Migration to the EU: five persistent challenges

February 2018

EU Member States’ legal and practical responses to migrants and refugees implicate several of their fundamental rights, as enshrined in the Charter of Fundamental Rights of the European Union (EU). The EU Agency for Fundamental Rights (FRA) has regularly reported on these issues since September 2015. This report highlights key trends and persistent concerns between October 2016 and December 2017. It focuses on five areas: access to territory, reception conditions, asylum procedures, unaccompanied children and immigration detention.

Contents

Introduction ....................................................................................................................2
Main findings ................................................................................................................4
1. Access to territory .................................................................................................... 6
2. Reception conditions .............................................................................................. 8
3. Asylum procedures ............................................................................................... 12
4. Unaccompanied children ...................................................................................... 14
5. Immigration detention .......................................................................................... 18
Conclusion ................................................................................................................... 22
Introduction

The number of people arriving irregularly in the EU dropped significantly in 2017 – to some 204,300 people, compared to over 500,000 in 2016. During the first three quarters of 2017, 164,300 first-time applicants sought asylum in the EU - 55 % fewer than did so during the first three quarters of 2016. At the same time, the number of displaced persons worldwide remained at a record-high level of some 65 million people.

While fewer people arrived and applied for asylum in the EU overall, this was not the case in all EU Member States. The number of asylum applications fell in some countries and increased in others. For example, in 2017, asylum applications decreased in Austria, Bulgaria, Denmark, Finland, Germany, Hungary, the Netherlands, Poland and Sweden. At the same time, applications for international protection increased in France, Greece, Italy and Spain. For example, in France, 100,412 asylum applications were lodged in 2017, a 17 % increase compared to 2016. In Spain, during the first three quarters of 2017, the number of arrivals by sea and land was 90 % higher than during the first three quarters of 2016, according to UN Refugee Agency UNHCR. More and more migrants arrived on small inflatable boats and more rescues at sea were carried out in 2017 than in 2016.

Meanwhile, some EU Member States stepped up their efforts to review pending applications. For example, in the first six months of 2017, Germany issued decisions on almost 358,000 asylum applications – more than in all other EU Member States combined.

National responses to migrants and refugees implicate their fundamental rights, as enshrined in the EU Charter of Fundamental Rights (the Charter). The EU Fundamental Rights Agency (FRA) promotes compliance with these rights by highlighting issues of concern, including in its regular reports on the asylum situation.

Fundamental rights at stake

National practices and policies regarding migrants and refugees mainly implicate the following fundamental rights:

- **human dignity** (Article 1 of the EU Charter of Fundamental Rights)
- **prohibition of slavery and forced labour**, including trafficking in human beings (Article 5)
- **right to respect for private and family life** (Article 7)
- **rights of the child** (Article 24)
- **right to an effective remedy** (Article 47)
- **principle of non-discrimination** (Article 21)
- **right to asylum** (Article 18)
- **protection in event of removal, expulsion or extradition** (Article 19)

FRA ACTIVITY

Eye on migration: timely updates, targeted thematic reports

FRA has issued regular updates on fundamental rights concerns in selected EU Member States since September 2015.

The reports currently focus on 14 countries particularly affected by large migration movements: Austria, Bulgaria, Denmark, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Slovakia, Spain and Sweden.

The ‘highlight’ reports – issued bi-monthly as of March 2018 – provide concise but thorough overviews on the situation in these countries.

FRA has also published focus sections on particular themes. These looked in detail at: the plight of children; healthcare; trafficking in human beings; gender-based violence; the impact of migrant arrivals on local communities; migrants with disabilities; family tracing and family reunification; hate crime; separated children; torture, trauma and its possible impact on drug abuse; and issues relating to lesbian, gay, bisexual, transgender and intersex (LGBTI) asylum seekers.

FRA’s ‘highlight’ reports were initially issued on a weekly basis, and first covered the situation in eight EU Member States. All reports can be found on FRA’s website.
In October 2016, FRA published a report on *Key migration issues: one year on from initial reporting*. It focused on particularly persistent concerns in four areas: unaccompanied children, safety and protection at reception facilities, impact on local communities, and violence and hate speech against migrants.\(^9\)

One year later, the overall number of asylum seekers in the EU has decreased, but several issues persist – and some have even deteriorated.\(^11\)

Building on the findings of the October 2016 report, this report presents the most pressing fundamental rights concerns between October 2016 and December 2017. It focuses on five areas:

- access to territory;
- reception conditions;
- asylum procedures;
- unaccompanied children;
- immigration detention.

The report also looks at positive developments in EU Member States. These are connected to both the lower number of new arrivals and improvements in asylum systems and the professional capacity of staff since the peak of the migration situation in 2015.

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\(^9\) FRA, *Key migration issues: one year on from initial reporting*, October 2016.

\(^11\) This report is based on information from all of FRA’s regular overviews of migration-related fundamental rights concerns from October 2016 to December 2017.
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MAIN FINDINGS

Access to territory

- Access to EU Member States’ territory has become more difficult in almost half of the EU Member States covered. Despite a significant drop in newly arriving asylum seekers, in most EU Member States, the management of external and internal borders remained in emergency mode or became stricter. Several EU Member States re-introduced border controls and kept them throughout 2017.
- Police and border guards reportedly ill-treated migrants, particularly on the Western Balkan route, and in Spain in certain locations.
- Some persons wishing to apply for asylum were denied entry to the EU and/or returned without an opportunity to apply for protection; others were collectively pushed back at land or sea borders.

