

# BEYOND THE PEAK: CHALLENGES REMAIN, BUT MIGRATION NUMBERS DROP

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ANNUAL REVIEW

## Contents

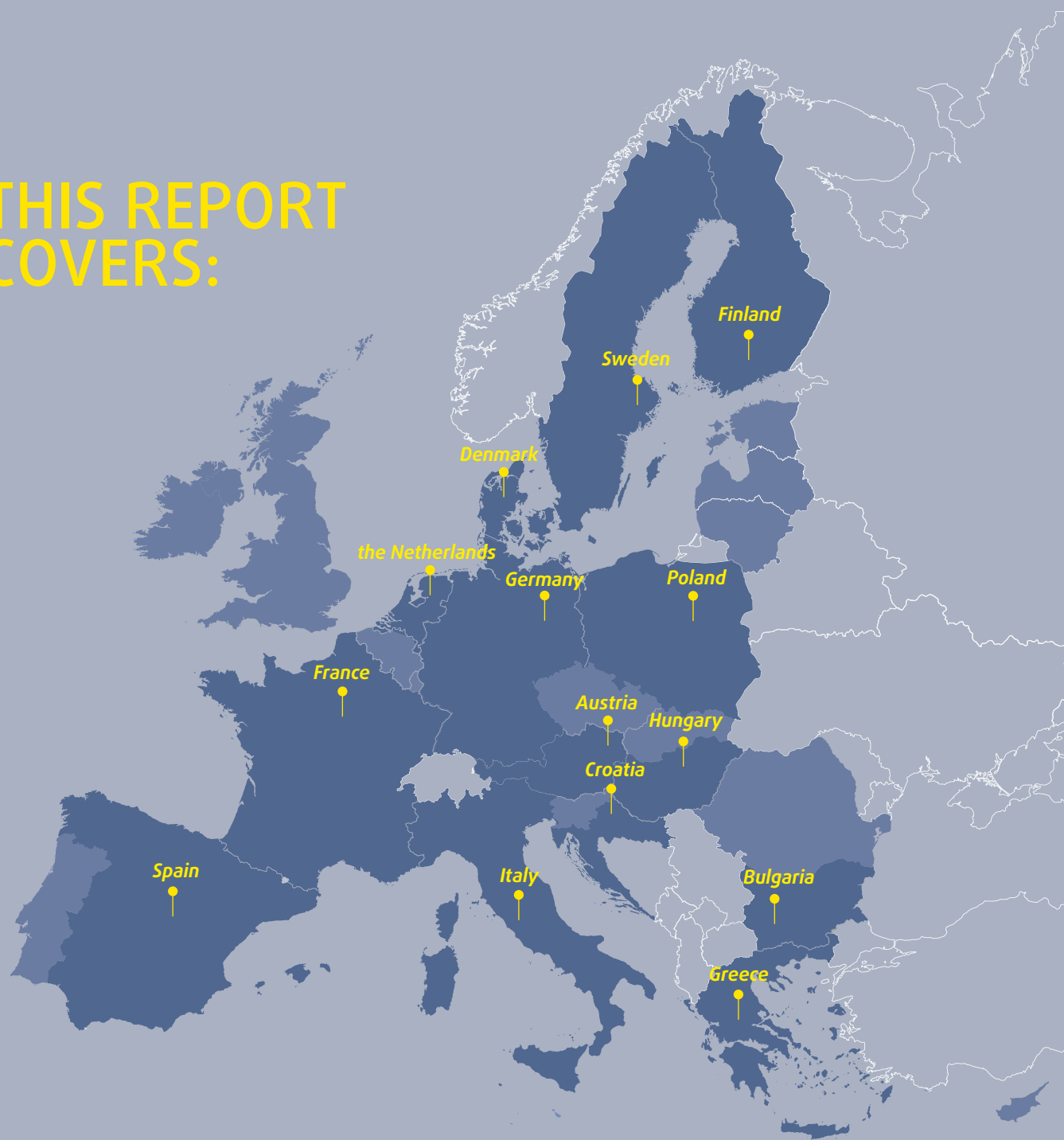
- 3 Introduction
- 5 Situation on the way to safety
- 11 Violence and hate speech against migrants
- 17 Asylum laws and policies



DISCLAIMER: This publication is based on bi-monthly reports that the European Union Agency for Fundamental Rights (FRA) commissioned under a contract with its research network, FRANET. Throughout 2018, FRANET provided FRA with descriptive up-to-date data on migration-related fundamental rights concerns on a bi-monthly basis. The data are based on interviews and desk research, and do not include analyses or conclusions.

EU Member States' legal and practical approaches and responses to migrants and refugees implicate several of their fundamental rights, as enshrined in the EU Charter of Fundamental Rights. The EU Agency for Fundamental Rights (FRA) has regularly reported on these issues since September 2015.

## THIS REPORT COVERS:



## Introduction

In 2018, some 150,000 people crossed the European Union's external borders irregularly – the lowest number in five years, according to the European Commission and the European Coast Guard and Border Agency (Frontex).<sup>1</sup> The number of people seeking asylum in the EU plus Norway and Switzerland (EU+) fell for a third year in 2018. There were some 635,000 applications – less than half the number of applications filed in 2015 (1.4 million) and 2016 (1.3 million).<sup>2</sup> Throughout 2018, the EU and Member States made an effort to address remaining challenges related to asylum, migration and borders, and to take forward the European Agenda on Migration.<sup>3</sup> The EU has supported Member States in handling arrivals on the external border. The development of legal pathways as alternatives to the dangerous smuggling routes has, since 2015, led to the resettlement to the EU of more than 50,000 people in need of international protection.<sup>4</sup>

The lower numbers of arrivals and the EU's and Member States' efforts have contributed to the improvement of some aspects of the situation of asylum seekers and migrants. Nevertheless, serious fundamental rights concerns persist.

This report looks into the fundamental rights situation of asylum applicants and beneficiaries of international protection in the EU throughout 2018. It pulls together the main issues identified in FRA's regular updates on fundamental rights related to asylum, migration and borders in selected EU Member States, which the agency has been publishing since September 2015. Evidence presented in these reports is based on interviews with institutions and other organisations, as well as on desk research.

### Key findings on the fundamental rights situation of migrants in 2018

#### 1. Migrants' rights at the border

- Despite a significant decline in the number of people arriving in Europe, the number of deaths of refugees and migrants attempting the journey to Europe remained high, with more than 2,275 fatalities.
- Rescue boats deployed by civil society organisations faced serious difficulties when trying to dock, considerably delaying the disembarkation of migrants and putting at risk their safety and physical integrity.
- A number of incidents of unlawful refusal of entry and mistreatment of migrants, including children, at the external and internal borders were reported.

“Europe is no longer experiencing the migration crisis we lived in 2015, but structural problems remain.”

First Vice-President of European Commission  
Frans Timmermans,  
press statement on European  
Agenda on Migration,  
6 March 2019



1 European Border and Coast Guard Agency (Frontex) (2019), *Risk Analysis for 2019*, p. 6; European Commission, *Progress report on the Implementation of the European Agenda on Migration*, COM (2019) 126 final of 6.3.2019, p. 1.

2 European Asylum Support Office (EASO) (2019), *EASO EU+ asylum trends 2018 overview*, p. 4.

3 COM(2015) 240 final of 13.5.2015.

4 European Commission, *Progress report on the Implementation of the European Agenda on Migration*, COM (2019) 126 final of 6.3.2019, p. 1.

## Note on sources

The evidence presented in this report is based on interviews with public institutions, non-governmental organisations, Ombudspersons and international organisations. The interviewed stakeholders are listed in the respective annexes of FRA's regular reports on migration. In addition, where sources of information are available in the public domain, hyperlinks can be found in the footnotes throughout the text.

## FRA activity

### Eye on migration: quarterly bulletins on migration

FRA has issued regular updates on migration-related fundamental rights concerns in selected EU Member States since September 2015. As of 2019, the 'Quarterly Bulletins' focus on 15 EU Member States and two candidate countries. For the first time, coverage now includes Belgium, North Macedonia and Serbia.

### 2. Violence and hate speech against migrants

- Political hate speech and generalising statements insinuating that migrants are a threat to national security and culture contributed to a racist anti-migrant environment.
- The police, NGOs and the media reported a high number of incidents of racist violence against migrants and refugees, in several cases causing severe injuries; as well as violence against buildings and online hate speech.
- The extent to which Member States collect and report hate-crime data varies significantly. Some Member States have put in place measures to address under-reporting and under-recording of hate crime that work well. However, overall, a number of hate crimes remain unreported.

### 3. Asylum laws and policies

- Some Member States continued to explore how far they could go in toughening their asylum laws and policies while remaining within the scope of EU law. In some cases, the Court of Justice of the European Union (CJEU) was called to decide whether boundaries were being pushed too far and whether proposed measures infringe EU law, including fundamental rights. Such laws concerned access to asylum procedures, detention of asylum applicants, and national restrictions on the right to family reunification.
- Further legislative changes lowering reception standards and restricting social welfare benefits for asylum applicants and beneficiaries of international protection came into force in some Member States, in particular affecting children. The CJEU deemed unlawful certain limitations on social assistance.
- Several EU Member States toughened their rules on immigration detention, which also affected children. This risks compromising international and EU law, which allow detention of children only as a measure of last resort and for the shortest appropriate time period.

One year ago, in February 2018, FRA published a similar overview of fundamental rights challenges that remained unaddressed at the time.<sup>5</sup> Although this year's report is structured differently, grouping remaining fundamental rights challenges under broader headings, most of the issues FRA flagged a year ago remain valid today. Improvements occurred mainly with regard to those concerns that are closely linked with the number of people arriving. For example, in 2018, the backlog in registering and processing asylum applications, which resulted in applicants being kept in a situation of limbo, decreased in several Member States. Less affected by new arrivals, many Member States are now able to offer more dignified reception conditions to new arrivals – although shortcomings still remain, particularly in locations near some EU Member States' borders.

The year 2018 was also marked by a lower number of arrivals of children at the EU's external borders (14 % fewer than in 2017). However, at the same time, progress has been slow in terms of addressing gaps regarding guardianship of unaccompanied children and providing a sufficient number of accommodation spots appropriate for their specific needs. In addition, age-assessment procedures of unaccompanied children remained a contested process in many Member States.

<sup>5</sup> FRA (2018), *Migration to the EU: five persistent challenges*, February 2018.

## 1. Situation on the way to safety

Routes taken by refugees and migrants heading to Europe changed in 2018. During the first half of the year, more people arrived in Greece than in Italy or Spain. In the second half, however, **Spain** replaced **Italy** and **Greece** as the main country of arrival on the EU's external border.<sup>6</sup> This is also linked to the Libyan Coast Guard rescuing and intercepting almost 15,000 refugees and migrants at sea, according to UNHCR,<sup>7</sup> which is more than the approximately 13,000 persons who left Libya and reached Italy.<sup>8</sup> The Libyan authorities were able to increase their capacity because of the EU's and Member States' support in the area of border management.

