

Submission to the European Commission in the context of the preparation of the first annual Rule of Law Report, by the European Union Agency for Fundamental Rights

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1. Background

On 20 April 2020 Commissioner Reynders asked the European Union Agency for Fundamental Rights (FRA) for a “contribution covering the relevant information present in EFRIS for each Member State, as well as any existing data or information on rule of law relevant matters such as data from your recent fundamental rights survey”.¹ This submission aims to inform the first annual rule of law report of the European Commission by using information available from FRA at the end of April 2020 and relevant for the reporting period 2019. The Agency stands ready to provide more comprehensive data for future annual reports, based on data gaps identified in this first exercise.

FRA’s overall objective of its mandate is to “*provide the relevant institutions, bodies, offices and agencies*” of the EU as well as the Member when implementing Union law with “*assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights.*” (Art. 2 of the Agency’s [founding regulation](#) (Council Regulation (EC) No. 168/2007). Thus, the Agency is mandated to deal with all matters related to fundamental rights as long as they fall within the scope of EU law. One of the Agency’s primary tasks is to “*collect, record, analyse and disseminate relevant, objective, reliable and comparable information and data*” and “*to develop methods and standards to improve the comparability, and reliability of data at European level, in cooperation with the Commission and the Member States*” (Art. 4 (1) a) and b) of the founding regulation).

Fundamental rights and the rule of law are closely interlinked.² Under the rule of law “*all public powers always act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts.*”³ For instance, the “*transparent, accountable, democratic and pluralistic process for enacting laws*” is amongst others based on the right to good administration (Article 41 of the Charter of Fundamental Rights of the EU and the related general principles of law) as is the “prohibiting the arbitrary exercise of executive power”. “Legal certainty” and the “separation of powers” are also closely linked to fundamental rights entitlements as Article 47 of the Charter and the rich case law of the European Court of Human Rights

¹ Letter Ares S(2020)2388760.

² Title VI of the Charter (Articles 47–50) enshrine the fundamental rights guarantees for a fair justice system.

³ European Commission (2019), Further strengthening the Rule of Law within the Union State of play and possible next steps, COM(2019) 163 final, p. 1.

shows.⁴ “Equality before the law” is in itself a fundamental right (equality and non-discrimination, as laid down in Articles 20 and 21 of the Charter).

2. Scope and structure

The submission builds on recent and upcoming FRA reports and focuses on those that provide comparable data for all Member States for the reporting period 2019. It is structured according to the European Commission’s questionnaire used for the Rule of Law Report data collection. Therefore the contribution covers the four areas of judicial systems, anti-corruption framework, media pluralism and other constitutional issues. The submission includes extracts from FRA reports as a principle, with some explanatory text added where needed.

3. FRA sources and reports used for this submission

a. The Fundamental Rights Survey

FRA’s Fundamental Rights Survey, conducted in 2019 and with results published in June 2020, provides for the first time a comprehensive set of comparable data on people’s experiences and opinions concerning their fundamental rights – including aspects that are of direct relevance to the rule of law. The survey focuses on everyday situations in areas including data protection, equal treatment, access to justice, consumer rights, crime victimisation, good administration and the importance of protecting rights. Specific results from the survey that are of direct relevance to the Commission’s questionnaire on rule of law are included in this submission, with further results available upon request.

The survey interviewed almost 35,000 people aged 16 years and older in all EU Member States, North Macedonia (the only non-EU country with an observer status to FRA at the time when the survey was designed) and the United Kingdom (an EU Member State at the time of data collection). The survey design involves a combination of face-to-face and online data collection, as appropriate in each country, to reach a representative sample of the total population.

The survey was designed and tested by FRA’s team of survey experts and statisticians, with full-scale data collection carried out by Ipsos MORI – overseen by FRA. Data collection was carried out in cooperation with Statistics Netherlands (CBS), Statistics Austria and the Centre des technologies de l’information de l’État (CTIE) in Luxembourg.

⁴ On legal clarity, foreseeability linked to the rule of law and fundamental rights, see e.g. ECtHR, *Brumarescu v. Romania*, No. 28342/95, 28 October 1999; on judicial independence, see e.g. ECtHR, *Findlay v. the United Kingdom*, No. 24810/06, 22 December 2009 and CJEU, C-103/97, *Köllensperger*, 4 February 1999.

Further analysis of the survey results can be provided to the European Commission on request, including results disaggregated by gender, age, level of education, and other key socio-demographic characteristics, both at the EU level and by Member State. Disaggregated results can help identify groups which face specific challenges in terms of their rights, or whose views on issues relevant to the consultation, such as views on independence of judges to do their work free from government influence, call for particular attention.

FRA has undertaken several surveys on specific groups in the population with respect to their knowledge about and experience of specific rights in practice⁵, but this is the first survey carried out by the Agency on the general population of the EU with respect to how they understand and experience fundamental rights.

b. [FRA reports on civil society](#)

A FRA report on [Challenges facing civil society organisations working on human rights in the EU](#) in 2018 identified key challenges for civil society, in particular through government regulatory work, the availability of funding, the possibilities to contribute to law and policy making, and a safe space for civil society to operate – free from harassment and negative discourses undermining the work of civil society. On the basis of these challenges, the Agency runs an annual consultation through its Fundamental Rights Platform – currently including some 700 registered civil society organisations with activities in the EU Member States. These organisations' experiences and challenges faced in 2019 is exemplified in this submission, albeit not broken down by EU Member State since this was not possible for statistical reasons.

c. [Forthcoming report on National Human Rights Institutions](#)

FRA's forthcoming (September 2020) report on NHRIs has comparative overviews on Paris Principles-compliant institutions – signifying independence and effectiveness. The report includes details on dimensions such as mandates, powers, and threats received. Many of the NHRIs are also Ombuds institutions and/or equality bodies. The report covers all 27 EU Member States (as well as North Macedonia, Serbia and the United Kingdom).

⁵ To date, FRA's survey research has concentrated on specific groups in society that are particularly vulnerable to rights abuses, and for which there is limited data – including ethnic minority and immigrant groups, the Roma, the EU's Jewish population, and lesbian, gay, bisexual, trans and intersex (LGBTI) people.

d. EFRIS – the European Union Fundamental Rights Information System

In line with the European Commission’s “blueprint for action”, this submission also builds on the European Union Fundamental Rights Information System (EFRIS).⁶ EFRIS reduces the complexity of the various European and international human rights monitoring mechanisms and points to data and information of direct relevance to the European Commission’s data collection on the rule of law. Additional tailor-made analysis has been undertaken by FRA to add detail. In the submission, the UN Human Rights logo indicates extracts of UN data from EFRIS.⁷

EFRIS based data has been limited to 2019 for the Universal Periodic Review (indicating whether the state has accepted the recommendation or only noted it) and the thematic Treaty Bodies which cover all countries on a regular basis. For the Treaty Bodies and Special Procedures, included here are the ones relevant to the four areas of the European Commission’s rule

United Nations human rights monitoring mechanisms

Each of the UN human rights treaties have a monitoring committee, so called Treaty Bodies, consisting of independent experts. The treaty bodies scrutinise the compliance with the treaties of all state parties at regular intervals of usually five years. This submission includes the recommendations provided to EU Member States assessed during 2019.

The UN has 44 thematic Special Procedures, most of which are so called Special Rapporteurs (others are, for instance, working groups), who are independent experts. One of the ways Special Procedures conduct their work is through country visits. This submission includes the Special Procedures relevant to the rule of law and their recommendations affecting the rule of law. As country visits are relatively rare, the submission covers a longer timeframe for this mechanism (2016–2019).

The UN Human Rights Council is an inter-governmental body consisting of 47 states. The Council organises a peer review of all UN member states at regular intervals of about five years. Any UN member state can make recommendations to the state under review. This submission includes the recommendations received by the EU Member States reviewed during 2019, indicating whether the state has accepted the recommendation or merely noted it.

⁶ European Commission (2019), Strengthening the rule of law within the Union A blueprint for action, COM/2019/343 final, at p. 10.

⁷ FRA also have related sources of information that could be of use for future rule of law reports, including the database on detention, which could also be adjusted to accommodate needs of the Commission.

of law report. In 2019, the relevant Treaty Bodies that covered an EU Member State were CEDAW (Committee on the Elimination of Discrimination Against Women), CRC (Committee on the Rights of the Child), the CCPR (Human Rights Committee – the international Covenant on Civil and Political Rights) and CESCR (Committee on Economic, Social and Cultural Rights).⁸

The Special Procedures only visit a few countries globally every year, and hence rarely EU Member States. Given the European Commission’s explicit request to draw on information from EFRIS and given that this is the first year of the rule of law report, FRA has included coverage from 2016–2019 to show the potential of Special Rapporteurs.

The relevant Special Procedures in these years were the Special Rapporteurs dealing with human rights defenders, independence of judges and lawyers, and countering terrorism.⁹ Table 1 provides an overview of visits to EU Member States by the Special Procedures most relevant to the rule of law.

⁸ In addition to the countries covered by the CESCR, during 2019 Denmark and Estonia were also scrutinized but no recommendations were made of relevance to the rule of law within the EU.

⁹ In 2019 the Special Rapporteur on racism also conducted a country visit to the Netherlands and the Special Rapporteur on arbitrary detention visited Greece but at the time of submission in early May 2020, the reports were not yet available. No visits were conducted during the time period by the Working Group on Enforced or Involuntary Disappearances or the Working Group on Arbitrary Detention. The Special Rapporteurs on extrajudicial, summary or arbitrary executions, on the promotion and protection of the right to freedom of opinion and expression, and on the rights to freedom of peaceful assembly and of association, have also not visited EU Member States during the period.

Table 1: UN Special Procedures most relevant to the rule of law, visits to EU Member States

	Special Rapporteur on the independence of judges and lawyers	Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism	Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression	Special Rapporteur on the rights to freedom of peaceful assembly and of association	Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material	Special Rapporteur on the situation of human rights defenders
Austria						
Belgium	1997				1998	
Bulgaria	2011					
Croatia						
Cyprus						
Czech Republic					1996	
Denmark						
Estonia					2008	
Finland						
France					2011	
Germany						
Greece					2005	
Hungary			1998			2016
Ireland			1999			2012
Italy	2002		2013			
Latvia					2008	
Lithuania						
Malta						
Netherlands					1998	
Poland	2017		1997			
Portugal	2015					
Romania	2011				2004	
Slovakia	2000					
Slovenia						
Spain		2008				
Sweden						

Source: FRA 2020

The following three tables explain the overall scope of EFRIS. Table 2 provides an overview of relevant United Nations and Council of Europe mechanisms, organised by the main areas of the European Commission’s data collection on the rule of law.