Reception conditions

- The number of asylum applicants that a country received is not necessarily linked to the quality of its reception conditions. Despite the relatively low numbers, reception conditions in several EU Member States did not improve. In countries where numbers of new arrivals remained high, capacity and poor living conditions caused concern.
- Inadequate reception conditions sparked many protests and other incidents.
- Although some positive developments regarding the protection of vulnerable asylum seekers were reported, these were outweighed by challenges regarding their identification, accommodation, and provision of special care and support.
- Sexual and gender-based violence in reception centres remains an issue in some EU Member States.
- Room for improvement in the treatment of lesbian, gay, bisexual, transgender and intersex (LGBTI) asylum seekers was observed in the majority of EU Member States.

Asylum procedures

- Challenges regarding the identification and registration procedures persisted in some EU Member States; for example, required timeframes were not respected or qualified staff was lacking.
- Some EU Member States decided on applications for international protection in border or transit zones, leading to long waiting periods in inadequate conditions, including for vulnerable persons.
- Issues regarding lengthy asylum procedures, too little time for decision-making, shorter deadlines for appeals and insufficient justifications of appeal decisions were reported in several EU Member States.
- Due to the large backlog of asylum applications, some EU Member States accelerated the asylum procedure, raising concerns over the quality of interviews and decision-making.
- Specific national guidelines for interviewing persons facing persecution based on sexual orientation or gender were available only in a few EU Member States, and LGBTI asylum applicants faced credibility doubts.
- Legal and practical obstacles to accessing legal aid, information and interpretation existed in all EU Member States covered.
Main findings

Unaccompanied children

- In most EU Member States, reception places for unaccompanied children were sufficiently available due to a drop in new arrivals. In a few EU Member States, the number of children decreased and the quality of child reception facilities improved. In many EU Member States, however, reception standards for children remained critical.

- Asylum-seeking children in several EU Member States had no or limited access to education.

- Children continued to face legal and practical obstacles to accessing asylum procedures in several EU Member States. In particular, problems regarding the appointment of guardians for unaccompanied children barely improved.

- Age assessment methods have been heavily criticised from a fundamental rights perspective – for example, when children were not given the benefit of the doubt concerning their age and treated as adults, or because age assessment procedures consisted purely of medical examinations.

- Legal and practical barriers to family reunification for beneficiaries of subsidiary protection was a great concern for unaccompanied children in several EU Member States.

Immigration detention

- Some positive developments in alternatives to detention and the provision of leisure activities to children were reported in some EU Member States covered. Nonetheless, in several EU Member States, challenges remained regarding legal assistance and information, conditions in detention facilities and the detention of vulnerable persons.

- In recent months, the use of immigration detention increased in certain EU Member States covered.

- Obstacles to obtaining legal aid and/or information were reported in some EU Member States.
1. Access to territory

Over the past two years, it has become more difficult for migrants and refugees to access the territory of EU Member States in almost half of the EU Member States covered. This risks interfering with their right to asylum (Article 16 of the Charter) and violating the prohibition of collective expulsions and *refoulement* (Article 19). Main concerns involved strict border management practices that were not sufficiently sensitive to protection needs, ill-treatment by law enforcement, as well as refusals of entry and summary returns.

**Border management**

At the end of 2017, at least for some sections of the Austrian, Danish, French, German and Swedish borders, temporary controls within the Schengen area were still in place.\(^\text{12}\) Hungary launched a ‘border hunting programme’, which included the training of volunteers to become police officers to assist the authorities with guarding the borders.\(^\text{13}\) A new ‘smart technology’ fence was erected at the Serbian border, capable of delivering small electric shocks to migrants and armed with heat sensors, cameras, and loudspeakers that blare warnings, in several languages, to not cross the border.\(^\text{14}\)

In the Central Mediterranean, non-governmental organisations (NGOs) deploying rescue vessels faced pressure from authorities to abstain from providing assistance.\(^\text{15}\) Italy resumed cooperation with Libya by signing a Memorandum of Understanding with the Libyan Government of National Accord.\(^\text{16}\) Pursuant to a request from the latter, Italy deployed military assets inside Libyan territorial waters.\(^\text{17}\)

**Ill-treatment by law enforcement**

Police and border guards reportedly ill-treated migrants, particularly on the Western Balkan route and in Ceuta and Melilla, Spain.\(^\text{18}\) In Hungary, several reports were published on police violence against people attempting to cross or having crossed the border fence.\(^\text{19}\) Police cameras recorded the use of severe force by Spanish border guards and police against people trying to cross the border irregularly in El Tarajal/Ceuta.\(^\text{20}\)

**Refusals of entry and summary returns**

Persons wishing to apply for asylum were denied entry and/or returned without an opportunity to...
apply for protection, or even collectively pushed back at land and at sea borders. For example, in Poland, border guards at some border crossing points continuously refused entry to persons wishing to apply for international protection. People who managed to submit their applications sometimes had to file them 30 or more times. The European Court of Human Rights (ECHR) ordered interim measures that asylum seekers should not be refused entry at the Terespol and Medyka border crossing points, which border guards disregarded.

Migrants reaching the Italian-French border were, according to NGO reports, either returned to Italy without a formal decision or detained in France without receiving information about their rights or the opportunity to apply for protection. According to some sources, almost all (95 %) apprehended persons in the Alpes-Maritimes Department in 2016 were returned to Italy. The French border police allegedly allowed entry only to particularly vulnerable people, since they had a higher chance of obtaining asylum.

Hungary frequently returned persons apprehended within eight km of the border, including vulnerable people, to the Serbian side of the fence, where they had to wait until they could submit their asylum claims in one of the two transit zones. Push-backs allegedly also happened at the Greek-Turkish land and sea border. In the Spanish enclaves Ceuta and Melilla, immediate returns were carried out quickly, not allowing for identifying vulnerabilities and protection needs. The ECHR found that the return of migrants violated the prohibition of collective expulsions.

