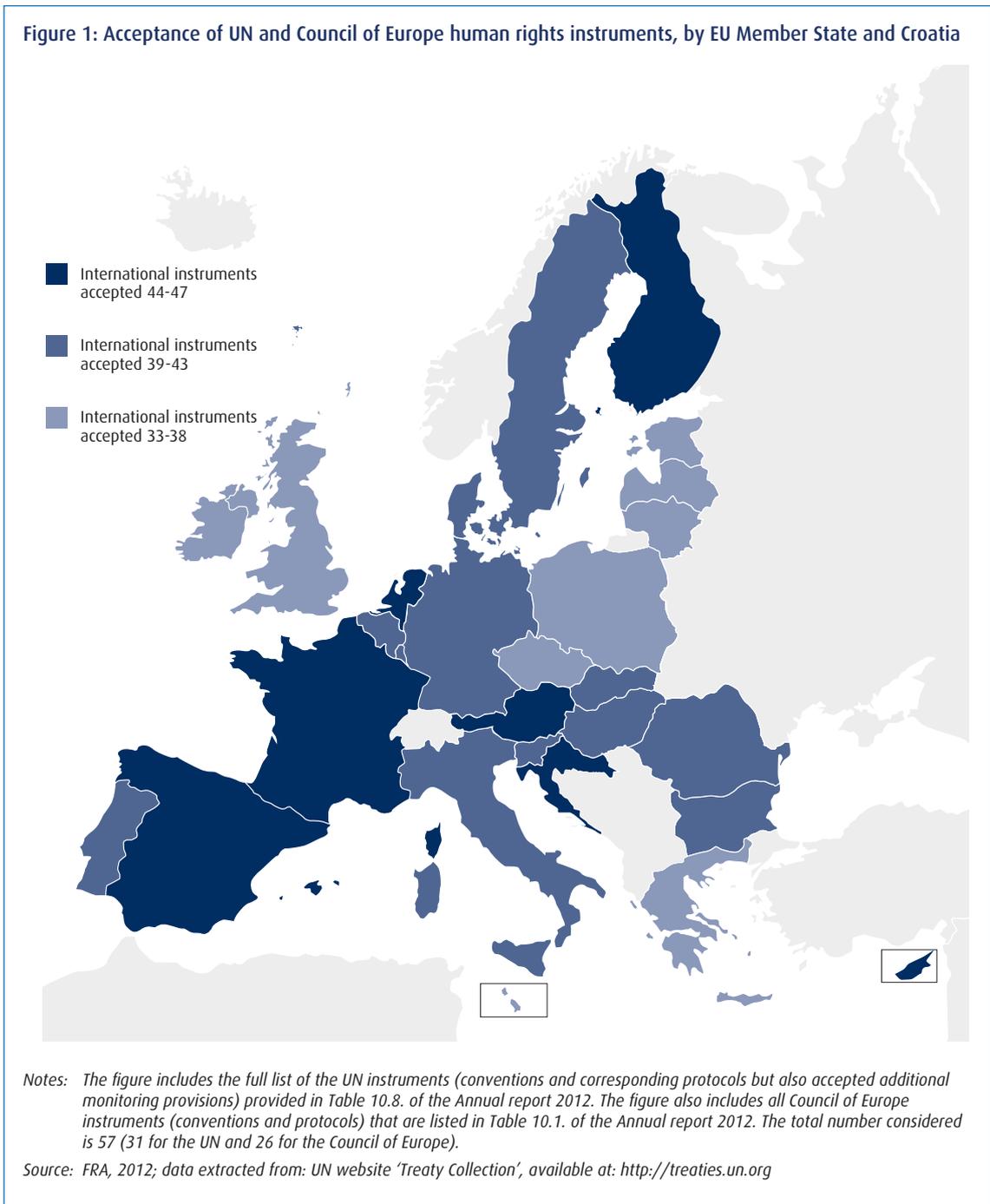
In the area of the **rights of crime victims**, 2012 witnessed the adoption of an EU directive establishing minimum standards on the rights, support and protection of victims of crime, which replaced a 2001 Framework Decision. This is a decisive step in the development of enforceable rights of victims of crime: for the first time, the European Commission was empowered to ensure the fulfilment of rights of crime victims by monitoring the transposition of the directive into EU Member States' national legislation and, if necessary, by bringing infringement proceedings to the CJEU.

The year also saw important progress in the field of victims' rights, particularly policies addressing labour exploitation and violence against women, while Member States continued in their efforts to ratify the Council of Europe's Convention on preventing and combating violence against women and domestic violence.

Finally, 2012 saw important development with regard to the **international obligations of the EU and its Member States**. One of the main developments was Latvia's ratification of the European Convention on Human Rights' (ECHR) Additional Protocol 13 on the abolition of the death penalty in all circumstances. Among EU Member States and Croatia only Poland has yet to ratify the protocol.

A number of EU Member States accepted a selection of key Council of Europe instruments in 2012 (for more details, see Chapter 10 on 'EU Member States and international obligations' in the FRA 2012 Annual report):

- Belgium, Italy, Malta, the Netherlands, Poland and the United Kingdom signed the Convention on Preventing and Combating Violence against Women and Domestic Violence, known as the *Istanbul Convention*;
- Lithuania ratified the Convention on Access to Official Documents;
- Portugal ratified the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse;
- Cyprus, Finland, Germany and Lithuania ratified the Convention on Action against Trafficking in Human Beings;
- Austria, Belgium and France ratified the Convention on Cybercrime;
- Cyprus, Estonia, Finland, Hungary and Lithuania ratified the Additional Protocol to the European Charter of Local Self-Government, and Bulgaria signed it;
- Finland ratified the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding Supervisory Authorities and Transborder Data Flows;
- Belgium ratified the ECHR Additional Protocol 7 on criminal appeal;
- Estonia declared that it considers itself bound by a range of additional articles of the European Social Charter (ESC);
- the Czech Republic ratified the ESC's additional protocol on collective complaints.



In short, the year 2012 witnessed remarkable developments as well as deplorable shortcomings in the field of fundamental rights in the EU and its Member States, as well as Croatia. Based on these findings, certain challenges have been identified that are addressed in the Outlook of each section.

# Asylum, immigration and integration

## Spotlight on access to healthcare for irregular migrants

Access to healthcare for migrants in an irregular situation continued to be a topic of policy discussions in some EU Member States. In Spain, the Foreigners Act was amended in April, limiting equal access to healthcare for undocumented migrants to emergency assistance, healthcare for persons under 18 years of age and care during pregnancy, childbirth and postpartum.

In Sweden, the government agreed to provide access to healthcare for migrants in an irregular situation at the same level as for asylum seekers. This covers healthcare which cannot be postponed, including maternity care. Children will have full healthcare access. Regional governments (*landsting*) may further regulate access on a par with residents. The new rules are expected to enter into force on 1 July 2013.

A different discussion on healthcare – though not limited to migrants in an irregular situation – emerged in Greece, as it presented amendments in April 2012 to immigration legislation, which would allow detention of asylum seekers and possible deportation of third-country nationals who have an infectious disease or belong to a group at high risk of infection. Such groups included sex workers, people who inject drugs, people ‘who live in conditions which do not fulfil the elementary rules of hygiene’ and people at risk ‘because of their country of origin’. There was no assessment as to whether a person posed an actual public health risk. UNAIDS, the Joint UN programme on HIV/AIDS, stressed the discriminatory nature of the new immigration law and called for its immediate review.

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

- The European Parliament and the Council of the European Union reach a compromise following intense negotiations on solutions for most of the provisions of the asylum *acquis* subject to revision, but they leave formal publication of the revised instruments to 2013.
- The European Asylum Support Office (EASO) publishes its first two country-of-origin reports describing the situation in Afghanistan and develops the first EU-wide methodology on country-of-origin information.
- The CJEU delivers preliminary rulings on five asylum cases in 2012, bringing to 15 the total number of preliminary rulings on asylum matters to date.
- Two more EU Member States adopt national legislation in 2012 on alternatives to detention, leaving only one EU Member State with a mandatory detention policy. The use of detention for immigration-related reasons, however, remains widespread and alternatives to detention are still little used.
- Two more EU Member States introduce return monitoring systems under the Return Directive, bringing the number of countries with an effective return monitoring system to 15.
- The European Commission enhances the European Web Site on Integration, providing a virtual platform to kick-start public discussion, policy initiatives and dialogue amongst stakeholders, in both non-governmental and governmental organisations.
- The Immigrant Citizens Survey, which covered 15 cities in seven EU Member States, finds that most immigrants are interested in voting and that three out of four want to become citizens.

In addition, in May 2012 the Greek Police disclosed the names and photographs of HIV-positive sex workers, some of whom were in an irregular situation, after having arrested them and subjected them to compulsory HIV testing. This raised a number of concerns about breaches of confidentiality of personal health data, imposition of criminal charges based on HIV status and discrimination. The Greek Ombudsman said that publishing the photos and personal data of the HIV positive women “not only violates rights inextricably linked to the respect of human dignity and status of the patient but is also an ineffective means of prevention and protection of public health”. On 20 April 2012, the European Commission asked the European Centre for Disease Prevention and Control to perform a risk assessment mission on the HIV situation in Greece. FRA participated as an observer.

### Spotlight on forced return monitoring

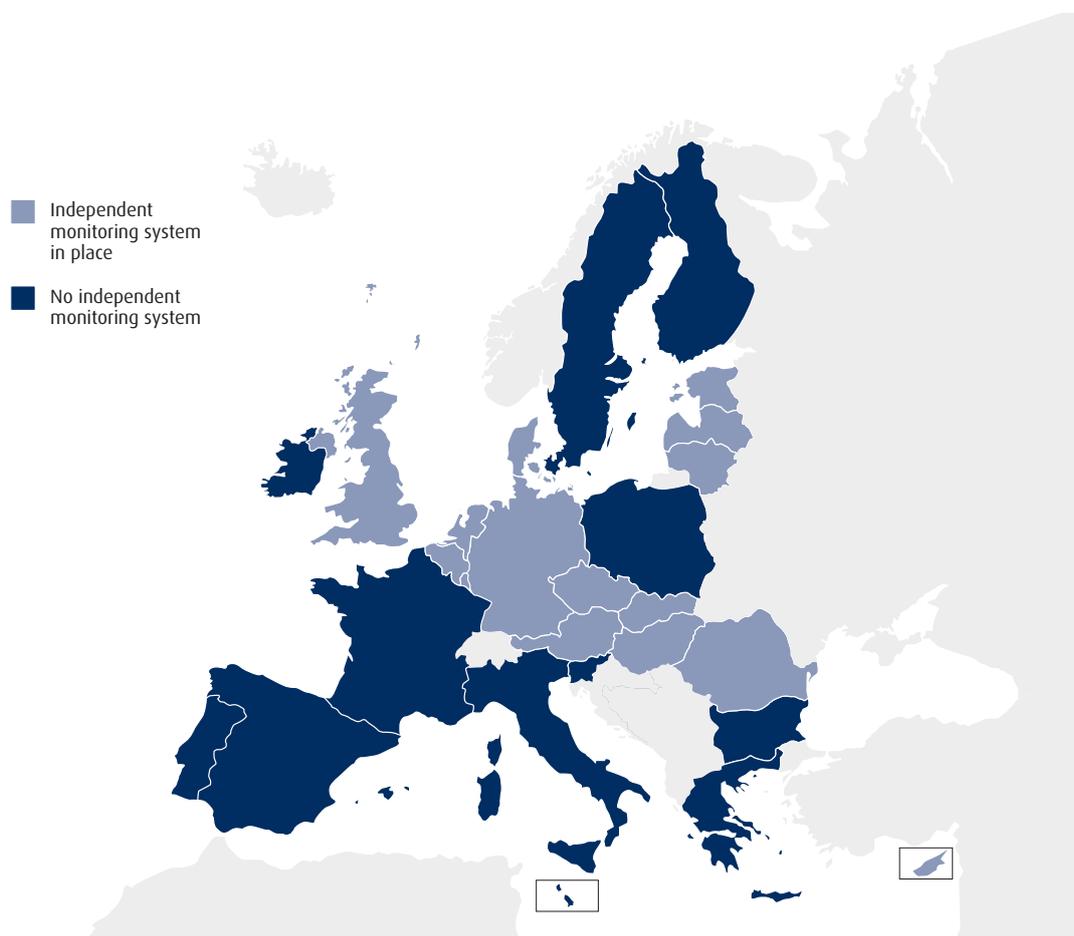
Third-country nationals who do not fulfil the conditions for entering or staying in the EU receive a return decision, which the authorities may enforce if it is not complied with voluntarily. Frontex-coordinated operations alone returned 2,110 persons in 2012, roughly the same as in 2011 when 2,059 persons were returned.