The journeys people chose to undertake to come to the EU were as dangerous as ever, mainly as a result of a reduction in overall search-and-rescue capacity. Many non-governmental organisations (NGOs) and other private entities stopped their search-and-rescue operations in the Mediterranean Sea due to the trend of criminalising such operations. An estimated 2,275 people died or went missing in the Mediterranean in 2018 – an average of more than six people every day.<sup>9</sup>

The numbers of deaths and missing persons trying to reach **Spain** alone increased by 288 % – from 202 in 2017 to 784 persons in 2018.

Fatalities took place not only at sea, but also at land borders. For example, in the Evros region, at the land border of Turkey to **Greece**, at least 40 deaths – including of children – were recorded by mid-October 2018, with nearly half of the migrants having drowned in the fast-flowing Evros River on their way to Greece.<sup>10</sup>

Some fatal incidents also occurred at the internal borders. At least two men drowned trying to cross the river Kupa between **Croatia** and Slovenia.<sup>11</sup> The situation along the French-Italian border (especially in the Department Alpes-Maritimes) remained problematic. Authorities in **France** continued to send several migrants back to **Italy** without a formal decision and denied them the possibility to apply for asylum in France. This practice increasingly pushed migrants seeking safety, including young people and families, to take risky mountain paths to avoid police checks. This led to at least four deaths in 2018.<sup>12</sup>

## Legal corner

The principle of *non-refoulement* is the core element of refugee protection and is enshrined in international and EU law. Article 33 (1) of the 1951 Refugee Convention and the interpretation of Article 3 of the European Convention on Human Rights (ECHR) prohibit returning an individual to a risk of persecution, torture, inhuman or other degrading treatment or punishment. EU primary law reflects the prohibition of *refoulement* in Article 78 (1) of the Treaty on the Functioning of the EU (TFEU) and in Articles 18 and 19 of the EU Charter of Fundamental Rights. The principle of *non-refoulement* also applies when authorities turn back people seeking international protection who have reached the EU's external borders or at high seas.

Providing assistance to people in distress at sea is a duty of all states and shipmasters under international law. Core provisions on search and rescue at sea are set out in the 1974 International Convention for the Safety of Life at Sea and the 1979 International Convention on Maritime Search and Rescue.



6 United Nations High Commissioner for Refugees (UNHCR) (2019), *Desperate Journeys - Refugees and migrants arriving in Europe and at Europe's borders - January - December 2018*.

7 UNHCR (2018), 'Overview 2018: Libya', p. 1.

8 The number of arrivals in Italy was provided by the Ministry of Interior, personal communication, 21 January 2019.

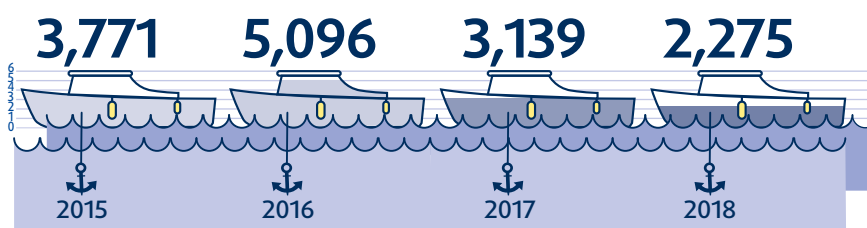
9 UNHCR (2019), *Desperate Journeys - Refugees and migrants arriving in Europe and at Europe's borders - January - December 2018*.

10 UNHCR (2018) 'UNHCR shocked at deaths in northern Greece', 13 October 2018; FRA, *Periodic data collection migration*, November 2018.

11 FRA, *Periodic data collection migration*, July 2018; FRA, *Periodic data collection migration*, May 2018.

12 FRA, *Periodic data collection migration*, July 2018; FRA, *Periodic data collection migration*, February 2018; as well various media reports and blogs.

### Estimated fatalities at sea 2015-2018



Source: UNHCR *Desperate Journeys 2018*

### Search-and-rescue operations

Anti-immigration policies by some EU Member States' governments in the Mediterranean, which have closed their ports to search-and-rescue boats, have resulted in a severe decline in search-and-rescue operations coordinated by EU Member States. The few remaining rescue boats deployed by civil society organisations and states faced serious difficulties when trying to dock, delaying the disembarkation of migrants and putting at risk their safety and physical integrity.

FRA is aware of at least 13 cases in 2018 where rescue vessels were not immediately allowed to dock, leaving more than 2,220 migrants and refugees, including children, stranded on board – often for more than a week in bad weather, under poor health conditions, and running out of drinking water and food before being allowed to disembark. A court in Sicily decided to initiate legal proceedings against the Italian Interior Minister for “aggravated kidnapping,” based on the minister’s decision to refuse to let nearly 200 rescued migrants disembark at an Italian port.<sup>13</sup>

Table 1: Vessels that were not immediately allowed to disembark migrants\*

Ship	Estimated (rounded) number of migrants on board	Month and place of disembarkation
1 'Aquarius' (NGO vessel)	630	June, Valencia (Spain)
2 'Lifeline' (NGO vessel)	235	June, Malta
3 Italian coastguard ship 'Diciotti' (state vessel)	500	June, Pozzallo (Italy)
4 'Alexander Maersk' (cargo vessel)	115	July, Pozzallo (Italy)
5 'Open Arms' (NGO vessel)	60	July, Barcelona (Spain)
6 'Vos Thalassa' (Italian state vessel)	70	July, Trapani (Italy)
7 British naval 'Protector' and Italian 'Monte Sperone' (state vessels)	**380	July, Pozzallo (Italy)
8 'Open Arms' (NGO vessel)	90	August, Algeciras (Spain)
9 Maltese army vessel 'Armed Forces of Malta OPV P61'	115	August, Malta
10 'Aquarius' (NGO vessel)	140	August, Malta
11 Italian coastguard ship 'Diciotti' (state vessel)	150	August, Catania (Italy) 13 persons evacuated to Lampedusa
12 'Aquarius' (NGO vessel)	60	September, Malta
13 'Nuestra Madre de Loreto' (fishing vessel)	10	December, Malta
14 'Open Arms' (NGO vessel)	310	December, Algeciras (Spain)
15 'Sea Watch 3' (NGO vessel)	32	January 2019, Malta
16 'Sea-Eye' (NGO vessel)	17	January 2019, Malta

Notes: \* The number of migrants is a rounded estimate. In some cases, people were rescued and transferred to a state vessel while at sea. In such cases, the table only mentions the state vessels.

\*\* Out of a total of 447 rescued. Rest were medically evacuated.

Source: FRA, 2019 [based on various sources, including NGO and media reports and interviews]

<sup>13</sup> Politico (2019), Italian court seeks legal action against Salvini over migrants, 24 January 2019.

Search-and-rescue activities of NGOs were accused of enabling the arrival of irregular migrants and of cooperating with migrant smugglers. For example, **Italy's** Minister of the Interior called search-and-rescue NGOs "migrant taxis" that cooperate with criminal networks.<sup>14</sup> Italian authorities confiscated migrant rescue boats, such as the *Iuventa*, from German NGO Jugend Rettet, and *Open Arms*, from Spanish NGO Proactiva Open Arms, and investigated and detained their staff members. In some cases, rescue vessels were blocked from leaving harbours due to purported flag issues (e.g. the '*Lifeline*', '*The Sea Eye*' and '*Sea Watch*' in **Malta**).<sup>15</sup>

## Access and treatment of migrants at borders

Migrants attempting to reach **Bulgaria, Croatia, France, Greece, Hungary, Poland** and **Spain** were reportedly pushed back across borders without being given the opportunity to apply for asylum.<sup>16</sup> Save the Children reported that more than 1,350 children were pushed back across the EU's borders between January and November 2018, involving violence in almost one third of the cases.<sup>17</sup>

According to UNHCR,<sup>18</sup> more than 12,700 migrants had entered **Greece** by land in the Evros region in 2018 as of mid-October – more than double the number that crossed in 2017.<sup>19</sup> People reported being beaten, stripped of their clothes and belongings, and forced back to Turkey across the Evros river in underwear.<sup>20</sup> In January 2018, the ECtHR held<sup>21</sup> that Greece violated Article 5 (2) of the ECHR (right to be informed promptly of the reasons for arrest) when detaining three migrants in a reception centre in Chios in order to return them to Turkey pursuant to the EU-Turkey Statement.<sup>22</sup>

The police and border guards in **Croatia** allegedly ignored asylum requests and continued to push back people, including children.<sup>23</sup> News<sup>24</sup> and videos<sup>25</sup> of police violence against refugees appeared on a daily basis.<sup>26</sup> The NGO "Are You Serious" reported<sup>27</sup> that the police drove migrants back to the Serbian border or, using physical force, forced them to walk for eight hours back to Šid.

## FRA activity

### Eye on responses to search-and-rescue operations

In October 2018, FRA published a note entitled 'Fundamental rights considerations: NGO ships involved in search and rescue in the Mediterranean and criminal investigations'. The note draws attention to the recent trend of criminalising search-and-rescue operations carried out by non-governmental organisations (NGOs) or other private entities in the Mediterranean Sea.

The note is available on [FRA's website](#).

14 Reuters (2018), 'Italy to ask NATO to help deal with migrant flows: Salvini', 8 June 2018.

15 For detailed information, see FRA (2018), *Fundamental rights considerations: NGO ships involved in search and rescue in the Mediterranean and criminal investigations*, Annex (Tables and figures).

16 FRA, *Migration: Key fundamental rights concerns - Quarterly bulletin 1* (February 2019).

17 Save the Children, 'Hundreds of children report police violence at EU borders', 24 December 2018. See also, Human Rights Watch, *Croatia, 'Migrants Pushed Back to Bosnia and Herzegovina; Violence, Abuse; Denied Opportunity to Apply for Asylum'*, 11 December 2018.

18 UNHCR (2018), 'UNHCR shocked at deaths in northern Greece', October 2018.

19 FRA, *Periodic data collection migration, November 2018*.

20 Greek Council for Refugees, ARSIS-Association for the Social Support of Youth and HumanRights360, *The new normality: Continuous push-backs of third country nationals on the Evros river*, December 2018; FRA, *Migration: Key fundamental rights concerns - Quarterly bulletin 1* (February 2019).

21 European Court of Human Rights (ECtHR), *J.R. and Others v. Greece*, No. 22696/16, 25 January 2018.

22 FRA, *Periodic data collection migration, February 2018*.

23 FRA, *Migration: Key fundamental rights concerns - Quarterly bulletin 1* (February 2019); FRA, *Periodic data collection migration, September 2018*; FRA, *Periodic data collection migration, July 2018*; FRA, *Periodic data collection migration, May 2018*; FRA, *Periodic data collection migration, March 2018*; FRA, *Periodic data collection migration, February 2018*.

24 Radio Slobodna Evropa (2018), 'New suspicions of police violence towards migrants' (Novo sumnje o nasilju hrvatske policije nad migrantima), 15 November 2018.

25 The Guardian (2018), 'They didn't give a damn': first footage of Croatian police 'brutality', 14 November 2019.

26 FRA, *Migration: Key fundamental rights concerns - Quarterly bulletin 1* (February 2019).

27 AreYouSerious, CentarZaMirovneStudije, DBrodsl>Welcome, NoName Kitchen (2018), *Fourth report on the unlawful and violent expatriations of refugees from the Republic of Croatia*.