FRA ACTIVITY

Avoiding violations of non-refoulement

FRA published a report on the scope of the principle of non-refoulement to encourage fundamental-rights compliant border management. The agency also prepared guidance on how to reduce the risk of refoulement when EU Member States work in or together with third countries.

For more information, see FRA (2016), Scope of the principle of non-refoulement in contemporary border management: evolving areas of law, Luxembourg, Publications Office of the EU (Publications Office); and FRA (2016), Guidance on how to reduce the risk of refoulement in external border management when working in or together with third countries, Luxembourg, Publications Office.

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2. Reception conditions

EU Member States must ensure that material reception conditions provide an adequate standard of living for asylum seekers, which guarantees their subsistence and protects their physical and mental health. The numbers of asylum applicants that countries received over the past two years were not necessarily linked to the quality of reception conditions in the countries. Key concerns included overcrowding and inadequate conditions, which triggered protests and incidents. The situation of vulnerable persons as well as the level of safety and protection in reception centres also posed problems.

Capacity

At the end of 2017, sufficient reception capacity was available in many EU Member States – for example, in Austria, Bulgaria, Denmark, Finland, Germany, the Netherlands, Poland, and Slovakia. Bulgaria, for example, had previously faced issues with overcrowding.

The lower number of arrivals prompted the closure of reception centres in some EU Member States. Closures were reported in Denmark, Finland, Germany, Hungary and Sweden. In Hungary, reception centres were closed due to the country’s extended border policy, pursuant to which all asylum seekers – except children below 14 years of age – were escorted to the outer side of the border fence to wait for admission to the transit zones.

In EU Member States that faced significant numbers of arrivals in 2017 – France, Greece, Italy and Spain – reception facilities remained overcrowded. For example, the hotspots in Lesbos and Samos, Greece, were hosting almost three times more people in October 2017 than there were available places. In Italy, a facility in Cona (Veneto), built for a maximum of 540 people, hosted more than 1,300 asylum seekers. In France, the reception capacity of 70,000 – 80,000 places remained inadequate compared to some 100,000 registered asylum applicants in 2017. In Spain, overcrowding was reported in the reception centres in Ceuta and Melilla.

Insufficient reception capacities led to the establishment of informal camps in France, Greece and Italy. Living conditions were sometimes critical, with limited access to water, sanitary facilities and food.

Inadequate conditions

In many facilities, conditions improved due to the drop in numbers or following repair and construction work – such as in Bulgaria, where most facilities were refurbished. Nonetheless, shortcomings persisted.

Although the majority of EU Member States have adopted some form of written standards for reception conditions, they reported significant challenges in respecting these in practice. For instance, the standard of living varied significantly between different Italian reception facilities. Many asylum seekers lived at ‘special reception centres’ (Centri

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35 FRA, Monthly migration report, December 2017.


45 FRA, Monthly migration report, June 2017.


48 Bulgaria, Ombudsperson, October 2017; State Agency for Refugees, December 2017; FRA, Monthly migration report, October 2017 and December 2017.

49 FRA, Current migration situation in the EU: Oversight of reception facilities, September 2017, p. 2.

Protests and incidents

Overcrowding, inadequate reception conditions and the closure of reception centres (and the subsequent relocation of asylum seekers) exacerbated tensions in several reception facilities. Incidents of violence were reported, among others, in Finland and the Netherlands.\(^{61}\)

Protests against reception conditions took place in Greece,\(^{64}\) including a general strike in the Municipality of Lesvos.\(^{66}\) Similarly, in Italy, several demonstrations and other actions criticising reception conditions took place.\(^{66}\)

Issues with providing support to asylum seekers were also reported. For example, in Austria, the reduction of social allowances (Bedarfsorientierte Mindestsicherung) for both beneficiaries of subsidiary protection and refugees in some Länder was a major concern.\(^{59}\) In the Greek hotspots, the increase in arrivals presented a challenge to providing support services,\(^{68}\) which were handed over from NGOs to authorities in the summer of 2017.\(^{61}\) In September, UNHCR urged authorities to improve reception conditions on the Eastern Aegean islands and to deploy more staff in the areas of health care, psychosocial support and the protection of unaccompanied children.\(^{53}\)

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\(^{52}\) FRA, Monthly migration report, May 2017.

\(^{53}\) Italy, ANCI press release of November 2017.


\(^{57}\) Germany, Workers’ Welfare Organization, October 2017; FRA, Monthly migration report, October 2017.

\(^{58}\) Hungary, Hir TV (2017), Embertelenköltek nyomán a transzitnők abban, 1 August 2017; FRA, Monthly migration report, August 2017, May 2017 and June 2017.


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\(^{59}\) See the HELP.gv.at webpage on Foreign citizens.

\(^{60}\) FRA, Monthly migration report, September 2017.

\(^{61}\) FRA, Monthly migration report, August 2017. Several NGOs raised concerns over it.

\(^{62}\) Greece, UNHCR (2017), UNHCR urges action to ease conditions on Greek islands, 8 September 2017; FRA, Monthly migration report, October 2017.


Vulnerable persons

To secure vulnerable persons’ rights, EU Member States need to identify the special reception needs of applicants within a reasonable period of time after they apply for international protection. In the reception of applicants for international protection, EU Member States must take into account the specific situation of vulnerable persons.

In the past months, positive developments regarding the identification and reception of vulnerable persons were reported in some EU Member States. In Italy, the number of potential trafficking victims among arrivals increased by 600% in the past three years. In response, authorities issued guidelines and organised training on identifying trafficking victims among asylum seekers.

Despite some positive trends, several challenges regarding identification, special care and support, and accommodation persisted in some EU Member States. In Germany, no standardised procedures for recognising specific needs of vulnerable asylum seekers were in place and safeguards for vulnerable persons during the registration, asylum and return procedures were reported to be insufficient. In Poland, special needs were often not recognised at an early stage and therefore not taken into account in the asylum procedure.

