



Fundamental Rights Report 2018

FRA opinions

The year 2017 brought both progress and setbacks in terms of fundamental rights protection. FRA's Fundamental Rights Report 2018 reviews major developments in the field, identifying both achievements and remaining areas of concern. This publication presents FRA's opinions on the main developments in the thematic areas covered, and a synopsis of the evidence supporting these opinions. In so doing, it provides a compact but informative overview of the main fundamental rights challenges confronting the EU and its Member States.

Contents

1	Shifting perceptions: towards a rights-based approach to ageing	2
2	EU Charter of Fundamental Rights and its use by Member States	4
3	Equality and non-discrimination	5
4	Racism, xenophobia and related intolerance	8
5	Roma integration	10
6	Asylum, visas, migration, borders and integration	13
7	Information society, privacy and data protection	15
8	Rights of the child	17
9	Access to justice including the rights of crime victims	20
10	Developments in the implementation of the Convention on the Rights of Persons with Disabilities ..	22



1 Shifting perceptions: towards a rights-based approach to ageing

This chapter explores the slow but inexorable shift from thinking about old age in terms of ‘deficits’ that create ‘needs’ to a more comprehensive one encompassing a ‘rights-based’ approach towards ageing. This gradually evolving paradigm shift strives to respect the fundamental right to equal treatment of all individuals, regardless of age – without neglecting protecting and providing support to those who need it. A human rights approach does not contradict the reality of age-specific needs; on the contrary, a rights-based approach enables one to better meet needs, as required, while framing them in a human rights-based narrative.

Labour markets and national social protection systems have already undergone profound transformations to respond to longevity and the challenges an ageing society poses to national economic and social systems. This process has started with a number of initiatives in the European Union (EU) and the world. These include fighting old age discrimination in the area of employment, promoting active ageing and incentivising longer working lives, as well as introducing reforms in social protection systems addressing old age, namely in pensions, health services and long-term care provision. Reforms are also starting to move away from needs-based approaches aimed at responding to age-related ‘deficits’, towards shifting the focus to the individual, a human being with fundamental rights and inherent human dignity. According to Article 1 of the EU Charter of Fundamental Rights, human dignity is inviolable and must be protected and respected, regardless of age.

However, this shift should not overlook the age-specific needs of older people, nor downgrade the importance of the state’s responsibilities towards individuals – including older people – who may need support. Moreover, older people are a heterogeneous group with quite diverse needs and preferences. Many preferences and experiences in the life course affect outcomes at older age. Gender, immigrant or ethnic minority status, disability as well as socio-economic status and geographical or other aspects can have a compound negative impact on older people. This largely determines to what extent they enjoy their rights.

The civil, political, economic, social and cultural rights enshrined in the EU Charter of Fundamental Rights apply to everyone, regardless of age. Nevertheless, age features specifically under Article 21 as a protected ground for discrimination and under Article 25,

which recognises a right for older people “to lead a life of dignity and independence and to participate in social and cultural life”.

Non-discrimination and equal opportunities for older people in various areas of life, as well as their living in dignity, are also embedded in the recently proclaimed European Pillar of Social Rights. According to the European Commission, the European Pillar of Social Rights “partially goes beyond the current acquis”. The objective is to reflect on how to extend protection against discrimination on the ground of age to the areas of social protection, including social security and healthcare, education, and access to goods and services available to the public.

The proclamation of the Social Rights Pillar, albeit a non-legally binding set of principles and rights, signals a strong political will and commitment by EU institutions and Member States to work towards a more social and inclusive Europe – a Europe that makes better and more respectful use of all its human capital without excluding anyone. It is an opportunity for the EU and Member States to deliver concrete results on promoting and implementing the rights of older people, who are an important part of human capital and have the potential to contribute substantially to all aspects of life.

However, setting rules and minimum standards is only the first step in this process. Raising awareness and using coordination and monitoring mechanisms are all equally essential to fulfil fundamental rights of all, including older people, as provided in the Charter. In this effort, the engagement of both the EU institutions and the Member States is more than necessary.

In this respect, FRA’s opinions outlined below should be seen as building blocks in support of the shift



towards a comprehensive human rights-based approach to ageing.

FRA opinion 1.1

The EU legislator should continue its efforts for the adoption of the Equal Treatment Directive. The directive will extend horizontally protection against discrimination based on various grounds, including age, to areas of particular importance for older people, including access to goods and services, social protection, health-care and housing.

FRA opinion 1.2

To deliver on stronger social rights protection, the EU legislator should proceed with concrete legal action, further implementing the principles and rights enshrined in the European Pillar of Social Rights. In this regard, it should ensure the rapid adoption of the proposed Work-life Balance Directive and accelerate the procedures for the adoption of a comprehensive European Accessibility Act. To ensure coherence with the

wider body of EU legislation, the Accessibility Act should include provisions linking it to other relevant acts, such as the regulations covering the European Structural and Investment Funds.

FRA opinion 1.3

EU institutions and Member States should consider using the European Structural and Investment Funds, as well as other EU financial tools, to promote a rights-based approach to ageing. To enhance reforms that promote living in dignity and autonomy, as well as opportunities to participate for older people, EU institutions and Member States should reaffirm and reinforce in the coming programming period (post 2020) ex-ante conditionalities, as well as provisions for monitoring their implementation. Such measures should ensure that EU funding is used in compliance with fundamental rights obligations.

Furthermore, EU institutions and Member States should systematically address challenges older people face in core policy coordination mechanisms, such as the European Semester.

2 EU Charter of Fundamental Rights and its use by Member States

In 2017, the Charter of Fundamental Rights of the European Union was in force as the EU's legally binding bill of rights for the eighth year. It complements national human rights documents and the European Convention on Human Rights (ECHR). As in previous years, the Charter's role and usage at national level was mixed: there appears to be no significant improvement in its use by the judiciary or in legislative processes; and it proved hard to identify government policies aimed at promoting the Charter. Instead, with references in national courts, parliaments and governments remaining limited in number and often superficial, the Charter's potential was once again not fully exploited.

According to the case law of the Court of Justice of the European Union (CJEU), the EU Charter of Fundamental Rights is binding on EU Member States when they act within the scope of EU law. The EU legislature affects, directly or indirectly, the lives of people living in the EU across almost all policy areas. In light of this, the EU Charter of Fundamental Rights should form a relevant standard when judges or civil servants in the Member States deliver on their day-to-day tasks. However, as in recent years (2012–2016), FRA's evidence suggests that judiciaries and administrations make only rather limited use of the Charter at national level. It appears that hardly any policies aim to promote the Charter although Member States are obliged not only to respect the rights covered by the Charter, but also to "promote the application thereof in accordance with their respective powers" (Article 51 of the Charter). Where the Charter is referred to in the legislative process or by the judiciary, its use often remains superficial.