Table 2: Examples of relevant UN and Council of Europe human rights mechanisms

	United Nations	Council of Europe
I. Judicial System		
A. Independence	Human Rights Committee, Special Rapporteur on judicial independence,	European Court of Human Rights
B. Quality of justice	Treaty Bodies (CERD, CEDAW, etc) Special procedures (disability, women, migrants, minorities, older people, extreme poverty, etc)	
C. Efficiency of justice systems	CCPR, CERD, CRC	Execution Department
II. Anti-corruption framework		
A. The institutional framework capacity to fight against corruption	Human Rights Committee	GRECO
B. Prevention	Human Rights Committee	GRECO
C. Repressive measures	Human Rights Committee	GRECO
III. Media pluralism		
A. Media regulatory authorities and bodies (AMS Directive)		
B. Transparency of media ownership and government interference		
C. Framework for journalists’ protection	Special Rapporteur on Human Rights Defenders	
IV. Other institutional issues related to checks and balances		
A. The process for preparing and enacting laws		
B. Independent authorities	Working Group on business and human rights; UPR;	European Court of Human Rights,
C. Accessibility and judicial review of administrative decisions		
D. The enabling framework for civil society	Special Rapporteur on Human Rights Defenders; UPR	

Source: FRA 2020

Table 3 provides an overview of relevant monitoring reports (Concluding Observations) by UN Treaty Bodies in the last three years. Some 40 reports have been produced during this period, which could be analysed to provide input to the different areas covered by the European Commission’s rule of law report.

Table 3: Latest report (last three years) with Concluding Observations by UN Treaty Body of EU Member States

	Committee against Torture	Committee on Economic, Social and Cultural Rights	Committee on Enforced Disappearances	Committee on the Elimination of Discrimination against Women	Committee on the Elimination of Racial Discrimination	Committee on the Rights of Persons with Disabilities	Committee on the Rights of the Child	Human Rights Committee
Austria			2018	2019				
Belgium							2019	2019
Bulgaria	2017	2019			2017			2018
Cyprus					2017	2017		
Czech Republic								2019
Denmark		2019						
Estonia		2019						2019
Finland					2017			
Germany		2018						
Hungary								2018
Ireland	2017			2017				
Italy	2017			2017			2019	2017
Lithuania			2017	2019				2018
Luxembourg				2018		2017		
Malta							2019	
Netherlands		2017						2019
Portugal			2018				2019	
Romania				2017			2017	
Slovakia		2019			2018			
Spain		2018					2018	

Source: [EFRIS](#)

Table 4 provides an overview of the main issues identified by the UN Treaty Body most relevant to the rule of law report's areas. The table shows the Member States that have had Concluding Observations adopted by the Human Rights Committee in the last three years. The list of issues has been reduced to the most relevant ones in a rule of law context.

Table 4: Issues of concerns related to the rule of law, raised by the UN Human Rights Committee in relation to the EU Members States reviewed in the last three years (orange highlights having an issue)

	Administration of justice & fair trial	Administration of justice	Arbitrary arrest and detention	Children: Juvenile justice	Civil & political rights general measures of implementation	Conditions of detention	Freedom of opinion and expression	Good governance	Legal, institutional and policy framework	Right to an effective remedy	Right to participation in public affairs and right to vote	Right to peaceful assembly	Support to victims and witnesses
Belgium													
Bulgaria													
Czech Republic													
Estonia													
Hungary													
Italy													
Lithuania													

Source: EFRIS

The countries and issues indicated in Table 3 could be analysed in detail, based on the text of the actual Concluding Observations. This example with the UN Treaty Bodies, and the Human Rights Committee in particular, could be applied also for other UN and Council of Europe mechanisms. In FRA's current submission, only the Concluding Observations from 2019 have been included in the detailed analysis.

4. FRA work and sources for future rule of law reports beyond this submission

a. FRA's data and information collection in all EU Member States

FRA runs a rapidly accessible multi-disciplinary expert network in all EU Member States. It provides EU wide information and comparative analysis of aspects such as access to justice, equality, discrimination and migration. FRA reports are commonly based on country reports, including good practices.

FRA regularly tracks issues related to access to justice in a chapter of the Agency's annual [Fundamental Rights Report](#). Given its yearly reporting cycle, this data collection could be expanded further and leveraged by the Commission to supply data on the Member States in relation to specific areas. In addition, the Agency has produced specific reports covering access to justice that touch on rule of law questions (such as in relation to [detention](#), the [European Arrest Warrant](#) and [victims of crime](#)) and has also produced a [handbook](#) on access to justice, developed together with the European Court of Human Rights. All of this supports the area of justice and mutual trust.

Moreover, the agency runs various networks bringing together national stakeholders relevant for the rule of law. The agency uses these networks

also to measure the 'temperature on the ground' and examine the situation of civil society and national human rights bodies, thereby also examining the situation of human rights defenders. FRA also runs qualitative periodic consultations of FRA's Fundamental Rights Platform (FRP) for civil society organisations but also of, for instance, National Human Rights Institutions. Such consultations can also identify good practice or other positive aspects.

FRA has long standing experience in socio-legal research matching law and practice, including by capturing the voice of relevant practitioners such as judges and lawyers as well as rights holders. For instance, the recent FRA reports on victims of crime in the 28 EU Member States contextualised the desk research with 231 in depth interviews in selected Member States.¹⁰

b. Qualitative field work research – FRA's work in the area of justice

FRA has long standing experience in undertaking independent, reliable and comparable socio legal research matching law and practice, in particular by capturing the voice of all relevant actors in the field, such as legal practitioners (judges, lawyers, prosecutors), law enforcement authorities, monitoring bodies, civil society actors, media as well as rights holders. This is something that is unique to FRA and has no parallel at any other body/institution at EU or Council of Europe level. The relevant qualitative research is usually done only in selected (rather than all) EU Member States due to FRA's budget availability. Provided sufficient (human and financial) resources become available, the qualitative research can easily be expanded to cover all EU Member States.

For example, with respect to FRA's data available for this year's rule of law report, a reference can be made to FRA's 2019 report [Rights in practice: access to a lawyer and procedural rights in criminal and European arrest warrant proceedings](#). The report looks at how these key criminal procedural rights are applied in practice. It is based on interviews with over 250 respondents in eight Member States, including judges, prosecutors, police officers, lawyers, staff of bodies that monitor prisons, as well as defendants. In highlighting diverse challenges, the report aims to spur efforts to ensure that criminal procedural rights are applied both effectively and consistently throughout the EU.

Another reference can be made to FRA's data on the situation of the rights of adult victims of violence in criminal justice systems. In 2019, [FRA published four reports](#) highlighting the failings in the justice system when it comes to rights of victims of violent crime – covering Austria, France, Germany, the Netherlands, Poland, Portugal and the United Kingdom. The

¹⁰ 148 expert interviews with practitioners; 81 interviews with adult victims of violent crimes, including 52 female victims; two interviews with mothers of victims killed in terrorist attacks.

findings of this research relate to the procedural and institutional aspects of the criminal justice system and victims of violent crime. The fieldwork research encompassed 231 semi-structured in-depth interviews (with practitioners, active in criminal proceedings – staff members of victim support organisations, lawyers advising victims, police, public prosecutors and criminal judges, as well as with adult victims of violent crimes,).

Finally, FRA's forthcoming report from the ongoing [fieldwork research](#) on concrete use cases of artificial intelligence in five EU Member States (Estonia, Finland, France, Spain and the Netherlands) will cover use cases from different areas, including public administration, law enforcement, and the justice field. The final study will be officially presented on 14 December 2020 at a launch event co-organised with the German Presidency of the Council of the EU; however, the data could be made available to the Commission earlier.

c. FRA's work with civil society

The annual consultation of civil society through FRA's Fundamental Rights Platform could be used to feed into future rule of law reports. However, the current data cannot be broken down by Member State as a reflection of the response rates per Member State, and the selection bias with respect to the platform organisations, which requires adjustment to provide representative answers. Still the data, at the EU level, would give a snapshot of the experiences of the human rights organisations who responded to the questionnaire and show developments across the EU over time.

FRA will conduct the next consultation with the Platform in late 2020, with results available in May 2021 – so the Agency could seek to align the consultation closer with the European Commission's rule of law framework. It could also explore how to enhance the data collection process to make the results applicable at Member State level for future rule of law reporting cycles. FRA's draft work programme for 2021 also includes a project on civic space using the Agency's research network in the Member States, which would be useful for the rule of law report.

5. The 2019 submission

Only the numbered questions of the European Commission's stakeholder consultation have been included where there is data or information included.

I. Judicial System

A. Independence

1. Appointment and selection of judges and prosecutors



United Nations UPR (2019) – **Slovakia** accepted four recommendations to improve the justice system by ensuring ethical standards, reform judicial selection and appointment and improve judicial accountability. [the recommendation also covered efficiency of the justice system]



United Nations CCPR (2019) – **the Czech Republic** was recommended to eradicate all forms of undue interference with the judiciary by the legislative and executive branches and safeguarding, in law and in practice, the full independence and impartiality of judges and the independence and effective autonomy of the Supreme Public Prosecutor's Office, by, inter alia, ensuring the compliance of the procedures for the selection, appointment, promotion, transfer and removal of judges and prosecutors.



United Nations Special Rapporteur on human rights defenders (2016) – **Hungary** was recommended to strengthen the judiciary by ensuring it can operate independently and effectively, and allocate budgetary resources to ensure independent legal assistance to human rights defenders. Hungary was also recommended to establish an independent body to safeguard the independence of the judiciary and supervise the appointment, promotion and regulation of the profession in accordance with international human rights standards.