Vulnerable persons faced difficulties in accessing special care in some EU Member States. In Austria, interpretation services in health care and psychological treatment for traumatised persons were not sufficiently available. In Bulgaria, available psychologists were insufficiently qualified. The lack of specialised staff to respond to the needs of torture survivors often led to long waiting periods. In Greece, access was difficult because referrals to mainland facilities took a long time.

In Finland, Germany, Italy and Spain, conditions in reception facilities were sometimes insufficient for vulnerable persons. In France and Italy, some pregnant women and children were left in the streets due to overcrowding.
Safety and protection

The Reception Conditions Directive (2013/33/EU) requires EU Member States to take appropriate measures to prevent assault and gender-based violence at reception facilities. Nevertheless, in some EU Member States, sexual and gender-based violence remained an issue – this was reported, for example, in Greece and Italy. The lack of certain basics at reception centres – such as adequate lightning, sufficient police patrols and overcrowding – increased these risks. After special reception facilities for women and new-born children were closed in France, instances of sexual violence and exploitation reportedly increased.
3. Asylum procedures

Over the past two years, increasingly restrictive asylum policies and practices in many EU Member States call into question to what extent 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 – is guaranteed. The main issues centred on identifying and registering asylum applicants, border procedures, standards and the duration of asylum procedures, as well as access to legal aid and information.

Identification and registration procedures

EU Member States must register an application for international protection no later than three working days after the application is made.94 However, this timeframe was not always respected. Issues regarding identification and/or registration procedures were observed in some EU Member States (France, Greece, Italy and Spain).95

For example, in France, difficulties with registration were continuously reported.96 In certain departments, asylum seekers had to wait more than two months before obtaining an appointment at the Prefecture.97 Asylum seekers without a registered application remained undocumented and did not receive any allowances.98 In mainland Greece, asylum seekers were asked to make Skype appointments to lodge their applications,99 because submitting an asylum application to the Regional Asylum Offices or the Asylum Units in person was almost impossible. At the same time, Greek authorities applied a pre-registration procedure (instead of immediate full registration), which led to long delays of up to 10 months before individual asylum applications could be lodged.100 In Italy, procedures were less clear for asylum applicants who arrived outside the normal landing points, particularly as regards the provision of information on asylum.101

Border procedures

EU Member States may decide on the admissibility of an application for international protection or its substance in border or transit zones, provided the decision is taken within a reasonable time.102

Using such an approach, Hungary gradually limited admissions to the transit zones at its border with Serbia to an average of a handful of persons per day in each of the two transit zones. Many people, including vulnerable persons, waited for their admission in Serbia for months – some up to a year.103

Access to asylum was also difficult at Polish borders in Terespol and Medyka, where only a few persons per day managed to register their applications.104 Facilities for interviewing applicants allegedly did not ensure privacy or confidentiality.105

Duration of asylum procedures

EU Member States must ensure that the examination procedure is concluded within six months after an application is lodged.106

Due to the large backlog of asylum applications, some EU Member States tried to accelerate their

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94 Or six days, if the application was lodged with an authority which is not competent for the registration, Directive 2015/22/EU of the European Parliament and of the Council of 25 June 2015 on common procedures for granting and withdrawing international protection, OJ L 180, (Asylum Procedures Directive), Art. 6 (4).
99 Greece, Greek Asylum Service, ‘What is the procedure’.
102 Asylum Procedures Directive, Art. 43 (1).
106 Asylum Procedures Directive, Art. 31 (3).
asylum procedures – France, Germany, Hungary and Italy. However, this raises concerns regarding the quality of interviews and decision-making. In Germany, an internal investigation revealed severe deficiencies in the asylum procedure after it was accelerated.

Issues regarding lengthy asylum procedures were reported in EU Member States such as Austria, Finland, Germany, Greece, Spain and Sweden. In France, delays remained significant; however, the examination time was reduced from eight months to five months in July 2017, despite an increase in asylum applications in 2017.

**Access to legal aid and information**

EU Member States must inform asylum seekers of the available asylum procedure and of their rights and obligations. In addition, they must make arrangements for interpretation to the extent necessary to facilitate access to the asylum procedure.

Asylum seekers do not generally have the right to a lawyer, but must be able to communicate with UNHCR or other organisations that provide legal advice or other counselling.

Legal aid, information and interpretation were not accessible in all EU Member States covered due to legal and practical obstacles. Legal assistance became less accessible for asylum seekers in Finland following changes to the legal aid system in September 2016, which also reduced the time to appeal negative asylum decisions from 30 to 21 days. In some parts of Germany, asylum procedures for applicants from third countries regarded as safe countries of origin were accelerated to an extent that individual counselling was often not possible. There was a lack of provision of legal information to asylum seekers in Greece, in particular on the islands. Legal assistance at first instance examinations of asylum requests was limited and exclusively provided by civil society organisations.

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104 FRA, Monthly migration report, November 2016.
117 Asylum Procedures Directive, Art. 8 (1).
118 Asylum Procedures Directive, Art. 12(1) (c).
120 FRA, Monthly migration report, November 2016.
4. Unaccompanied children

The best interests of the child must be a primary consideration in all actions affecting children, including in asylum and migration procedures, as required by Article 24 (2) of the EU Charter of Fundamental Rights and the United Nations Convention on the Rights of the Child.

Although the number of unaccompanied children declined in several EU Member States over the past two years, their level of protection barely improved. In most EU Member States, the quality of child reception facilities, appointment of guardians, access to the asylum procedure and obstacles related to family reunification remained key issues.