FRA opinion 2.1

The EU and its Member States should encourage greater information exchange on experiences with and approaches to referencing and using the Charter – between judges, bar associations and administrations within the Member States, but also across national borders. In encouraging this information exchange, EU Member States should make best use of existing funding opportunities, such as those under the Justice programme.

EU Member States should promote awareness of the Charter rights and ensure that targeted training modules are offered for national judges and other legal practitioners.

According to Article 51 (field of application) of the EU Charter of Fundamental Rights, all national legislation implementing EU law has to conform to the Charter. As in previous years, the Charter's role in legislative processes at national level remained limited in 2017: the Charter is not a standard that is explicitly and regularly applied during procedures scrutinising the legality or assessing the impact of upcoming legislation – whereas national human rights instruments are systematically included in such procedures. Moreover, just as in previous years, many decisions by national courts that used the Charter did so without articulating a reasoned argument about why the Charter applied in the specific circumstances of the case.

FRA opinion 2.2

National courts, as well as governments and/or parliaments, could consider a more consistent 'Article 51 (field of application) screening' to assess at an early stage whether or not a judicial case or legislative file raises questions under the EU Charter of Fundamental Rights. The development of standardised handbooks on practical steps to check the Charter's applicability – so far the case only in very few EU Member States – could provide legal practitioners with a tool to assess the Charter's relevance in a particular case or legislative proposal. The FRA Handbook on the applicability of the Charter could serve as inspiration in this regard.



3 Equality and non-discrimination

The year 2017 brought mixed progress in promoting equality and non-discrimination in the European Union (EU). While the Equal Treatment Directive – proposed in 2008 – had not been adopted by year-end, the EU proclaimed the European Pillar of Social Rights, which is rooted in the principle of non-discrimination. Restrictions on religious clothing and symbols at work or in public spaces remained a subject of attention, particularly affecting Muslim women. Equality for lesbian, gay, bisexual, trans and intersex (LGBTI) persons made some advances, particularly regarding the civil status of same-sex couples. Meanwhile, findings drawing on a wide range of equality data – including data obtained through discrimination testing – show that unequal treatment and discrimination remain realities in European societies.

The findings of FRA's Second European Union Minorities and Discrimination Survey (EU-MIDIS II) and diverse national research published in 2017 confirm that discrimination and unequal treatment on different grounds remain realities in key areas of life throughout the EU. The EU and its Member States can, however, draw on policy instruments to foster equality, with the European Pillar of Social Rights promoting protection against discrimination beyond the current *acquis* in the area of equality. Nonetheless, with the proposed Equal Treatment Directive not yet adopted, the EU operates a hierarchy of grounds. Negotiations on the proposed directive in the Council of the EU entered their ninth year in 2017 and had not been completed by year-end.

Article 21 of the EU Charter of Fundamental Rights prohibits discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. Article 19 of the Treaty on the Functioning of the European Union (TFEU) holds that the Council, acting unanimously, in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

FRA opinion 3.1

The EU legislator should continue its efforts for the adoption of the Equal Treatment Directive to ensure that the EU offers comprehensive protection against discrimination in key areas of life, irrespective of a person's sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

FRA opinion 3.2

The EU legislator should proceed with concrete legal action to deliver on stronger social rights protection and further implement the principles and rights enshrined in the Pillar of Social Rights.

Restrictions on religious clothing and symbols at work or in public spaces continued to shape debates on religion in the EU in 2017. These restrictions particularly affect Muslim women who wear different forms of head or face-covering garments. The CJEU and the European Court of Human Rights (ECtHR) offered further guidance in this area, regarding genuine occupational requirements, the prohibition of visible religious symbols, and the wearing in public of religious garments that fully cover the face. Some EU Member States put restrictions on face-coverings in public places to promote their ideal of inclusive societies, or to preserve the neutrality of civil servants, judges and public prosecutors.

Article 10 of the EU Charter of Fundamental Rights guarantees everyone's right to freedom of thought, conscience and religion. This right includes the freedom to change religion or belief and the freedom to manifest religion or belief in worship, teaching, practice and observance, either alone or in community with others. Article 21 of the EU Charter of Fundamental Rights prohibits any discrimination on the ground of religion or belief. Article 22 of the EU Charter of Fundamental Rights further provides that the Union shall respect cultural, religious and linguistic diversity.

FRA opinion 3.3

EU Member States should ensure that fundamental rights and freedoms are safeguarded when considering any restrictions on symbols or garments associated with religion. Any legislative or administrative proposal that risks limiting the freedom to manifest one's religion or belief should embed fundamental rights considerations and respect for the principles of legality, necessity and proportionality.

FRA opinion 3.4

EU Member States are encouraged to continue adopting and implementing specific measures to ensure that lesbian, gay, bisexual, trans and intersex (LGBTI) persons can fully avail themselves of all their fundamental rights. In doing so, EU Member States are encouraged to use the list of actions to advance LGBTI equality published by the European Commission to guide their efforts.

EU Member States continued to implement measures to advance the equality of lesbian, gay, bisexual, trans and intersex (LGBTI) persons. Several EU Member States aligned the civil status of same-sex couples to that of married couples, although sometimes with limitations regarding adoption or assisted procreation. Others took steps to de-medicalise the process of gender reassignment, with one EU Member State adopting simplified procedures for trans persons to alter their registered sex. The issue of binary gender markers came to the fore in some EU Member States, with one making it possible to use the 'X' marker in official documents, as an alternative to male or female.

Article 21 of the EU Charter of Fundamental Rights prohibits discrimination based on sex and sexual orientation. The European Commission published a list of actions to advance LGBTI equality in December 2015, including improving rights and ensuring legal protection of LGBTI people and their families, as well as monitoring and enforcing existing rights. The list of actions covers the period 2016–2019. Although not legally binding, the list provides guidance as to where and how EU Member States can work towards ensuring that LGBTI persons can avail themselves of their right to equality and non-discrimination. The EU and its Member States have committed to meeting the targets of the 2030 Agenda for Sustainable Development. Sustainable Development Goal 10 on reducing inequality within and among countries sets, as one of its targets, ensuring equal opportunity and reducing inequalities of outcome. This includes eliminating discriminatory laws, policies and practices, and promoting appropriate legislation, policies and action.

Equality data offer a powerful means to uncover patterns of inequality in EU Member States, as well as a solid foundation for evidence-based policy-making. Findings of EU-MIDIS II and of research published by national equality bodies and public authorities in 2017 amply demonstrate that discrimination and unequal treatment deeply affect European societies. Findings of research implementing the discrimination testing method provide further empirical evidence of discrimination in access to employment and housing on a number of grounds in several EU Member States. By systematically collecting data on patterns of inequality, the EU and its Member States can monitor the impact of policies and measures put in place to foster equality and promote non-discrimination and adjust them to improve their effectiveness. The EU and its Member States have committed to meeting the targets of the 2030 Agenda for Sustainable Development. The availability of robust and reliable equality data would enable the EU and its Member States to measure progress with regard to meeting targets 10.2 and 10.3 under Sustainable Development Goal 10 on reducing inequality within and among countries.