The Return Directive requires EU Member States to establish an effective return monitoring system. Fundamental rights concerns during forced returns may relate, for example, to the treatment of returnees by the authorities enforcing return, returnees’ access to information, legal remedy and communication, holding conditions and safeguards for vulnerable persons.

As illustrated in Figure 2, at the end of 2012, legislation or cooperation agreements between the authorities and the monitoring body in 15 Member States, including the United Kingdom which is not bound by the Return Directive, provide for independent return monitoring. These either provide a legal basis for monitoring returns in general or designate a specific institution for this function. EU Member States where monitoring is designated to an agency belonging to the branch of government responsible for the return (Portugal, Sweden) and Member States where monitoring is carried out on an ad hoc or informal basis (such as pilot projects in Finland and Poland) have not been included among these 15 EU Member States.

In Slovakia, independent monitoring by non-governmental organisations (NGOs) is possible by law, although no mechanism is in place and independent monitoring has not yet been performed systematically in practice.

Figure 2: Independent forced return monitoring systems, EU-27



Notes: Ireland and the United Kingdom are not bound by the Return Directive. The monitoring systems depicted are provided for either by law or by cooperation agreement.

Source: FRA, 2012

Monitoring systems are operational to different degrees. In a minority of EU Member States, the monitors accompany the actual return flight. Of the 15 Member States where the FRA considers that effective monitoring systems are in place, only seven (Austria, Belgium, Czech Republic, Denmark, Estonia, Luxembourg, the United Kingdom) monitored a return flight in 2012, while monitoring in the other Member States remained limited to the pre-departure process. In Lithuania, the Red Cross plans to join a return flight in 2013. Member States with monitors who are not independent from the authority implementing the removal (Portugal, Sweden) also carry out in-flight monitoring.

## Spotlight on integration of migrants

The Immigrant Citizens Survey, co-funded by the European Commission, explored the experiences across the EU of integration policies by first-generation migrants who have resided in the country for more than one year in the fields of employment, languages, political and civic participation, family reunification, long-term residence, citizenship and the link between participation and positive settlement outcomes. The survey, published in 2012 by the King Baudouin Foundation and the Migration Policy Group, covered 15 cities in seven EU Member States (Belgium, France, Germany, Hungary, Italy, Portugal and Spain) and 7,473 immigrants born outside the EU participated.

The data showed that for most of the immigrants surveyed, job security remains the major issue and that 25–33 % of immigrants feel overqualified for their jobs. Yet “participating in the labour market is one of the best and most concrete ways to integrate in society”, according to the European Agenda for Integration of third-country nationals.

The Immigrant Citizens Survey further highlights that immigrants generally tend to speak more languages than the average person in their new country, which demonstrates the potential contributions of migrants to a diverse and inclusive EU. They also highly value the language courses offered in several Member States as part of national action plans on migrant integration.

The Immigrant Citizens Survey shows that in the area of political and civic participation, most immigrants are interested in voting, particularly at a local level, and that three out of four participants want to become citizens of the country in which they reside. Nonetheless, immigrants’ broader participation in civic life varies depending on the city and participation in an immigrant NGO depends heavily on the local and national context.

The number of people who acquired citizenship in an EU Member State rose 4 % to 810,000 in 2010 from 2009, the first time that this number exceeded 800,000, according to the 2012 Eurostat report *Population and social condition*.

France, Spain and the United Kingdom awarded the lion’s share, together granting 57 % of all new EU citizenships. By including Germany and Italy, which award the next largest numbers of new citizenships, these five EU Member States account for about 78 % of the EU total. The overall EU increase was due to a rise of 55 % to 44,000 new citizenships that Spain awarded in 2010 over 2009.

### FRA PUBLICATIONS

The reports *Fundamental rights of migrants in an irregular situation in the European Union*, *Migrants in an irregular situation: access to healthcare in 10 EU Member States* and *Migrants in an irregular situation employed in domestic work: challenges for the EU and its Member States* are available in French and German, see:

<http://fra.europa.eu/en/publication/2012/fundamental-rights-migrants-irregular-situation-european-union>

## Outlook

In the **area of asylum, immigration and integration** the EU will continue its efforts to complete the revision process of the Dublin and the Eurodac regulations, as well as of the Reception Conditions and the Asylum Procedures Directives. The many unclear provisions in the existing asylum *acquis* are likely to lead to further referrals to the CJEU for preliminary rulings.

EASO activities will expand further providing an impulse towards an increased quality of asylum systems in the EU. EASO is also likely to release its first guidance on a specific topic – age assessment.

In spite of the increased attention to the situation and rights of migrants in an irregular situation, tangible changes are likely to be limited in 2013. Provisions on access to justice in the Employers Sanctions Directive, including cases of particularly exploitive working conditions, have not yet brought about real change for those concerned.

However, depending on its final wording, the Seasonal Workers Directive could help reduce the reliance on undeclared work in sectors such as agriculture and tourism, and thus indirectly reduce the risk of exploitation, given that migrants in an irregular situation run a higher risk of exploitation than regular workers.

In the field of return and removals, the review of the implementation of the Return Directive provides an opportunity to draw attention to the slow implementation by Member States of some of its protective provisions, such as Article 8 (6) on return monitoring and Articles 16 and 17 on conditions of detention.

Attention is likely to remain focused on the monitoring of migrant integration. In 2013 a pilot study carried out by the Migration Policy Group (MPG) for the European Commission will be completed and further reflection will be devoted, in cooperation with Member States, to the development of EU migrant indicators to support integration monitoring. This could go hand-in-hand with evaluating the implementation of national action plans to identify good practices to support. Focus on political, social and civic participation is likely to increase. The discourse on migrant integration is also focusing on the links between growth and mobility and how migrants can contribute to a more diverse, vibrant, energetic and inclusive society.

# Border control and visa policy

## Spotlight on irregular border crossings and deadly incidents

During the first half of 2012, the land border between Greece and Turkey continued to be one of the main entry points for persons crossing the external EU land border in an irregular manner. Between January and September 2012, authorities detected approximately 59,000 irregular border crossings at the external EU border. Three out of four (some 44,000 persons) were at the land border.

In the late summer of 2012, Greece deployed an additional 1,800 police officers to that border as part of operation Xenios Zeus. Subsequently, the number of land crossings dropped to fewer than 100 in the last week of August from some 2,100 during the first week of the month, according to Frontex.

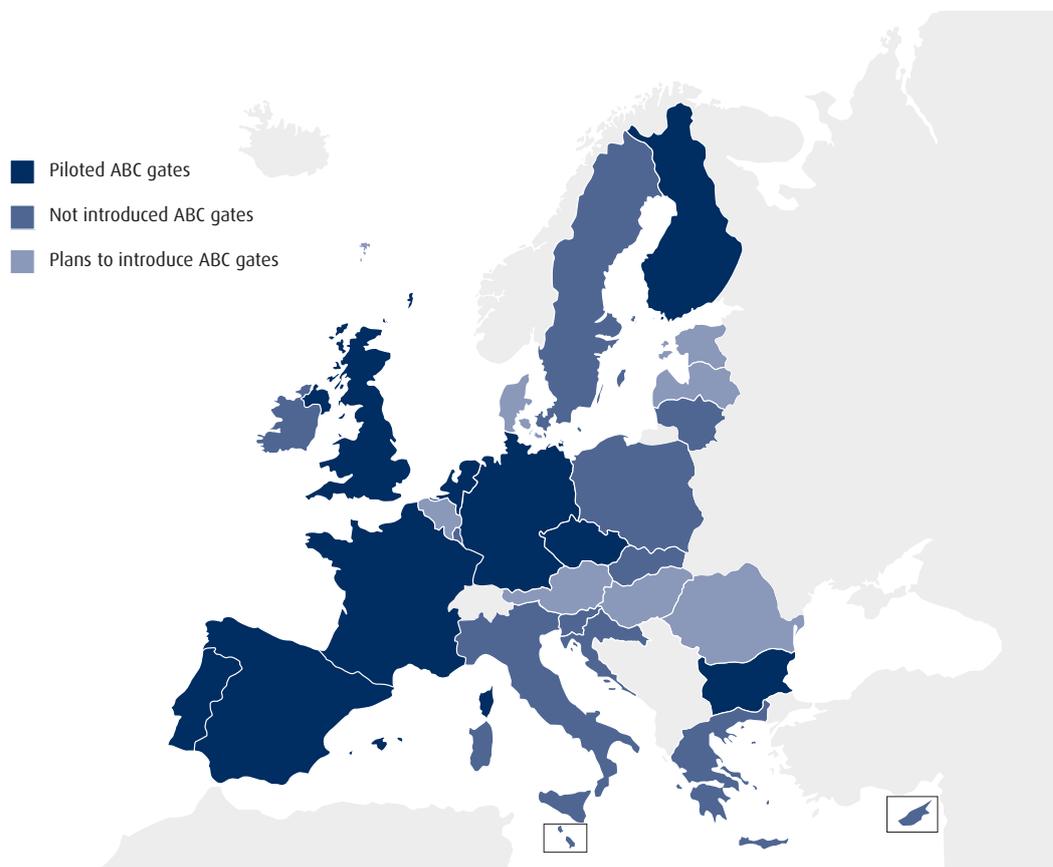
Greece completed the construction of a border fence along 12 kilometres of land border with Turkey in December 2012, with a view to stopping irregular border crossings despite concerns about its appropriateness. National funds covered the estimated €3 million in costs.

In Greece, irregular crossings at the land border declined but arrivals by sea increased. Deadly incidents continued to take place in the Eastern Aegean Sea. On 6 September 2012, 61 persons including children died when a boat with Syrians and other nationals capsized near Izmir on the Turkish coast. In the central Mediterranean, a boat with 130 passengers coming from Sfax in Tunisia sank about 12 nautical miles away from Lampedusa on 7 September 2012. The Italian Coast Guard, the Italian tax and financial police (*Guardia di Finanza*) and North Atlantic Treaty Organization vessels responded, rescuing 56 migrants, but at least one died and several dozen remained missing. Figure 3 shows trends concerning arrivals by sea to southern Europe over the past five years in the four Member States affected, namely Greece, Italy, Malta and Spain.

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

- Negotiations on the Eurosur Regulation, introducing a European surveillance system, advance quickly and 18 Member States are connected to the network by year-end.
- The CJEU annuls Council Decision 2010/252/EU, containing guidance for Frontex operations at sea, because the decision does not respect the ordinary legislative procedure under which the European Parliament acts as co-legislator. The guidelines remain in force until they are replaced.
- The Frontex Fundamental Rights Officer and the Frontex Consultative Forum start their work in the second half of 2012.
- Irregular border crossings by sea in the Central Mediterranean drop to some 15,000 persons in 2012 from almost 65,000 in 2011 while in the eastern Aegean they increase substantially.
- Visa applicants increasingly make use of the right to appeal a negative Schengen visa decision.
- The European Commission highlights the role of cooperation not just in preventing irregular migration but also in supporting fair and equal treatment of visa applicants.
- The VIS is launched in the Near East and in the Gulf regions.

Figure 3: Irregular crossings of the sea border, 2008–2012, four EU Member States



Source: National police data, 2012

### Spotlight on immigration liaison officers (ILOs)

The FRA Annual report 2011 highlighted efforts to move border control activities beyond the external borders of the EU. In 2012, the Immigration Liaison Officers (ILOs) acted upon its reinforced mandate according to the amended ILO Network Regulation (Regulation 493/2011). The immigration services or other competent authorities of EU Member States post ILOs abroad to cooperate with the host country on irregular immigration, return and the management of legal migration. Such externalisation of border control has fundamental rights implications. In cases where ILOs involved in pre-departure document checks in third-country airports stop a passenger, for example, they may prevent a person in need of international protection from reaching a safe place.

In 2004, the EU set up an ILO network to enhance coordination among ILOs posted by EU Member States to the same third country. Some of the changes introduced through the 2011 amendment are important from a fundamental rights point of view. First, ILOs deployed in the same host country are now asked to exchange information on asylum seekers' access to protection in the host country (Article 4). Second, the ILO networks must report each semester to the European Parliament,

the Council of the European Union and the European Commission on their activities in specific countries and/or regions of particular interest to the EU, taking into consideration all relevant aspects, including human rights (Article 6). The reporting template, however, remains security oriented, mentioning asylum seekers only under the heading of risks and threats at the host country borders. Third, EASO, Frontex and the United Nations High Commissioner for Refugees (UNHCR) may be invited to participate in ILO network meetings held in the host country (recital 5 and Article 4 (2)).