Reception conditions

Asylum-seeking children should be accommodated in specialised facilities and foster care placements to guarantee the protection and care necessary for their wellbeing. They should also have access to education and healthcare.

In most EU Member States, reception places for unaccompanied children were sufficiently available due to a drop in new arrivals. Several child reception facilities closed down in Austria, Denmark, Finland, the Netherlands and Sweden. Children had to move to other locations, resulting in a change of their known environment, including schools and guardians; interruptions in the provision of mental health care; and difficulties for their wellbeing and integration prospects.

In a few EU Member States, the number of arriving children decreased and the quality of child reception facilities improved. Bulgaria amended a regulation on the reception of asylum seekers to allow for separate units for unaccompanied children. In Slovakia, where hardly any unaccompanied children arrived, preparatory work for a new educational space for unaccompanied children started in the children’s home in Medzilaborce.

In many EU Member States, however, despite the decreasing numbers, standards of reception facilities for children did not improve and conditions remained critical. For example, in Hungary, insufficient psychological and psychiatric care was provided to children, despite their traumatic experiences. Children complained about violence and intolerant behaviour by the authorities. Instead of being placed in facilities with child-specific services, children over 14 were transferred to the transit zones at the border with Serbia, where they had to stay until their asylum claims were processed. In Denmark and in the Netherlands, some unaccompanied children stayed in adult facilities. In two cases in Denmark, child siblings were separated and placed into different accommodation centres when one of them turned 17.

In France, Greece, Italy and Spain, high numbers of unaccompanied children continued to arrive, leading to insufficient capacity and reception conditions. For example, in Italy, since 2011, there has been a sixfold increase in annual arrivals, a gradual increase in the proportion of children under the age of 15, and a growing number of girls among unaccompanied children.

In France, children had to stay in hotels in poor sanitary conditions. Informal camps – such as in Calais – reappeared; authorities tried to carry out evacuation measures. Children at the camps risked becoming victims of crime, such as trafficking, sexual assault and rape. Throughout 2017, between 900 and 3,300 unaccompanied children were waiting for appropriate shelter in Greece. Unaccompanied children were often registered as adults and left in overcrowded and unsafe camps on the Aegean islands or at police stations for several weeks, without specific services or protection, adequate sanitary conditions or basic resources.

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125 Denmark, the Danish Immigration Service (Udlændingestyrelsen), 21 June 2017.
130 FRA, Monthly migration report, October 2016.
133 Denmark, Red Cross and Danish Immigration Service; FRA, Monthly migration report, April 2017, August 2017 and September 2017.
134 Italy, Save the Children, Atlas of Unaccompanied Children in Italy (Atlante minori stranieri non accompagnati in Italia); FRA Monthly migration report, July 2017.
In Italy, the reception system could not accommodate the increasing number of arriving unaccompanied children; many of them – an average of 28 daily – lived on the streets, stayed in adult facilities or disappeared. Some 540 unaccompanied children were presumed to live in Melilla, Spain, including at least 100 of whom were sleeping on the streets.

Some unaccompanied children reported ill-treatment and beatings by security staff in a Centre for Minors in Madrid, Spain. 92% of the children in the overcrowded ‘La Purisima’ facility for boys said they experienced violence daily.

Asylum-seeking children in the hotspots in Greece and in parts of France, Hungary and Spain had no or limited access to education. Only 29% of children in reception centres attended regular schools in Germany; 81% in large cities, children had to wait for a place in regular school for up to one year. In some EU Member States, when compulsory schooling ended, some 16- and 17-year-olds were not offered any education and faced difficulties getting into vocational training or employment. In Germany, some young refugees did not get work permits even though they had already been accepted for apprenticeships by an employer.

Appointment of guardians

Unaccompanied children seeking asylum should swiftly be provided with an independent and qualified guardian to ensure that children’s views are taken into consideration and that they have access to adequate reception, healthcare and education services. Guardians are also essential in safeguarding children’s procedural rights.

Compared to 2016, problems regarding the appointment of guardians for unaccompanied children barely improved. Guardians were overburdened in several EU Member States – such as Austria46, Finland47, France48 and Sweden49. For example, in Austria, one guardian was in charge of some 50 to 200 children. In addition, in several cases, adult siblings were appointed as guardians for their younger siblings.

However, a significant change occurred in Italy: to overcome systemic shortcomings, a new law created the function of volunteer guardians; the training and recruitment of such guardians started at the end of 2017.

In several countries, severe problems regarding the appointment of guardians persisted. In Greece, no functioning guardianship system was established and no progress occurred regarding adoption of the draft guardianship law. In Hungary, guardians were only assigned to unaccompanied children under the age of 14. In Como, northern Italy, legal counseling and a guardian were only available to unaccompanied children once they applied for asylum. In Poland, the appointment of guardians took a very long time – in some cases up to nine months. Access to guardians varied greatly in Sweden’s 290 municipalities, but the lack of resources for supervising the guardians was an overall concern.

In Germany, NGOs, guardians and employees of youth services and care institutions lacked the necessary psychological and legal qualifications. This includes knowledge about asylum law and recent reforms – a gap also likely to exist in other EU Member States.

FRA ACTIVITY

Reinforcing guardianship systems

The handbook on guardianship jointly published by FRA and the European Commission aims to help standardise guardianship practice. It provides guidance and recommendations to EU Member States on strengthening their guardianship systems, setting forth the core principles, fundamental design and management of such systems.

For more information, see FRA (2014), Guardianship for children deprived of parental care, Luxembourg, Publications Office.
**Accessing asylum procedures**

The best interests of the child must be the guiding principle when unaccompanied children make use of their right to asylum. For this purpose, EU law provides specific safeguards, including access to information, legal representation, and specialised training for the officials working with children. Children continued to face legal and practical obstacles to accessing asylum procedures in several EU Member States.