## FRA activity

EU Member States are increasingly involved in border-management activities on the high seas, within – or in cooperation with – third countries, and at the EU's borders. Such activities entail risks of violating the principle of *non-refoulement*, the cornerstone of the international legal regime for the protection of refugees, which prohibits returning individuals to a risk of persecution.

FRA published a report to encourage fundamental-rights compliant approaches to border management, including by highlighting potential grey areas.

See FRA (2016), **Scope of the principle of non-refoulement in contemporary border management: evolving areas of law**, Publications Office, Luxembourg.

Pushed-back migrants had to sleep outside in harsh winter conditions without food or water.<sup>28</sup> The Ministry of the Interior repeatedly denied the Ombudsperson access to information regarding police treatment.<sup>29</sup> UNHCR,<sup>30</sup> the Council of Europe<sup>31</sup> and Members of the European Parliament<sup>32</sup> called on Croatia to investigate allegations of collective expulsions of migrants and of excessive use of force by law enforcement officers, which had been witnessed for more than two years.<sup>33</sup>

In **Hungary**, denials of entry continued at the border with Serbia, including the use of force by police, although such cases seem to have decreased in 2018.<sup>34</sup> Migrants in an irregular situation who managed to enter the country were often apprehended by the national police and escorted back to the outer side of the fence at the Hungarian-Serbian border.<sup>35</sup>

Border guards in **Poland** refused to let asylum applicants enter the country at the land-border crossing points – mainly at Terespol, coming from Belarus, and at Medyka, coming from the Ukraine.<sup>36</sup> Furthermore, many asylum applicants and other migrants continued to end up in immigration detention as a result of poorly functioning identification and referral procedures. This occurred even though the detention of victims of violence is prohibited under Polish immigration<sup>37</sup> and asylum law.<sup>38</sup>

28 FRA, *Periodic data collection migration, March 2018*.

29 Office of the Croatian Ombudswomen, Personal communication, 21 January 2019. See also the **letter by the Ombudswomen** to the President of the Committee on Human and National Minority Rights of the Croatian Parliament, Zagreb, 17 October 2018.

30 UNHCR (2019), *Desperate Journeys - Refugees and migrants arriving in Europe and at Europe's borders –January - December 2018 (website version)*.

31 Council of Europe, Commissioner for Human Rights (2018), **Letter to the Prime Minister of Croatia to investigate allegations of collective expulsions of migrants and of violence by law enforcement offices**, 5 October 2018.

32 European Parliament (2018), **Question for written answer to the Commission E-004570/2018**, 7 September 2018.

33 FRA, *Periodic data collection migration, November 2018*.

34 The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) **reported ill-treatment of migrants along the Hungarian-Serbian borders**; FRA, *Periodic data collection migration, March 2018*, FRA, *Periodic data collection migration, November 2018*.

35 FRA, *Migration: Key fundamental rights concerns - Quarterly bulletin 1 (February 2019)*.

36 FRA, *Migration: Key fundamental rights concerns - Quarterly bulletin 1 (February 2019)*; FRA, *Periodic data collection migration, November 2018*; FRA, *Periodic data collection migration, September 2018*; FRA, *Periodic data collection migration, July 2018*; FRA, *Periodic data collection migration, March 2018*.

37 Poland, **Law of 12 December 2013 on aliens (Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach)**, 12 December 2013; Poland, **Act of 13 June 2003 on granting foreigners protection to the territory of the Republic of Poland (Ustawa z dnia 13 czerwca 2003 r. o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej)**, 13 June 2003.

38 The ECtHR ruled that there had been a violation of Article 3 (prohibition of torture and inhuman or degrading treatment) and Article 13 (right to an effective remedy). The case involved a Chechen family of seven who unsuccessfully tried, on three occasions, to seek asylum at the Lithuanian border and were returned to Belarus. The same applicants were allegedly also pushed back at Poland's land border at Terespol, and their application before the ECtHR related to this alleged push-back was still pending at time of publication. The Supreme Administrative Court delivered 12 judgments in cases concerning refusal-of-entry decisions issued to asylum seekers at the border in Medyka and Terespol. All of these judgments annulled refusal-of-entry decisions issued by border guards, mainly on account of formal and procedural flaws. See FRA, *Periodic data collection migration, November 2018*.



The Commissioner for Human Rights of the Council of Europe<sup>39</sup> observed that **Spain**'s border guards summarily returned migrants, including children, who attempted to enter Melilla by climbing the border fence to Morocco without identifying the persons concerned or assessing their individual situation.<sup>40</sup>

People in Northern **France** who intended to move without authorisation from Calais to the United Kingdom were allegedly mistreated, including by way of police violence and excessive use of tear gas or other sprays to avoid the establishment of informal camps.<sup>41</sup>

Throughout 2018, FRA also collected reports about summary returns from France to **Italy**, also affecting unaccompanied children and families, in particular in the French Department of Alpes-Maritimes.<sup>42</sup> *Médecins sans Frontières Italy* spoke to migrants who were returned from France at the French-Italian border in Ventimiglia: 14 migrants said that they had suffered violence from the Italian police and nine from the French gendarmerie.<sup>43</sup>

Back on Italian territory, many migrants ended up living on the streets or in informal camps, waiting for the first opportunity to cross the border again. There was only one formal camp in Ventimiglia, managed by the Italian Red Cross, with a capacity of 444 places; some 4,231 migrants stayed there during the first four months of 2018.<sup>44</sup> Unaccompanied children stayed in makeshift shelters with no access to drinkable water and sanitary facilities, in conditions of extreme neglect.<sup>45</sup>

## In the spotlight

The Spanish Interior Minister announced intentions to remove the barbed wire on fences between Morocco and Ceuta and Melilla as a signal of solidarity and respecting people's dignity.

See InfoMigrants (2018), 'Spain wants to remove barbed wire from border fences with Morocco'; FRA, *Periodic data collection migration*, July 2018.

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39 Council of Europe, Commissioner for Human Rights, *Third party intervention by the Commissioner in ECtHR N.D. v. Spain and N.T. v. Spain Nos. 8675/15 and 8697/15*, 28 March 2018.

40 Jesuit Migrant Service (*Servicio Jesuita a Migrantes*) (2018), 'The way out of the Labyrinth' – report on the southern frontier 2018, 29 November 2018; FRA, *Periodic data collection migration*, May 2018; In its *Concluding Observations on Spain*, the Committee on the Rights of the Child expressed concern in relation to the practice of automatic pushbacks of children seeking international protection in the autonomous cities of Ceuta and Melilla. See FRA, *Periodic data collection migration*, March 2018.

41 L'Auberge des Migrants, Refugee Info Bus, de la Cabane Juridique, Utopia 56, *Rapport sur les violences à Calais, Pratiques abusives et illégales des forces de l'ordre Observations, Observations et témoignages du 1er novembre 2017 au 1er novembre 2018*, 4 December 2018.

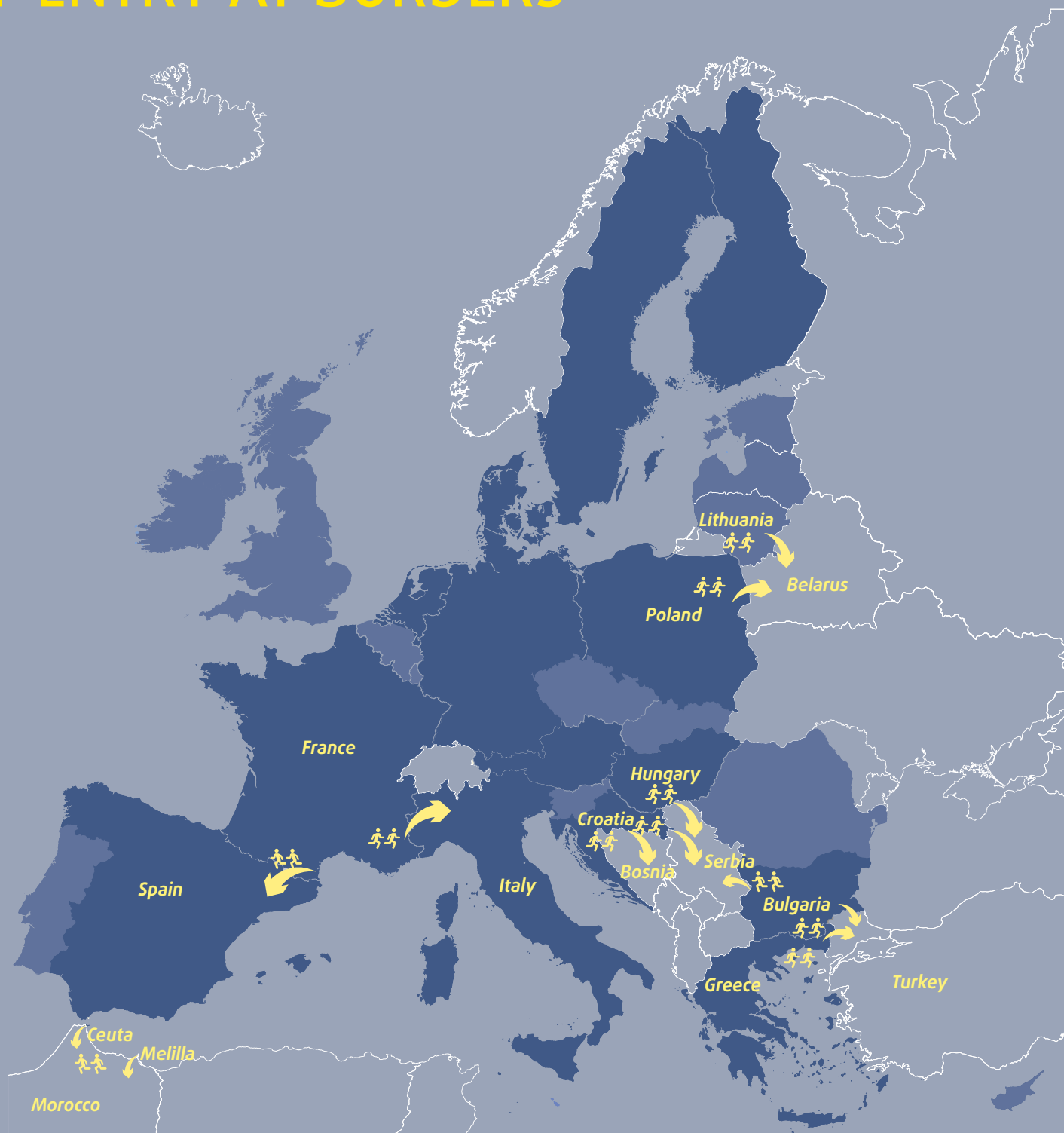
42 FRA, *Migration: Key fundamental rights concerns - Quarterly bulletin 1* (February 2019); FRA, *Periodic data collection migration*, November 2018; FRA, *Periodic data collection migration*, September 2018; FRA, *Periodic data collection migration*, July 2018; FRA, *Periodic data collection migration*, March 2018.

43 Médecins Sans Frontières (MSF), Italy, *Mal di Frontiera*, 8 February 2018, p. 15. See also Contrôleur générale des lieux de privation de liberté, *Rapport de la deuxième visite des services de la police aux frontières de Menton (Alpes-Maritimes)*, published on 5 June 2018, at 4.1.2.