United Nations Special Rapporteur on human rights defenders (2017) – **Poland** was recommended to:

- reconsider the ongoing reform of the judicial system. Any reform of the judiciary should aim at strengthening the independence and impartiality of the judiciary, not at bringing the judicial system under the control of the executive and legislative branches. The reform

should be the result of an open, fair and transparent process, involving not only the parliamentary majority and the opposition, but also the judiciary itself, the Office of the Ombudsman and civil society actors;

- the reform of the judiciary should be carried out in accordance with existing norms and standards relating to the independence of the judiciary, the separation of powers and the rule of law, as enshrined in the Polish Constitution and in a vast array of international and regional treaties to which Poland is a party. The recommendations, made by a number of international and regional bodies, such as the Human Rights Committee, the Venice Commission, OSCE/ODIHR and the European Commission, should be taken into account in the development and implementation of legislative and other measures to strengthen the effectiveness and impartiality of the judiciary;
- the way out of this critical juncture and of the current severe threat to the independence of the judiciary is to restore the primacy of international standards on independence of the judiciary and to promote a process of democratic and transparent dialogue among all the parties concerned based on those standards and on the need to reaffirm checks and balances;
- the Special Rapporteur deplores the ongoing public campaign against the judiciary that has accompanied the implementation of the proposed judicial reform. The negative and unfair rhetoric against judges that has been generated by the Government hampers public trust and confidence in the judiciary as an institution, and undermines the capacity of the judiciary to decide the matters before it impartially and in accordance with the law. He urges members of the executive and legislative branches to refrain from any negative rhetoric against judges or the judiciary as a whole. Any attack on the judiciary as an institution constitutes a flagrant breach of the principle of judicial independence and is not acceptable in a democratic State governed by the rule of law;
- all political forces should work together to restore the independence and legitimacy of the Constitutional Tribunal as guarantor of the Polish Constitution. Loyal cooperation among the various State institutions is a necessary precondition for achieving a durable solution to the constitutional crisis. Any political solution should build upon previous rulings of the Constitutional Tribunal, in particular those of 3 and 9 December 2015;
- Polish authorities should refrain from any interference with the work of the Constitutional Tribunal. Decisions of the Tribunal are binding under Polish constitutional law, and the national authorities must

respect and abide by them. Under no circumstances can the publication of judgments of the Tribunal be dependent on a decision of the executive or legislative branch. In this regard, the Special Rapporteur calls on the national authorities to publish with no additional delay, and implement fully, the judgments issued by the Tribunal on 9 March 2016, 11 August 2016 and 7 November 2016;

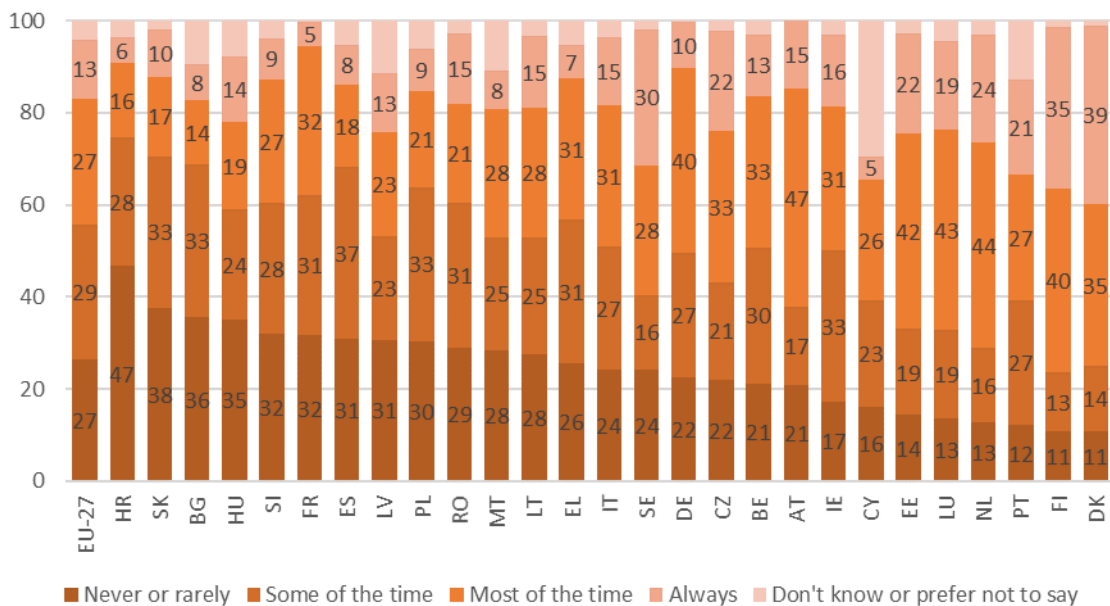
- any future reform of the composition and functioning of the Constitutional Tribunal should be carried out in accordance with the recommendations outlined in paragraphs 76 and 77;
- the Act on Common Courts Organisation should be amended to bring it into line with the Constitution and international standards relating to the independence of the judiciary and the separation of powers. In particular, the Special Rapporteur recommends: removing the discretionary power of the Ministry of Justice to appoint and dismiss court presidents; amending the new retirement regime applicable to common court judges so as to apply it only to judges who have taken up their functions following the entry into force of the law; removing the discretionary power of the Minister of Justice to prolong, on a case by case basis, the mandates of individual judges until the age of 70;
- the Act on the Supreme Court should be amended to bring it into line with the Constitution and international standards relating to the independence of the judiciary and the separation of powers;
- amend the new retirement regime applicable to common court judges so as to apply it only to judges who have taken up their functions following the entry into force of the law;
- remove the discretionary power of the President of the Republic to decide, on a case by case basis, the prolongation of the mandate of Supreme Court judges;
- remove the additional discretionary powers conferred on the President of the Republic vis à vis the Supreme Court and its judges, particularly in relation to his/her power to choose the First President of the Court among five candidates elected by the General Assembly of the Court, define the internal structure of the Supreme Court and adopt its rules of procedures;
- remove the provisions concerning the automatic retirement of all judges of the Military Chamber and providing for the reassignment of the judges currently sitting in the Chamber, with their consent, to another chamber of the Supreme Court;
- eliminate the provisions concerning the participation of lay judges in proceedings before the Supreme Court concerning extraordinary appeals and disciplinary cases;

- review the vast *ratione materiae* jurisdiction of the Extraordinary Chamber and the Disciplinary Chamber in line with the recommendations of the European Commission, the Venice Commission and OSCE/ODIHR;
- the Act on the National Council of the Judiciary be amended to bring it into line with the Constitution and international standards relating to the independence of the judiciary and the separation of powers;
- remove the provisions concerning the new appointment procedure for the judicial members of the National Council of the Judiciary and ensuring that the 15 judicial members of the Council are elected by their peers;
- remove the provisions concerning the early termination of the mandates of all the current judicial members of the National Council of the Judiciary.

10. Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

FRA’s Fundamental Rights Survey asked the following question on judicial independence: ‘Do you think that judges in [your country] can do their job free from government influence?’ Figure 1 provides the responses by EU Member State (answer categories are listed below the figure).

Figure 1: Question: ‘Do you think judges in [your country] can do their job free from government influence?’, by country (%)^{a,b}



Notes: ^a Out of all respondents in EU-27 who were asked to complete the section ‘Rights awareness & responsibilities’ of the survey (n = 24,352); weighted results.

^b The question asked in the survey was ‘Do you think judges in [your country] can do their job free from government influence?’ The answer categories used in the survey were ‘Never’, ‘Rarely’, ‘Some of the time’, ‘Most of the time’, ‘Always’, ‘Prefer not to say’ and ‘Don’t know’. In the figure above, some of the original answer categories have been combined, as indicated in the category labels.

Source: FRA, Fundamental Rights Survey 2019. Data collection in cooperation with CBS (NL), CTIE (LU) and Statistics Austria (AT).



United Nations UPR (2019) – **Slovakia** accepted two recommendations received on improving public trust in the judicial system and ensure independence of the judiciary [the recommendations also covered anti-corruption and safety of journalists].

B. Quality of justice

12. Accessibility of courts (e.g. court fees, legal aid)



United Nations CEDAW (2019) – **Lithuania** was recommended to ensure full access to justice for disadvantaged or marginalized groups, such as women belonging to minority groups, migrant, rural and older women, women with disabilities, lesbian, bisexual and transgender women and intersex persons; Awareness raising among women of available remedies to claim violations of their rights under the Convention; Expansion of the scope of the Office of the Equal Opportunities Ombudsperson to facilitate access to justice for all women at the regional and local levels. There were no complaints in 2018 to the Office of the Equal Opportunities Ombudsperson from women or girls with disabilities, and low number of complaints of discrimination on the basis of sex or gender overall, due in part to the absence of regional and local branches of the Office.



United Nations CCPR (2019) – the **Netherlands** was recommended to review the ongoing reform measures in the legal aid system, with a view to ensuring that people, including the most vulnerable in all constituent countries, can benefit from the new system on an equal footing and to enhancing access to justice for all, including in the constituent countries.

15. Other – please specify

FRA’s Fundamental Rights Survey provides unique data on people’s experiences of crime victimisation and reporting to the police, as well as reasons for not reporting. The questions and the response categories are based on established crime victimisation surveys, which are used in a number of Member States as indicators to compare official data on crime

(which does not reflect the true extent of crime) with what people indicate they actually experience and do not report. FRA is a long-term member of Eurostat's expert group on crime data collection, and therefore applies established and robust approaches to data collection in this area.

For example, with respect to experiences of violence the following questions were asked:

- 'Sometimes people can do things that physically hurt you. For the next question please think about strangers as well as anyone you know, including acquaintances, colleagues, family members and relatives. In the past 5 years, how many times has somebody done each of the following things?
 - Slapped you, thrown something at you, pushed you or pulled your hair
 - Hit you with their fist or with something else that could hurt you
 - Kicked or dragged you, or beaten you up
 - Tried to suffocate or strangle you'

Answer categories used for the items above record both the prevalence and frequency of incidents.

- 'Did you or anyone else report this incident to the police? Answer categories: 'Yes, I reported the incident', 'Yes, somebody else reported the incident', 'No', 'Police were already aware about it so no need to report', 'Don't know', 'Prefer not to say'.
- 'Why was the incident not reported to the police?' Answer categories:
 - Not serious enough
 - Inconvenient / too much trouble to report
 - Police won't do anything about it
 - Don't trust the police
 - Reported to other authorities or services
 - Took care of it myself
 - Fear of reprisals
 - Other reasons
 - Prefer not to say

The survey collected the data concerning experiences and reporting to the police for the following crime types:

- Burglary
- Online banking or payment card fraud

- Consumer fraud (experience of being cheated or misled in terms of quantity, quality, pricing or delivery of goods, items, products or services purchased, in a shop or online)
- Harassment
- Physical violence (including incidents of sexual nature).

FRA can provide the Commission with results concerning the above at the Member State level upon request.

C. Efficiency of justice systems

16. Length of proceedings



United Nations UPR (2019) – **Slovakia** accepted four recommendations to improve the justice system by reducing backlog [the recommendation also covered appointment processes and accountability].