General shortcomings in the asylum system particularly affect children. In **Austria**, asylum procedures for unaccompanied children took more than a year. It sometimes took authorities in **Germany** several months to make decisions about unaccompanied children’s placements into care and specific benefits. When authorities doubt that an applicant’s claimed age is correct, they can ask the applicant to undergo medical examinations. In **Italy**, assessments were made without using the multidisciplinary approach envisaged under national law.

When authorities doubt an applicant’s claimed age is correct, they can ask the applicant to undergo an age assessment. There are different methodologies to assess a child’s age. EASO published information on age assessment practice in Europe, and highlighted key points that should be taken into consideration when undertaking age assessments. It is also developing guidance for EU Member States on how to assess the age from a holistic and multidisciplinary approach and on the implementation of the principle of the best interests of the child, as well as an update of the information collected for the first edition of the publication. In practice, the applicant’s age may be estimated through visual estimation by a doctor, X-rays, medical examinations (of wrists, teeth, genitals), or a combination of these measures. Such examinations, in particular of sexual maturity, can be traumatising for the child and impinging human dignity. Based on its research, FRA recommends that assessments should be multidisciplinary and not be based solely on medical examinations, and applicants should be given the benefit of the doubt.

In parts of **France** and in **Hungary**, children were reportedly not given the benefit of the doubt concerning their age and treated as adults. In **Hungary**, age assessment procedures consisted purely of

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159 Austria, Asylum Coordination Austria, FRA, Monthly migration report, May 2017, August 2017 and December 2017.

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**Family reunification**

EU law regulates family reunification for refugees – but not for beneficiaries of subsidiary protection – in the **Family Reunification Directive (2003/86/EC)**. Legal and practical barriers to family reunification for beneficiaries of subsidiary protection were a great concern for unaccompanied children in several EU Member States.

**Germany** and **Sweden** adopted temporary measures excluding beneficiaries of subsidiary protection from applying for family reunification for a certain time period. In **Austria** and **Denmark**, family reunification for beneficiaries of subsidiary protection was only granted after three years.
Practical obstacles also slowed down or prevented family reunification. These included high fees (Spain\textsuperscript{171} and Poland\textsuperscript{172}); restrictive deadlines (Austria\textsuperscript{173}, Germany\textsuperscript{174} and Poland\textsuperscript{175}); the requirement to provide evidence of having sufficient living space (Germany\textsuperscript{176}); closed embassies in countries such as Syria and Iraq; delays due to limited resources in the Immigration Service (the Netherlands\textsuperscript{177}); and authorities’ strict approach to accepting unofficial documents as evidence of family ties (the Netherlands\textsuperscript{178}).

Applicants in Greece – including many unaccompanied children – faced significant delays in joining their family members in Germany.\textsuperscript{179} As of mid-August 2017, some 4,339 applicants had been accepted by Germany but were not yet transferred. Over 60 % were children, some unaccompanied.\textsuperscript{180}

\textsuperscript{171} FRA, Monthly migration report, March 2017.
\textsuperscript{172} FRA, Monthly migration report, May 2017.
\textsuperscript{173} FRA, Monthly migration report, March 2017.
\textsuperscript{174} FRA, Monthly migration report, August 2017.
\textsuperscript{175} FRA, Monthly migration report, May 2017.
\textsuperscript{176} FRA, Monthly migration report, August 2017.
\textsuperscript{177} FRA, Monthly migration report, March 2017.
\textsuperscript{178} FRA, Monthly migration report, July 2017.
\textsuperscript{179} Germany, Greece, Pro Asyl and Refugee Support Aegean (2017), The Dublin family reunification procedure from Greece to Germany, 2 August 2017. See also the leaked letter by the Greek Minister of Migration Policy to the German Minister of Interior, Ref. No. 2789, 4 May 2017.
\textsuperscript{180} Germany, Deutscher Bundestag, Drucksache 18/13408, Response by the German authorities to the question by MEP Ulla Jelpke (DIE LINKE.), 22 August 2017.
5. Immigration detention

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 seekers and returnees under certain circumstances, they need to respect their fundamental rights and safeguards provided for in the EU asylum acquis. If this is not done, the deprivation of liberty becomes arbitrary. The Reception Conditions Directive (2013/33/EU) and the Return Directive (2008/115/EC) provide an exhaustive list of grounds on which an individual may be detained.48 Detention should be a measure of last resort, applied after an individual assessment in each case.49 Asylum applicants must not be detained only because they are seeking international protection.50

The lack of legal assistance and information during detention, inadequate conditions and inhumane treatment, and immigration detention of vulnerable persons remained key concerns.

Alternatives to detention

There were some positive developments regarding alternatives to detention in Bulgaria, Finland and Poland. In Bulgaria, legislative amendments in November 2017 introduced new alternatives – bail and the deposit of passports or travel documents – to pre-removal detention.194 In Finland,5 designation residence became an alternative to detention for children aged 15 to 17.195

Legal assistance and information

Detained asylum seekers are entitled to free legal assistance and representation under certain conditions.196 Asylum seekers and returnees must be provided with information on their rights and obligations.197 Obstacles to obtaining legal aid and/or information were reported in Bulgaria,198 Italy,199 Poland,200 Slovakia201 and Spain.202

The European Court of Human Rights found that Italy violated migrants’ right to liberty and security by not promptly informing them of the reasons for their detention.203 The case concerned three Tunisian nationals who, while trying to reach Italian shores, were apprehended and held in a detention centre and in two harboured ships for several days before being deported to Tunisia without being given the opportunity to apply for protection. A study by ECRE and other civil society organisations stated that migrants held in Italian hotspots did not have access to an

Immigration detention: figures and trends

In recent months, the use of immigration detention increased in certain EU Member States covered, as reported in France and the Netherlands. In others (Germany, Italy and Spain), construction of new detention facilities are planned. The Spanish Ombuds institution questions the effectiveness of pre-removal detention, as only 29% of the detainees were returned in 2016.