44 FRA, *Periodic data collection migration*, July 2018.

45 FRA, *Periodic data collection migration*, May 2018.

# REPORTED INCIDENTS OF UNLAWFUL REFUSAL OF ENTRY AT BORDERS



Note: Unlawful refusals of entry at airports are not included.

Source: FRA, 2019

## 2. Violence and hate speech against migrants

Throughout 2018, the police, NGOs and the media reported incidents of racist violence against migrants and refugees, in several cases causing severe injuries; as well as violence against buildings and online hate speech.<sup>46</sup> The arrival of asylum seekers fuelled xenophobic sentiments. This chapter describes both developments in 2018 and the more general situation throughout the EU.

In 2016, as part of the Second European Union Minorities and Discrimination Survey (EU-MIDIS II), FRA surveyed immigrants and descendants of immigrants in the EU, asking them about their experiences with hate-motivated harassment and violence. FRA analysed the responses of over 10,500 persons who identified themselves as Muslims when asked about their religion. Some 27 % of Muslim respondents said they experienced harassment because of their ethnic or immigrant background in the 12 months before the survey, and 45 % of those individuals said they experienced six or more incidents during that period. Some 2 % of all 10,527 respondents said they were physically attacked because of their ethnic or immigrant background during the same period.<sup>47</sup>

EU-MIDIS II also surveyed over 5,800 people of African descent in 12 EU Member States.<sup>48</sup> Of those surveyed, 20 % of women and 23 % of men said they experienced racist harassment in the 12 months before the survey. Indicated experiences with racist violence vary greatly across the EU countries, but were highest in **Finland**, followed by **Austria**; the latter also had the highest rate of individuals indicating that they experienced racist assault by police officers.<sup>49</sup>

### Political hate speech and racist violence

Political hate speech and generalising statements insinuating that migrants are a threat to national security and culture contributed to an enabling environment for the general public and the media to push the boundaries of what is considered acceptable to say about, or do against, migrants. While it is impossible to analyse the exact context and motivation of all incidents, it can be assumed that political hate speech contributes to a racist anti-migrant environment.

The results of a Eurobarometer survey<sup>50</sup> on integration of immigrants in the EU showed that 38 % of all EU citizens consider migration as a problem rather than an opportunity, but this varies significantly by country.<sup>51</sup> Respondents also tend to overestimate the number of non-EU immigrants in their country. In 19 of the 28 Member States, the estimated proportion of immigrants in the population is at least twice the actual proportion, and in some countries the ratio is much higher.<sup>52</sup>

## Legal corner

Violence and hate speech against migrants can implicate a number of fundamental rights. The EU Charter of Fundamental Rights enshrines in Article 1 the right to human dignity. Articles 2 and 3 protect the right to life and physical and mental integrity. Article 21 prohibits discrimination based on a number of grounds, including ethnic origin and race.

Council Framework Decision 2008/913/JHA requires EU Member States to take measures to punish hate speech and hate crime based on race, colour, religion, descent or national or ethnic origin.

The Victims' Rights Directive (2012/29/EU) sets out minimum standards on the rights, support and protection of victims of crime.

## In numbers

A Eurobarometer survey on integration of immigrants in the EU showed that 38 % of all EU citizens consider migration as a problem rather than an opportunity.

European Commission (2018), 'Eurobarometer survey 469 on the integration of immigrants in the European Union', 13 April 2018.

46 FRA, Periodic data collection migration, September 2018; FRA, Periodic data collection, July 2018; FRA, Periodic data collection migration, May 2018; FRA, Periodic data collection, March 2018; FRA, Periodic data collection migration, February 2018.

47 FRA (2017), *Second European Union Minorities and Discrimination Survey (EU-MIDIS II): Muslims - Selected findings*, Luxembourg, Publications Office, pp. 8 and 41.

48 FRA (2018), *Second European Union Minorities and Discrimination Survey (EU-MIDIS II): Being Black in the EU*, Luxembourg, Publications Office. The study covers the following countries: Austria, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Malta, Portugal, Sweden and the United Kingdom.

49 *Ibid*, p. 13.

50 European Commission (2018), 'Eurobarometer survey 469 on the integration of immigrants in the European Union', 13 April 2018.

51 European Commission, *Special Eurobarometer 469*, Integration of immigrants in the European Union, April 2018, p.57.

52 *Ibid*, p.58.



**The party is over for illegals.”**

Minister of Interior,  
Italy, cited in Morocco  
World News, 3 June 2018

## In the spotlight

Tens of thousands of people gathered for a demonstration in Macerata, Italy, to speak out against a racist attack against African migrants and to show support for the victims.

See *Internazionale* (2018),  
An anti-racist movement is  
reborn in Macerata.

The number of racially motivated attacks have risen sharply in Italy, tripling between 2017 and 2018, when the Northern League (*Lega Nord*) entered government in coalition with the Five Star Movement (*Cinque Stelle*).<sup>53</sup> The Minister of Interior declared: “The party is over for illegals.”<sup>54</sup> Later in the year, he announced the imposition of a curfew of 9 pm for all ‘ethnic shops and activities’, suggesting that these kinds of businesses attract drug dealers.<sup>55</sup> Activists of the political organisation New Force (*Forza Nuova*, FN) disseminated racist leaflets in the multicultural neighbourhood of Piazza Vittorio (Rome), telling migrants to go back to their countries of origin. A national newspaper released a video<sup>56</sup> showing police officers in Palermo (Sicily) spraying pepper spray into the face of a handcuffed foreign national who had been brought in to the immigration office of the local police headquarters.<sup>57</sup> In **Macerata**<sup>58</sup> a gunman, wearing an Italian flag around his neck and making a fascist salute, opened fire on African migrants from his car, wounding six people before being arrested.

Several people and the mayor of Moria (Lesvos), **Greece**, gathered at the police directorate to express their solidarity with a farmer in Moria who had opened fire on three asylum applicants allegedly trying to steal his sheep. No injuries were reported and police and prosecutor investigations against the farmer followed.<sup>59</sup> On 22 April 2018, in Mytiline (Lesvos), a group of approximately 200 people violently attacked asylum applicants who were camping on the main square in protest against living conditions in the Moria hotspot.<sup>60</sup>

The government in **Hungary** engaged in xenophobic and anti-migrant rhetoric, aimed at establishing a connection between various unfortunate events in the country and the alleged “migration crisis”. For instance, the then-candidate minister of agriculture repeatedly misled the public<sup>61</sup> that the ‘African pig plague’ discovered in the North of Hungary was triggered by an irregular migrant’s sandwich.<sup>62</sup> The NGO Lunaria reported<sup>63</sup> 68 acts of physical violence against migrants between April and September 2018, compared to 19 during the same period the year before.<sup>64</sup>

53 The Guardian (2018), ‘Italy’s intelligence agency warns of rise in racist attacks’, 28 February 2019.

54 Morocco World News (2018), ‘Italy: “The Party is Over” for Undocumented Migrants’, 3 June 2018.

55 Matteo Salvini’s Official Facebook Page (2018), ‘Jobs, taxes, pensions, security: bureaucrats and professors against the government but we pull straight! #primagliitaliani Live from the rooftops of Rome.’ (*Lavoro, tasse, pensioni, sicurezza: burocrati e professoroni contro il governo ma noi tiriamo dritto! #primagliitaliani In diretta dai tetti di Roma.*), video, 11 October 2018, last accessed 24 January 2019.

56 La Repubblica.it. (2018), ‘Palermo police officers spray stinging spray in the face of the handcuffed migrant’, 22 August 2018.

57 LaRepubblica.it, Rome (2018), ‘Rome, Forza Nova distributes racist and anti-immigrant flyers in Piazza Vittorio’, 10 July 2019.

58 BBC (2018), ‘Italy migrants attack: Macerata shooting reveals a bitter national debate’, 12 February 2018.

59 FRA, Periodic data collection, March 2018.

60 ERT International (2018), ‘Violent incidents in Mytilene – Far-right members attacked refugees’, 23 April 2018.

61 24.HU (2018), ‘Rátett egy lapáttal a migránsszendvicsezésre az új agrárminiszter’, 16 May 2018.

62 Index (2018), ‘Minister of Agriculture: A migrant dropped a sandwich so that there is swine fever in Hungary’, 14 May 2018; FRA, periodic data collection, July 2018.

63 Lunaria (2018), *A summer marked by racism (Un’estate all’insegna del razzismo)*.

64 FRA, Periodic data collection migration, November 2018.

After a 35-year-old German in Chemnitz, **Germany**, was allegedly killed by several individuals of different nationalities, including some rejected asylum-seekers, violent xenophobic demonstrations and attacks on persons with migrant backgrounds repeatedly took place.<sup>65</sup> Also, thousands of supporters of a pro-migration policy marched in Chemnitz following the wave of racist violence and demonstrations.<sup>66</sup> The Federal Minister for the Interior primarily linked the incidents to shortcomings in the asylum system, indicating that some of the murder suspects should have long been removed<sup>67</sup> and that “[m]igration is the mother of all problems.”<sup>68</sup>

The UN High Commissioner for Human Rights<sup>69</sup> deemed worrying the recent outbreak of anti-migrant violence in Germany, which appeared to have been stoked by xenophobic hate speech. The Amadeu Antonio Foundation and Pro Asyl<sup>70</sup> registered a total of 756 attacks on asylum applicants and their homes in 2018 in Germany; 199 of these resulted in bodily injuries to asylum applicants. A government’s response to a parliamentary question<sup>71</sup> revealed that 17 demonstrations of right-wing extremists took place in Germany between August and October 2018, with up to 3,500 participants per demonstration, and including violent attacks against migrants.<sup>72</sup> A study of the University of Warwick<sup>73</sup> detected a close connection between the number of anti-refugee and other hate speech posts on Facebook of the party *Alternative für Deutschland* (AfD) and the number of physical attacks against refugees and their accommodation.<sup>74</sup>

The Council of Europe<sup>75</sup> expressed concerns over the rise of racism and nationalism in **Croatia**, and deemed inadequate the Croatian authorities’ response to this development.<sup>76</sup>

The Law and Justice (*Prawo i Sprawiedliwość* – PiS) party in **Poland** released an anti-immigrant commercial prior to local elections, painting a picture of Poland in 2020 should the opposition come to power and push a ‘pro-immigrant’ agenda. The commercial, which is no longer available on youtube, envisaged violence, riots on the streets, and the total dissolution of Polish society.<sup>77</sup>

## In the spotlight

In **Croatia**, more than 1,080 people from 70 different organisations signed or supported a public statement condemning the increase of hateful statements against refugees in the media and social discussions.

*For more information, see ‘Future beyond the police hammer and humanitarian anvil’*

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65 WELT (2018), The Federal Government strongly condemns ‘hunts’ in Chemnitz’ (*Bundesregierung verurteilt „Hetzjagden“ in Chemnitz scharf*), 27 August 2018.

66 Sueddeutsche Zeitung, ‘Chemnitz – A city that shows two faces’, 27 August 2018.

67 Germany, Federal Ministry of Interior, Building and Community, *Tatverdächtige in Chemnitz und Fachaufsicht des BAMF*, Press release, 4 September 2018.