Different types of data, such as statistical and administrative data, as well as scientific evidence can be used to support policymaking to promote equal treatment and combat discrimination. Such data can also be used to assess the implementation of the Racial Equality Directive (2000/43/EC) or the Employment Equality Directive (2000/78/EC). In its general policy recommendations, the European Commission against Racism and Intolerance (ECRI) highlights the need for good data to support the fight against discrimination. In addition, the United



Nations Convention on the Rights of Persons with Disabilities offers guidance with regard to the collection of equality data.

FRA opinion 3.5

EU institutions and EU Member States are encouraged to continue supporting and funding the collection of reliable and robust equality data by EU agencies and bodies, national statistical authorities, national equality bodies, other public authorities and academic institutions. In addition, EU Member States are encouraged to provide the Statistical Office of the European Union (Eurostat) with robust and reliable equality data, so as to enable the EU to develop targeted programmes and measures through which to foster equal treatment and promote non-discrimination. Where possible and relevant, the collected data should not only be disaggregated by sex and by age, but also by ethnic origin, disability and religion.

4 Racism, xenophobia and related intolerance

Seventeen years after the adoption of the Racial Equality Directive and nine years after the adoption of the Framework Decision on Racism and Xenophobia, immigrants and minority ethnic groups continue to face widespread discrimination, harassment and discriminatory ethnic profiling across the EU, as the findings of FRA's second European Union Minorities and Discrimination Survey (EU-MIDIS II) show. The European Commission supported EU Member States' efforts to counter racism and hate crime through the EU High Level Group on combating racism, xenophobia and other forms of intolerance. It also continued to monitor closely the implementation of the Racial Equality Directive and of the Framework Decision. Although several EU Member States have been reviewing their anti-racism legislation, in 2017 only 14 of them had in place action plans and strategies aimed at combating racism and ethnic discrimination.

Despite the policy initiatives undertaken within the framework of the EU High Level Group on combating racism, xenophobia and other forms of intolerance, racist and xenophobic hate crime and hate speech continue to profoundly affect the lives of millions of people in the EU. This is illustrated in findings from EU-MIDIS II and reported in FRA's regular overviews of migration-related fundamental rights concerns.

Article 1 of the Framework Decision on Racism and Xenophobia outlines measures that Member States shall take to punish intentional racist and xenophobic conduct. Article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) further obliges State parties to make incitement to racial discrimination, as well as acts of violence against any race or group of persons, offences punishable by law.

FRA opinion 4.1

EU Member States should ensure that any case of alleged hate crime, including hate speech, is effectively recorded, investigated, prosecuted and tried. This needs to be done in accordance with applicable national, EU, European and international law.

EU Member States should make further efforts to systematically record, collect and publish annually comparable data on hate crime to enable them to develop effective, evidence-based

legal and policy responses to these phenomena. Any data should be collected in accordance with national legal frameworks and EU data protection legislation.

Despite the strong legal framework set by the Racial Equality Directive (2000/43/EC), EU-MIDIS II results and other evidence show that a considerable proportion of immigrants and minority ethnic groups face high levels of discrimination because of their ethnic or immigrant backgrounds, as well as potentially related characteristics, such as skin colour and religion. The results show little progress compared with eight years earlier, when the first EU-MIDIS survey was conducted; the proportions of those experiencing discrimination remain at levels that raise serious concern. They also reveal that most respondents are not aware of any organisation that offers support or advice to discrimination victims, and the majority are not aware of any equality body.

FRA opinion 4.2

EU Member States should ensure better practical implementation and application of the Racial Equality Directive. They should also raise awareness of anti-discrimination legislation and the relevant redress mechanisms, particularly among those most likely to be affected by discrimination, such as members of ethnic



minorities. In particular, Member States should ensure that sanctions are sufficiently effective, proportionate and dissuasive, as required by the Racial Equality Directive.

In 2017, only 14 EU Member States had dedicated national action plans in place to fight racial discrimination, racism and xenophobia. The UN Durban Declaration and Programme of Action resulting from the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance assigns State parties primary responsibility to combat racism, racial discrimination, xenophobia and related intolerance. The EU High Level Group on combating racism, xenophobia and other forms of intolerance provides EU Member States with a forum for exchanging practices to secure the successful implementation of such action plans.

FRA opinion 4.3

EU Member States should develop dedicated national action plans to fight racism, racial discrimination, xenophobia and related intolerance. In this regard, Member States could draw on the practical guidance offered by the Office of the United Nations High Commissioner for Human Rights on how to develop such plans. In line with this guidance, such action plans would set goals and actions, assign responsible state bodies, set target dates, include performance indicators, and provide for monitoring and evaluation mechanisms. Implementing such plans would provide EU Member States with an effective means for ensuring that they meet their obligations under the Racial Equality Directive and the Framework Decision on Combating Racism and Xenophobia.

As reported in previous Fundamental Rights Reports, evidence from EU-MIDIS II shows that members of ethnic minority groups continue to face discriminatory profiling by the police. Such profiling can undermine trust in law enforcement among persons with ethnic minority backgrounds, who may frequently find themselves stopped and searched for no reason other than their appearance. This practice contradicts the principles of the ICERD and other international standards, including those embodied in the European Convention on Human Rights and related jurisprudence of the ECtHR, as well as the EU Charter of Fundamental Rights and the Racial Equality Directive.

FRA opinion 4.4

EU Member States should end discriminatory forms of profiling. This could be achieved through providing systematic training on anti-discrimination legislation to law enforcement officers, as well as by enabling them to better understand unconscious bias and challenge stereotypes and prejudice. Such training could also raise awareness of the consequences of discrimination and of how to increase trust in the police among members of minority communities. In addition, to monitor discriminatory profiling practices, EU Member States could consider recording the use of stop-and-search powers. In particular, they could record the ethnicity of those subjected to stops – which currently happens in one Member State – in accordance with national legal frameworks and EU data protection legislation.

5 Roma integration

The EU Framework for national Roma integration strategies has not yet resulted in significant and ‘tangible progress’, despite the continued implementation of measures to improve Roma inclusion in the Member States. Roma participation in education has increased, but early school leaving and segregation in education remain problems. The situation of Roma in employment, housing and health shows little improvement, while persisting anti-Gypsyism, which manifests itself in discrimination, harassment and hate crime, remains an important barrier to Roma inclusion. The need to tackle anti-Gypsyism became a higher political priority in 2017, reflected in the European Parliament Resolution on fundamental rights aspects in Roma integration in the EU. Enhanced efforts to monitor the implementation and effectiveness of integration measures are necessary, while special attention should be paid to marginalised and socially excluded young Roma and Roma women.