18. Other – please specify

FRA's ongoing qualitative fieldwork research on artificial intelligence (covering five EU Member States – **Estonia, Finland, France, the Netherlands, and Spain**) includes examples of where this is used in justice systems to improve efficiency. This includes, but is not limited to:

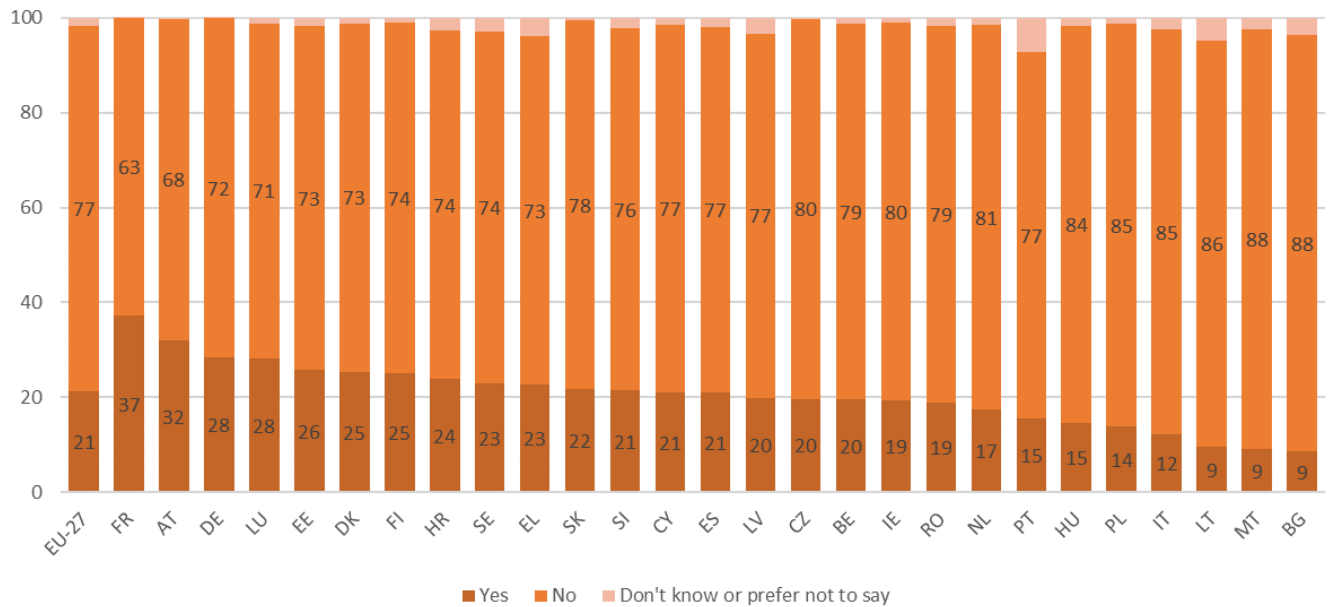
- transcription and anonymization of court decisions, as well as work on making orders of payments automatic in Estonia;
- facilitating jurisprudence search, automatic translation, terminology extraction and text simplification in Spain; and
- anonymization of court decisions in France.

Artificial intelligence is used, tested and explored in many other areas by public administration and private companies, including in the area of law enforcement, with varying levels of awareness about possible fundamental rights implications. FRA will exemplify and analyse these in its upcoming report on AI and fundamental rights. The lack of awareness and understanding of the use of AI tools can also hamper effective access to justice, for example when law enforcements uses facial recognition technology (see: FRA (2019), [Facial recognition technology: fundamental rights considerations in the context of law enforcement](#)).

FRA's Fundamental Rights Survey asked questions on problems faced with public administration or local authorities about taking long time to process matters. Figure 2 provides the responses by EU Member State (answer categories are listed below the figure). It is important to note that the results depend on people's expectations. Thus, the results show an

interplay between the actual time taken by public administration to deal with a request and people’s expectations.

Figure 2: Question: ‘In the past 5 years, have you had any problems with public administration/local authorities for the following reasons? B) Your matter took a long time to process’, by country (%)^{a,b}



Notes: ^a Out of all respondents in EU-27 who were asked to complete the section ‘Everyday life experiences’ of the survey (n = 26,493); weighted results.

^b The question asked in the survey was ‘In the past 5 years, have you had any problems with public administration/local authorities for the following reasons? B) Your matter took a long time to process’.

Source: FRA, Fundamental Rights Survey 2019. Data collection in cooperation with CBS (NL), CTIE (LU) and Statistics Austria (AT).



United Nations CEDAW (2019) – **Austria** received a recommendation to improve coordination of structures at all levels to ensure uniformity of results in the implementation of the Convention throughout the State party. Anti-discrimination legislation, currently scattered across numerous federal and provincial laws, and complex distribution of institutions at the federal and provincial levels, which may negatively affect victims’ ability to claim their rights and obtain a remedy, providing varying degrees of protection for different grounds of discrimination, which may result in confusion and legal uncertainty. Current anti-discrimination legal framework fails to afford equal protection against all forms of discrimination.



United Nations CCPR (2019) – **Belgium** was recommended to guarantee the right of victims to an effective remedy when there has been a violation of the Covenant [based on individual complaints].



United Nations CCPR (2019) – the **Czech Republic** was recommended to guarantee the right of victims to an effective remedy when there has been a violation of the Covenant [based on individual complaints].



United Nations CCPR (2019) – **Estonia** was recommended to guarantee the right of victims to an effective remedy when there has been a violation of the Covenant [based on individual complaints].



United Nations CCPR (2019) – the **Netherlands** was recommended to guarantee the right of victims to an effective remedy when there has been a violation of the Covenant [based on individual complaints].

II. Anti-corruption framework

A. The institutional framework capacity to fight against corruption

19. Authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Resources allocated to these (the human, financial, legal, and practical resources as relevant)



United Nations UPR (2019) – **Cyprus** accepted a recommendation received on the strengthening of its anti-corruption laws by adopting regulations and codes of conduct to govern lobbying and decision making processes.



United Nations UPR (2019) – **Slovakia** accepted two recommendations received on improving transparency and oversight to combat corruption, increase accountability and improve public trust in the judicial system; and to take all necessary steps to strengthen anti-corruption laws, ensure independence of the judiciary and protect the rights and safety of journalists.



United Nations UPR (2019) – **Slovakia** noted a recommendation it received on setting up an independent anti-corruption body



United Nations CRC (2019) – **Italy** was recommended to strengthen institutional capacities to effectively detect, investigate and prosecute corruption, and ensure, including through the eradication of corruption in public procurement processes and the overpricing of contracts for the provision of public goods and services, the full and efficient spending of funds allocated to all programmes supporting the realization of children’s rights at the national, regional and local levels.



United Nations CRC (2019) – **Malta** was recommended to improve audits to increase transparency and accountability with regard to public expenditure across all sectors, and strengthening institutional capacities to effectively detect, investigate and prosecute corruption.

B. Prevention

22. Measures in place to ensure Whistle blower protection and encourage reporting of corruption

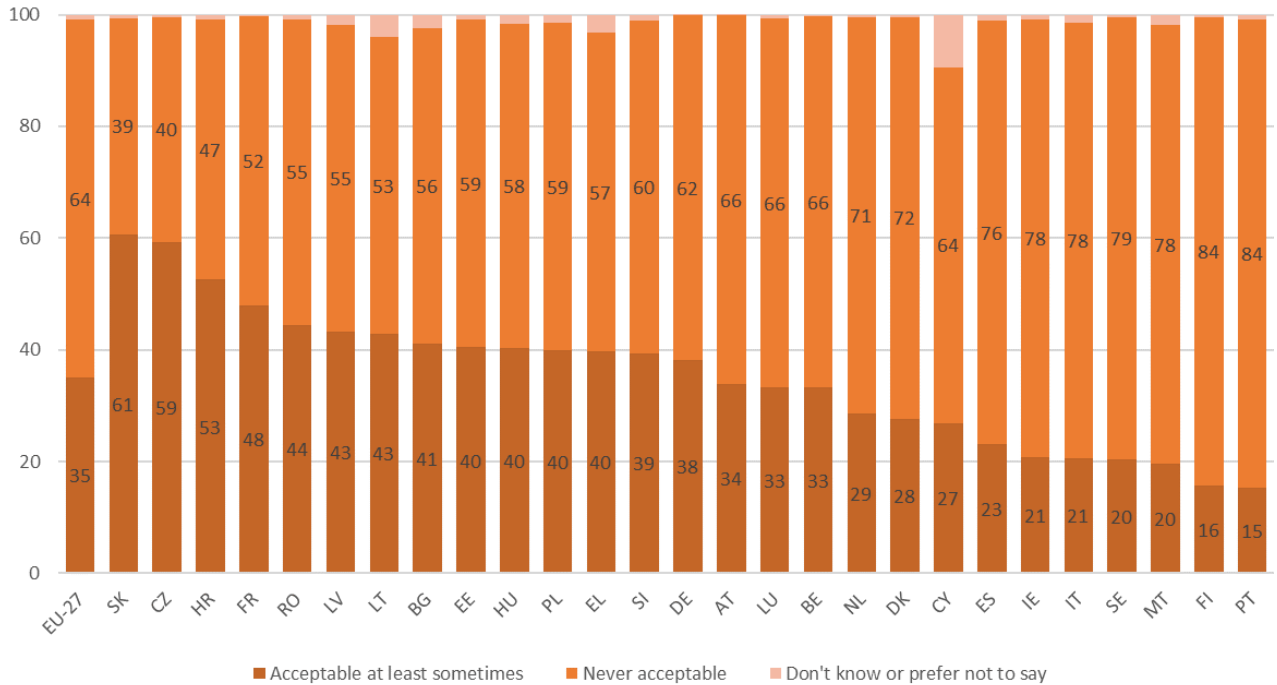


United Nations CESCR (2019) – **Bulgaria** was recommended to ensure the protection of whistle blowers and civil society activists working on anti-corruption, from persecution and violence.

24. Any other relevant measures to prevent corruption in public and private sector

FRA’s Fundamental Rights Survey asked questions related to corruption by public officials, segments of the population particularly vulnerable to corruption, and the type of public officials most commonly involved as well as data on people’s perceptions concerning situations where people might be asked to pay a bribe. The following figures (3 to 8) provide the responses by EU Member State.