By 2012, approximately two thirds of EU Member States as well as Croatia had posted immigration liaison officers abroad: Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Latvia, the Netherlands, Poland, Portugal, Spain, Sweden and the United Kingdom.

An important fundamental rights question emerges concerning the potential of an ILO to prevent the departure of person seeking asylum. In the context of air borders, the IATA Code of Conduct for Immigration Liaison Officers explicitly states that ILOs may advise airline staff but cannot compel compliance. It also states that airline staff should direct persons requesting asylum to UNHCR, to the appropriate diplomatic mission(s) or to an appropriate local NGO.

Only a few EU Member States have instructed ILOs on how to handle requests for asylum. The Austrian ILOs, for instance, are instructed in regular trainings to refer all people requesting asylum to the Austrian Embassy for further information. The Dutch ILO must refer a request for asylum to headquarters to get further instructions on how to proceed. A possible instruction in such an event is to refer the person to the UNHCR office in the host country, for example. In 2012, persons who said they were in need of protection approached the United Kingdom ILO in Kuala Lumpur who referred them to UNHCR.

## Outlook

With regard to **border control and visa policy**, several legislative proposals on borders or visa matters will be negotiated and possibly adopted during 2013. The proposals relate to the Schengen evaluation process, the temporary reintroduction of border controls, suspending the visa waiver, the Internal Security Funds, Eurosur and amendments to the Schengen Borders Code. They also include Council Decision 2010/252/EU containing guidance for Frontex operations at sea, which the CJEU annulled and which is expected to be replaced. All these proposals entail important fundamental rights aspects. The same is true for the announced European Commission proposal on the smart border package, tabled for early 2013.

The trend towards increased use and reliance on databases and information technology tools for border management and visa processing procedures is expected to continue.

The smart borders package will send alerts on visa over-stayers. There are also data protection challenges, such as purpose limitation, which need to be carefully evaluated, particularly as some EU Member States consider irregular stay an administrative offence but others criminalise it.

Considering the data protection concerns involved, the CJEU is expected to provide legal guidance on the proportionality of the storage of biometric data in passports and travel documents and their use for purposes other than border control.

It remains to be seen how the design and usage of ABC gates will evolve with experience and exchange of good practice to address challenges relating to protection of victims of trafficking in human beings as well as concerns related to the rights of the child and persons with disabilities.

Due to the civil war in Syria and the unstable situation in North Africa, the EU must be prepared for a continued flow of arrivals via Turkey, Greece and throughout the Mediterranean. The fundamental rights aspects of this situation are subject to further analysis, with 2013 seeing studies launched on the EU's southern border.

The UN Special Rapporteur on the human rights of migrants is expected to present his report on the management of the external borders, including findings made during his visits to Greece, Italy, Tunisia and Turkey. The FRA issued a report on the fundamental rights at Europe's southern sea borders in March 2013.

In 2012, Frontex appointed a Fundamental Rights Officer as well as the members of the Consultative Forum, and the European Ombudsmen had an on-going inquiry into Frontex and its human rights obligations. This increased focus in 2012 on fundamental rights in Frontex activities has raised expectations that fundamental rights be reflected in the day-to-day running of operational activities.

In the Schengen cooperation on external border control, fundamental rights concerns are expected to be mainstreamed within the evaluations foreseen for 2013, in light of the increased attention to fundamental rights in the training of Schengen evaluators.

The fundamental rights of passengers who are held in airport transit zones have largely remained off the fundamental rights radar. As FRA research, forthcoming in 2013, indicates, not enough attention is paid to their situation and possible violations of their right to human dignity.

To spur economic growth, the EU has increasingly begun to view migrants, as well as visitors, including those required to hold visas, as potential contributors to the EU economy. The common visa policy will therefore continue not only to focus on migration control but also to facilitate legitimate travel. As indicated above a detailed analysis could be done on issues related to applicants' dignity and their fair and professional treatment – also within the context of the harmonisation of visa issuing procedures. The proposed complaints boxes could, if properly used, inform the EU in greater detail about the situation of visa applicants, including VIS.

Visa applicants are making increasing use of their right to appeal a refused, revoked or annulled visa and this trend is expected to continue. CJEU legal guidance on this issue is also expected.

# Information society and data protection

## Spotlight on the reform of the EU's legislation on data protection

On 25 January 2012, the European Commission proposed the most important reform of EU data protection legislation in 20 years.

In its policy communication, the European Commission explains that its main aim is to put individuals in control of their personal data. The Commission seeks to ensure that consent is given explicitly and freely when it is required; internet users have an effective right to be forgotten and a right to data portability; and administrative and judicial remedies serve to reinforce the rights of data subjects.

The European Commission also explains that it wants to ensure that data protection rules support a single digital market across the EU. The Commission is therefore proposing to lay down data protection rules at EU level through a regulation which is directly applicable in all Member States and does not require further transposition into national law. Thus, the Commission wishes to achieve uniformity of the data protection legal framework across the EU and estimates that this would lead to net savings for companies of about €2.3 billion a year alone in administrative burdens. The Commission also wishes to simplify the regulatory environment by doing away with formalities such as general notification requirements; the Commission estimates that would lead to net savings of €130 million a year alone in administrative burdens. The Commission is also proposing to set up a 'one-stop-shop' system for data protection in the EU: data controllers (including natural or legal persons and public authorities which determine the purposes, conditions and means of the processing of personal data) in the EU will deal with a single data protection authority (DPA) alone, namely the DPA of the Member State in which the company is based.

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

- EU institutions launch the most far-reaching reform of EU data protection legislation in 20 years and stress the need for uniform rules across the EU to regulate this policy area.
- Various voices raise concerns in a number of EU Member States about certain aspects of the European Commission's reform proposals, such as over-regulation or whether such proposals need to be made at EU level. They take issue, for example, with the Commission's decision to use a regulation, which sets immediately applicable rules, rather than a directive, which defines common minimum EU standards, but permits national implementation that takes into account different legal traditions.
- The CJEU develops its line of jurisprudence on the complete independence of data protection authorities.
- The revision of the EU Data Retention Directive is postponed, while national implementing legislation continues to face constitutional challenges in a number of Member States. The CJEU is asked to deliver an opinion on the fundamental rights compliance of the directive.
- The Council of the European Union reaches political agreement on the proposed PNR Directive, but the European Parliament suspends cooperation on a number of legislative files including this one during the second half of 2012, delaying the legislative procedure.
- The European Parliament rejects the ACTA, which means that neither the EU nor its individual Member States can join the agreement.
- The responsible national data protection authority audits Facebook at its European headquarters and expresses satisfaction at the progress achieved, but fundamental rights concerns persist in other EU Member States.
- A national data protection authority investigates Google's new privacy policy, pursuing a mandate from the Article 29 Working Party on behalf of the 27 EU Member States.

All the main European bodies and institutions working in the field of privacy and data protection – the European Data Protection Supervisor (EDPS), Article 29 Working Party, the European Economic and Social Committee (EESC), the Committee of the Regions, FRA, the European Data Protection Commissioners, the Member States and different associations and non-governmental organisations active in the field of data protection – have commented on the proposed reform.

In some EU Member States, especially in the national parliaments, the European Commission proposals raised concerns. One such concern related to the principle of subsidiarity, or whether such proposals needed to be made at EU level and might not better be addressed nationally, and another to the impression that the European Commission proposals were too far reaching and too detailed, thus posing the risk of overregulation.

These concerns were, for instance, voiced in Belgium, the Czech Republic (especially in relation to the draft directive), Estonia, Germany, Slovenia and Sweden. In Lithuania, in contrast, the prevailing view was that the proposals did not contradict the principle of subsidiarity.

In other Member States, the issue of subsidiarity was coupled with the perceived lack of consistency between the proposed regulation and the proposed directive. This and other arguments were often combined with the suggestion to adopt a single legal instrument instead, preferably a directive that would define common minimum standards, but permit better standards at national level. This line of argument surfaced in the Czech Republic, Estonia, Germany, Lithuania, Slovenia and Sweden.

Another strand of argument focused on the economic impact of the proposals, drawing attention to the administrative burdens for the private sector and alleged excessive sanctions. These concerns were raised in the Czech Republic, Estonia, the Netherlands, Slovenia, Sweden and the United Kingdom.

### **Spotlight on Google from the perspective of data protection**

In March 2012, Google opted to merge 60 separate privacy policies for individual Google-owned sites into one single policy for all its services. The move allowed it to combine data from different sites – including You Tube, social network Google+ and smartphone system Android – in order to better target its advertising.

The Article 29 Working Party mandated the French data protection authority, Commission on Information Technology and Liberties (*Commission nationale de l'informatique et des libertés*, CNIL), to carry out an investigation into Google's new privacy policy. The EU Data Protection Authorities published their common findings in a joint letter on 16 October 2012.

They established that Google's changes had neglected to give users an opt-out option. In addition, Google had failed to place any limit on the "scope of collection and the potential uses of the personal data", meaning it might be in breach of several data protection principles, such as purpose limitation, data quality, data minimisation, proportionality and right to object. They further highlighted the wide range of potential uses Google might have for the data, including product development or advertising. EU data protection laws place limits on such activities, they said.

Although Google has not been directly accused of acting illegally, EU Data Protection authorities have expressed concerns about "insufficient information to its users (especially its passive users)" and "about the combination of data across services". They, therefore, instructed Google to give clearer information about what data are collected for what purpose. They also instructed Google to: modify its tools in order to avoid excessive data collection and to take effective and public measures to comply quickly with the recommendations. Otherwise authorities in several countries could take action against it.

Following an investigation, Google promised to delete collected data that remained from its Street View service as part of their Wi-Fi mapping exercise in the United Kingdom. This latter practice, which resulted in the gathering and storage of fragments of personal data including emails, complete URLs and passwords, raised fundamental rights concerns because under data protection principles only specific data for specific purposes may be collected.

The company, in a letter dated 27 July 2012 to the United Kingdom Data Protection Authority, the Information Commissioner's Office (ICO), admitted that a "small portion" of the information that had been collected from its Street View cars when they had toured the United Kingdom was still "in its possession". In response, the ICO said it would examine the contents of the information Google had discovered. The ICO said that Google may have breached the terms of the agreement following a 2010 investigation into the issue.

"We are also in touch with other data protection authorities in the EU and elsewhere through the Article 29 Working Party and the GPEN [Global Privacy Enforcement Network] network to coordinate the response to this development. The ICO is clear that this information should never have been collected in the first place and the company's failure to secure its deletion as promised is cause for concern," the ICO added.

#### FRA PUBLICATION

*FRA opinion on proposed EU data protection reform package, FRA Opinion – 2/2012, 1 October 2012*

<http://fra.europa.eu/en/opinion/2012/fra-opinion-proposed-eu-data-protection-reform-package>

## Outlook

In the area of **data protection**, EU institutions are expected to debate the reform of EU data protection legislation in 2013, particularly in the Council Working Party on Information Exchange and Data Protection and in the European Parliament's Civil Liberties, Justice and Home Affairs (LIBE) committee. It remains to be seen to what extent EU institutions will take up the fundamental rights concerns expressed by FRA, EDPS and Article 29 Working Party.

Besides the discussion surrounding this major reform package, more specific policy measures will also continue to dominate data protection debates.

Since the evaluation of the Data Retention Directive found that there was a need to clarify the relationship between the Data Retention Directive and Article 15 of the EU e-Privacy Directive 2002/58/EC, it is likely that the revision of the Data Retention Directive will only take place once the Data Protection Reform has been adopted.

### FRA PUBLICATION

*FRA Symposium report – European Union data protection reform: new fundamental rights guarantees, July 2012*

<http://fra.europa.eu/en/publication/2012/fra-symposium-report-european-union-data-protection-reform-new-fundamental-rights>

With regard to the draft PNR directive, the European Parliament has ended its suspension of cooperation and the debate in the European Parliament will thus gain momentum in 2013. It remains to be seen if the LIBE committee, and the Plenary of the European Parliament, will align themselves with the draft report of the rapporteur and support the proposed PNR directive or oppose it on fundamental rights grounds.

Important signals can also be expected from the CJEU. The CJEU is expected to deliver a judgment in the case against Hungary addressing once more the requirement of independence for data protection authorities and to further develop and elaborate its line of jurisprudence on this aspect of effective data protection in practice. Cases on data retention referred to the CJEU might offer further insights into the fundamental rights dimensions of this EU measure. Rulings concerning biometric passports will play an important role in determining the legality of including biometrics in EU passports and travel documents.

Apart from such developments in EU legislation, policies and case law, the wider public will continue to see debates on the data protection dimension of internet-based services.