Anti-Gypsyism remains an important barrier to Roma inclusion, findings of FRA surveys on Roma show. Roma continue to face discrimination because of their ethnicity in access to education, employment, housing and healthcare. Discrimination and anti-Gypsyism violate the right to non-discrimination as recognised under Article 21 of the EU Charter of Fundamental Rights, the Racial Equality Directive (2000/43/EC) and other European and international human rights instruments. Furthermore, the 2013 Council Recommendation on effective Roma integration measures recommends that Member States take necessary measures to ensure the effective practical enforcement of the Racial Equality Directive. The need to tackle discrimination against Roma by implementing the Racial Equality Directive and the Framework Decision on Combating Racism and Xenophobia, with a particular focus on gender aspects, was highlighted in previous FRA reports, including the EU-MIDIS II report on *Roma – Selected findings* and the *Fundamental Rights Report 2017*.

FRA opinion 5.1

EU Member States should ensure that combating anti-Gypsyism is mainstreamed into policy measures and combined with active inclusion policies that address ethnic inequality and poverty, in line with the Racial Equality Directive and the Framework Decision on Combating Racism and Xenophobia. They should also include awareness-raising measures on the benefits of Roma integration, targeted towards the general population, service providers, public

educational staff and the police. Such measures could include surveys or qualitative research conducted at national or local level to understand the social impact of anti-Gypsyism.

Early-childhood education enrolment rates for Roma have increased, reflecting investments and measures by governments to support early education. Despite a drop in the rate of young Roma early school leavers, about 7 out of 10 Roma aged 18–24 years still leave school early. Furthermore, segregation in education has increased in several EU Member States and discrimination in education has not significantly improved. Article 3 (3) of the Treaty on European Union (TEU) outlines the importance of combating social exclusion and discrimination, and of protecting the rights of the child, which include the right to education. Article 21 of the EU Charter of Fundamental Rights explicitly prohibits discrimination on the grounds of ethnicity or race. The 2013 Council Recommendation on effective Roma integration measures calls for the elimination of any school segregation and to ensure the sustainability and long-term impact for eliminating segregation. The Racial Equality Directive also applies to the area of education. Infringement procedures brought against three Member States concerning segregation in education in the context of violations of the Racial Equality Directive reflect the severity of this issue.

FRA opinion 5.2

National educational authorities should provide necessary support and resources to schools with Roma student populations to address all aspects of educational inclusion: to increase participation in education and to reduce dropout rates. EU Member States should implement further efforts to address segregation in education that focus on longer-term sustainability and in parallel address discrimination and anti-Gypsyism. Desegregation measures should be accompanied by awareness-raising efforts and diversity promotion in schools addressed to teachers, students and parents.

Improved educational participation of Roma has not always resulted in higher employment rates or labour market participation. Long-term unemployment remains a challenge, while integration in the labour market is even more difficult for young Roma and Roma women. While some specific projects and policy measures have targeted the needs of young Roma and Roma women in employment, little systematic attention has been paid to these particular groups. The 2013 Council Recommendation on effective Roma integration measures asks EU Member States to take effective measures to ensure equal treatment of Roma in access to the labour market – for example, through measures to support first work experience and vocational training, self-employment and entrepreneurship, access to mainstream public employment services and eliminating barriers such as discrimination. The European Pillar of Social Rights, proclaimed in 2017, makes reference to education, training and lifelong learning to help manage successful transitions into the labour market, as well as gender equality, equal opportunities and active support to employment, particularly for young people and the unemployed.

FRA opinion 5.3

EU Member States should strengthen measures to support access to the labour market for Roma. Employment policies, national employment offices and businesses, particularly at local level, should provide support to enable self-employment and entrepreneurship activities. They should also implement outreach efforts to Roma to support their full integration into the labour market, with a focus also on Roma women and young people.

For Roma integration measures to succeed, the meaningful participation of Roma in projects and in the design and implementation of local policies and strategies is essential. National-level participation by Roma is important for the design and monitoring of national Roma integration strategies or integrated sets of policy measures and should be supported through national-level dialogue and participation platforms. Particularly at the local level, mechanisms for cooperation with local authorities and civil society organisations can facilitate the involvement of local people, including Roma. The 2013 Council Recommendation on effective Roma integration measures calls for active involvement and participation of Roma, and appropriate local approaches to integration. FRA's experience through its Local Engagement for Roma Inclusion (LERI) research shows how local communities can become empowered to participate in projects and strategy development.

FRA opinion 5.4

EU Member States should review their national Roma integration strategies or integrated sets of policy measures to advance efforts to promote participatory approaches to policymaking and in integration projects, paying particular attention to the local level and supporting community-led efforts. European Structural and Investment Funds and other funding sources should be used to facilitate participation of Roma and community-led integration projects.

The 2013 Council Recommendation on effective Roma integration measures calls on EU Member States to appropriately monitor and evaluate the effectiveness of their national strategies and social inclusion policies. Such monitoring mechanisms need to include relevant qualitative and quantitative data where possible, ensuring that the data collection is in line with applicable national and Union law, particularly regarding the protection of personal data. While several Member States have included quantitative and qualitative indicators to measure progress in Roma integration, some still do not have any monitoring mechanisms in place. Few monitoring mechanisms include information on effective use of EU funds.

FRA opinion 5.5

Member States should improve or establish monitoring mechanisms on Roma integration, in line with the 2013 Council Recommendation on effective Roma integration measures in the Member States. Monitoring mechanisms should include further collection of anonymised data disaggregated by ethnicity and gender, in line

with EU data protection legislation, and include relevant questions in large-scale surveys such as the Labour Force Survey and the EU Statistics on Income and Living Conditions. Monitoring mechanisms should involve civil society and local Roma communities. Independent assessments, involving Roma, should also review the use and effectiveness of EU funds, and should feed directly into improving policy measures.



6 Asylum, visas, migration, borders and integration

Irregular arrivals by sea halved compared to 2016, totalling some 187,000 in 2017. However, more than 3,100 people died while crossing the sea to reach Europe. Along the Western Balkan route, allegations of police mistreating migrants increased. Some EU Member States still struggled with the reception of asylum applicants. Migration and security challenges were increasingly linked, with large-scale EU information systems serving to both manage immigration and strengthen security. Meanwhile, the push to address irregular migration more effectively exacerbated existing fundamental rights risks.

Although the number of people arriving at the EU's external border in an unauthorised manner dropped in 2017, significant fundamental rights challenges remained. Some of the gravest violations involve the mistreatment of migrants who cross the border by circumventing border controls. Reports of abusive behaviour increased significantly in 2017, particularly on the Western Balkan route. Respondents in FRA's EU-MIDIS II survey, which interviewed over 12,000 first-generation immigrants in the EU, also indicated experiences with violence by police or border guards. Despite the significant number of allegations, criminal proceedings are rarely initiated – partly due to victims' reluctance to pursue claims, but also because of insufficient evidence. Convictions hardly occur.