68 Tagesschau (2018), *Innenminister Seehofer Migration „Mutter aller Probleme“*, 6 September 2018.

69 United Nations High Commissioner for Human Rights (OHCHR), ‘Opening Statement at the 39th session of the UN Human Rights Council’, 10 September 2018.

70 Mut Gegen Rechte Gewalt (2019), ‘Chronicle of refugee hostile incidents’ (*Chronik flüchtlingsfeindlicher Vorfälle*), 26 February 2019.

71 Germany, German Parliament, *Protests against and attacks on refugee shelters in the third quarter of 2018*, 6 November 2018.

72 Germany, German Parliament, *Findings of the Federal Public Prosecutor’s Office and the Federal Security Agency on extreme right-wing criminal and violent acts in Chemnitz*, 9 November 2018. FRA, *Migration: Key fundamental rights concerns - Quarterly bulletin 1* (February 2019).

73 Müller, K. and Schwarz, C., ‘Fanning the Flames of Hate: Social Media and Hate Crime’, 30 November 2018.

74 FRA, *Periodic data collection migration*, February 2018.

75 Council of Europe, European Commission Against Racism and Intolerance (ECRI), ‘Croatia: Racist and hate speech against Serbs, LGBT persons and Roma escalating’, 15 May 2018.

76 FRA, *Periodic data collection*, July 2018.

77 FRA, *Periodic data collection migration*, November 2018.

## FRA activity

### Highlighting anti-Muslim discrimination, hate speech and hate crime to foster effective responses

FRA's 2012-2017 database on anti-Muslim hatred provides an easy-to-use overview of information on hate crime, hate speech and discrimination against Muslims across the EU. It brings together research and survey findings and information on significant international, European and national case law and rulings relating to hate crime, hate speech and discrimination against Muslims.

For more information, see [FRA's webpage on the database](#).

## Discriminatory ethnic profiling

Discrimination through racial profiling by police, border and security guards emerged as an issue in a number of Member States, including in **Austria**, **Finland**, **Germany**, **Spain** and **Sweden**. Profiling involves categorising individuals according to personal characteristics, which can include racial or ethnic origin, skin colour, religion or nationality.<sup>78</sup>

In **Austria**, the civil society organisation ZARA provides, in its annual report, several examples of cases of ethnic profiling and police violence.<sup>79</sup> A video involving the black Viennese rapper T-Ser went viral on social media, showing that several police officers checked both his and his band members' identities. The musicians said the incident was an example of racial profiling, and that they regularly experience such profiling.<sup>80</sup>

The **German** government analysed 28 official complaints in relation to ethnic profiling between 1 January 2017 and 30 April 2018. Nineteen complaints were dismissed as unfounded, seven cases are still being investigated, and two were found to be justified.<sup>81</sup>

In **Spain**, according to the UN experts, black people were repeatedly assumed to be undocumented migrants and more often arrested in public-street controls than people with other ethnic origins.<sup>82</sup>

In **Sweden**, the results of a qualitative study based on interviews with police officers, as well as individuals who have been subjected to ethnic profiling, show that 'to be stopped frequently by the police produces a feeling of being treated as a potential perpetrator for no reason'.<sup>83</sup>

A report<sup>84</sup> indicated that some acts, mainly by security guards, in **Finland** were of selective nature and partly based on the person's ethnicity. For example, persons belonging to racial minorities were surveyed by security authorities in many types of urban spaces more often than the general population.<sup>85</sup>

## Reporting mechanisms

The data collected and presented in this report can only give a fragmented picture of the actual situation of hate speech and hate crime against migrants, as the extent to which Member States collect and report hate crime data varies significantly. Evidence shows that the figure of unreported hate crime is much higher and incidents reported in this report must be considered as anecdotal examples only.

In **Poland**, for example, research by the Ombudsman's Office shows that **only 5 %** of crimes against foreigners motivated by hatred are reported to the police.<sup>86</sup>

The evidence has consistently shown that victims encounter difficulties in reporting, often due to their vulnerable situation or the lack of reporting

78 FRA (2018), *Preventing unlawful profiling today and in the future: a guide*, Luxembourg, Publications Office, 2018.

79 ZARA (2018), *Racism Report 2017*

80 Austria, Der Standard (2018), *Wiener Musiker wirft Polizei Rassismus vor*, 15 October 2018.

81 Germany, German Bundestag (*Deutscher Bundestag*) (2018), 'Beschwerde wegen Personenkontrollen', Press release, 28 May 2018.

82 United Nations (UN) Working Group of Experts on People of African Descent (2018), *Report on the mission to Spain*, 39<sup>th</sup> session, 14 August 2018; FRA, *Periodic data collection migration*, November 2018.

83 FRA (2018), *Second European Union Minorities and Discrimination Survey—Being Black in the EU*, Luxembourg, Publications Office, 2018; Department of Criminology, Stockholm University (*Kriminologiska institutionen, Stockholms universitet*) (2017), *Report on Ethnic Profiling in Sweden: Randomly Selected (Slumpvis Utvald – Ras-/Etnisk Profilerings i Sverige)*, Civil Rights Defenders, 2017.

84 Keskinen, S., Atabong, A., Himanen, M., Kivijärvi, A., Osaze, U., Pöyhölä, N. and Rousku, V., (2018) *The Stopped-Ethnic Profiling in Finland*, Swedish School of Social Science, University of Helsinki, Helsinki.

85 FRA (2018), *Second European Union Minorities and Discrimination Survey—Being Black in the EU*, Luxembourg, Publications Office, 2018; FRA, *periodic data collection migration*, May 2018.

86 InteriaFakty (2018), 'Victims of Hate crime are left without support' (*Ofiary przestępstw z nienawiści są pozostawione bez wsparcia*), 28 December 2018.

## FRA activity

### Providing guidance on preventing unlawful profiling

FRA's new guide, published in late 2018, explains what profiling is, the legal frameworks that regulate it, and why conducting profiling lawfully is both necessary to comply with fundamental rights and crucial for effective policing and border management. The guide also provides practical guidance on how to avoid unlawful profiling in police and border-management operations. FRA (2018), **Preventing unlawful profiling today and in the future: a guide**, Publications Office, Luxembourg.

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### Providing technical assistance on hate crime to national authorities

FRA evidence shows that proper recording of hate crime is still not a reality in many EU Member States. Upon request from the Member States, FRA, together with OSCE ODIHR, offers national workshops that provide technical assistance to national authorities to improve their ability to record and collect hate-crime data and thus provide better support to victims.

For more information, see [FRA's webpage on hate-crime-related workshops](#).

channels or specific support services available in the country.<sup>87</sup> Moreover, in many cases, the police, public prosecutors and criminal judges are reluctant to record and acknowledge hate crime. Identification and recording of hate crime are key preconditions for offences to be adequately investigated, prosecuted and sanctioned. Lack of relevant data hampers efforts to develop effective measures to prevent hate crime and renders it invisible.

FRA published a thematic focus report on hate crime in 2016,<sup>88</sup> which pointed out the scarce recording and publication of hate crime committed against asylum applicants and refugees in the EU. The results of FRA's 2018 report on *Hate crime recording and data collection practice* show that the situation has not changed since 2016 and that challenges regarding reporting, collecting and publishing hate crime data persist.<sup>89</sup>

Member States' approaches to collecting data differ, including regarding whether or not data are disaggregated by bias motivation, and what data are officially published.<sup>90</sup> For example, as of March 2018 in **Bulgaria, Hungary, and Italy**, there was no possibility of flagging potential hate crimes at the moment of recording, and no guidelines on hate-crime recording were available.<sup>91</sup>

Some Member States have put measures in place to address under-reporting and under-recording of hate crime – for example, **Croatia, Finland, Germany, Greece and Spain**.

In **Croatia**, the recording of hate crime by the police and other authorities is governed by a specific protocol.<sup>92</sup> Similarly, in **Finland**, several internal instructions guide police officers on how to properly identify and record hate crimes. The guidelines highlight that, for a crime to be considered a hate crime, 'it is enough for the perpetrator to assume that the victim belongs to a particular group'.<sup>93</sup>

In **Germany**, hate crime data are collected within the framework of politically motivated criminal offences. The three-tier collecting system serves to verify the figures via an expert working group and aims to support evidence-based decision on how to prevent hate crime. The Federal Ministry of Interior publishes annual statistics on its website on politically motivated crimes and specifically on hate crimes. Since 2018, judicial data on hate crime are also collected and will be published in the following reporting periods.<sup>94</sup>

In **Spain**, police officers send potential hate crime cases to a special public prosecutor responsible for hate crimes. When categorising the offence, the police officer can choose from a list of eight bias motivations (racism/xenophobia, ideology, sexual orientation or identity, gender, religious beliefs, antisemitism, disability, aporophobia). The Secretary of State for Security within the Ministry of the Interior publishes an annual report on hate crime, which also contains police statistics and trends.<sup>95</sup>

To effectively prevent and counter hate crime, it has to be addressed holistically and in cooperation with other actors, such as civil society organisations. The **Greek** Ministry of Justice signed an inter-agency agreement in June 2018, pursuant to which the relevant ministries (Citizens' Protection, Immigration Policy and Health) and the NGO Racist Violence Recording Network pledge to take a co-ordinated and holistic approach to combating racist crime.<sup>96</sup>

87 In this respect, there are no specific support services for refugees and migrants or for victims of hate crime in Bulgaria, for example. See FRA, *Thematic focus: hate crime* (November 2016), p. 10.

88 FRA, *Thematic focus: hate crime* (November 2016).

89 FRA (2018), *Hate crime recording and data collection practice across the EU*, Luxembourg, Publications Office, 2018.

90 *Ibid*, p.23.

91 *Ibid*, pp.33, 57, 62 and 74.

92 FRA (2018), *Hate crime recording and data collection practice across the EU*, Luxembourg, Publications Office, 2018, pp. 35-36.