# The rights of the child and protection of children

## Spotlight on child poverty

The European Commission's Social Protection Committee endorsed the advisory report *Tackling and preventing child poverty, promoting child well-being* in 2012. The report presents an in-depth analysis of key EU and national policy tools and developments in relation to child poverty and social exclusion. It proposes that the future European Commission Recommendation, initially planned for 2012, should support EU and national efforts to contribute to enhancing political commitment, strengthen the evidence base of policy development, drive policy change by mainstreaming child poverty issues, and structure and prioritise EU action to create synergy.

Child poverty in the EU is an issue of growing concern. According to 2011 Eurostat figures, 27 % of children are at risk of poverty or social exclusion, a higher percentage than the rest of the population. The situation in Member States is particularly affected by the economic crisis. On 24 October 2012, the European Commission proposed setting up a fund with a budget of €2.5 billion for the period 2014–2020 to help the most deprived persons, including children, in the EU by supporting Member State schemes to provide food, clothing and other essential goods. The issue of child poverty was also the theme of conferences organised during 2012 by the Presidencies of the EU Council (Denmark and Cyprus).

The economic crisis affected children in a number of EU Member States, both through the reduction of family incomes and through budgetary cuts in state social expenditure. A UN Children's Fund (Unicef) study, *Childhood in Spain 2012-2013: The impact of the crisis on children*, argued that budgetary cuts were affecting services for children, including health, education and social services.

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

- The European Parliament and Council of the European Union adopt a directive establishing minimum standards on the rights, support and protection of victims of crime, strengthening the protection of children who are victims of crime.
- The European Commission addresses the issues of child trafficking and sexual abuse of children on the internet through the adoption of two European strategies: the EU Strategy towards the Eradication of Trafficking in Human Beings and the European Strategy for a Better Internet for Children.
- Eurostat data show that in 2011 children were at greater risk of poverty or social exclusion than the rest of the population: 27 % of children faced this risk. To help address this problem, the European Commission is preparing the adoption of a Recommendation on child poverty with a focus on access to resources, services and child participation.
- EU Member States continue to prepare legal and policy reforms in the fields of crime, family and child protection. A number of reforms have been stopped or delayed, however, in part because of the economic crisis.

In Portugal a decree adopted in June 2012 significantly reduced various benefits with severe financial implications for families with children. The Italian Society of Paediatrics, major children's medical networks and children's rights associations raised concern over the impact of budgetary cuts in the social and healthcare sectors in Italy. The President of the Authority for Childhood and Adolescence said that almost two million children were living in families in poverty in Italy, drawing on data published by ISTAT, the national statistical office.

The economic situation in Greece became particularly difficult in 2012. The UN Committee on the Rights of the Child in its Concluding Observations on the State Report of Greece expressed deep concern about the right to life, survival and development of children and adolescents whose families are quickly losing their livelihoods and access to state-funded social services, including healthcare and social security. The Committee noted in particular its concern about youth unemployment and school drop-out rates, especially among Roma children.

The Greek Ombudsman's Parallel Report to the UN Committee on the Rights of the Child notes an increase in child beggars or children working as street vendors. The Greek National Committee of Unicef published a report in March 2012 that expresses particular concern regarding child poverty and malnutrition, noting incidents of students fainting at school.

The Finnish government announced on 22 March 2012 that the annual index-based increase in child benefits would be discontinued between 2013 and 2015, as part of the government's efforts to save €1.2 billion in public spending for 2013–2016. The Constitutional Law Committee considering the proposal concluded that the economic recession is an acceptable reason for reducing social benefits provided that this does not infringe on constitutional obligations. It considered the reduction of child benefits, estimated at 8 % by 2015, as acceptable. The amendment of the Child Benefits Act (*lapsilisälaki/barnbidragslag*, Act No. 796/1992, legislative amendment Act No. 713/2012) takes effect as of 1 January 2013.

In the United Kingdom, a report by the Secretary of State for Work and Pensions shows that a target to halve child poverty by 2010 has not yet been met, although the number of children living in relative income poverty in 2010–2011 was reduced to 2.3 million, 600,000 short of the target.

### Spotlight on asylum seeking and migrant children

The European Commission adopted its first interim report on the implementation of the Action Plan on Unaccompanied Minors 2010–2014 in September 2012. The report takes stock of the progress made and identifies the main areas for improvement in the best interests of the child, such as the need for collecting data on the situation of these children, the need for preventing unsafe migration and trafficking, the need to provide better access to procedural guarantees and the need to find durable solutions.

Table 1: Asylum applicants by age group (\*), 2012 (%), by EU Member State

EU Member State	Total	Distribution of age groups as a share of total (%)					
		0–13 years	14–17 years	18–34 years	35–64 years	64 years and over	Unknown
<b>EU-27</b>	<b>319,185</b>	<b>20.7</b>	<b>6.8</b>	<b>51.1</b>	<b>20.3</b>	<b>0.9</b>	<b>0.2</b>
AT	17,425	22.4	12.1	49.4	15.6	0.5	0.0
BE	28,105	21.2	7.5	50.6	20.1	0.6	0.0
BG	1,385	11.3	8.0	60.4	19.0	1.3	0.0
CY	1,635	9.4	2.9	66.4	20.6	0.4	0.4
CZ	740	17.4	2.2	41.6	37.6	1.2	0.0
DE	77,540	28.4	7.5	43.0	20.0	1.0	**
DK	6,045	17.8	8.5	53.5	19.2	0.9	0.0
EE	75	7.8	6.5	50.6	35.1	0.0	0.0
EL	9,575	2.9	2.4	82.7	11.9	0.1	0.0
ES	2,565	13.3	4.4	61.5	20.3	0.5	0.0
FI	3,095	18.5	7.1	52.8	20.5	0.7	0.3
FR	60,560	19.1	3.1	52.3	24.7	0.9	0.0
HU	2,155	18.1	11.4	57.7	12.4	0.3	0.0
IE	955	24.6	4.6	49.3	21.2	0.3	0.0
IT	15,715	6.3	5.3	73.4	14.9	0.1	0.0
LT	645	9.9	3.4	59.6	26.8	**	0.0
LU	2,050	29.5	4.9	45.5	19.7	0.4	0.0
LV	205	13.1	2.9	55.8	28.2	0.0	0.0
MT	2,080	3.4	8.2	80.0	8.1	**	0.3
NL*	–	–	–	–	–	–	–
PL	10,750	35.6	4.3	39.1	20.2	0.7	0.0
PT	295	8.5	9.9	58.0	23.5	0.0	0.0
RO	2,510	3.8	5.9	78.2	12.0	0.2	0.0
SE	43,865	22.1	10.6	45.0	20.7	1.6	0.0
SI	305	14.8	17.8	46.7	20.4	**	0.0
SK	730	6.3	6.8	71.0	15.9	0.0	0.0
UK	28,175	13.8	5.6	55.3	21.7	1.0	2.5

Notes: (\*) Data not available for the Netherlands (due to the transition to a new registration system, the Dutch Immigration and Naturalisation Service) is not able to provide certain figures for 2012 asylum applications)

(\*\*) Two or fewer applicants recorded in the reference period.

Source: Eurostat (2012), Data in focus 14/2012: Population and social conditions, p. 6, available at: [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-QA-12-014/EN/KS-QA-12-014-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-12-014/EN/KS-QA-12-014-EN.PDF)

In 2012, the main areas of concern across EU Member States included guardianship or legal representation and the administrative detention of children alone or with their families. The Council of Europe Committee of Ministers is closely supervising the issue of detention of unaccompanied minors in the context of execution of the judgment in the case of *M.S.S v. Belgium and Greece*.

In Cyprus, the Ombudsman's Office published a report on legal representation of unaccompanied asylum seeking children in May 2012. The report recommended changes in legislation to ensure the legal representation of unaccompanied asylum-seeking children.

With respect to administrative detention, Human Rights Watch reported in 2012 that unaccompanied children in Malta were still kept in detention pending the outcome of age determination procedures.

In the United Kingdom, the Children's Commissioner for England raised a number of concerns about the treatment of unaccompanied asylum-seeking children upon arrival in its report, *Landing in Dover*. The report found that children were detained for a significant time period while interviews were carried out, and that children who did not claim asylum during their interview were returned to France. The United Kingdom's Border Agency has since ceased this practice of returning children.

The Children's Commissioner recommended that, except for gathering basic information, no interviews should be conducted with children upon arrival. Interviews should instead wait until children have been referred to local child protection services and have had adequate rest and time for recovery, as well as the opportunity to obtain legal advice and representation.

### Outlook

Regarding the **rights of the child and the protection of children**, it is hoped that relevant actors acknowledge the fact that investing in children and breaking the chain of disadvantage across generations is the way forward. The EU legislature is expected to continue its efforts to minimise the damaging effects of the economic crisis on children. An upcoming Recommendation on Child Poverty and Well-Being is likely to provide the EU Member States with a set of common principles for effective action in key areas like: access to adequate resources, access to affordable quality services and children's right to participation. A set of indicators is also envisaged to be developed in order to monitor child poverty and social exclusion at the national level. As austerity measures resulted in serious cuts to services such as childcare, it is expected that this recommendation will reinforce social investments.

Actions targeting unaccompanied and separated children will continue in 2013, on the basis of the Action Plan on Unaccompanied Minors (2010–2014). The EASO with the support of the FRA will publish in 2013 a handbook on age-assessment targeting this particular vulnerable group. EASO will also develop a new module on interviewing children as part of the European Asylum Curriculum to train officials working in the field of asylum across the EU. The FRA has been invited to join the Reference Group providing advice on the module.

Turning the rights of the child into reality in the field of justice is an essential action item under the EU Agenda for the Rights of the Child and the Council of Europe Strategy for the Rights of the Child (2012–2015). A directive on special safeguards for suspected or accused persons who are vulnerable, including children, is planned to be tabled in 2013. It recognises the multiple challenges that confront child offenders. These legislative initiatives will be complemented by extensive researches conducted at the EU level. The European Commission is planning to launch its report on criminal justice in the second quarter of 2013 and next year FRA will expand its field work research within its Child-friendly Justice project by interviewing children who have been involved in justice procedures.

The protection of children on the internet from all forms of violence remains a challenge for the year to come. In this regard, the adoption of a European Strategy for a better Internet for children was an important accomplishment in 2012. Still, challenges remain at the implementation level, as more precise rules and provisions regarding sanctions to tackle child pornography more effectively and to address data protection and privacy issues are needed. An important development foreseen for 2013 is the inauguration of a new European Cybercrime Centre that will coordinate at EU level the fight against cyber-crime.

# Equality and non-discrimination

## Spotlight on legislative developments at EU level

In 2012, several discussions continued on legislative initiatives with an equality dimension. In 2011, the European Commission submitted its proposal for the EU structural funds legislative package for 2014–2020. According to the proposal, at least a quarter of the cohesion budget should be dedicated to the European Social Fund, amounting to €84 billion. The aim is to combat youth unemployment, promote active ageing, social innovation and social inclusion, and support disadvantaged groups such as Roma.

The proposal contained seven general conditions that must be met before EU Member States can receive funding, namely: anti-discrimination, gender equality, disability, public procurement, state aid, environmental legislation, and statistical systems/result indicators. Discussions in the Council of the European Union under the Danish Presidency of the EU in 2012 resulted in the removal of the conditions on anti-discrimination, gender equality and disability.

The European Commission, as well as civil society organisations, called upon the Council to reverse this decision, saying that removing these conditions could undermine the full participation of the most vulnerable social groups in the EU and the attainment of the Europe 2020 goals.

In November 2012 under the Cyprus Presidency of the EU, the Council agreed on a fourth partial general approach to the structural funds legislative package, which did not include the conditions on anti-discrimination, gender equality and disability.

## Key developments in the area of non-discrimination

- The Council of the European Union adopts on 29 October 2012 the EU-level framework for the implementation and monitoring of the CRPD, following the EU's ratification of the UN CRPD in December 2010. The framework comprises the European Commission, the European Ombudsman, the Petitions Committee of the European Parliament, FRA and the European Disability Forum.
- Five EU Member States ratify the UN CRPD in 2012, bringing the total to 24 EU Member States, as well as Croatia. A large majority of Member States identify focal points under the CRPD and either extend the mandate of existing bodies or set up new bodies as CRPD monitoring mechanisms.
- The European Parliament LIBE Committee publishes a feasibility study on a possible LGBT persons Roadmap. At national level a variety of measures are adopted and case law continues to play an important role.
- The European Commission proposes that women should fill at least 40 % of non-executive board member positions in publicly-listed companies. Some Member States address the gender pay gap in legislative and policy measures.
- The 2012 European Year of Active Ageing and Solidarity between Generations raises the visibility of the challenges and obstacles that an ageing society faces, as well as the opportunities to address such issues.