Article 4 of the EU Charter of Fundamental Rights prohibits torture, inhuman or degrading treatment. The prohibition is absolute, meaning that it does not allow for exceptions or derogations.

FRA opinion 6.1

EU Member States should reinforce preventive measures to reduce the risk that individual police and border guard officers engage in abusive behaviour at the borders. Whenever reports of mistreatment emerge, these should be investigated effectively and perpetrators brought to justice.

In 2017, the EU gave high priority to reforming its large-scale information technology (IT) systems in the field of migration and asylum. Through 'interoperability', the different systems will be better connected with one another. A central repository will pull together the identity of all persons stored in the different systems, and a mechanism will detect

if data on the same person are stored in the IT systems under different names and identities. Not all aspects of the proposed regulations on interoperability have been subjected to careful fundamental rights scrutiny.

The reforms of the IT systems affect several rights protected by the EU Charter of Fundamental Rights, including the right to protection of personal data (Article 8), the rights of the child (Article 24), the right to asylum (Article 18), the right to an effective remedy (Article 47) and the right to liberty and security of person (Article 6).

FRA opinion 6.2

The EU should ensure that either the EU legislator or independent expert bodies thoroughly assess all fundamental rights impacts of the different proposals on interoperability prior to their adoption and implementation, paying particular attention to the diverse experiences of women and men.

The European Union and its Member States made significant efforts to increase the return of migrants in an irregular situation. Immigration and other relevant authorities consider deprivation of liberty as an important building block for effective returns. The revised Return Handbook, adopted in 2017, contains a list of situations which EU Member States should consider as indications of a 'risk of absconding' – in practice, the most frequent justification for ordering detention. It also defines circumstances where a risk of absconding should be presumed, shifting the burden to rebut the presumption on the individual. The lack of comparable statistics on immigration detention in the EU makes it difficult to assess to what degree the reinforced

attention on making returns more effective has prompted an increase in the use of immigration detention. However, reports pointing to patterns of arbitrary detention emerged from different EU Member States.

Detention constitutes a major interference with the right to liberty protected by Article 6 of the EU Charter of Fundamental Rights. Any deprivation of liberty must, therefore, respect the safeguards established to prevent unlawful and arbitrary detention.

FRA opinion 6.3

When depriving individuals of their liberty for immigration-related reasons, EU Member States must respect all safeguards imposed by the Charter as well as those deriving from the European Convention on Human Rights. In particular, detention must be necessary in the individual case.

FRA has consistently highlighted the importance of forced return monitoring pursuant to Article 8 (6) of the Return Directive as a tool to promote fundamental rights-compliant returns. Not all EU Member States have set up operational forced return monitoring systems.

The implementation of returns entails significant risks related to core fundamental rights set out in the EU Charter of Fundamental Rights, including the right to life (Article 2), the prohibition of torture, inhuman or degrading treatment or punishment (Article 4), the right to liberty (Article 6), the right to an effective remedy and the principle of non-refoulement (Article 19).

FRA opinion 6.4

All EU Member States bound by the Return Directive should set up an effective return monitoring system.



7 Information society, privacy and data protection

For both technological innovation and protection of privacy and personal data, 2017 was an important year. Rapid development of new technologies brought as many opportunities as challenges. As EU Member States and EU institutions finalised their preparatory work for the application of the EU Data Protection package, new challenges arose. Exponential progress in research related to 'big data' and artificial intelligence, and their promises in fields as diverse as health, security and business markets, pushed public authorities and civil society to question the real impact these may have on citizens – and especially on their fundamental rights. Meanwhile, two large-scale malware attacks strongly challenged digital security. The EU's recent reforms in the data protection and cybersecurity fields, as well as its current efforts in relation to e-privacy, proved to be timely and relevant in light of these developments.

Article 8 (3) of the EU Charter of Fundamental Rights and Article 16 (2) of the TFEU recognise the protection of personal data as a fundamental right. They affirm that compliance with data protection rules must be subject to control by an independent authority. The oversight and enforcement of data protection rights can become reality if such authorities have the necessary human, technical and financial resources, including adequate premises and infrastructure, to ensure effective performance of their tasks and exercise of their powers. Such a requirement is grounded in Article 52 (2) of the General Data Protection Regulation (GDPR).

FRA opinion 7.1

EU Member States should thoroughly assess the human and financial resources, including technical skills, necessary for the operations of data protection authorities in view of their new responsibilities deriving from the enhanced powers and competences set out under the General Data Protection Regulation.

The GDPR requires that data protection authorities ensure awareness and understanding of the rights and risks related to the processing of personal data. However, most of the guidelines and awareness-raising campaigns are mainly accessible online, so access to the internet is crucial for awareness of rights. In a majority of Member States, there is still an important digital divide between generations in terms of the use of the internet.

FRA opinion 7.2

Data protection authorities should ensure that all data controllers give specific attention to children and older EU citizens to guarantee equal awareness of data protection and privacy rights, and to reduce the vulnerability caused by digital illiteracy.

Taking into account the analysis of the CJEU, the scope of data retention carried out pursuant to the Passenger Name Record (PNR) agreement and PNR Directive should be limited to what is strictly necessary. This means excluding the retention of data of passengers who have already departed and who do not present, in principle, a risk of terrorism or serious transnational crime – at least where neither the checks and verifications nor any other circumstances have revealed objective evidence of such a risk.

FRA opinion 7.3

When reviewing the PNR Directive pursuant to Article 19, the EU legislator should pay particular attention to the analysis of the Court of Justice of the European Union (CJEU). Notably, it should consider reviewing the provisions of the PNR Directive to limit the scope of data retention, after air passengers' departure, to those passengers who may objectively present a risk in terms of terrorism and/or serious transnational crime.

Data protection authorities have the task of monitoring and enforcing the application of the GDPR, and promoting the understanding of risks, rules, safeguards and rights in relation to personal data processing. This role becomes even more important in the context of 'big data' analytics, which allows for unprecedented availability, sharing and automated use of personal data. As the European Parliament and the Council of Europe have highlighted, such processing – operated by natural persons, private companies and public authorities – could pose a number of challenges to individuals' fundamental rights, notably their rights to privacy, protection of personal data and non-discrimination. Further research is still necessary to identify such challenges clearly and address them promptly.

FRA opinion 7.4

EU Member States should evaluate the impact of 'big data' analytics and consider how to address related risks to fundamental rights through strong, independent and effective supervisory mechanisms. Given their expertise, data protection authorities should be actively involved in these processes.