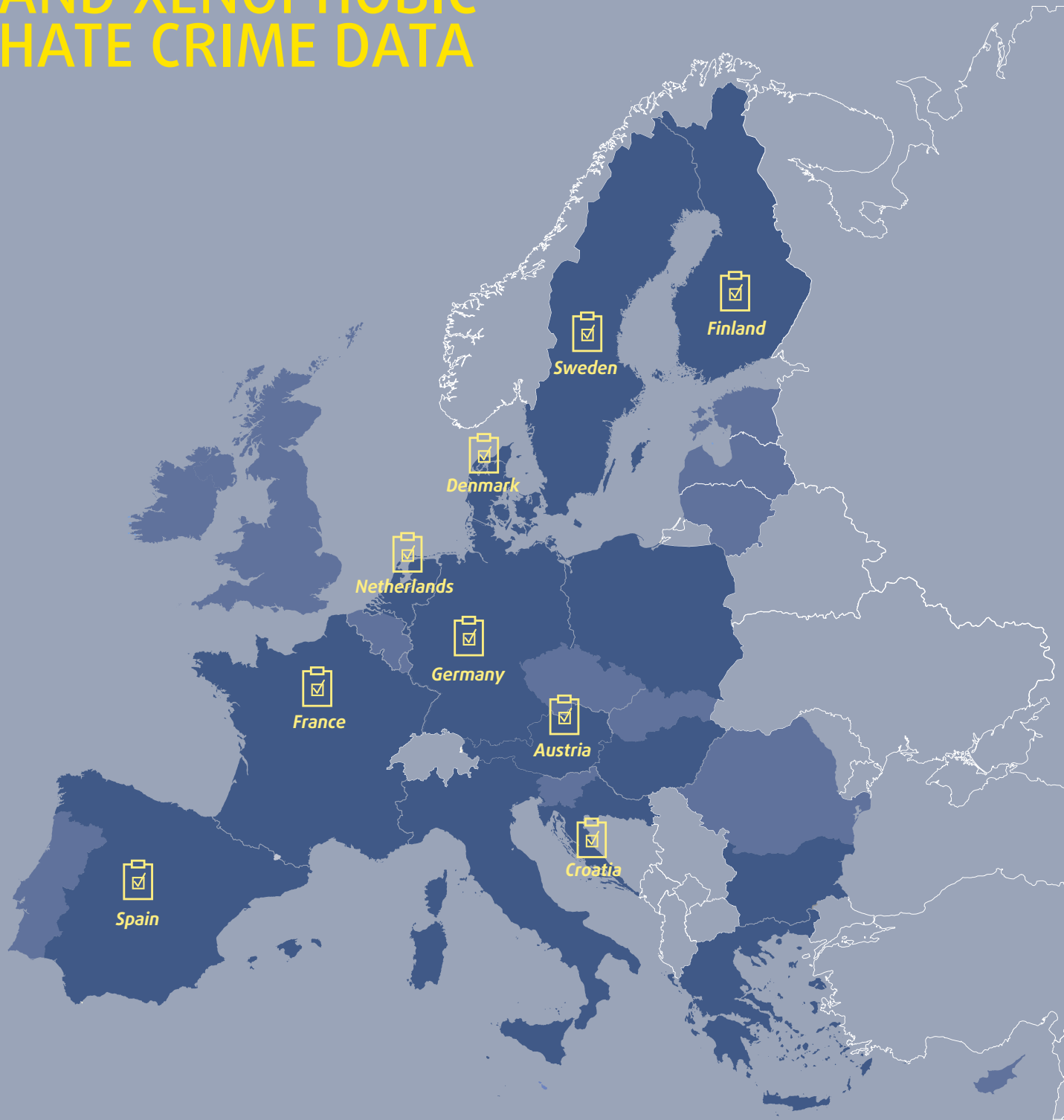
93 *Ibid*, p.46.


94 *Ibid*, p. 53.

95 *Ibid*, p. 84.

96 Organization for Security and Co-operation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODIHR) (2018), *Agreement on inter-agency co-operation on addressing racist crimes in Greece*, designed as part of the "Building a Comprehensive Criminal Justice Response to Hate Crime"-project funded by the EU (2017-2019), 6 June 2018.

# PUBLICATION OF RACIST AND XENOPHOBIC HATE CRIME DATA



 Racist and xenophobic hate crime data collected and published



### 3. Asylum laws and policies

Throughout 2018, the trend of introducing and implementing increasingly restrictive asylum policies and practices continued in many EU Member States. The main issues centred on hurdles to accessing protection, reduction of rights and benefits for asylum applicants and beneficiaries of international protection, as well as measures to increase detention and returns.

#### Access to protection

##### Acceleration of asylum procedure

Due to the large backlog of asylum applications, several EU Member States tried to accelerate their asylum procedures. In some countries, this approach restricted the asylum applicants' freedom of movement and obliged them to stay in either certain geographical areas (in the Eastern Aegean **Greek** islands) or in a reception centre (in **Hungary**). Such an approach can reduce the waiting times and situation of legal limbo for asylum applicants. However, accelerated procedures also raise risks regarding the quality of interviews and decision-making, and thus the conformity with fundamental rights. Furthermore, it may be difficult for asylum applicants to access legal aid or psychological support to adequately prepare for their hearings.<sup>97</sup>

**Greece** adopted a law<sup>98</sup> that extends the applicability of fast-track asylum border procedures on the Eastern Aegean islands until the end of 2019.<sup>99</sup> The law also prolongs the validity of residence permits for beneficiaries of international protection (from two to three years), to be issued in a simplified procedure.<sup>100</sup> Legislative reforms in **Italy** make it possible to confine asylum applicants for 30 days in the hotspots while the authorities carry out accelerated asylum procedures.<sup>101</sup>

With legislative amendments<sup>102</sup> in **Hungary**, automatic inadmissibility of asylum applications under certain conditions became the norm and significantly sped up the asylum procedure.<sup>103</sup> The country continued to admit roughly one person per working day to each of the two transit zones and to oblige the persons to stay there during the asylum procedure. This left people stranded in Serbia for up to one year, waiting until they could submit their application for international protection in Hungary.<sup>104</sup> In December 2018, the European Commission referred Hungary to the Court of Justice of the European Union (CJEU) for failure to provide effective access to asylum procedures and the indefinite detention of asylum applicants in transit zones without respecting the applicable procedural guarantees under EU asylum law.<sup>105</sup>

## Legal corner

According to Articles 31 (8) and 43 (1) of the Asylum Procedures Directive, EU Member States may decide on the admissibility of an application for international protection or its substance in an accelerated procedure and/or in border or transit zones, provided the decision is taken within a reasonable time and sufficient procedural safeguards are applied. Under certain circumstances, such accelerated procedures can call into question the right to asylum – as enshrined in Article 18 of the EU Charter of Fundamental Rights and in the 1951 Convention relating to the Status of Refugees.

*Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (Asylum Procedures Directive), OJ L 180.*

97 FRA, Periodic data collection migration, September 2018.

98 Greece, Act No. 4587/2018 on the urgent regulatory framework of the Ministry of Migration Policy, 24 December 2018.

99 FRA, Migration: Key fundamental rights concerns - Quarterly bulletin 1 (February 2019).

100 FRA, Periodic data collection migration, May 2018.

101 Italy, Law decree No. 113 of 4 October 2018, converted into Law No. 132 of 1 December 2018 (Decreto-legge 4 ottobre 2018, n. 113, coordinato con la legge di conversione 1<sup>o</sup> dicembre 2018, n. 132), Official Gazette [Gazzetta Ufficiale] No. 281, 3 December 2018, Article 3 (1) (a) on the 30 days deadline and Article 9 (1-ter) and (1-quarter) on border procedure as well as on the five territorial commissions; FRA, Migration: Key fundamental rights concerns - Quarterly bulletin 1 (February 2019).

102 Hungary, Amendment to the Hungarian Constitution, 28 June 2018.

103 FRA, Periodic data collection migration, September 2018.

104 FRA, Migration: Key fundamental rights concerns - Quarterly bulletin 1 (February 2019); FRA, Periodic data collection migration, November 2018; FRA, Periodic data collection migration, May 2018.

105 CJEU, C-808/18, *Commission v. Hungary*, case referred to the court on 21 December 2018.

## FRA activity

### Responding to the 2015 asylum emergency: assessing the long-term impact on fundamental rights

A FRA research project is exploring what happened to people who sought asylum in the EU as part of the large-scale arrivals in 2015-2016. It focuses on young people aged 16-24 who have received or are likely to receive international protection in Austria, France, Germany, Greece, Italy or Sweden. The project looks at policies relating to residence permits, family reunification, education, and housing and social assistance, and analyses the impact of such policies on fundamental rights, integration perspectives as well as vulnerability to crime.

For more information, see FRA's [webpage on the project](#).

Authorities in **France** increasingly used accelerated asylum procedures, seeking to reduce the average processing time of 11 months.<sup>106</sup> Legislative changes<sup>107</sup> “for controlled immigration, an effective right to asylum and successful integration” reduced the time limit for submitting an asylum application from 120 to 90 days from the date of entering the country.<sup>108</sup>

In **Germany**, the use of accelerated procedures (so-called “*Direktverfahren*”) increased, reducing the time between registration of an asylum application and the first hearing to only a few days. The country introduced so-called anchor centres (*AnKER Centres – zentrale Aufnahme-, Entscheidungs- und Rückführungseinrichtungen*), where asylum applicants are registered, have their cases assessed, and from where they will potentially be returned.<sup>109</sup> NGOs criticised<sup>110</sup> the anchor centres because of the constraints on asylum applicants’ mobility, their integration perspectives, the lack of educational opportunities, the limited accommodation of the special needs of children, the potential for violence, limited access to legal consultation, and the lack of privacy.<sup>111</sup>

Similarly, **the Netherlands** set up so-called ‘Combined Asylum Seekers’ Centres’, where organisations working in the field cooperate under one roof to speed up asylum and return procedures.<sup>112</sup>

In **Finland**, amendments to the Aliens Act<sup>113</sup> requiring asylum applications to be processed in six months entered into force.<sup>114</sup> A government proposal<sup>115</sup> to reduce potential misuse of the asylum procedure and to encourage asylum applicants to present all relevant information during the first procedure instead of subsequent applications was submitted to parliament.<sup>116</sup>

### Reducing the duration of residence permits

EU law requires Member States to provide refugees with residence permits that are valid for no less than three years, and beneficiaries of subsidiary protection with permits valid for at least one year.<sup>117</sup> In 2015, many Member States went beyond the requirements of the Qualification Directive with regard to the duration of the permit.<sup>118</sup> In the meantime, however, several countries have changed their laws to meet only the minimum requirements of EU law.

106 France, Ministry of Interior, *Draft bill for a controlled migration and effective right to asylum*. FRA, *Periodic data collection*, March 2018.

107 France, Ministry of Interior (*Ministère de l’Intérieur*) (2018), *Adoption définitive du projet de loi pour une immigration maîtrisée, un droit d’asile effectif et une intégration réussie*, press release, 1 August 2018.

108 FRA, *Periodic data collection migration*, November 2018.

109 FRA, *Periodic data collection*, July 2018.

110 ProAsyl, ‘Why anchor centres are a bad idea’ (*Warum Ankerzentren eine schlechte Idee sind*), 10 April 2018.

111 FRA, *Periodic data collection migration*, May 2018.

112 FRA, *Periodic data collection migration*, September 2018.

113 For more details on the amendments to the Finnish Aliens Act, see the [website](#) of the Finnish Judicial Database.

114 Finnish Immigration Service, ‘Processing time of asylum applications limited to 6 months from 20 July onwards’, 18 July 2018; FRA, *Periodic data collection migration*, September 2018.

115 Finland, Ministry of Interior, ‘Amendments proposed to processing subsequent applications by asylum seekers’, 5 December 2018.

116 FRA, *Migration: Key fundamental rights concerns - Quarterly bulletin 1* (February 2019).

117 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (*Qualification Directive*), OJ L 337, Art. 24 (2).

118 European Commission, *Evaluation of the application of the recast Qualification Directive (2011/95/EU)*, January 2019, p. 179.