In Poland, where migrants in an irregular situation who are apprehended include a significant number of families with children, the proportion of decisions imposing an alternative to detention increased from 11% in 2014 to over 23% in 2017.


184 Reception Conditions Directive, Recital 20, Art. 8 (2).
185 Reception Conditions Directive, Art. 8 (1).
189 Reception Conditions Directive, Art. 10 (5); Return Directive, Art. 16 (5).
190 FRA, Monthly migration report, October 2016.
effective remedy to challenge their deprivation of liberty.194 In Poland, courts reviewing appeals by individuals who were detained often ignored their requests to be present at their appellate hearings on the decision to detain them, and failed to inform applicants about extensions of their detention.195

Inadequate conditions and inhumane treatment

Asylum seekers and returnees must as a rule be placed in specialised detention facilities.196 Inadequate conditions were observed in certain detention and/or pre-release facilities in Bulgaria,197 Denmark,198 France,199 Germany,200 Greece,201 Hungary,202 Italy203 and Spain.204

Spanish courts ordered several measures for the improvement of the conditions in different Aliens Detention Centres (CIE).205 The Court of Algeciras, Spain, described the CIE in Algeciras and buildings in Tarifa as looking and being organised like prisons.206

The Danish Helsinki Committee for Human Rights deemed the conditions at the departure centre Kærshovedgård worse than in prison207 and the Association of Immigration Lawyers plans to challenge the legality of the conditions.208 The German lawyers’ association raised concerns over plans to establish prison-like detention centres in Hesse and Saxony.209

Conditions in the pre-release detention facilities located in Western Greece were inadequate, including – among others – serious overcrowding, a lack of natural light, substandard hygiene conditions, and limits on time detainees can spend outdoors.210 The Bulgarian Ombudsperson211 noted unsatisfactory detention conditions in the country’s two pre-release facilities. However, according to the Ministry of Interior, authorities were improving living conditions in these facilities.212

5. Immigration detention

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196 Reception Conditions Directive, Art. 16 (1), (2); Return Directive, Art. 16 (1).
197 Bulgaria, Bulgarian Ombudsman, September 2017; FRA, Monthly migration report, September 2017.
200 Germany, German Lawyers Association (Deutscher Anwaltsverein), Stellungnahmen SN 55/17: Reif Abschiebungshaft/Ausreisegezwang in Sachsen, 1 November 2017; FRA, Monthly migration report, November 2017.
206 FRA, Monthly migration report, January 2017, Spain, Juzgado de instrucción No una de Algeciras (Cádiz), Expediente de control de estancia en cie No 242/2016, 12 December 2016.
208 Denmark, Foreningen af Udlændingeretadvokater, FAU vil have forbedret forholdene på Kærshovedgård, FRA, Monthly migration report, August 2017.
209 Germany, German Lawyers Association (Deutscher Anwaltsverein), Stellungnahmen SN 55/17: Reif Abschiebungshaft/Ausreisegezwang in Sachsen, 1 November 2017; FRA, Monthly migration report, November 2017.
210 Greece, Council of Europe, Report to the Greek Government on the visits to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), September 2017, NGO Greek Council for Refugees, The Greek Council for Refugees identifies adverse detention conditions in Western Greece (To ΕΠΙ διαπιστώνει δυσμενείς συνθήκες κράτησης στη Δυτική Ελλάδα), press release, 31 October 2017; FRA, Monthly migration report, November 2017.
Inhumane treatment by the authorities was reported in some detention centres in Hungary, Italy and Spain. In the Nyírbátor asylum detention facility, Hungary, NGOs reported in 2016 that asylum seekers were handcuffed and taken to medical appointments on a leash. Detainees in Nyírbátor reported humiliating treatment and occasional physical violence by armed security guards. In Italy, the Ordinary Court of Bari (Apulia) ordered the state to pay €30,000 in compensation for the inhumane and degrading treatment of migrants in the former detention centre in Bari. The supervisory judge of the CIE in Madrid, Spain, confirmed several complaints about inhumane treatment, including verbal abuse, humiliation, harassment, gross assaults, and solitary confinement for minor offences.

In the same EU Member States, detainees in certain detention centres protested against the conditions and lack of procedural safeguards.

Detention of vulnerable persons

Under EU law, Articles 15 to 17 of the Return Directive regulate the detention of migrants in an irregular situation pending removal. Articles 8 to 11 of the Reception Conditions Directive govern the detention of applicants for international protection. These instruments emphasise 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. The stringent requirements flowing from the Charter and from Articles 3 (prohibition of torture) and 5 (right to liberty and security) of the ECHR mean that deprivation of liberty will only be in line with EU law in exceptional cases.

EU Member States efforts to speed up asylum processing and make returns more effective may prompt an increased use of immigration detention, possibly also affecting children. There exist serious risks of violating children’s right to liberty and security if the strict safeguards protecting children from arbitrary detention are disregarded. According to FRA research in 2016, high numbers of children were detained in Bulgaria, Greece, Hungary, Poland and Slovakia.

Certain EU Member States detained children and/or other vulnerable persons, such as victims of trafficking or violence. Sometimes this occurred as a result of deficient identification mechanisms. For instance, according to various sources, victims of violence were regularly detained in Poland due to inadequate identification procedures, although in breach of Polish law. In Spain, trafficking victims and children were often detained, especially when arriving by sea. In most cases, the authorities did not identify these migrants as vulnerable.