The Directive on security of network and information systems (NIS Directive) enhances the overall level of network and information system security by, among other strategies, imposing a variety of

obligations on national "operators of an essential service", such as electricity, transport, water, energy, health and digital infrastructure, to ensure that an effective strategy is implemented across all these vital sectors. In particular, Article 8 of the directive obliges Member States to designate one or more national competent authorities, as well as a national single point of contact on the security of network and information systems, which "shall, whenever appropriate and in accordance with national law, consult and cooperate with the relevant national law enforcement authorities and national data protection authorities". Implementation initiatives in several Member States have highlighted the need to ensure that the data protection principles enshrined in the GDPR are properly taken on board and reflected in national legislation transposing the NIS Directive.

FRA opinion 7.5

EU Member States should ensure that the national provisions transposing the NIS Directive into national law adhere to the protection principles enshrined in the General Data Protection Regulation (GDPR). In particular, national provisions need to adhere to the principles of purpose limitation, data minimisation, data security, storage limitation and accountability, especially as regards the NIS Directive's obligation for national authorities to cooperate with national law enforcement and data protection authorities.



8 Rights of the child

Child poverty rates in the EU decreased slightly overall, but remained high. Almost 25 million children are at risk of poverty or social exclusion. Severe housing deprivation affects 7 % of families with children in the EU. The European Pillar of Social Rights underlines children’s right to protection from poverty and to equality; it specifically focuses on affordable early childhood education and good-quality care. Migrant and refugee children continued to arrive in Europe seeking protection, although in lower numbers than in 2015 and 2016. While the European Commission provided policy guidance through a Communication on the protection of children in migration, Member States continued efforts to provide appropriate accommodation, education, psychological assistance and general integration measures for children. Implementing the best interests of the child principle remained a practical challenge in the migration context. There was very limited progress in reducing immigration detention of children. Meanwhile, diverse European and national initiatives focused on the risks of radicalisation and violent extremism among young people.

In line with the trend of the previous two years, the number of children in the EU living at risk of poverty or social exclusion continued to decrease. Nevertheless, almost 25 million children are at risk of poverty or social exclusion; this requires the urgent attention of the EU and its Member States. Article 24 of the EU Charter of Fundamental Rights provides that “[c]hildren shall have the right to such protection and care as is necessary for their well-being”. The European Semester in 2017 included an increased number of country-specific recommendations related to children – but, for the first time, none related to child poverty. EU Member States make very limited use of the European Commission’s 2013 Recommendation ‘Investing in children: breaking the cycle of disadvantage’ in their National Reform Programmes as part of the European Semester. Although it has been criticised by civil society actors, the European Pillar of Social Rights might present an opportunity to change child poverty rates and reinforce the Commission’s 2013 Recommendation, the implementation of which the Commission evaluated in 2017.

FRA opinion 8.1

The European Union and its Member States should ensure they deliver on the commitments included in the European Pillar of Social Rights to protect children from poverty, provide access to affordable early childhood education and care of good quality without discrimination. They should also ensure the right of girls and boys from disadvantaged backgrounds to specific

measures to enhance equal opportunities. The implementation of the Pillar requires concrete legislative proposals, action plans, budgetary allocation and monitoring systems in all areas that affect children and their families, such as employment, gender equality, access to health services, education and affordable housing.

EU Member States should make use of the Commission’s 2013 Recommendation ‘Investing in children’ when presenting their National Reform Programmes for the European Semester.

Seven per cent of families with children in the EU experience severe housing deprivation. They are living in overcrowded households with at least one of the following: a leaking roof, no bath/shower and no indoor toilet, or insufficient light. Despite the lack of EU-wide data on evictions and homelessness, reports from national statistical offices and NGOs highlight an increased number of children in homeless shelters. Article 34 (3) of the EU Charter of Fundamental Rights recognises “[t]he right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices”. The European Pillar of Social Rights’ principles also include access to social housing, protection from forced eviction and support to homeless people – but, in contrast to the Revised European Social Charter, the Pillar does not establish any binding measures. However,

when ratifying the Revised European Social Charter, only seven Member States accepted as binding the provision on the right to housing.

FRA opinion 8.2

EU Member States should establish the fight against severe housing deprivation as a political priority and ensure that families with children, especially those living at risk of poverty, have priority access to social housing or are provided with adequate housing assistance. Relevant authorities should address homelessness and implement measures that include the prevention or delay of evictions of families with children, especially during winter. While doing so, Member States should make use of various housing funding programmes that the EU offers.

The EU should promote regional and cross-national exchange of practices related to practical measures to prevent evictions of families with children. It should also promote EU-wide efforts to collect data on evictions of families with children and on homelessness.

The number of asylum seekers and refugees arriving in Europe decreased in 2017. Fewer than 200,000 children applied for asylum in the EU, a reduction of almost 50 % compared with 2016. The European Commission's 2017 Communication setting out actions to protect children in migration was a positive step forward. The best interests of the child is a well-established international human rights law principle enshrined in the Convention on the Rights of the Child (Article 3), the EU Charter of Fundamental Rights (Article 24) and EU secondary law, as well as in most national legislation related to children. However, there is a shortage of guidance, data collected for FRA's *Fundamental Rights Report 2018* show; only a few Member States have developed structured processes and methods to implement the best interests of the child in practice.

FRA opinion 8.3

EU Member States should formalise procedures appropriate for their national contexts for assessing the best interests of the child in the area of asylum or migration. Such procedures should clearly define situations when a formal best interests determination is necessary, who is responsible, how it is recorded and what gender and cultural-sensitive methodology it should follow.

The EU could facilitate this process by coordinating it, mapping current practice and guiding the process, through the existing networks of Member States on the rights of the child and the protection of children in migration, which the European Commission coordinates.

Children continue to be detained for immigration purposes. However, a number of Member States have taken positive steps towards developing alternatives to detention. The EU *acquis* establishes that children are to be detained only as a last resort and only if less coercive measures cannot be applied effectively. Such detention must be for the shortest period of time possible. At the United Nations level, the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families issued two Joint General Comments in which they deem immigration detention of children a violation of the rights of the child. They affirm that children "should never be detained for reasons related to their or their parents' migration status". The stringent requirements flowing from the EU Charter of Fundamental Rights and from Articles 3 (prohibition of torture) and 5 (right to liberty and security) of the European Convention on Human Rights (ECHR) mean that deprivation of liberty will be in line with EU law only in exceptional cases.

FRA opinion 8.4

To promote children's right to protection and care, the EU and its Member States should develop credible and effective non-custodial alternatives that would make it unnecessary to detain children during asylum procedures or for return purposes, regardless of whether they are in the EU alone or with their families. This could include building on, for example, case management, alternative care, counselling and coaching.

The European Commission should consider the systematic monitoring of the use of immigration detention for children and other people in a vulnerable situation.

Radicalisation and violent extremism, rooted in different ideologies, is a reality in Europe. The establishment of the EU High-Level Commission Expert Group on Radicalisation (HLCEG-R) is a promising development towards a comprehensive response. A number of fundamental rights concerns come into



play in the area of radicalisation and in implementing the EU's internal security strategy. Member States have implemented a combination of law enforcement measures, but also established educational programmes or centres of support for children at risk of radicalisation and their families, or promoted alternative narratives on online platforms.