For example, in 2015, **Austria, Croatia, Finland, France, Italy, the Netherlands** and **Sweden**<sup>119</sup> granted residence permits for refugees for more than the required three years.<sup>120</sup> Out of those countries, only **France** and **Italy** kept the more favourable provisions of ten and five years, respectively. Since then, a number of national legislative amendments reducing the duration of residence permits came into force. For example, **Austria** (in 2016) and **Sweden** (in 2015) changed the duration of residence permits for refugees from permanent to three years. In addition, in 2018, at least **Austria, Denmark, Italy, Hungary** and **Sweden** introduced various restrictions regarding the residence permits granted to beneficiaries of international protection. **France**, on the other hand, extended the validity of residence permits for beneficiaries of subsidiary protection from one to four years.<sup>121</sup>

**Italy** kept the five-year residence permit for beneficiaries of international protection, but abolished the frequently granted humanitarian residence permit. Instead there are new permits of shorter duration and with reduced benefits – such as for special healthcare needs, a natural disaster or risk of torture in the country of origin, or for acts of civil merit.<sup>122</sup>

In addition to reducing, in 2016, permanent residence permits for refugees to three-year permits, in 2018, **Austria** extended the time at which one can apply for Austrian citizenship from six to ten years after the issuance of a residence permit.<sup>123</sup>

A law in **Sweden**<sup>124</sup> imposed temporary restrictions on granting residence permits to refugees.<sup>125</sup> The Migration Court in Gothenburg requested a preliminary ruling<sup>126</sup> from the CJEU concerning the amendments' compatibility with EU law.<sup>127</sup>

The **Danish** Parliament adopted an amendment to the Danish Aliens Act,<sup>128</sup> restricting the granting of permanent-residence permits for foreigners who actively interfered with the clarification of their identity while applying for a residence permit.<sup>129</sup>

## Legal corner

The Qualification Directive (2011/95/EU) sets out minimum general standards regarding the duration of residence permits once international protection has been granted. According to Article 24 (1) and (2), Member States shall issue at least a three-year residence permit to beneficiaries of refugee status and a one-year renewable residence permit to beneficiaries of subsidiary protection.

## In the spotlight

Pursuant to a new law, between July and the end of October, **Sweden** granted 1,060 temporary residence permits to unaccompanied children and young adults. These temporary permits allow them to stay in Sweden for studies at upper secondary level, even if their asylum claims have been rejected.

*The legislative amendments are available on the [website of the Swedish Parliament](#).*

119 Before 24 November 2015: permanent; after 24 November 2015: 3 years. See Sweden, Act on temporary restrictions of the possibility to be granted residence permits in Sweden, 1 July 2016.

120 Duration of initial residence permits for refugees in 2015: Austria: permanent; Croatia: 5 years; Finland: 4 years; France: 10 years; Italy: 5 years; and the Netherlands: 5 years. European Commission, Evaluation of the application of the recast Qualification Directive (2011/95/EU), January 2019, p. 182.

121 Although the Commissioner for Human Rights of the Council of Europe welcomed some positive elements of the law, other aspects were subject to harsh criticism by the same Commissioner and various NGOs (e.g. *La Cimade* and GISTI); FRA, Periodic data collection migration, May 2018.

122 Italy, Law decree No. 113 of 4 October 2018, converted into Law No. 132 of 1 December 2018 (*Decreto-legge 4 ottobre 2018, n. 113, coordinato con la legge di conversione 1<sup>o</sup> dicembre 2018, n. 132*), Official Gazette [*Gazzetta Ufficiale*] No. 281, 3 December 2018; FRA, Migration: Key fundamental rights concerns - Quarterly bulletin 1 (February 2019).

123 Austria, Aliens Law amendment Act (*Fremdenrechtsänderungsgesetz*), 13 June 2018; FRA, Periodic data collection, July 2018.

124 Sweden, Act on temporary restrictions on the possibility of obtaining a residence permit in Sweden (*Lag om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige*), 1 July 2018.

125 FRA, Periodic data collection migration, November 2018.

126 Sweden, Migration Court Gothenburg, 'The Migration Court in Gothenburg files a preliminary ruling to the EU Court on the compatibility of the so-called upper secondary laws with EU law', press release, 31 July 2018.

127 FRA, Periodic data collection migration, September 2018.

128 Denmark, Act on the Amendment of the Aliens Act (*Lov om ændring af udlændingeloven*), 14 December 2017.

129 FRA, Periodic data collection migration, February 2018.

## Legal corner

Article 7 of the EU Charter of Fundamental Rights guarantees everyone's right to respect for their family life. Article 24 (3) of the Charter affirms the right of every child to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless this is contrary to his or her interests.

EU secondary law regulates family reunification for refugees – but not for beneficiaries of subsidiary protection – in the Family Reunification Directive (2003/86/EC). It is an entry channel enabling those who already reside legally in a Member State to be joined by their family members from a third country.

### Family reunification remains challenging

Several EU Member States have introduced legal restrictions on family reunification since 2015, in particular for beneficiaries of subsidiary protection. For example, in 2017, **Germany** and **Sweden** adopted temporary measures excluding beneficiaries of subsidiary protection from applying for family reunification for a certain time period.<sup>130</sup> The Migration Court of Appeal of Sweden ruled in November 2018 that suspending the right to family reunification for beneficiaries of subsidiary protection violated Sweden's human rights obligations.<sup>131</sup>

In 2016, **Austria**<sup>132</sup> and **Denmark**<sup>133</sup> introduced a three-year waiting period for beneficiaries of subsidiary protection before they can reunite with their families. In 2018, **Austria**, **Denmark** and **Germany** introduced even further restrictions.

The **Austrian Consular Fee Act**<sup>134</sup> introduced a fee of EUR 200 per person over 6 years old and EUR 100 for persons under 6 years to apply for family reunification under the Asylum Act, making family reunification the most expensive procedure at Austrian embassies.<sup>135</sup>

The **Danish** government proposed<sup>136</sup> a bill that would allow immigration authorities to postpone the processing of family reunification cases for up to four months in case of a sudden increase of requests.<sup>137</sup>

In **Germany**, provisions on family reunification for persons under subsidiary protection<sup>138</sup> introduced a quota of 1,000 persons per month to be reunited with their family members under subsidiary protection as of 1 August 2018.<sup>139</sup> Due to the complexity of the procedure, by the end of 2018, only 3,500 persons had been able to reunite with their family members in Germany under subsidiary protection – although the new quota system would have allowed for 5,000 to do so during these five months.<sup>140</sup> Some 30,000 people signed a petition,<sup>141</sup> organised by the NGO Pro Asyl, against further limitations on the right to family reunification.<sup>142</sup>

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<sup>130</sup> Germany, Federal Gazette, *Amendments to the German Residence Act (Aufenthaltsgesetz)*, Die Bundesregierung (2016), 16 March 2016; Sweden, *Act on temporary restrictions of the possibility to obtain a residence permits in Sweden (Lag (2016:752) (om tillfälliga begränsningar av möjligheten att få uppehållstillstånd i Sverige)*, 20 July 2016. For restrictions to family reunification introduced by EU Member States in 2016, see also FRA (2017), *Fundamental Rights Report 2017*, Luxembourg, Publications Office, Chapter 5.4.

<sup>131</sup> Sweden, Migration Court of Appeal, Case MIG 2018:20, November 2018.

<sup>132</sup> Austria, Federal Ministry of the Interior, *Amendment to Article 35 of the Alien Law*, 12 July 2016; FRA, *Monthly migration report*, November 2017.

<sup>133</sup> FRA, *Monthly migration report*, December 2017.

<sup>134</sup> Austria, Federal law on the collection of fees and the replacement of expenses for official acts of Austrian representation authorities in consular matters (*Konsulargebührengesetz 1992 - KGG 1992*).

<sup>135</sup> FRA, *Periodic data collection*, July 2018.

<sup>136</sup> Denmark, *Proposal for a law amending the Aliens Act, the Integration Act, the Repatriation Act and various other laws*, 15 January 2019.

<sup>137</sup> FRA, *Migration: Key fundamental rights concerns - Quarterly bulletin 1* (February 2019).

<sup>138</sup> Germany, Federal Gazette, *New regulation for family reunification for persons under subsidiary protection*, 17 July 2018.

<sup>139</sup> Information provided by the Migration Commission of the German Bishops Conference, the Jesuit Refugee Service, staff of the City of Chemnitz, the Federal Association for Unaccompanied Minors, and UNHCR.

<sup>140</sup> ZEIT Online (2018), 'Was wurde aus Obergrenze und Familiennachzug?', 30 December 2018.

<sup>141</sup> Pro Asyl, 'Call to the Parliament: families belong together! (*Appell an den Bundestag: »Familien gehören zusammen!*)', 30 January 2018.

<sup>142</sup> FRA, *Periodic data collection*, March 2018.

In addition to legal obstacles, the following recurring practical challenges made family reunification difficult:<sup>143</sup>

- Length of waiting times before getting an appointment at embassies to file an application.
- Length of family reunification procedures.
- High costs for fees, translations, travel and DNA tests, etc.
- Practical problems with getting decisions on guardianship for unaccompanied children.
- Time pressure due to various deadlines, e.g. to take part in the facilitated family reunification procedure or to apply for family unification before the age of majority.
- Limited access to legal assistance.
- Lack of valid travel documents, particularly from Syria.
- Compliance with requirements concerning accommodation, income and insurance.
- Limited information provided to asylum applicants and refugees on the possibility to apply for family reunification.

## Welfare and reception services

Throughout 2018, several Member States continued to introduce further legislative changes restricting reception services and social welfare for asylum applicants and beneficiaries of international protection.

### Lowering reception standards

A reform in **Italy** transformed the Italian approach to reception. The Central Service for National Asylum Seekers and Refugees Protection System (*Servizio centrale del sistema di protezione per richiedenti asilo e rifugiati, SPRAR*) – often highlighted as a promising practice – became accessible to protection-status holders and unaccompanied children only. Asylum applicants will be hosted in the lower quality first-level reception facilities or special reception centres (*centri di accoglienza straordinaria, CAS*).<sup>144</sup> This law led to the Danish Immigration Council no longer transferring vulnerable asylum applicants to Italy under the Dublin Regulation, as the law might limit their access to reception facilities adapted to their needs.<sup>145</sup>

**“[We need] basic services centres, suitable infrastructure that enables us to concentrate people in the asylum process in one place.”**

Minister of Interior, Austria,  
cited in *Die Presse*,  
7 January 2019

## Legal corner

The Reception Conditions Directive (2013/33/EU) lays down the minimum common reception conditions standards for applicants of international protection. Disregarding these minimum standards may conflict with Member States’ human rights obligations set out in the EU Charter for Fundamental Rights, particularly the right to live in dignity, the right to liberty and security, the right to respect family life, the right to asylum, the right not to be discriminated against or the right of children to be protected and taken care of according to their necessities and well-being.

## In the spotlight

The **Spanish** Refugee Aid Commission (CEAR) launched a campaign called “Put them in your house” (“*Mételos en tu casa*”), which supports refugees in finding housing by encouraging Spaniards to provide accommodation.

See *Spanish Refugee Aid Commission (CEAR), ‘Have you thought of renting your house to a refugee?’*, 16 November 2018.

<sup>143</sup> These challenges were first identified in FRA (2016), Thematic focus: Family tracing and family reunification (September 2016); and confirmed in 2018.