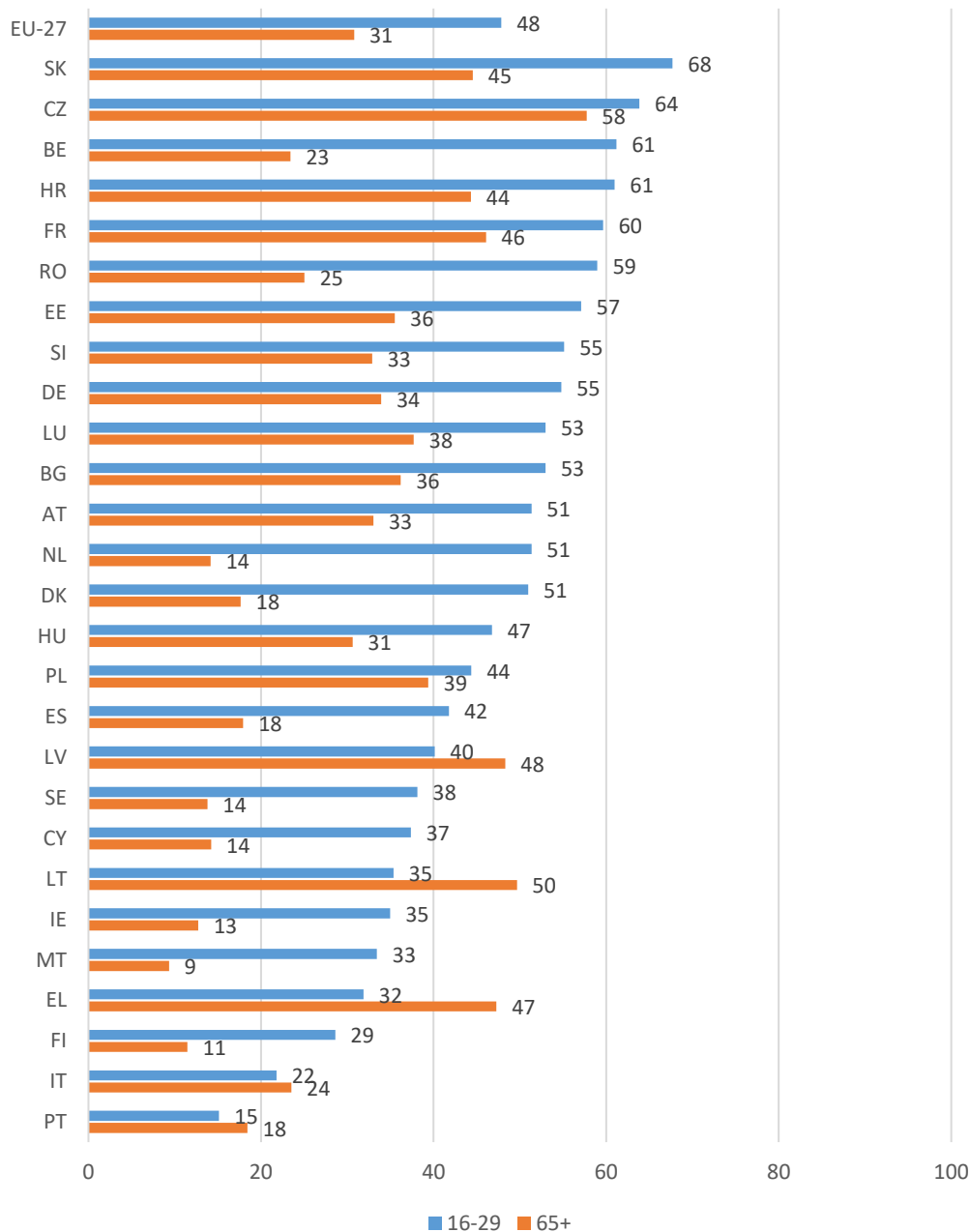
Figure 3: Question: 'If you needed something really urgently from a public official or a civil servant, to what extent do you think it is acceptable to do the following things? A) To give them a gift, B) To do a favour for them', by country (%)^{a,b}



Notes: ^a Out of all respondents in EU-27 (n = 32,537); weighted results.
^b The question asked in the survey was 'If you needed something really urgently from a public official or a civil servant, to what extent do you think it is acceptable to do the following things? A) To give them a gift, B) To do a favour for them'. The answer categories were 'Always acceptable', 'Sometimes acceptable', 'Never acceptable', 'Prefer not to say' and 'Don't know'. In the figure above, the category 'Acceptable at least sometimes' includes respondents who answered 'Always acceptable' or 'Sometime acceptable' to one or both items A and B in question.

Source: FRA, Fundamental Rights Survey 2019. Data collection in cooperation with CBS (NL), CTIE (LU) and Statistics Austria (AT).

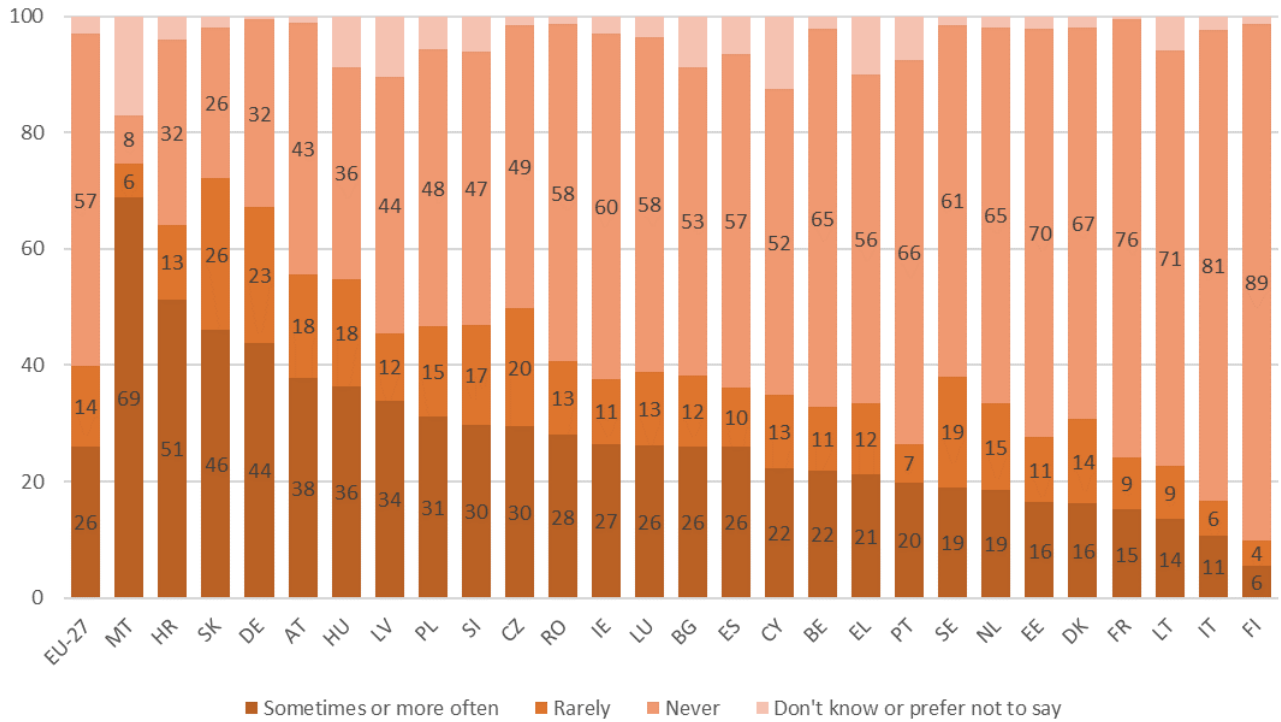
Figure 4: Question 'If you needed something really urgently from a public official or a civil servant, to what extent do you think it is acceptable to do the following things?' A) To give them a gift, B) To do a favour for them', age groups 16-29 and 65+, by country (%)



Notes: ^a Out of all respondents in EU-27 (age group 16-29 n = 5,775; age group 65+ n = 7,312); weighted results.
^b The question asked in the survey was 'If you needed something really urgently from a public official or a civil servant, to what extent do you think it is acceptable to do the following things? A) To give them a gift, B) To do a favour for them'. The answer categories were 'Always acceptable', 'Sometimes acceptable', 'Never acceptable', 'Prefer not to say' and 'Don't know'. The figure above presents the results for respondents who answered 'Always acceptable' or 'Sometime acceptable' to one or both items A and B in question.

Source: FRA, Fundamental Rights Survey 2019. Data collection in cooperation with CBS (NL), CTIE (LU) and Statistics Austria (AT).

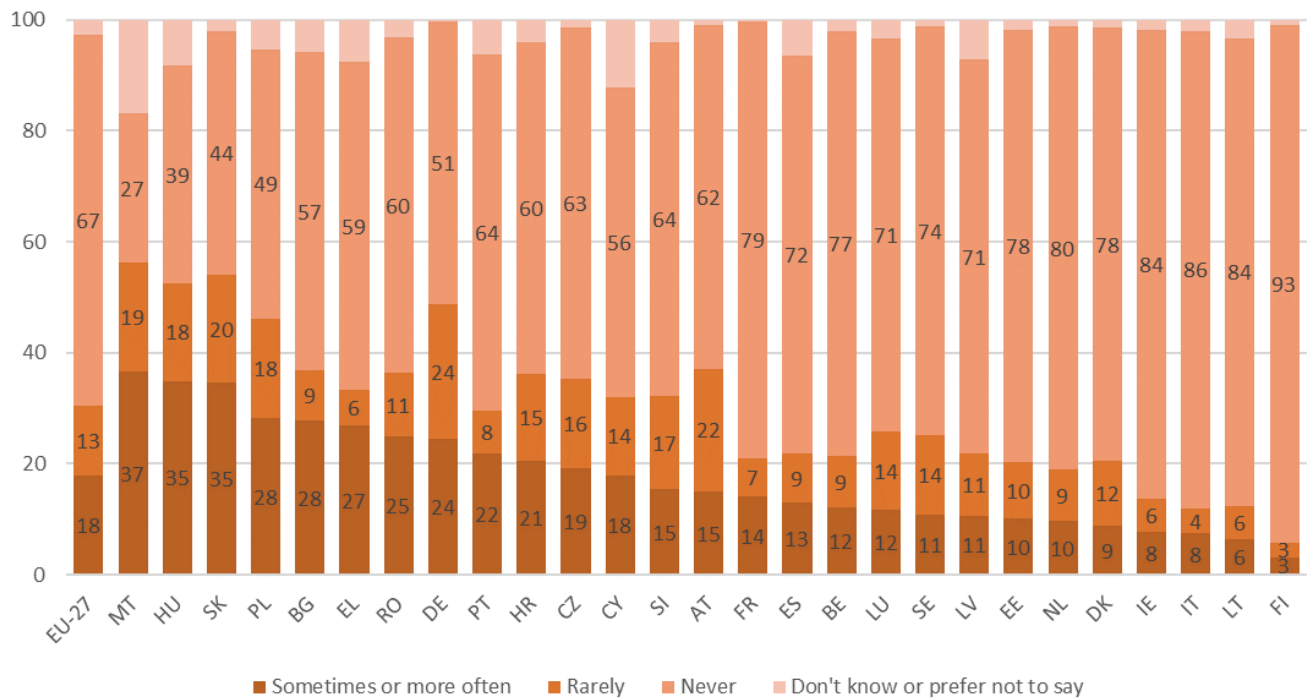
Figure 5: Question: ‘Do you think that people in [your country] often have to give a gift, or make a donation or a payment without an invoice, or do some other kind of favour when doing the following things? A) To register their ownership of a land or property’, by country (%)^{a,b}



Notes: ^a Out of all respondents in EU-27 (n = 32,537); weighted results.
^b The question asked in the survey was ‘Do you think that people in [your country] often have to give a gift, or make a donation or a payment without an invoice, or do some other kind of favour when doing the following things? A) To register their ownership of a land or property.’ The answer categories were ‘Never’, ‘Rarely’, ‘Sometimes’, ‘Frequently’, ‘Always’, ‘Prefer not to say’ and ‘Don’t know’. In the figure above, the category ‘Sometimes or more often’ includes respondents who answered ‘Sometimes’, ‘Frequently’ or ‘Always’.