FRA opinion 8.5

EU Member States should address the complex phenomenon of radicalisation through a holistic, multidimensional approach going beyond security and law enforcement measures. For this, Member States should establish programmes that promote citizenship and the common values of freedom, tolerance and non-discrimination, in particular in educational settings. Member States should encourage effective coordination among existing actors in child protection, justice, social and youth care, health and education systems to facilitate comprehensive integrated intervention.

9 Access to justice including the rights of crime victims

Despite various efforts by the EU and other international actors, challenges in the areas of the rule of law and justice posed growing concerns in the EU in 2017, triggering the first-ever Commission proposal to the Council to adopt a decision under Article 7 (1) of the Treaty on European Union. Meanwhile, several EU Member States took steps to strengthen their collective redress mechanisms in line with Commission Recommendation 2013/396/EU, which potentially improves access to justice. Victims' rights also saw progress. About a third of EU Member States adopted legislation to transpose the Victims' Rights Directive; many implemented new measures in 2017 to ensure that crime victims receive timely and comprehensive information about their rights from the first point of contact – often the police. The EU signed the Istanbul Convention as a first step in the process of ratifying it. Another three EU Member States ratified the Convention in 2017, reinforcing that EU Member States recognise the instrument as defining European human rights protection standards in the area of violence against women and domestic violence. This includes sexual harassment – an issue that received widespread attention due to the #metoo movement.

The EU and other international actors in 2017 continued to be confronted with growing challenges in the area of justice at the national level and, in particular, regarding the issue of judicial independence. An independent judiciary is the cornerstone of the rule of law and of access to justice (Article 19 of the TEU, Article 67 (4) of the TFEU and Article 47 of the EU Charter of Fundamental Rights). Despite continued efforts of the EU and other international actors, the rule of law situation in one of the EU Member States caused increasing concern, particularly in terms of judicial independence. This prompted the European Commission to submit, for the first time in the history of the EU, a proposal to the Council for adoption of a decision under Article 7 (1) of the TEU.

FRA opinion 9.1

The EU and its Member States are encouraged to further strengthen their efforts and collaboration to reinforce independent judiciaries, an essential rule of law component. One way forward in this context is to depart from the existing approach of tackling rule of law emergencies in individual countries in an ad-hoc manner. Instead, the existing efforts should be stepped up to develop criteria and contextual assessments to guide EU Member States in recognising and tackling any possible rule of law issues in a regular and comparative

manner. In addition, existing targeted advice from European and international human rights monitoring mechanisms, including the remedial actions set out in the European Commission's recommendations issued as part of its Rule of Law Framework procedure, should be acted on to ensure compliance with the rule of law. All EU Member States should always stand ready to defend the rule of law and take necessary actions to challenge any attempts to undermine the independence of their judiciary.

Collective redress mechanisms enhance access to justice, which is paramount to secure the effectiveness of Union law and ensure respect for fundamental rights, as required by Article 47 of the EU Charter of Fundamental Rights. For this purpose, European Commission Recommendation 2013/396/EU on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law has sought to facilitate access to justice and to that end recommended a general collective redress mechanism based on the same basic principles throughout EU Member States. In 2017, the Commission initiated its assessment of the implementation of Recommendation 2013/396/EU and several Member States took steps to directly



implement it. Nevertheless, legislation at national level still significantly diverges among Member States, creating different forms and levels of collective action.

FRA opinion 9.2

EU Member States – working closely with the European Commission and other EU bodies – should continue their efforts to ensure that Commission Recommendation 2013/396/EU on collective redress mechanisms is fully implemented to enable effective collective action and access to justice. The collective redress mechanisms should be wide in scope and not limited to consumer matters. The European Commission should also take advantage of the assessment of the implementation of Commission Recommendation 2013/396/EU, initiated in 2017, to provide the necessary support to EU Member States to introduce or reform their national mechanisms for collective redress in line with the rule of law and fundamental rights in all the areas where collective claims for injunctions or damages in respect of violations of the rights granted under Union law would be relevant.

The year 2017 saw positive developments in terms of more EU Member States adopting legislation to transpose the Victims' Rights Directive, including efforts to ensure that victims are informed about the rights they have under new legislation. Evidence at national level in some Member States shows that victims still encounter obstacles to reporting crime and that victims do not always receive comprehensive information about their rights. This can negatively affect the victims' opportunity to access their rights in practice.

FRA opinion 9.3

Following positive legal developments to transpose the Victims' Rights Directive up until 2017, EU Member States should focus on the effective implementation of the directive. This should include the collection of data disaggregated by gender on how crime victims have accessed their rights; such data should be used to address gaps in institutional frameworks to enable and empower victims to exercise their rights. Further data collection at national and at EU level will shed light on this and highlight gaps that need to be filled to ensure that victims of crime have access to rights and support on the ground.

In 2017, another three EU Member States ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), bringing to 17 the total number of EU Member States that had ratified the convention by the end of the year. When it comes to determining European standards for the protection of women against violence, the Istanbul Convention is the most important point of reference. In particular, Article 36 obliges State parties to criminalise all non-consensual sexual acts and adopt an approach that highlights and reinforces a person's unconditional sexual autonomy. However, the 2017 evaluation reports by the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) revealed gaps in national legislation regarding the criminalisation of non-consensual sexual acts, which is not in line with the convention's requirements.

FRA opinion 9.4

All EU Member States and the EU itself should consider ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). EU Member States are encouraged to address gaps in national legislation regarding the criminalisation of all non-consensual sexual acts. EU Member States should – in line with Article 36 of the Istanbul Convention – unambiguously and unconditionally criminalise the respective acts.

The stark realities brought to the surface by the global #metoo movement underline FRA's findings from its 2012 Violence against Women survey, which showed that violence against women – including sexual harassment – remains widespread. Hence, there is a clear need for renewed emphasis in this area at both EU and Member State level.

FRA opinion 9.5

EU Member States should reinforce their efforts and take further measures to prevent and combat sexual harassment. This should include necessary steps towards effectively banning sexual harassment as regards access to employment and working conditions in accordance with Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

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

The European Commission’s progress report on implementation of the European Disability Strategy 2010-2020 provided an opportunity to take stock of the EU’s efforts to realise the rights set out in the United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD). Movement towards the adoption of the European Accessibility Act indicated that a major legislative milestone is moving closer. Despite significant achievements at the EU and national levels, however, implementation gaps persist in key areas such as accessibility and independent living. Tools such as indicators, as well as rulings by national courts on the justiciability of the CRPD, can help to ensure that practice follows the promise of legal obligations. Monitoring frameworks established under Article 33 (2) of the convention also have a crucial role to play, but a lack of resources, limited mandates and a lack of independence undermine their effectiveness.