Disagreements have hampered discussions on the draft Maternity Leave Directive proposed by the European Commission in 2008. These disagreements arose from the Council's position in 2011 on the length of maternity leave and the amount of allowance foreseen in the European Commission proposal, following a 2010 Parliament resolution. The Commission is not planning to withdraw the proposal and rather aims at continuing to make efforts to achieve further progress.

The discussion on the proposed Horizontal Directive continued in the Council of the European Union in 2012. The main issues concerned the division of competences between the EU and the Member States, the overall scope of the directive and the principle of subsidiarity.

The European Parliament made repeated calls that have been widely supported by civil society, to 'unblock' the decision-making process.

Some EU Member States are already implementing aspects that would be required for adopting such a horizontal directive. The anti-discrimination legislation in place, for example, in Belgium, Bulgaria, the Czech Republic, Ireland, Malta, the Netherlands, Spain and the United Kingdom as well as Croatia, extends the duty to provide reasonable accommodation for persons with disabilities beyond the field of employment, such as to the provision of goods and services.

### Spotlight on the implementation of the Convention on the Rights of Persons with Disabilities

In keeping with the EU's obligations under Article 33 (2) of the CRPD, the Council of the European Union adopted a proposal in October 2012 designating the members of the EU-level framework to promote, protect and monitor the implementation of the Convention.

The entities comprising the EU framework are the European Parliament's Petitions Committee, the European Ombudsman, the European Commission, FRA and the European Disability Forum. In addition, a majority of EU Member States have established the bodies defined under Article 33 of the CRPD for implementing and monitoring the CRPD at the national level.

Five EU Member States (Bulgaria, Estonia, Greece, Malta and Poland) ratified the CRPD in 2012, bringing the total ratifications to 24 EU Member States and Croatia, among which 19 have also ratified its Optional Protocol. The EU Member States that ratified the convention but not its Optional Protocol are Bulgaria, the Czech Republic, Denmark, Poland and Romania. Estonia and Poland made formal declarations upon ratification with regard to Article 12 of the CRPD on equal recognition before the law, interpreting this article to allow restriction of a person's legal capacity according to the provisions of existing national legislation.

#### FRA PUBLICATION

*Involuntary placement and involuntary treatment of persons with mental health problems, June 2012*

<http://fra.europa.eu/en/publication/2012/involuntary-placement-and-involuntary-treatment-persons-mental-health-problems>

Finland, Ireland and the Netherlands have yet to ratify the CRPD, but they have indicated that they are in the process of amending their legislation to ensure compliance before ratifying.

EU Member States continued to implement and monitor the CRPD during 2012. Article 33 of the convention sets out States Parties' obligations to: designate a focal point for matters related to the CRPD and to consider setting up a coordination mechanism to facilitate alignment between different sectors (paragraph 1); maintain, strengthen, designate or establish a framework including independent mechanism(s) to promote, protect and monitor the implementation of the CRPD (paragraph 2); and ensure that persons with disabilities and their representative organisations are involved and participate fully in the monitoring process (paragraph 3).

**Table 2: Ratification of the UN Convention on the Rights of Persons with Disabilities, by EU Member State and Croatia**

Country	Ratified in	Optional Protocol
AT	2008	Yes
BE	2009	Yes
BG	2012	No
CY	2011	Yes
CZ	2009	No
DE	2009	Yes
DK*	2009	No
EE	2012	Yes
EL	2012	Yes
ES	2007	Yes
FR	2010	Yes
HU	2007	Yes
IT	2009	Yes
LT	2010	Yes
LU	2011	Yes
LV	2010	Yes
MT	2012	Yes
PL	2012	No
PT	2009	Yes
RO	2011	No
SE	2008	Yes
SI	2008	Yes
SK	2010	Yes
UK	2009	No
HR	2007	Yes
EU	2010	No

Note: For more information about the structures set up for the implementation and monitoring of the CRPD, see Table 5.1 in Chapter 5 of the FRA Annual report 2012.

Source: FRA, 2012

As a first step, a large majority of Member States have identified focal points, with the Ministry responsible for social affairs typically assuming this role. About a third of those Member States that have specified a national focal point have also given it the role of coordination mechanism.

Secondly, EU Member States typically take one of two approaches regarding mechanisms set up to promote, protect and monitor the implementation of the CRPD: either extending the mandate of existing bodies to incorporate this role, or setting up new bodies tasked specifically with CRPD monitoring.

Reflecting the first approach, National Human Rights Institutions (NHRIs) in Belgium, Denmark, Germany, Luxembourg and Great Britain (England, Scotland and Wales) have been designated as the independent mechanism required under Article 33 (2) of the CRPD. Three of these, in Belgium, Denmark and England and Wales, are both NHRIs and equality bodies. In Cyprus, Latvia and Lithuania, respective national equality bodies were designated as independent monitoring bodies, while in France, Luxembourg and in Scotland and Northern Ireland (United Kingdom) both the respective national equality body and the NHRI are included in the monitoring frameworks.

Seven EU Member States, namely Austria, Estonia, Hungary, Italy, Malta, Slovenia and Spain, adopted the second approach and created new mechanisms dedicated to monitoring CRPD implementation. Many of these new mechanisms also systematically involve persons with disabilities through their representative organisations.

A further eight Member States (Bulgaria, the Czech Republic, Greece, Poland, Portugal, Romania, Slovakia and Sweden, as well as Croatia) are in the process of establishing monitoring mechanisms. The Bulgarian, Polish and Slovakian proposals involve NHRIs, equality bodies and ombudsman institutions. In Sweden, the government commissioned a delegation to examine which institution should be designated as monitoring body. The delegation concluded that Sweden should establish an NHRI with this mandate. The national Equality Ombudsman and the Swedish Agency for Disability Policy Co-ordination can, within their mandate, take on the monitoring role until an independent mechanism is set up.

#### FRA PUBLICATIONS

*Choice and control: the right to independent living*, Report, June 2012

*Choice and control: the right to live independently – Experiences of people with intellectual disabilities*, Easy-read summary, June 2012

<http://fra.europa.eu/en/publication/2012/choice-and-control-right-independent-living>

### Spotlight on religious practices and the registration of religious communities

In 2012, cases of alleged discrimination on the ground of religion or belief arose in several EU Member States. These issues often concentrated around highly publicised topics such as ritual slaughtering, wearing face-covering clothing and male circumcision.

On 6 December 2012, the Belgian Constitutional Court rejected a claim lodged to annul the ban on face coverings that came into force on 13 July 2011. In its judgment, the court concluded that the imposed ban does not violate fundamental rights provided that it does not apply to places of worship. On 6 February 2012, the Minister of Interior and Kingdom Relations of the Netherlands submitted a legislative proposal to the Dutch Parliament establishing a general ban on the wearing of face-covering clothing, but due to the collapse of the government the proposal was not further debated. The new government, after the general elections, has put in its coalition agreement that “clothing that covers the face will be banned in education, the care sector, public transport and in public-authority buildings”.

In the Netherlands, the Dutch Parliament debated the ritual slaughter of animals, leading a member of parliament of the Party for Animals (*Partij voor de Dieren*) to table a legislative proposal in 2011 to ban this practice. In 2012, however, the Senate rejected the proposed law. In June, the State Secretary for Agriculture found a compromise with relevant stakeholders by means of a covenant. This covenant aims at allowing ritual slaughter under animal welfare conditions, thus avoiding an outright ban. On 27 November 2012, the Polish Constitutional Court ruled that the ritual slaughter of animals is illegal as of January 2013.

In Finland, the National Discrimination Tribunal did not consider as discriminatory the prohibition of Islamic prayers during breaks in common areas shared by all workers under the Non-Discrimination Act. It rejected the application.

The District Court of Cologne in Germany found that the circumcision of an infant boy constituted bodily harm in spite of the parents' agreement and should be penalised. This judgment sparked debates in a number of countries on the legality of circumcisions. A wide range of actors expressed criticism on the topic, including several faith-based communities. A German draft proposal clarifying legal questions on the matter was published in autumn and the law entered into force in December 2012. The law says that parents are entitled in their care of a child, who is not sufficiently developed to understand and assess the issue himself, to agree to a circumcision even if it is not medically required, provided that it is carried out according to up-to-date medical standards and respects the child's best interests. If a child opposes the circumcision then the procedure might not be in his best interests, depending on his state of development.

The Slovenian Human Rights Ombudsman issued a non-binding opinion stating that circumcision based solely on religious grounds is not allowed by law and that the child's consent is necessary because of the interference with his bodily integrity. In the case of conflict between freedom of religion and children's rights, the Ombudsman concluded that the latter prevails, relying on the constitutional provisions on the best interest of the child.

Registration requirements for faith communities also emerged as a fundamental rights matter in some EU Member States. A church law came into force in Hungary that significantly changes registration requirements for all existing churches. Registration of a denomination now falls under the Parliament's competence, which may deny registration even if the criteria set by the church law have been met. More than 300 denominations lost their legal status in January 2012.

In February 2012, 84 Hungarian denominations submitted requests for their recognition, of which 66 were unsuccessful. The Council of Europe European Commission for democracy through law (Venice Commission) issued an opinion on this law, concluding that "The Act sets a range of requirements that are excessive and based on arbitrary criteria [which] can hardly be considered in line with international standards". The Hungarian Government said it plans to introduce amendments that bring the law in line with international standards.

A Lithuanian law regulating registration procedures of religious communities and associations and their real estate property for religious purposes came into force on 1 July 2012. This law simplifies registration procedures for religious communities and associations when privatising their properties, which were nationalised before independence but are still in use by a religious communities.

## Outlook

In the **areas of equality and non-discrimination**, intense debate on the EU legal and policy framework in 2012 and in 2013 is expected to yield important developments. The European Parliament, which has repeatedly called for the adoption of the proposed Horizontal Directive, will draft its own initiative report on the implementation of the Employment Equality Directive. The European Commission plans to publish a report in October 2013 on the implementation of the Racial Equality Directive and the Employment Equality Directive. Discussions will also continue on the Commission's proposal for the EU structural funds legislative package for 2014–2020.

There will also be discussions in 2013 on gender-based discrimination, including a proposed revision of the Pregnant Workers Directive. With particular regard to the issue of violence against women, EU Member States have until 6 April 2013 to put into place all the legal and administrative provisions necessary to give full effect to the Directive on preventing and combating trafficking in human beings and protecting its victims. In addition, following a European Parliament resolution, the European Commission is expected to review and propose amendments to the Gender Recast Directive latest by 15 February 2013, focusing in particular on the gender pay gap issue. With regards to 'women in decision-making', the European Parliament and the Council of the European Union are expected to review the European Commission's legislative proposal in 2013.

The European Accessibility Act will be published in 2013. This is expected to ensure the equal treatment of persons with disabilities and the elderly. The act will complement existing EU legislation by providing clarity on what accessibility means for the provision of goods and services in the EU.

Regarding discrimination based on sexual orientation and gender identity, on-going debates in the area of family life which are linked to the Stockholm Programme and the 2013 European Year of Citizens may result in developments at EU level. The report on the evaluation of the Free Movement Directive may affect the issue of free movement of same-sex couples. The European Commission is expected to launch the report in May 2013, in light of the European Parliament's renewed calls for the need to ensure freedom of movement for all EU citizens and their families, without discrimination on, among others, grounds of sexual orientation.

### FRA PUBLICATION

*FRA opinion on proposed EU regulation on property consequences of registered partnerships, FRA Opinion – 1/2012, June 2012*

<http://fra.europa.eu/en/opinion/2012/fra-opinion-proposed-eu-regulation-property-consequences-registered-partnerships>

A European Commission proposal is expected to amend in 2013 the existing regulation on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility. In addition, the European Commission is expected to make two legislative proposals in 2013 that tackle the issue of civil status documents, as already envisaged by the Green Paper of 2010 on promoting free movement.

**FRA PUBLICATION**

Factsheet: *Inequalities and multiple discrimination in healthcare*, February 2012

<http://fra.europa.eu/en/publication/2012/inequalities-and-multiple-discrimination-healthcare>

# Racism and ethnic discrimination

## Spotlight on trends in officially recorded racist, anti-Roma, anti-Semitic/anti-Muslim and (right wing) extremist crimes

Data published by relevant authorities across EU Member States show great fluctuation in recorded crime with racist, xenophobic, anti-Roma, antisemitic, Islamophobic/anti-Muslim or (right-wing) extremist motives (see Tables 6.1 to 6.6 in the Annual report 2012).