Source: FRA, Fundamental Rights Survey 2019. Data collection in cooperation with CBS (NL), CTIE (LU) and Statistics Austria (AT).

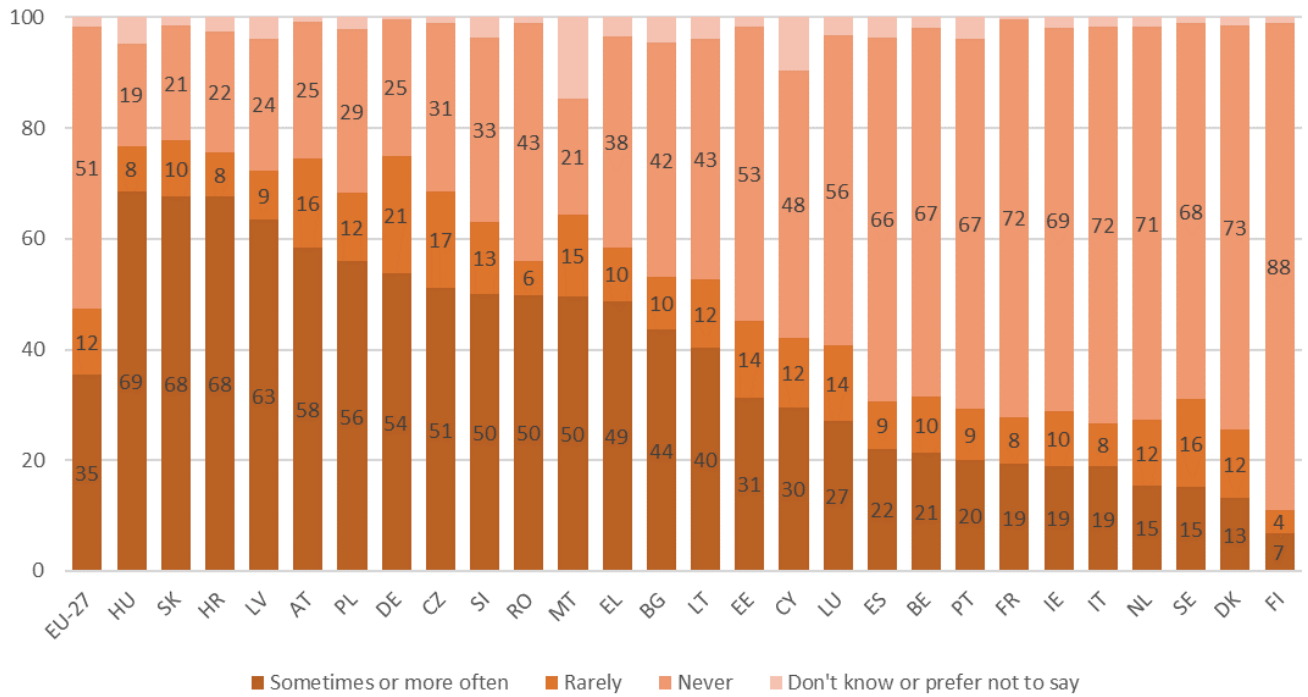
Figure 6: Question: ‘Do you think that people in [your country] often have to give a gift, or make a donation or a payment without an invoice, or do some kind of favour when doing the following things? B) To obtain a driver’s license’, by country (%)^{a,b}



Notes: ^a Out of all respondents in EU-27 (n = 32,537); weighted results.
^b The question asked in the survey was ‘Do you think that people in [your country] often have to give a gift, or make a donation or a payment without an invoice, or do some kind of favour when doing the following things? B) To obtain a driver’s license’. The answer categories were ‘Never’, ‘Rarely’, ‘Sometimes’, ‘Frequently’, ‘Always’, ‘Prefer not to say’ and ‘Don’t know’. In the figure above, the category ‘Sometimes or more often’ includes respondents who answered ‘Sometimes’, ‘Frequently’ or ‘Always’.

Source: FRA, Fundamental Rights Survey 2019. Data collection in cooperation with CBS (NL), CTIE (LU) and Statistics Austria (AT).

Figure 7: Question: ‘Do you think that people in [your country] often have to give a gift, or make a donation or a payment without an invoice, or do some kind of favour when doing the following things? C) To receive better treatment in a public hospital’, by country (%)^{a,b}

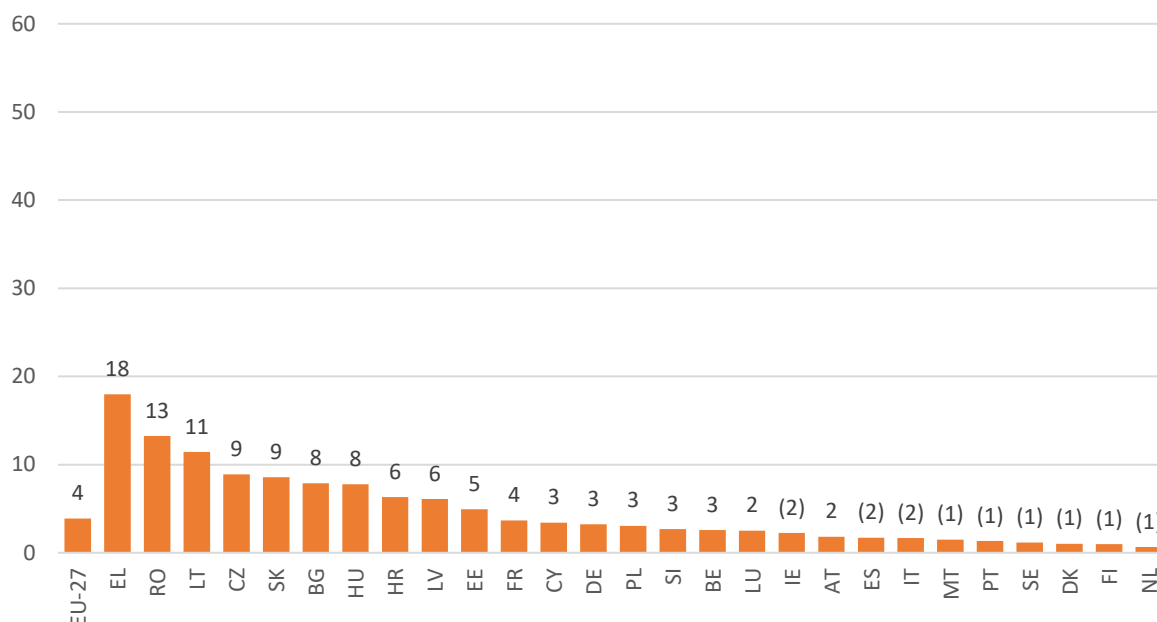


Notes: ^a Out of all respondents in EU-27 (n = 32,537); weighted results.

^b The question asked in the survey was ‘Do you think that people in [your country] often have to give a gift, or make a donation or a payment without an invoice, or do some kind of favour when doing the following things? C) To receive better treatment in a public hospital’. The answer categories were ‘Never’, ‘Rarely’, ‘Sometimes’, ‘Frequently’, ‘Always’, ‘Prefer not to say’ and ‘Don’t know’. In the figure above, the category ‘Sometimes or more often’ includes respondents who answered ‘Sometimes’, ‘Frequently’ or ‘Always’ to the question.

Source: FRA, Fundamental Rights Survey 2019. Data collection in cooperation with CBS (NL), CTIE (LU) and Statistics Austria (AT).

Figure 8: Question: 'In the past 5 years, did any public official or civil servant in [your country] ask you or expect you to do a favour (such as give a gift or donation) for a particular service?', by country (%)^{a,b}



- Notes:
- ^a Out of all respondents in EU-27 (n = 32,537); weighted results.
 - ^b The question asked in the survey was 'In the past 5 years, did any public official or civil servant in [your country] ask you or expect you to do a favour (such as give a gift or donation) for a particular service?'
 - ^c Results based on a small number of responses are statistically less reliable. Thus, results based on 20 to 49 unweighted observations in a group total or based on cells with fewer than 20 unweighted observations are noted in parentheses. Results based on fewer than 20 unweighted observations in a group total are not published.
- Source: FRA, Fundamental Rights Survey 2019. Data collection in cooperation with CBS (NL), CTIE (LU) and Statistics Austria (AT).



United Nations CESCR (2019) – **Bulgaria** was recommended to allocate adequate human, material and financial resources for the implementation of the Action Plan to Prevent and Fight Corruption and the enforcement of anti-corruption legislation; strengthen the capacity of the judiciary to combat corruption effectively; raise the awareness of the public and State officials about the anticorruption legislation and the Action Plan to Prevent and Fight Corruption.

C. Repressive measures

26. Application of sanctions (criminal and non-criminal) for corruption offences (including for legal persons)



United Nations CESCR (2019) – **Slovakia** was recommended to further increase investigations, prosecutions and convictions for corruption, including in cases of gross corruption by high level officials, and take robust measures to prevent future incidences of corruption.