Detention of children, often under poor conditions, was reported in France, where children were placed in pre-removal detention on a regular basis without individual assessments.

219 Hungary, NGOs, May 2017; FRA, Monthly migration report; May 2017.
226 Article 28 of the Dublin Regulation also envisages the detention in the context of a transfer between Member States.
229 Poland, UNHCR, the Ombudsperson and a number of NGOs, December 2017, Act on foreigners (Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach), 12 December 2013; FRA, Monthly migration report, December 2017.
As reported by several NGOs, regional courts in **Poland** tended not to give a primary consideration to the best interests of the child when deciding upon children’s placement in or prolongation of immigration detention. In **Sweden**, legislative changes extended the possibilities for detention of children. To address past shortcomings, legislative amendments in **Slovakia** provided for access to mental health and social services for families with children and established the right of children to receive meals five times a day and access outdoor space three times a day.

**FRA ACTIVITY**

**Avoiding unlawful detention of children**

In a report on immigration detention of children, FRA outlined available safeguards against unlawful and arbitrary detention of children. It also identified good practices in the EU Member States.

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

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Conclusion

Two years after FRA began regularly reporting on fundamental rights issues relating to migration, key concerns persist. This report covers the five areas where challenges remain across several EU Member States: access to territory, reception conditions, asylum procedures, unaccompanied children, and immigration detention. Concerted efforts by all actors at the European as well as national levels are necessary to address remaining protection gaps.

In addition, based on their research over the past two years, members of FRA’s contracted research network, FRANET, identified up to three of the most persistent fundamental rights concerns in their countries. These issues – outlined per Member State in the following table – should be tackled through immediate action to ensure that responses to asylum seekers and migrants are in line with the law and are upheld in practice. This is not a comprehensive list, but serves to highlight particular issues that remain persistent in the covered EU Member States. Certain issues may apply across Member States, while others are only an issue in the Member State in question. If a particular issue is not listed for an EU Member State in the table, this does not mean that the problem does not exist, but rather only that it does not rank among the top three issues.
### Persistent key fundamental rights concerns

<table>
<thead>
<tr>
<th>EU Member State</th>
<th>AT</th>
<th>BG</th>
<th>DE</th>
<th>DK</th>
<th>EL</th>
<th>ES</th>
<th>FI</th>
<th>FR</th>
<th>HU</th>
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<th>NL</th>
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| Persistent key fundamental rights concerns | • Three-year waiting period for beneficiaries of subsidiary protection before being allowed to ask for family reunification.  
• Overworked/overburdened guardians and resources for an unaccompanied child above the age of 14 being lower than for Austrian children in out-of-home care.  
• Limited availability of interpretation services in health care and insufficient offer for psychological treatment for traumatised persons. | • Difficulties with the integration of persons who have been granted international protection.  
• Inadequate representation of and support for unaccompanied children (could be addressed as a result of recent amendments to law and/or policy at the national level).  
• Insufficient use of alternatives to detention of migrants in an irregular situation in practice (could be addressed as a result of recent amendments to law and/or policy at the national level). | • Restricted access to medical care for asylum seekers in reception centres and in remote areas.  
• Practical and legal barriers to family reunification.  
• No standardised procedures for the recognition of specific needs of vulnerable applicants for asylum. | • Delays in the asylum procedure and family reunification transfers from Greece to other EU Member States under the Dublin Regulation.  
• Overcrowding and living conditions in the hotspots.  
• Push-backs at the Greek-Turkish border. | • Difficulties in accessing the asylum procedure for those arriving by sea.  
• Long waiting periods at Barajas Airport’s (Madrid) asylum room.  
• Situation of unaccompanied children in Spain in general, and in particular in the Andalusia Autonomous Community and the autonomous city of Melilla. | • Significant health risks of asylum seekers in informal camps.  
• Migrants at the Italian-French border being returned to Italy without the opportunity to apply for protection.  
• Police harassment. | • High occurrence of hate speech on the internet.  
• Asylum seekers’ inadequate access to mental health care and services.  
• Restricted access to and poor quality of legal aid and other support services for asylum seekers. | • Activity of human smugglers.  
• Growing xenophobic attitude of local communities.  
• Deprivation of liberty in the transit zones. | • Overcrowded and poor reception conditions.  
• Border management and fundamental rights: role of NGO rescue vessels, implementation of the MoU with Libya.  
• Hate crime occurrence. | • Doubts about credibility faced by LGBTI-refugees during their asylum procedures.  
• Returns to Afghanistan.  
• Difficulties in children’s amnesty procedures (so-called ‘Kinderpardon’). | • Lack of access to the asylum procedure at Polish border crossings.  
• Detention of victims of violence.  
• Lack of systematic legal assistance to asylum seekers in detention as well as open centres. | • Long asylum procedures.  
• Act on temporary restrictions’ impact on the possibility to obtain a residence permit.  
• Problems related to the accuracy of age assessment methods/the burden of proof. | • Lack of adequate legal aid provided to migrants.  
• Quality of interpretation.  
• Detention of families with children. |
Further information

After two years of reporting, FRA will continue to report on migration-related fundamental rights concerns in selected EU Member States.

The drop in new arrivals has not led to a decrease in fundamental rights concerns, but identified problems appear to persist, often remaining the same throughout several months. FRA will therefore issue its ‘highlight’ reports on a bi-monthly basis as of March 2018.

In addition, Croatia will replace Slovakia as of 2018. The number of new arrivals in Slovakia has been consistently low in recent months. Meanwhile, the fundamental rights situation of migrants in Croatia, particularly at the border with Serbia, has continuously caused concern.


For all previous monthly and weekly reports, see: http://fra.europa.eu/en/theme/asylum-migration-borders/overviews

Disclaimer:

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