When considering trends, care must be taken not to confuse the rate of recorded incidents of racist, xenophobic and related crime with the actual rate of crime. Not only is it widely acknowledged that this type of crime is grossly under-recorded (as are many forms of inter-personal crime), but variations observed within EU Member States from one year to the next could be the result of:

- how these crimes are defined in criminal law;
- changes in how (the characteristics of) incidents are recorded;
- the willingness of victims and/or witnesses to report incidents; and,
- the actual occurrence of racist, xenophobic and related crime.

For those EU Member States that publish data on more than one bias motivation, Austria and the Czech Republic witnessed decreases in all forms of recorded crime between 2010 and 2011, while Denmark, the Netherlands, Poland and Sweden saw increases in every category. Germany experienced increases for racist, xenophobic and right-wing extremist crimes, and a decrease in antisemitic crimes. In Finland, increases were observed for racist and Islamophobic/anti-Muslim crimes but a decrease was seen in antisemitic crime. Recorded racist, antisemitic and extremist crimes appeared to be on the decrease in France, while recorded Islamophobic/anti-Muslim crimes appeared to be on the increase. Recorded racist crime was on the increase in Belgium, while the

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

- A number of EU Member States address crimes motivated by racism, xenophobia and related intolerances, by redefining what constitutes such crimes, and changing and enhancing their data collection systems.
- Increases in recorded crimes motivated by racism, xenophobia and related intolerances are observed in 11 EU Member States that publish data on these crimes, with decreases observed in another six Member States.
- Elements of extremist ideology increasingly join mainstream political and public discourse in EU Member States.
- Several EU Member States begin implementing policies at the national level to improve Roma integration, but the overall situation of Roma remains critical with respect to discrimination in healthcare, housing, education and employment.
- Members of ethnic minorities, migrants, refugees and irregular migrants continue to face discrimination and inequalities in healthcare, housing, education and employment across the EU, as exemplified by spatial segregation, discriminatory advertisements and differential treatment in access to services.
- A number of EU Member States take steps to enable the collection of data disaggregated by ethnicity, thereby allowing for better recording and identification of potentially discriminatory practices.

same number of crimes of Holocaust denial or revisionism was recorded there between 2010 and 2011. Note that the data for Belgium only cover incidents of Holocaust denial or revisionism and should therefore not be taken as representative of antisemitic crime as a whole.

**FRA PUBLICATION**

*The situation of Roma in 11 EU Member States – Survey results at a glance, May 2012*

<http://fra.europa.eu/en/publication/2012/situation-roma-11-eu-member-states-survey-results-glance>

**Table 3: Variation in officially recorded racist, anti-Roma, antisemitic, Islamophobic/anti-Muslim and (right-wing) extremist crime in EU Member States between 2010 and 2011, published data**

	Racist crime	Anti-Roma crime	Antisemitic crime	Islamophobic/ Anti-Muslim crime	Extremist crime (right-wing)
AT	↘		↘	↘	↘
BE	↗		=*		
CY					
CZ	↘	n/c	↘		
DE	↗		↘		↗
DK	↗				↗**
ES	↗				
FI	↗		↘	↗	
FR	↘		↘	↗	↘
IE	↘				
LT	↗				
LU	↗				
NL	↗		↗		
PL	↗				↗
SE	↗	↗	↗	↗	↗
SK	n/c				
UK	↘		n/c		
HR	=				

Notes: Blank entries: no data are collected or published.  
 \* Incidents of Holocaust denial or revisionism recorded by the Federal Police.  
 \*\* Includes crimes motivated by either right-wing or left-wing extremism.  
 n/c: data are not comparable with the previous year.  
 ↗ indicates a rise in numbers of recorded incidents.  
 ↘ indicates a decline in numbers of recorded incidents.  
 = indicates the same number of incidents recorded between 2010 and 2011.

Source: FRA, 2012

## Spotlight on the situation of Roma

The situation of Roma in EU Member States continues to be a cause of concern as Roma are often the victims of discrimination and social exclusion, live in deep poverty and lack access to healthcare and decent housing. This is confirmed by the findings of two combined household surveys conducted by FRA and the UN Development Programme (UNDP) – in association with the World Bank and with funding from the European Commission – on the situation of Roma populations in 2011, hereafter referred to as FRA/UNDP surveys. In total, 22,203 persons who self-identify as Roma and non-Roma persons living in close proximity to Roma populations were interviewed in Bulgaria, the Czech Republic, France, Greece, Hungary, Italy, Poland, Portugal, Romania, Slovakia and Spain, covering 84,287 household members.

The FRA/UNDP surveys show that one in three Roma are unemployed, 20 % are not covered by health insurance, 90 % are at risk of poverty and about half had experienced discrimination in the past 12 months because of their Roma background.

The Special Eurobarometer 2012 on discrimination in the EU confirmed these findings, with three out of four Europeans viewing Roma as a group at risk of discrimination. All different groups of Europeans as well as an absolute majority in most EU Member States share this view.

The use of the term ‘Roma’ in this annual report follows the approach of the Council of Europe, which uses the term to refer to “Roma, Sinti, Kale and related groups in Europe, including Travellers and the Eastern groups (Dom and Lom), and covers the wide diversity of the groups concerned, including persons who identify themselves as Gypsies”.

In May 2012, the European Commission, with its *Communication on Roma Integration Strategies: a first step in the implementation of the EU Framework*, called on EU Member States to implement their national strategies to improve the economic and social integration of Roma. The Member States developed these strategies in response to the Commission’s EU Framework for national Roma integration strategies adopted on 5 April 2011, which the Council of the European Union endorsed soon afterwards.

By March 2012, all EU Member States had presented a National Roma Integration Strategy or a corresponding set of policy measures within their broader social inclusion policies. The European Commission’s assessment focused on evaluating the Member States’ approaches to the four key areas of healthcare, housing, education and employment, and on how structural requirements (cooperation with civil society, with regional and local authorities, monitoring, anti-discrimination and establishment of a national contact point) as well as funding were addressed.

### FRA PUBLICATION

*Antisemitism: Summary overview of the situation in the European Union 2001–2011, June 2012*

<http://fra.europa.eu/en/publication/2012/antisemitism-summary-overview-situation-european-union-2001-2011-0>

The European Commission assessment concluded that despite EU Member States' efforts to develop a comprehensive approach to Roma integration, much more needs to be done when it comes to securing sufficient funding for Roma inclusion, putting monitoring mechanisms in place and fighting discrimination and segregation. The European Commission stressed in particular that the "socio-economic inclusion of Roma remains first and foremost the responsibility of the Member States and they will need stronger efforts to live up to their responsibilities, by adopting more concrete measures, explicit targets for measurable deliverables, clearly earmarked funding at national level and a sound national monitoring and evaluation system".

#### FRA PUBLICATION

Factsheet: *FRA survey of Jewish people's experiences and perceptions of antisemitism*, March 2012

<http://fra.europa.eu/en/publication/2012/fra-survey-jewish-peoples-experiences-and-perceptions-antisemitism>

The European Commission's assessment chimes with the findings of the Special Eurobarometer on discrimination, which show that national efforts for the integration of the Roma population are seen as less effective than efforts to fight discrimination in general; 45 % of Europeans think that efforts to integrate Roma are ineffective, against 31 % for efforts to fight discrimination in general.

In addition, this survey reveals that the majority of Europeans (53 %) believe that their society could benefit from better Roma integration. This view is stronger for 71 % of Europeans with Roma friends or acquaintances than for 49 % of Europeans without Roma friends or acquaintances.

### Outlook

In the area of **racism and ethnic discrimination**, the review of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law foreseen under its Article 10 by the end of November 2013 will provide an opportunity to assess the performance of EU Member States in combating racism and xenophobia.

The European Commission's report on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (*Racial Equality Directive*) is expected for autumn 2013 and will provide an opportunity to assess the policies and legal measures EU Member States have taken to combat ethnic and racial discrimination.

#### FRA PUBLICATION

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

<http://fra.europa.eu/en/publication/2012/racial-equality-directive-application-and-challenges>

The deterioration of the situation in Greece and the scape-goating of migrant and minority populations that accompanied it must serve as a warning signal to EU institutions and other EU Member States to actively counter the mainstreaming of extremist ideology in a timely, decisive and effective fashion.

EU Member States' adoption of National Roma Integration Strategies begins a process that will continue and be monitored until at least 2020. When implementing these strategies, Member States will identify specific measures to implement their strategies, develop projects and actions, establish clear timetables and allocate appropriate funding to ensure their success and the better inclusion of Roma in EU society. To achieve significant progress in the near future, Member States shall ensure that regional and local integration policies focus on Roma in a clear and specific way, and address the needs of Roma with explicit but not exclusive measures to prevent and compensate for the disadvantages they face.

**FRA PUBLICATION**

Factsheet: *Combating racial discrimination*,  
January 2012

<http://fra.europa.eu/en/publication/2012/combating-racial-discrimination>

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

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

The UN Committee on the Rights of Persons with Disabilities confirmed its broad interpretation of the meaning of participation in political and public life as guaranteed by Article 29 of the UN CRPD.

In its Concluding Observations on the State report presented by Hungary, the Committee called on the State to review "all relevant legislation [...] to ensure that all persons with disabilities regardless of their impairment, legal status or place of residence have a right to vote, and that they can participate in political and public life on an equal basis with others."

The UN standards are reiterated in several other forums. For example, the Organization for Security and Co-operation in Europe reported on several occasions its concern about inaccessible polling stations (France, Greece, the Netherlands, and Slovenia). It regularly refers to the CRPD standards when doing so.

The right to vote for persons with intellectual disabilities and persons with mental health problems is an area of law characterised by great diversity among EU Member States. The majority, however, still link the loss of legal capacity – the withdrawal of legal recognition of a person's decisions, such as to register to vote – to disenfranchisement. EU Member States follow three main approaches: total exclusion, case-by-case consideration and full participation.

EU Member States that exclude individuals link the right to vote to the legal capacity of the individual. In other Member States, national legislation prescribes an individual assessment of the ability to vote before taking the right away.

EU Member States that have removed all restrictions enable persons with intellectual disabilities and persons with mental health problems to vote on an equal footing with other citizens.

## Key developments in the participation of EU citizens in the EU's democratic functioning

- The European Citizens' Initiative takes effect on 1 April 2012 and provides the basis for participatory democracy at EU level. The European Commission registers 12 such initiatives in 2012.
- Preparations for the European Year of Citizens 2013 prompt discussions and consultations on the future of citizens' participation in EU decision-making processes.
- The European Parliament and the Council of the European Union discuss reforming electoral rules to facilitate non-national EU citizens' participation in European Parliament elections.
- Various EU Member States take steps to facilitate the participation of persons with disabilities in elections in line with the CRPD.
- EU Member States generally continue to link the loss of voting rights to the loss of legal capacity for persons with mental health problems and persons with intellectual disabilities.

There have been few changes since 2011. Croatia reformed its legal framework and Luxembourg has made plans to do so.

**Table 4: The right to political participation of persons with mental health problems and persons with intellectual disabilities, by EU Member State and Croatia**

EU Member State	Exclusion	Limited participation	Full participation
AT			X
BE	X		
BG	X		
CY		X	
CZ	X	X	
DE	X		
DK	X	X	
EE	X	X	
EL	X		
ES		X	X
FI		X	X
FR		X	X
HU		X	
IE	X		X
IT			X
LT	X		
LU	X		
LV	X		
MT	X	X	
NL			X
PL	X		
PT	X		
RO	X		
SE			X
SI		X	
SK	X		
UK			X
HR	X		

*Notes: An EU Member State can be represented in more than one column, as persons with mental health problems and persons with intellectual disabilities may be treated differently according to the national law of the respective Member State.*

*Source: FRA, 2012*

### Spotlight on the implementation of the European citizens' initiative

On 1 April 2012, the regulation governing European citizens' initiatives (ECI) took effect. Since then, citizens' committees, made up of at least seven EU citizens who are resident in at least seven EU Member States, can make requests for registration.

The first European Citizens' Initiative, 'Fraternité 2020 – Mobility. Progress. Europe', was registered on 9 May 2012. It was proposed by a committee of EU citizens living in Austria, Belgium, Hungary, Italy, Luxembourg, Romania and Spain. The main objective is to "enhance EU exchange programmes – like Erasmus or the European Voluntary Service – in order to contribute to a united Europe based on solidarity among citizens".

Twelve ECIs were registered in 2012, covering a variety of topics including media pluralism and press freedom, animal protection ('Stop Vivisection') and broader ecological considerations ('30 Km/h – Making the Streets Liveable!'). In the area of political participation and citizenship, the 'Let me Vote' initiative aims at granting the right to vote to non-national EU citizens in all political elections while the 'central public online collection platform for the European citizens' initiative' seeks to facilitate the registration and collection of signatures for future ECIs.