III. Media pluralism

A. Media regulatory authorities and bodies (Audiovisual Media Service Directive)

No FRA resources

28. Independence, enforcement powers and adequacy of resources of media authorities and bodies



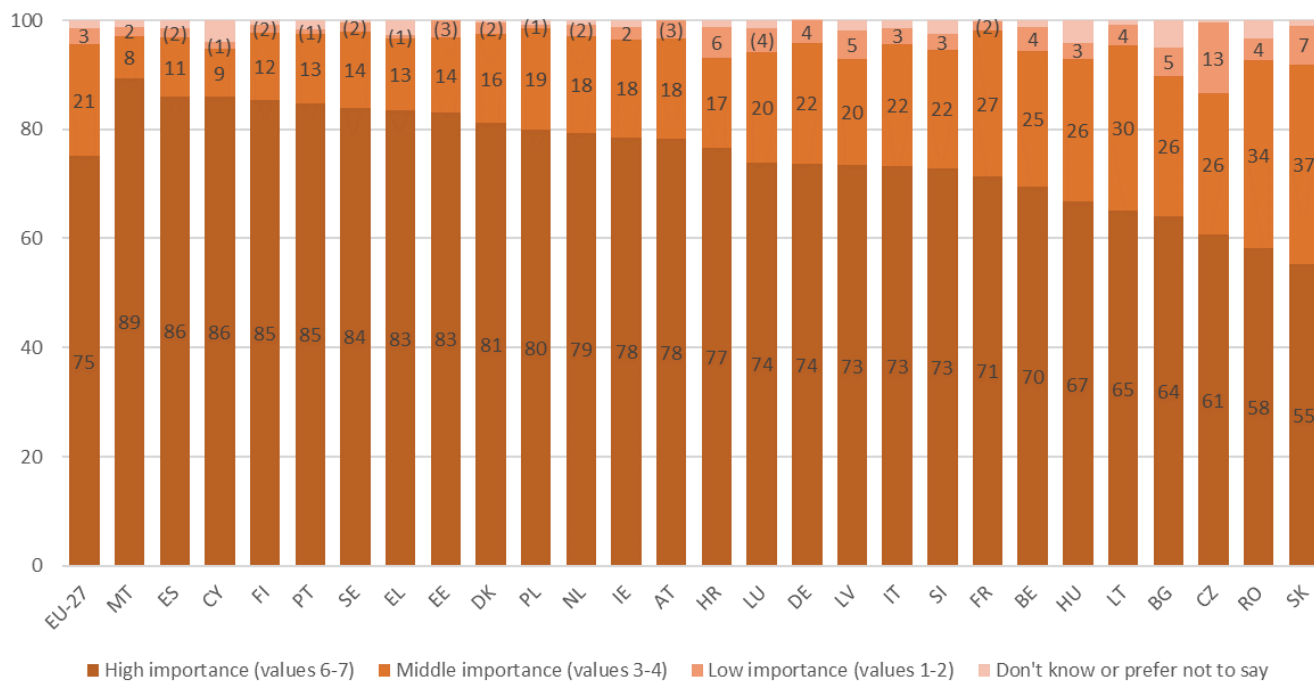
United Nations CCPR (2019) – the **Czech Republic** was recommended to avoid any form of political influence over media outlets, ensuring the transparency of private media ownership and preventing undue media dominance or concentration that may adversely impact media freedom and pluralistic views. Reported growing concentration of ownership of private media in the hands of a few actors and allegations of increasing political influence over the media affecting, inter alia, the manner of coverage of all political actors during elections.

B. Transparency of media ownership and government interference

30. The transparent allocation of state advertising (including any rules regulating the matter)

FRA's Fundamental Rights Survey, asked about the views on the importance of media being free from government influence. Figure 9 provides details for the 27 EU Member States.

Figure 9: Question: ‘How important do you think the following things are for democracy? D) That the reporting by the media is free from government influence’, by country (%)^{a,b,c}



Notes: ^a Out of all respondents in EU-27 who were asked to complete the section ‘Rights awareness & responsibilities’ of the survey (n = 24,354); weighted results.
^b Question asked in the survey was ‘How important do you think the following things are for democracy? D) That the reporting by the media is free from government influence’. Respondents could answer by selecting a value from a scale, ranging from ‘1 – Not at all important’ to ‘7 – Extremely important’. In addition, respondents who did not select one of these answer categories were provided an option to answer “prefer not to say” or “don’t know”. In the figure above, category ‘High importance’ includes respondents who selected values 6 or 7, ‘Middle importance’ corresponds with values 3 to 5, and ‘Low importance’ refers to values 1 and 2 on the seven point scale. For details concerning the socio demographic variables used in the analysis see Annex I.
^c Results based on a small number of responses are statistically less reliable. Thus, results based on 20 to 49 unweighted observations in a group total or based on cells with fewer than 20 unweighted observations are noted in parentheses. Results based on fewer than 20 unweighted observations in a group total are not published.

Source: FRA, Fundamental Rights Survey 2019. Data collection in cooperation with CBS (NL), CTIE (LU) and Statistics Austria (AT).

C. Framework for journalists' protection

35. Access to information and public documents



United Nations CCPR (2019) – the **Czech Republic** was recommended ensure effective exercise in practice of the right of access to information held by public bodies, including by addressing any practical or administrative obstacles to processing information requests and by ensuring timely and comprehensive responses to such requests. Proactively put in the public domain government information of public interest to give effect to the right of access to information.



United Nations Special Rapporteur on human rights defenders (2016) – **Hungary** was recommended to review the legal provisions related to freedom of information and data protection in order to guarantee free and uncontrolled access to public interest information.

36. Other – please specify



United Nations UPR (2019) – **Cyprus** accepted a recommendation received to ensure that the right to freedom of expression is equally guaranteed and enjoyed by all of its citizens and community members, including those involved in intercommunal activities and journalists.



United Nations UPR (2019) – **Slovakia** accepted a recommendation received on improving transparency and oversight to combat corruption, increase accountability and improve public trust in the judicial system; and to take all necessary steps to strengthen anti-corruption laws, ensure independence of the judiciary and protect the rights and safety of journalists.



United Nations UPR (2019) – **Slovakia** accepted two recommendations to protect the rights and safety of journalists [the recommendations also covered anti-corruption and judicial independence].



United Nations CCPR (2019) – the **Czech Republic** was recommended to ensure non-interference of officials with the legitimate exercise of the right to freedom of expression of journalists and media workers, guarantees of their effective protection against any kind of threat, pressure,

intimidation or attack, and thorough investigation of illegal acts against journalists and bringing those responsible to justice. Increasing allegations of threats against journalists, especially by high ranking politicians, including violence. Instances of hostile rhetoric against media outlets and accusations of media manipulation of public opinion emanating from public officials.

IV. Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

No relevant resources

B. Independent authorities

39. Independence, capacity and powers of [NHRIs], [ombuds institutions] and equality bodies]

The following extracts are from FRA's draft report on NHRIs. Strong, independent, effective NHRIs in the EU contribute significantly to promoting and protecting human rights. In addition, NHRIs also have a great potential to contribute more and more explicitly in an EU context – including on issues such as the rule of law. Strengthening and consolidating their role would help EU Member States deliver also on the global 2030 Agenda's Sustainable Development Goals. In particular on Goal 16 on strong institutions and the rule of law, and its requirement of having Paris Principles compliant NHRIs.

All EU Member States have committed to establish NHRIs. The Paris Principles – as interpreted through General Observations by the global accreditation system (the Global Alliance of NHRIs' Sub Committee on Accreditation, SCA) – form the framework for assessing NHRI's independence and effectiveness. These principles establish the bare minimum of what is necessary for an NHRI to be independent and effective

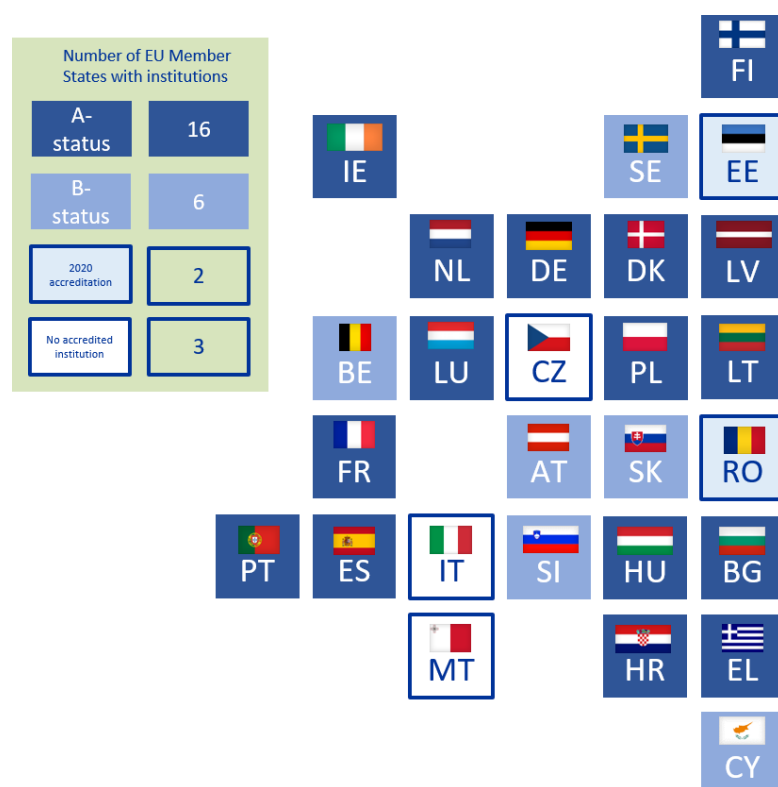
While only 5 EU Member States do not have NHRIs at all, 11 of the 27 states, however, do not have a Paris Principles compliant A status NHRI as of the beginning of 2020.

EU Member States are regularly recommended in contexts such as the Universal Periodic Review (UPR) and country assessments by UN treaty bodies to ensure Paris Principles compliant – A status – NHRIs. For states with Paris Principles compliant NHRIs, there are also needed improvements, as pointed out by the GANHRI's SCA."

Figure 10 provides an overview of the EU Member States and the existence and status of NHRIs. Of the 27 EU Member States there are 16 with Paris Principles compliant (A status) NHRIs. There are six with B status and of

the five without, two institutions are scheduled to be accredited for the first time in 2020, likely bringing the number of NHRIs (either A or B status) to 24. The Figure shows the highest accreditation status (A status) for states with more than one accredited NHRI. Currently Bulgaria is the only one of the 27 EU Member States with two NHRIs, one accredited with A and one with B status.

Figure 10: Paris Principles compliance of NHRIs in EU Member States – A status signifying independence and effectiveness



Source: FRA 2020, based on accreditation status by the Global Alliance of NHRIs (GANHRI)

The diversity of types and mandates of NHRIs sets the stage for a challenging task assessing their compliance with the Paris Principles. To do this, the GANHRI Sub Committee on Accreditation (SCA) assesses both “law and practice”.¹¹ Practice is assessed by examining whether an NHRI “is effectively fulfilling its mandate to promote and protect human rights” through demonstrable actions.

Figure 11 provides an overview of the most recent assessments by NHRIs, which draws a simplified picture of the actual situation. The shaded boxes indicate an area of concern raised by the Sub-Committee on Accreditation

¹¹ GANHRI, [Rules of Procedure for the GANHRI SCA](#), 2019, Para. 8.1. See also: GANHRI, [A practical guide to the work of the Sub-Committee on Accreditation \(SCA\)](#), 2018.

in its assessment report – some may be minor issues, others larger and complex ones. The numbers in the vertical column to the right are the total numbers of NHRIs with the specific issue of that row. The numbers in the horizontal row at the bottom reflect the total number of issues raised per NHRI.