<sup>144</sup> Italy, Law decree No. 113 of 4 October 2018, converted into Law No. 132 of 1 December 2018 (*Decreto-legge 4 ottobre 2018, n. 113, coordinato con la legge di conversione 1<sup>o</sup> dicembre 2018*), n. 132, Official Gazette [*Gazzetta Ufficiale*] No. 281, 3 December 2018; FRA, Migration: Key fundamental rights concerns - Quarterly bulletin 1 (February 2019).

<sup>145</sup> The UN Human Rights Committee had found that Denmark did not fulfil its obligations under the UN Covenant on Civil and Political Rights when transferring two vulnerable asylum seekers to Italy without ensuring that reception conditions were appropriate. See FRA, Migration: Key fundamental rights concerns - Quarterly bulletin 1 (February 2019).

## Legal corner

Article 29 of the Qualification Directive (2011/95/EU) sets out minimum standards on the access of beneficiaries of international protection to social assistance. Member States may, under certain conditions, limit assistance for beneficiaries of subsidiary protection to core benefits.

## In the spotlight

The **Spanish** Congress of Deputies approved a legal decree that expands access to healthcare to undocumented migrants.

*For more information, see El Pais (2018) Congress passes a legal decree to take back universal healthcare. FRA, Periodic data collection migration, November 2018.*

Almost 200 municipalities met in Oviedo (Asturias) for the Fifth National Meeting of Child and Adolescent Participation Councils,<sup>146</sup> with the aim of establishing friendly spaces for refugee children and privacy for their families.<sup>147</sup> Following a judgment by the Superior Court of Madrid,<sup>148</sup> asylum applicants who have been returned to Spain under the Dublin Regulation will be able to re-enter the Spanish reception system. Before this, families returning to Spain sometimes had to live in the streets.<sup>149</sup>

### Cutting social services

A reform in **Italy** limits the rights of asylum applicants to access local public services, such as vocational training.<sup>150</sup> NGOs expressed concerns about the reform.<sup>151</sup>

Several provinces in **Austria** (Lower Austria, Upper Austria, Voralberg) in recent years introduced rules offering lower levels of social assistance to refugees with a temporary residence permit than to Austrian nationals. The CJEU deemed such rules to be non-compliant with EU law.<sup>152</sup> An amendment to the alien law<sup>153</sup> allows authorities to seize cash from asylum applicants as a contribution to their social services, and to cut German-language classes for asylum applicants.<sup>154</sup> The government also presented a legislative proposal to significantly cut social welfare benefits.<sup>155</sup> The law, once in force, will particularly affect refugees and beneficiaries of subsidiary protection who do not speak sufficient German, as the benefit will depend on a person's employability.<sup>156</sup>

146 UNICEF Spain, 'One year to grow and keep dreaming on cities friends of the childhood', 18 December 2018.

147 FRA, Migration: Key fundamental rights concerns - Quarterly bulletin 1 (February 2019).

148 Jesuit Migrant Service (JSM), Judgement in favour of the free movement right of persons seeking international protection, 21 November 2018.

149 FRA, Migration: Key fundamental rights concerns - Quarterly bulletin 1 (February 2019)

150 Italy, Law decree No. 113 of 4 October 2018, converted into Law No. 132 of 1 December 2018 (*Decreto-legge 4 ottobre 2018, n. 113, coordinato con la legge di conversione 1<sup>o</sup> dicembre 2018, n. 132*), Official Gazette [Gazzetta Ufficiale] No. 281, 3 December 2018; FRA, Migration: Key fundamental rights concerns - Quarterly bulletin 1 (February 2019).

151 Il Giornale.it (2019), 'Decree Salvini, the rebel mayors counted: check the map online', 7 January 2019. FRA, Migration: Key fundamental rights concerns - Quarterly bulletin 1 (February 2019).

152 CJEU, C-713/17, Ayubi v Bezirkshauptmannschaft Linz-Land, 21 November 2018.

153 Austria, Aliens Law Amendment Act 2018 (*Fremdenrechtsänderungsgesetz 2018 - FrÄG 2018*), 13 June 2018.

154 FRA, Periodic data collection, July 2018.

155 Austria, Federal Law on Principles for Social Welfare and Federal Law on Nationwide General Statistics on Benefits of Social Assistance (*Sozialhilfe-Grundsatzgesetz, Sozialhilfe-Statistikgesetz*), 30 November 2018.

156 Employability is assumed if a person can prove at least language level B1 (German) or C1 (English), has completed vocational qualification measures, and has completed a 'values and orientation' course. FRA, Migration: Key fundamental rights concerns - Quarterly bulletin 1 (February 2019).

## Immigration detention

### Grounds for detention

Several EU Member States introduced additional laws and policies toughening immigration detention. These countries include **Croatia, France, Hungary, Italy, the Netherlands** and **Sweden**.

**Croatia** amended the Foreigners Act, expanding the list of reasons for referring people to detention centres. For example, the amended act applies a much broader interpretation of the risk of absconding.<sup>157</sup> Also, lawyers need to announce their visits to detention centres two days in advance (just like regular visitors), and police officials are present throughout the visits. This makes access to legal aid challenging.<sup>158</sup>

In **France**, legislative changes<sup>159</sup> introduced fines of up to EUR 3,750 or a 1-year prison term for people who illegally cross the borders within the EU, and increased the maximum length of immigration detention from 45 days to 90 days, including for families with children.<sup>160</sup>

The Social Democrat Party in **Sweden** presented a new migration programme.<sup>161</sup> It aims to create more immigration detention centres, with extended legal grounds for detaining asylum applicants; and increases the average duration of entry bans from four to eight years.<sup>162</sup>

A bill in **the Netherlands** provides for strip searching and will subject all migrants to deprivation of liberty upon arrival, for up to two weeks.<sup>163</sup>

### Children in detention

In December 2017, the European Court of Human Rights carefully scrutinised the legality of immigration detention of children.<sup>164</sup> The court found that **Bulgarian** authorities had held children of an Iraqi family in administrative detention in unacceptable conditions. The ruling concerned a family with three children aged 16, 11 and 18 months, detained in a dirty and damp cell without access to toilet facilities and without food for 24 hours. According to the family, they spent a total of 41 hours in the detention cell; according to the Bulgarian authorities, this was 32 hours. The court found that the conditions in the Bulgarian detention cell were not suitable for children, even for a short period of time. The children had been subjected to “inhuman and degrading treatment,” constituting a breach of Article 3 of the European Convention on Human Rights.

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<sup>157</sup> FRA, Periodic data collection, July 2018.

<sup>158</sup> Croatia, Ministry of Internal Affairs (*Ministarstvo unutarnjih poslova*), By-law on the Rules Regarding Detention in the Reception Centre for Foreigners, 8 November 2018; FRA, Migration: Key fundamental rights concerns - Quarterly bulletin 1 (February 2019).

<sup>159</sup> France, Ministry of Interior (*Ministère de l'Intérieur*) (2018), 'Adoption définitive du projet de loi pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie', press release, 1 August 2018.

<sup>160</sup> FRA, Periodic data collection migration, November 2018.

<sup>161</sup> For more information, see 'A safe migration policy for a new time' (*En trygg migrationspolitik för en ny tid*) on the Social Democratic Party's website.

<sup>162</sup> FRA, Periodic data collection, July 2018.

<sup>163</sup> Amnesty International, Doctors of the World, and Stichting LOS also published a memorandum about the Dutch bill for the Return and Aliens Detention Act, identifying several far-reaching restrictions of freedom. See FRA, Migration: Key fundamental rights concerns - Quarterly bulletin 1 (February 2019).

<sup>164</sup> ECtHR, S.F. and Others v. Bulgaria (Application no. 8138/16), 7 December 2017.

## Legal corner

According to Article 6 of the EU Charter of Fundamental Rights, everyone has the right to liberty and security of person. While EU Member States can detain asylum applicants and returnees under certain circumstances, they need to respect their fundamental rights and safeguards provided for in the EU asylum acquis.

The Reception Conditions Directive (2013/33/EU) and the Return Directive (2008/115/EC) provide an exhaustive list of grounds based on which an individual may be detained.

The detention of children implicates various fundamental rights and will only be in line with EU law if limited to exceptional cases. Article 24 of the Charter protects the best interests of the child in all actions relating to children, and Article 17 of the Return Directive allows for detention of unaccompanied children and families with children only as a measure of last resort and for the shortest appropriate period of time.

See *Reception Conditions Directive*, OJ 2013 L 180, Recital 20 and Art. 8. See also *Return Directive*, OJ L 348, Art. 15.

Nonetheless, some Member States further toughened their laws and policies concerning immigration detention of children. In addition, the number of children in detention was still high in 2018, often under poor conditions.

For example, in **Greece**, a large number of unaccompanied children were detained in police stations and pre-removal facilities on the mainland (“protective custody”) or in Reception and Identification Centres on the islands in unacceptable detention conditions. According to the National Center for Social Solidarity (EKKA), the number of unaccompanied children in Reception and Identification Centres and protective custody rose from 140 in March 2018 to 703 in December 2018.<sup>165</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe urged the Greek authorities to fundamentally review their approach with regard to “protective custody” of unaccompanied children and end their immigration detention.<sup>166</sup>

**Legislative changes**<sup>167</sup> in **France** increasing the maximum length of immigration detention from 45 days to 90 days can have a particularly negative effect on children.<sup>168</sup> Out of the 135 children in detention in France between 1 January 2018 and 31 August 2018, 78 were younger than 6 years old. In 2017, 305 children were placed in detention centers in mainland France, 7 times more than in 2013.<sup>169</sup>

A bill in **the Netherlands** introduced the possibility of isolation detention of children over 13 years of age.<sup>170</sup>

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<sup>165</sup> Greece, National Center for Social Solidarity (EKKA), *Situation Update: Unaccompanied Children (UAC) in Greece*, 15 December 2018.

<sup>166</sup> Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2019), Report to the Greek Government on the visit to Greece from 10 to 19 April 2018, *CPT/Inf (2019) 4*, p. 54.

<sup>167</sup> France, Ministry of Interior (*Ministère de l'Intérieur*) (2018), *'Adoption définitive du projet de loi pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie'*, press release, 1 August 2018.

<sup>168</sup> FRA, *Periodic data collection migration*, November 2018.

<sup>169</sup> France, ANEFE, *France - confinement of children*, 15 November 2018.

<sup>170</sup> Amnesty International, Doctors of the World, and *Stichting LOS* also published a memorandum about the Dutch bill for the Return and Aliens Detention Act, identifying several far-reaching restrictions of freedom. See FRA, *Migration: Key fundamental rights concerns - Quarterly bulletin 1* (February 2019).







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

## Looking ahead

After three years of regular migration updates, FRA will continue to report on migration-related fundamental rights concerns in 2019. The drop in new arrivals has not led to a decrease in fundamental rights concerns. However, problems that arise often persist for several months. As of 2019, FRA will therefore issue 'Quarterly Bulletins' on key migration-related fundamental rights concerns. These bulletins cover the following countries: Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France, North Macedonia, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Serbia, Spain and Sweden.

For the February 2019 Quarterly Bulletin, see:

<https://fra.europa.eu/en/theme/asylum-migration-borders/overviews/2019>

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