Seven requested ECI registrations were rejected because they did not satisfy the conditions laid down in the ECI regulation. Article 4 (2) of the regulation stipulates that the European Commission will register a proposed initiative within two months of a request provided that: the citizens' committee has been formed and the contact persons designated; the proposed initiative does not manifestly fall outside the framework of the Commission's powers; the proposed initiative is not manifestly abusive, frivolous or vexatious; and the proposed initiative is not manifestly contrary to EU values as set out in Article 2 of the TEU.

The initiative 'My voice against nuclear energy', for example, aimed at eliminating nuclear energy. The European Commission refused to register the initiative arguing that such a ban would be contrary to the Euratom Treaty. Since the TEU and TFEU provide no legal basis to propose an act contrary to the Euratom Treaty, the latter treaty would need to be modified by agreement between the contracting parties before such an ECI could be registered.

Some European Parliament resolutions suggest that the Petition Committee of the Parliament should hold the public hearings prescribed by Article 11 of the ECI regulation, given its experience of direct contact with citizens.

The majority of EU Member States have in place the enabling legislation or rules allowing citizens to start or contribute to an ECI.



## Outlook

In the area of the **participation of citizens in the Union's democratic functioning**, 2013 was designated the European Year of Citizens to celebrate the introduction of EU citizenship 20 years earlier. The year will focus on both what the EU has already achieved for citizens and on meeting citizens' expectations for the future. Events throughout the year will explain how people can benefit directly from their EU rights and the policies and programmes that exist to facilitate the full enjoyment of EU citizenship.

The year should stimulate an EU-wide debate with citizens on how the EU should look in future and what reforms are needed to improve their everyday lives.

The Council Regulation establishing the Europe for Citizens' Programme (2014–2020), which will be adopted by mid-2013, will support active participation in EU life.

Another issue that will be debated is the broadening of EU citizens' right to vote in national elections in the country in which they are residing. This area of reform is central to the European Citizens' Initiative 'Let me Vote' and has already triggered robust discussions.

# Access to efficient and independent justice

## Spotlight on the reform of the Court of Justice of the European Union and the European Court of Human Rights

The Charter of Fundamental Rights of the European Union ensures access to justice through the right to an effective remedy before a tribunal in Article 47 (1).

The CJEU's statute was revised in 2012 to make the court more efficient and adapt it to the enlarged EU. Seventeen judges now constitute a full court in contrast to 15, with similar adjustments made in the smaller constellations. The Grand Chamber was enlarged from 13 to 15 judges, but the former requirement of having all five Chamber Presidents present for a Grand Chamber decision has been relaxed to stipulate a minimum of three of the five. The revision also reduced some written documentation in favour of oral procedures.

The CJEU also adopted new rules of procedures in September 2012 to streamline its work and handle a heavier workload. The increase in cases and the types of cases stem from the transition into a more integrated Union, resulting in a consistent rise in requests for preliminary rulings over recent years. The changes to the rules of procedure also made it possible for the CJEU to deal with a file case without an oral hearing. The new rules extended defence submission deadlines to two months from one, clarified rules on legal aid and introduced the possibility of keeping the parties for preliminary rulings anonymous. The new rules of procedure have themselves been made more user-friendly through clearer clustering and headings.

## Key developments in access to efficient and independent justice

- Doubts about the rule of law in some EU Member States lead to an EU initiative aimed at monitoring developments in all Member States through a 'justice scoreboard'.
- Financial austerity takes a toll on access to justice through reductions in numbers of courts and mergers of non-judicial mechanisms.
- A sense of crisis spurs innovation and reform in some EU Member States, which modify court procedures and make more use of e-justice tools in order to reduce costs and shorten length of proceedings.
- The criminal procedural roadmap of the EU takes a step forward with the adoption of a second instrument, Measure B – 'the letter of rights'.
- Focus at the Member State level remains on non-judicial mechanisms, such as National Human Rights Institutions and national equality bodies – with some strengthened and others weakened – as a number receive increased monitoring responsibilities under UN human rights conventions.

Further reforms were initiated during 2012 concerning the ECtHR in Strasbourg. One of the principal aims of the Brighton Declaration of April 2012 was to match the capacity of the ECtHR with the number of incoming cases. The member states of the Council of Europe through its Steering Committee for Human Rights (CDDH) have been preparing two new draft protocols, Nos. 15 and 16, to the ECHR in part to diminish the number of applications and make the court more efficient.

Draft Protocol No. 15 would introduce a number of changes to the ECHR, by:

- stressing in the preamble the subsidiary relationship between the ECtHR and the States Parties and the role of the margin of appreciation in applying certain ECHR rights. This measure aims at clarifying the respective roles of national authorities and the ECtHR;
- requiring judges at the ECtHR to be under 65 when taking office. This measure aims at replacing an upper-age limit and at ensuring that highly qualified judges may serve the full term of office;
- removing the right of parties to a case to object to a Chamber's proposal to relinquish a case to the Grand Chamber. This measure aims at accelerating proceedings in important cases and thereby helping to maintain consistency in case law;
- reducing the time limit for submitting an application to four from six months after the final decision at domestic level;
- allowing applications in which an applicant had not suffered 'significant disadvantage' to be deemed inadmissible even if not previously considered by a domestic tribunal. These last two measures aim at rationalising and updating certain admissibility criteria.

Draft Protocol No. 16, though optional, would expand the competence of the ECtHR to give advisory opinions. The highest courts and tribunals (as specified by each ratifying state) would be empowered to ask the ECtHR to deliver an advisory opinion on questions of principle as to interpretation or application of rights and freedoms contained in the ECHR and its protocols, arising in the context of a case pending before that court.

Such an advisory opinion by the ECtHR would not be binding. The proposal would allow, similar to the rules in contentious proceedings, for friends-of-the-court (*amicus curiae*) submissions by the Council of Europe Commissioner for Human Rights. The protocol would seek to underscore the importance of national courts as the first port of call for human rights cases and to promote effective resolution of complaints at the national level.

#### FRA PUBLICATION

*Access to justice in cases of discrimination in the EU – Steps to further equality*, December 2012

<http://fra.europa.eu/en/publication/2012/access-justice-cases-discrimination-eu-steps-further-equality>

### Spotlight on the length of proceedings

Judicial efficiency and the need to reduce the length of court proceedings remained an overarching need for most EU Member States in 2012, as in previous years. The number of cases related to length of proceedings, as well as to fair trial more generally, continued to decline, falling to 151 in 2012 from 202 in 2011 (see Table 5). Nonetheless, these violations continued to constitute a third of all violations, and the most frequent, that the ECtHR found.

As to violations among EU Member States, length of proceedings emerges as the one main pattern from the case law of the ECtHR.

In response, Belgium, for example, endeavoured to speed up trials by having single judges rather than panels deal with some criminal case appeals, unless the defendant requested otherwise. Greece reinforced that same procedure for civil courts and Croatia for administrative proceedings.

The Czech Republic also adopted an amendment introducing single judges in some decisions on appeal. The Public Defender of Rights in the Czech Republic reported in March 2012 that lengthy procedures were threatening the right to a fair trial within a reasonable timeframe and even noted that some courts had refused to hear complaints on length of proceedings.

In preparation for EU accession, the EU monitored Croatia in relation to a number of issues, including the judiciary and fundamental rights, looking in particular at increasing efficiency.

The difficulties some EU Member States, such as Bulgaria, Latvia and Slovenia, experience with length of proceedings stem from problems in distributing cases evenly. These Member States therefore took steps to address the issue by facilitating the shifting of judges and cases among courts and by clarifying the respective roles of levels of courts, with positive effects. In the United Kingdom, England and Wales are seeking the same improvements through a proposed unification of local (county) courts.

Table 5: Number of ECtHR judgments in 2012 and fair trial-related violations, by EU Member State and Croatia

	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE
ECtHR judgments finding at least one violation*	10 (7)	6 (7)	58 (52)	0 (1)	10 (19)	11 (31)	0 (1)	2 (3)	52 (69)	8 (9)	2 (5)	19 (23)	24 (33)	2 (2)
Violations of the right to a fair trial	0 (0)	1 (2)	8 (2)	0 (0)	2 (13)	1 (0)	0 (0)	1 (1)	1 (6)	3 (4)	0 (0)	3 (11)	0 (4)	0 (0)
Violations of length of proceedings	3 (5)	1 (0)	17 (21)	0 (1)	0 (2)	0 (19)	0 (0)	0 (0)	35 (50)	1 (1)	0 (2)	0 (2)	9 (19)	2 (2)

Notes: The number of cases in 2011 is in parenthesis.

The five highest numbers of violations are highlighted in blue.

\*ECtHR judgments finding at least one violation by an EU Member State, or concerning two EU Member States: Italy & Bulgaria (2012), Greece & Germany (2012).

Source: Council of Europe/ECtHR, Annual Report 2012, p. 152

Ireland shortened the period for some requests for judicial review from six to three months and also took steps to reduce the length of oral proceedings in superior courts. Ireland will also hold a referendum on constitutional changes in late autumn 2013 that would enable the Supreme Court to speed up its procedures.

To reduce its length of proceedings, Italy is limiting appeals in civil proceedings by restricting the types of legal actions that can be referred to its supreme court, the Court of Cassation. Italy also revised the Pinto act – which was originally introduced to address the systemic delays from length of proceedings issues – particularly as regards a reasonable duration of the trial, beyond which the right to compensation arises. Finland drew up plans to introduce two new options in court proceedings to make these more efficient. It plans to allow: plea bargaining, under which the prosecution negotiates with a defendant for a guilty plea to a lesser offence than the one charged; as well as an option of non-prosecution, which would reduce the number of investigations going to court.

#### FRA PUBLICATION

Factsheet: *Access to justice in cases of discrimination in the EU – Steps to further equality*, December 2012

<http://fra.europa.eu/en/publication/2012/factsheet-access-justice-cases-discrimination-eu-steps-further-equality>

Estonia, among others, introduced simplified procedures, such as hearing witnesses by telephone or through written statements, rather than requiring them to appear in court, avoiding the resulting delays if they failed to appear. Such procedures are allowed in criminal cases if the accused and the prosecutor have agreed on how the case should be concluded. Slovenia adopted a revised act that provides for stricter time limits for court proceedings.

The Netherlands instituted a system whereby certain questions on civil law from lower courts can be put to the Supreme Court to resolve the issue – a system similar to EU Member State courts' requests for preliminary rulings from the CJEU. It also introduced a new court procedure for administrative law cases that aims at finding

	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	HR	Total
	36 (34)	7 (9)	1 (1)	10 (10)	1 (9)	5 (4)	56 (54)	22 (27)	70 (58)	4 (0)	20 (11)	21 (19)	10 (8)	19 (23)	486 (529)
	3 (7)	2 (3)	0 (1)	1 (0)	0 (3)	2 (1)	1 (14)	5 (1)	13 (9)	0 (0)	0 (1)	1 (2)	0 (3)	2 (8)	50 (96)
	16 (16)	1 (5)	1 (0)	2 (1)	0 (3)	0 (0)	6 (15)	17 (13)	10 (10)	0 (0)	13 (6)	11 (5)	1 (1)	5 (3)	151 (202)

solutions by the judge for the parties rather than legal elements for a verdict – a system that is believed to improve the efficiency of justice through less legal rigidity.

Many EU Member States have also introduced various e-justice measures to reduce the length of proceedings.

## Outlook

In the area of **access to efficient and independent justice**, the adverse effect of the economic crisis on access to justice, as with many other areas, continued in 2012, including by restricting legal aid to a more limited number of cases or decreasing the number of local courts. However, as was explored during the FRA's 2012 Fundamental Rights Conference, Justice in austerity – challenges and opportunities for access to justice, there are also numerous initiatives, some well under way and some burgeoning that give reason for optimism in 2013 and beyond. 2012 also generated a reinvigorated debate on the need to underpin the rule of law across the EU and this will see developments during 2013.

While the main concern over excessive length of proceedings persists, several EU Member States took action that not only reduced the time it takes to access justice but also helped to modernise justice systems in a way that should increase the quality, independence, efficiency, transparency and ultimately trust in these institutions. Various types of non-judicial bodies with a human rights remit, such as NHRIs and equality bodies, are increasingly viewed as cost-efficient and accessible bodies. Legal standing is receiving increased attention, boosted by EU action in the area of collective redress.