The European Commission’s progress report on implementation of the European Disability Strategy demonstrates how actions to implement the United Nations Convention on the Rights of Persons with Disabilities (CRPD) are helping to drive wide-ranging legal and policy reforms, from accessibility to independent living. Nevertheless, some initiatives at EU and Member State level do not fully incorporate the human rights-based approach to disability required by the CRPD, or lack the clear objectives, adequate budgets and operational guidance for effective implementation and assessment of progress.

FRA opinion 10.1

The EU and its Member States should intensify efforts to embed CRPD standards in their legal and policy frameworks to ensure that the human rights-based approach to disability is fully reflected in law and policymaking. This should include a comprehensive review of legislation for compliance with the CRPD. Guidance on implementation should incorporate clear targets and timeframes, and identify actors responsible for reforms. Member States should also consider developing indicators to track progress and highlight implementation gaps.

the proposed European Accessibility Act in 2017, demonstrating the EU’s commitment to this flagship legislation to implement the CRPD. Nevertheless, significant differences remain over important issues, such as the scope of the act’s applicability to audio-visual media and transport services, as well as its interrelationship with other relevant EU law, including European Structural and Investment Funds (ESIF) and the Public Procurement Directive. This raises the prospect of the proposal being weakened in key areas during legislative negotiations, which risks undermining the act’s capacity to improve the accessibility of goods and services for persons with disabilities in the EU.

FRA opinion 10.2

The EU should ensure the rapid adoption of a comprehensive European Accessibility Act, which includes robust enforcement measures. This should enshrine standards for the accessibility of the built environment and transport services. To ensure coherence with the wider body of EU legislation, the Act should include provisions linking it to other relevant acts, such as the regulations covering the European Structural and Investment Funds and the Public Procurement Directive.

Intense negotiations saw the Council of the EU and the European Parliament adopt their positions on

EU Structural and Investment Funds (ESIF) play an important role in supporting national efforts to



achieve independent living. Civil society, including disabled persons' organisations, can play an important role in providing the information necessary for effective monitoring of the use of the funds.

FRA opinion 10.3

The EU and its Member States should ensure that the rights of persons with disabilities enshrined in the CRPD and the EU Charter of Fundamental Rights are fully respected to maximise the potential for EU Structural and Investment Funds (ESIF) to support independent living. To enable effective monitoring of the funds and their outcomes, the EU and its Member States should also take steps to include disabled persons' organisations in ESIF monitoring committees and to ensure adequate and appropriate data collection on how ESIF are used.

By the end of 2017, Ireland was the only EU Member State not to have ratified the CRPD, although the main reforms paving the way for ratification are now in place. In addition, five Member States and the EU have not ratified the Optional Protocol to the CRPD, which allows individuals to bring complaints to the CRPD Committee and for the Committee to initiate confidential inquiries upon receipt of "reliable information indicating grave or systematic violations" of the convention (Article 6).

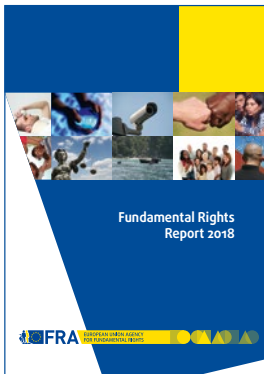
FRA opinion 10.4

EU Member States that have not yet become party to the Optional Protocol to the CRPD should consider completing the necessary steps to secure its ratification as soon as possible to achieve full and EU-wide ratification of its Optional Protocol. The EU should also consider taking rapid steps to accept the Optional Protocol.

Two of the 27 EU Member States that have ratified the CRPD had not, by the end of 2017, established frameworks to promote, protect and monitor its implementation, as required under Article 33 (2). Furthermore, the effective functioning of some existing frameworks is undermined by insufficient resources, limited mandates and a failure to ensure systematic participation of persons with disabilities, as well as a lack of independence in accordance with the Paris Principles on the functioning of national human rights institutions.

FRA opinion 10.5

The EU and its Member States should consider allocating sufficient and stable financial and human resources to the monitoring frameworks established under Article 33 (2) of the CRPD. As set out in FRA's 2016 legal Opinion concerning the requirements under Article 33 (2) of the CRPD within an EU context, they should also consider guaranteeing the sustainability and independence of monitoring frameworks by ensuring that they benefit from a solid legal basis for their work and that their composition and operation takes into account the Paris Principles on the functioning of national human rights institutions.



The year 2017 brought both progress and setbacks in terms of fundamental rights protection. FRA's *Fundamental Rights Report 2018* reviews major developments in the EU between January and December 2017, and outlines FRA's opinions thereon. Noting both achievements and remaining areas of concern, it provides insights into the main issues shaping fundamental rights debates across the EU.

This year's focus chapter takes a look at the shift towards a rights-based approach to ageing. The remaining chapters discuss the EU Charter of Fundamental Rights and its use by Member States; equality and non-discrimination; racism, xenophobia and related intolerance; Roma integration; asylum and migration; information society, privacy and data protection; rights of the child; access to justice; and developments in the implementation of the Convention on the Rights of Persons with Disabilities.

Further information:

For the full FRA *Fundamental Rights Report 2018* – see <http://fra.europa.eu/en/publication/2018/fundamental-rights-report-2018>

See also related FRA publications:

- FRA (2018), *Fundamental Rights Report 2018 – FRA opinions*, Luxembourg, Publications Office, <http://fra.europa.eu/en/publication/2018/fundamental-rights-report-2018-fra-opinions> (available in all 24 official EU languages)
- FRA (2018), *Shifting perceptions: towards a rights-based approach to ageing*, Luxembourg, Publications Office, <http://fra.europa.eu/en/publication/2018/frr-2018-focus-rights-based-ageing> (available in English and French)

For previous FRA Annual reports on the fundamental rights challenges and achievements in the European Union in a specific year, see: <http://fra.europa.eu/en/publications-and-resources/publications/annual-reports> (available in English, French and German).



FRA – EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Schwarzenbergplatz 11 – 1040 Vienna – Austria
T +43 158030-0 – F +43 158030-699
fra.europa.eu – info@fra.europa.eu
[facebook.com/fundamentalrights](https://www.facebook.com/fundamentalrights)
[linkedin.com/company/eu-fundamental-rights-agency](https://www.linkedin.com/company/eu-fundamental-rights-agency)
twitter.com/EURightsAgency



Publications Office

© European Union Agency for Fundamental Rights, 2018
© Photos (top left to bottom right): iStock.com;
European Commission; iStock.com (Nos. 3 & 4);
OSCE (Milan Obradovic); iStock.com (Nos. 6-10)
Print: ISBN 978-92-9491-949-6, doi:10.2811/334370
PDF: ISBN 978-92-9491-974-8, doi:10.2811/414028