As for EU cross-border justice, 2013 will witness the proposal of two outstanding measures of the criminal procedure roadmap, namely on legal aid and safeguards for vulnerable persons (measures C2 and E) in a package that includes an initiative on the presumption of innocence. Court decisions in civil matters will be expedited by the late 2012 developments on the Brussels I regulation that simplifies cross-border enforcement of judgments, and the promotion and application of mediation as an alternative to justice will be furthered.

### FRA PUBLICATION

*Handbook on the establishment and accreditation of National Human Rights Institutions in the European Union, October 2012*

<http://fra.europa.eu/en/publication/2012/handbook-establishment-and-accreditation-national-human-rights-institutions>

# Rights of crime victims

## Spotlight on the rights of victims of crime

Several EU Member States took steps to protect against bias-motivated violence and support victims of such violence. Member States are increasingly developing hate crime definitions to cover a wide range of protected characteristics.

Croatia's new Criminal Code specifies that a hate crime means a criminal offence committed on account of a person's race, colour, religion, national or ethnic origin, disability, sex, sexual orientation or gender identity (Article 87 (20) CC). In line with Article 4 of the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, the same provision provides that unless a more severe penalty is explicitly prescribed – as is the case with a number of offences including aggravating murder, female genital mutilation and serious/bodily injury – such conduct should be taken as an aggravating circumstance.

In Malta, the Criminal Code was amended to include further victims of bias-motivated crime, such as crimes for which the pretext is sex, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion.

On the basis of three proposals to amend the Criminal Code, the German Parliament discussed ways to implement Article 4 of the Framework Decision on Racism and Xenophobia, which concerns Member States taking necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance.

The debate also touched on the question of whether it would be sufficient to introduce a crime committed due to a bias motivation as an aggravating circumstance or whether police might overlook a mere aggravating circumstance in investigations. The latter argument is in line with FRA's opinion that merely including bias-motivation in a list of aggravating circumstances is neither the most effective way to acknowledge victims nor to ensure public visibility of hate crime.

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

- The European Parliament and the Council of the European Union adopt a Directive establishing minimum standards on the rights, support and protection of victims of crime, replacing the 2001 Framework Decision on the standing of victims in criminal proceedings.
- The European Commission adopts the *EU strategy towards the eradication of trafficking in human beings 2012–2016*, which identifies key priorities the EU should focus on to combat trafficking in human beings.
- EU Member States take steps to strengthen the protection of victims of violence against women as part of their preparations to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (*Istanbul Convention*).

### FRA PUBLICATION

Factsheet: *Victim support services in the EU: an overview and assessment of victims' rights in practice*, December 2012

<http://fra.europa.eu/en/publication/2012/victim-support-services-eu-overview-and-assessment-victims-rights-practice>

In March 2012, the British government launched its 2012–2014 plan to tackle hate crime, which seeks to encourage the reporting of hate crimes by victims and sets out an agenda for dealing with hate crime at a local level, thereby enabling “hate crime strategies that reflect local needs”. In October 2012, the Equality and Human Rights Commission of Great Britain published *Out in the open: a manifesto for change*. The report examines various agencies’ plans to identify and eliminate disability-related harassment over the coming years, and sets out recommendations. *Out in the Open* is a follow-up to the 2011 report *Hidden in plain sight* which highlighted systemic failures in organisations’ work to prevent disability-related harassment.

**FRA PUBLICATION**

*Making hate crime visible in the European Union: acknowledging victims’ rights*, November 2012

<http://fra.europa.eu/en/publication/2012/making-hate-crime-visible-european-union-acknowledging-victims-rights>

**Table 6: Classification of official data collection mechanisms pertaining to hate crime, by EU Member State**

Limited data	Good data	Comprehensive data
<i>Few incidents and a narrow range of bias motivations are recorded</i>	<i>A range of bias motivations are recorded</i>	<i>A range of bias motivations, types of crimes and characteristics of incidents are recorded</i>
<i>Data are usually not published</i>	<i>Data are generally published</i>	<i>Data are always published</i>
Bulgaria Cyprus Estonia Greece Hungary Ireland Italy Latvia Luxembourg Malta Portugal Romania Slovenia	Austria Belgium Czech Republic Denmark France Germany Lithuania Poland Slovakia Spain	Finland Netherlands Sweden United Kingdom

Notes: Information as of January 2013. ‘Official data’ is understood here as those data collected by law enforcement agencies, criminal justice systems and relevant state ministries. There is a broad range of bias motivations covered by the 27 EU Member States and Croatia. These include: racism, xenophobia, religious intolerance, antisemitism, Islamophobia/anti-Muslimism, anti-Roma, sexual orientation, gender identity, disability and extremism, as well as any other bias motivations covered by national legislation.

Source: FRA (2012), *Making hate crime visible in the European Union: acknowledging victims’ rights*, Luxembourg, Publications Office, p. 36

The same report highlighted the importance of acknowledging victims of hate crime and emphasised the need for comprehensive and reliable data. To date, official data collection mechanisms pertaining to hate crime in the 27 EU Member States can be classified into three categories, based on their scope and transparency:

- *Limited data*: data collection is limited to a few incidents and to a limited range of bias motivations. The data are not usually published.
- *Good data*: data are recorded on a range of bias motivations and are generally published.
- *Comprehensive data*: a broad range of bias motivations, types of crimes (such as assault, threat, etc.) and characteristics of incidents are recorded. The data are always published.

### Spotlight on the Victims' package and national developments

On 25 October 2012, the European Parliament and the Council of the European Union adopted the Directive establishing minimum standards on the rights, support and protection of victims of crime (*EU Victims' Directive*). The directive entered into force on 15 November, replacing the Council Framework Decision on the standing of victims in criminal proceedings.

With the adoption of the new directive, which constituted Measure A of the Council of the European Union's *Roadmap for strengthening the rights and protection of victims*, Measure B providing the EU Member States with guidance when implementing the directive is the roadmap's next step. It will recommend practical measures by taking stock of the existing best practices among Member States in the field of assistance and protection to victims of crime and building on them within the framework of the applicable legislative instruments.

EU Member States have three years, until 16 November 2015, to adopt the necessary national provisions and measures. The United Kingdom and Ireland opted in to this directive. Denmark is not taking part and will neither be bound by nor subject to its application.

Several EU Member States took concrete measures to strengthen victims' rights over the course of 2012. This included enacting new legislation expanding the definition of victims and the rights of victims, both during the investigation of a crime and throughout criminal proceedings. Several countries also strengthened the rights of 'indirect' victims such as family members.

In early 2012, the Czech government thus strengthened the situation of victims by adopting an Act on the Victims of Crime. The lower house of the Czech Parliament

#### FRA PUBLICATION

*EU-MIDIS – Data in Focus 6: Minorities as victims of crime*, November 2012

<http://fra.europa.eu/en/publication/2012/eu-midis-data-focus-report-6-minorities-victims-crime>

passed the act in December 2012, which is expected to proceed through the upper house in 2013. The act organises and extends the rights of victims in criminal proceedings, increases state financial aid provisions and introduces a duty to provide information to victims on where they can access support.

A Dutch act extending the categories of persons entitled to speak in court during criminal procedures took effect on 1 September 2012. The Act on the extension of the right to speak in court for victims and next of kin during criminal procedures grants the right to speak to any family member with close family ties to the deceased victim. Parents or guardians of children under the age of majority who are not able or are too young to speak for themselves also now have the right to speak in court.

A group of Polish Members of Parliament brought a legislative initiative to the lower house of the parliament (*Sejm*) in May that makes it possible for everyone whose rights have been violated to challenge a prosecutor's decision not to initiate or to discontinue preparatory proceedings. Under the current state of affairs, thousands of people harmed by an offence against the public interest depend upon the prosecutor to take action. Under the initiative, persons who are directly or indirectly harmed by the offender's conduct would be entitled to appeal against the prosecutor's decisions.

## Outlook

In the area of the **rights of crime victims**, 2012 saw the adoption of the EU Victims' Directive (Measure A of the Road map for strengthening the rights and protection of victims, in particular in criminal proceedings). The upcoming year will see the adoption of recommendations on practical measures and best practices for the implementation of the directive in practice. These recommendations are expected to provide guidance to the Member States and take stock of the existing practices in the field of assistance and protection to victims (measure B).

The Council of the EU is expected to adopt a regulation on mutual recognition of protection measures taken in civil matters upon request of the person at risk in the first half of 2013. This measure will complement the European Protection Order relating to criminal matters. The regulation is due to enter into force later in 2013 and shall apply from 11 January 2015.

Under Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, EU Member States must take the necessary measures to comply with the provisions of the Framework Decision by 28 November 2013. By this date, the Council will have reviewed the Framework Decision and assessed the extent to which Member States have complied with it.

### FRA PUBLICATION

Factsheet: *Hate crime in the European Union*, November 2012

<http://fra.europa.eu/en/publication/2012/hate-crime-european-union>

Table 7: Overview of monitoring reports released under UN and Council of Europe monitoring procedures in 2012, by EU Member State and Croatia

Countries	UN reports									Council of Europe reports				Total
	HRC	CERD	CESCR	CEDAW	CAT	CRC	CRC-OP-SC	CRPD	UPR	ECPT	ECRML	FCNM	ECRI	
AT		✓				✓								2
BE										✓				1
BG			✓	✓						✓		✓		4
CY						✓								1
CZ					✓				✓		✓			3
DE	✓									✓				2
DK													✓	1
EE														0
EL					✓	✓	✓							3
ES			✓									✓		2
FI		✓							✓					2
FR										✓				1
HU								✓						1
IE												✓		1
IT		✓											✓	2
LT	✓													1
LU													✓	1
LV													✓	1
MT												✓		1
NL									✓	✓	✓			3
PL									✓					1
PT		✓												1
RO												✓		1
SE							✓					✓	✓	3
SI														0
SK			✓											1
UK						✓			✓					2
HR													✓	1
<b>Total</b>	2	4	3	1	2	4	2	1	5	5	2	6	6	43

✓ = Participation in monitoring cycles in 2012

Note: The table shows an overview of monitoring reports released under the UN and Council of Europe monitoring procedures in 2012. As regards the latter, it does not take as a reference the dates of country visits; reports included are those available on the UN and Council of Europe website.

*Acronyms stand for:*

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

Source: FRA, 2012; data extracted from: UN bodies – <http://tb.ohchr.org/default.aspx>; Council of Europe bodies – [www.cpt.coe.int/en/states.htm](http://www.cpt.coe.int/en/states.htm), [www.coe.int/t/dg4/education/minlang/Report/default\\_en.asp](http://www.coe.int/t/dg4/education/minlang/Report/default_en.asp), [www.coe.int/t/dghl/monitoring/minorities/3\\_FCNDocs/Table\\_en.asp](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNDocs/Table_en.asp), [www.coe.int/t/dghl/monitoring/ecri/activities/countrybycountry\\_en.asp](http://www.coe.int/t/dghl/monitoring/ecri/activities/countrybycountry_en.asp)

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A great deal of information on the European Union Agency for Fundamental Rights is available on the Internet. It can be accessed through the FRA website at [fra.europa.eu](http://fra.europa.eu).

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

For its role in advancing peace, reconciliation, democracy and human rights in Europe, the European Union (EU) was awarded the Nobel Peace Prize in 2012, a vote of confidence in the project of European integration and an eloquent acknowledgement of what a hard-won achievement it represents. It was awarded, fittingly, at a time of testing, when the values that knit the EU together felt the strain of socio-economic, political and constitutional crises.

Against a backdrop of rising unemployment and increased deprivation, the FRA Annual report 2012 closely examines the situation of those, such as children, who are vulnerable to budget cuts, impacting important fields such as education, healthcare and social services. It looks at the discrimination that Roma continue to face and the mainstreaming of elements of extremist ideology in political and public discourse. It considers the impact the crises have had on the basic principle of the rule of law, as well as stepped up EU Member State efforts to ensure trust in justice systems.

The annual report also covers key EU initiatives that affect fundamental rights. The European Commission launched a drive in 2012 to modernise the EU's data protection framework. The EU also pushed ahead with the increased use of databases and information technology tools for border management and visa processing. It took steps to enable non-national Union citizens to participate in European Parliament elections, enhanced victims' rights, successfully negotiated asylum instruments which were under review and focused on the challenges and obstacles facing older persons, including those with disabilities, in its 2012 Year of Active Ageing.

This year's summary of the FRA Annual report – Highlights 2012 – puts the spotlight on key legal and policy developments in the field of fundamental rights in 2012, covering the following topics: asylum, immigration and integration; border control and visa policy; information society and data protection; the rights of the child and protection of children; equality and non-discrimination; racism and ethnic discrimination; participation of EU citizens in the Union's democratic functioning; access to efficient and independent justice; and rights of crime victims.



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