Figure 11: Overview of critical points raised in assessments by the SCA of NHRIs [EU27]

A-status B-status No accredited institution	Austria	Belgium	Bulgaria – Commission	Bulgaria – Ombud	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania – Institute	Romania – Ombud	Slovakia	Slovenia	Spain	Sweden	
Establishment																													1	
Independence																														11
Composition																														22
Organisation and infrastructure																														13
Working methods																														0
General mandate																														19
Quasi-judicial functions																														0
Stakeholder relations																														6
NPM-specific																														5
More than one NHRI / state																														1
	3	3	4	4	2	4		2		6	4	4	2	3	2		5	1	4		2	5	1	3		5	4	3	2	

Source: FRA, 2020, based on a 2019 compilation by ENNHRI, 2020

The three main issues, raised in relation to the institutions covered in this report, are composition, mandate and related to organisation and infrastructure. When these areas are broken down in detail, it is clearer that composition relates in many instances to an overly narrow selection process for leadership positions of NHRIs. These selection processes are not sufficiently transparent, participatory and formalised, and constitutes the most frequently raised concern by the SCA for all NHRIs globally. A common concern for NHRIs covered [in the EU] is that of pluralism and diversity, which would need improvement, especially in single person institutions such as typically Ombuds institutions.¹²

NHRIs should have a broad and clear promotion and protection mandate and that neither of the two should be too limited.¹³ Also related to mandate is a sufficiently broad one related to human rights treaties – not only

¹² The importance of pluralism, especially in single-person NHRIs such as Ombudsperson, is mentioned in: GANHRI, [SCA General Observations](#), 2018, GO 1.7.

¹³ GANHRI, [SCA General Observations](#), 2018, GO 1.2.

treaties to which the state is already a party should be within the scope – and that this shall explicitly be mentioned in legislation. Organisational and infrastructure aspects are almost exclusively about lack of sufficient resources, in particular budget size but are in some cases also about financial autonomy.

Issues raised by the SCA in relation to a smaller number of NHRIs, such as independence, tend to relate to immunity. The requirement for an explicit functional immunity for the leadership of an NHRI has been qualified given that this is something that does not exist in some legal traditions but as an issue it is still commonly raised.¹⁴ Problems raised in relation to [National Preventive Mechanisms under the Optional Protocol to the UN torture convention] concern issues like interaction with civil society and more effective follow up of recommendations and are frequently linked to sufficient level of funding for this additional and demanding mandate. Stakeholder relations, as a final example of more details, relates often to sufficient resources to interact internationally and effective processes for cooperation with other bodies.

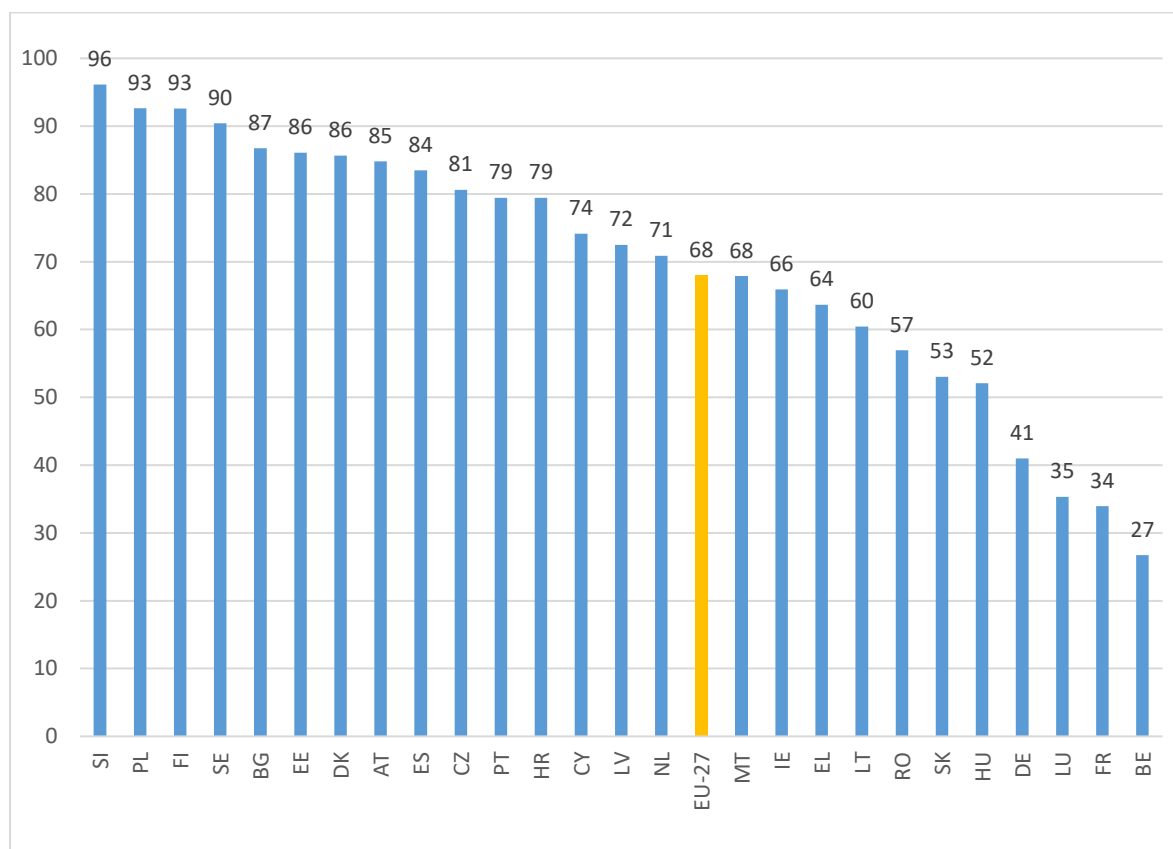
FRA's report on NHRIs also looks into to what extent the environment is enabling NHRI to act independently. The report highlights that for NHRIs to be able to function well, they also depend on democracy, the rule of law, good administration and human rights in order to operate independently and effectively. The research for FRA's NHRI report looked into the nature and frequency of physical and verbal threats by state or non-state actors and whether these threats could be linked to any particular issues, such as gender, ethnicity, age, disability, religion or belief, political opinions, (national) minority status, sexual orientation or gender identity. The NHRIs' responses to FRA's questionnaire suggest that a significant number of employees and volunteers were subjected to threats or harassment (verbal or written, including online) in relation to work for their respective NHRI, within the previous twelve months.¹⁵

FRA's Fundamental Rights Survey, asked 'Have you heard of any of the following [NHRIs]? Please respond with the first thing that comes to your head. Figure 12 provides details on the responses.

¹⁴ GANHRI, [SCA General Observations](#), 2018, GO 2.3.

¹⁵ FRA consultation with NHRIs, 2019.

Figure 12: Awareness of the NHRI, by country (%)^{a,b,c,d}



- Notes: ^a Out of all respondents in EU-27 who were asked to complete the section 'Rights awareness & responsibilities' of the survey (n = 24,354); weighted results.
- ^b For Italy no equivalent organisation to a NHRI was identified.
- ^c In the case of two NHRIs in a country, the better known was chosen for the survey.
- ^d Question asked in the survey was: Have you ever heard of any of the following? Please respond with the first thing that comes into your head. [NAME OF THE NATIONAL (ACCREDITED) HUMAN RIGHTS INSTITUTION]

Source: FRA, Fundamental Rights Survey 2019. Data collection in cooperation with CBS (NL), CTIE (LU) and Statistics Austria (AT).



United Nations UPR (2019) – **Cyprus** accepted seven recommendations received on ensuring a Paris Principles compliant NHRI.



United Nations UPR (2019) – **Slovakia** accepted twelve recommendations received on ensuring a Paris Principles compliant NHRI.



United Nations CEDAW (2019) – **Austria** was recommended to ensure an independent appointment process for the members of the Austrian Ombudsman Board, with sufficient human, technical and financial resources to implement its

mandate to promote and protect women’s rights and engage with the Committee during its reviews of Austria and encouragement to comply and seek accreditation for A status under the Paris Principles. The appointment process of the Board Members by the three main political parties in the parliament continues to raise issues regarding their independence, as reflected by its accreditation as a B status NHRI.



United Nations CEDAW (2019) – **Lithuania** was recommended to extend the mandate of the Seimas Ombudsman to receive and make authoritative findings and recommendations on complaints by women, including in the private sphere; increase the human, technical and financial resources of the Seimas Ombudsman’s Office to enable it to effectively carry out its mandate to promote and protect women’s rights. The limited mandate of the Seimas Ombudsman’s Office to consider complaints by women, in particular concerning gender based violence, including in the private sphere; underfunding of the Seimas Ombudsman’s Office.



United Nations CRC (2019) – **Belgium** was recommended to on ensure a Paris Principles compliant NHRI.



United Nations CRC (2019) – **Italy** was recommended to ensure full independence and autonomy to the Authority for Children and Adolescents and to increase the resources for the Authority.



United Nations CRC (2019) – **Italy** was recommended to ensure a Paris Principles compliant NHRI.



United Nations CRC (2019) – **Malta** was recommended to strengthen the independence of the Office of the Commissioner for Children, by ensuring adequate specific and separate human, technical, and financial resources as well as the immunities required for it to effectively carry out its function.



United Nations CRC (2019) – **Portugal** was recommended to allocated adequate human, technical and financial resources to and enhance the mandate and authority of the National Commission for the Promotion of the Rights and Protection of Children and Youth.



United Nations CRC (2019) – **Portugal** was recommended to allocated adequate resources to the Office of the Ombudsman.



United Nations CCPR (2019) – **Belgium** was recommended to ensure a Paris Principles compliant NHRI.



United Nations CCPR (2019) – the **Czech Republic** was recommended to ensure a Paris Principles compliant NHRI.



United Nations CCPR (2019) – **Estonia** was recommended to ensure a Paris Principles compliant NHRI.



United Nations CESC (2019) – **Bulgaria** was recommended to ensure a Paris Principles compliant NHRI (Commission for Protection against Discrimination).



United Nations CESC (2019) – **Slovakia** was recommended to ensure a Paris Principles compliant NHRI (Slovak National Centre for Human Rights currently with B status); expand efforts to increase funding to, improve the independence of and ensure fully transparent recruitment processes for all staff members of the Slovak National Centre for Human Rights.



United Nations Special Rapporteur on human rights defenders (2016) – **Hungary** was recommended to strengthen the role and independence of the Ombudsman and reinforce the financial autonomy of his Office; consult the Ombudsman on legislative processes and ensure adequate implementation of his recommendations;



United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (2018) – **Belgium** was recommended to:

- ensure a Paris Principles compliant NHRI;
- establish an independent, adequately resourced, overarching expert oversight body to undertake review of the overall operation of all counter terrorism and national security powers, laws and policies;
- strengthen the independence of the Standing Police Monitoring Committee by ensuring that it is composed of independent experts recruited from outside the police who are trained in human rights and equality standards.



United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (2018) – **France** was recommended to create a:

- fully independent, adequately resourced expert oversight body be created to oversee the totality of counter terrorism and exceptional national security powers operational in France; This body would undertake independent review of the overall operation of all counter terrorism and national security powers, laws and policies in the country. Such oversight should also be tasked to ensure that laws and policies are compatible with international human rights and, as applicable, international humanitarian law;
- fully independent and comprehensive oversight of the work of intelligence entities should be implemented. Such oversight should have the resources and technical capacity to enable adequate oversight, taking account of technological developments.

C. Accessibility and judicial review of administrative decisions

No relevant resources

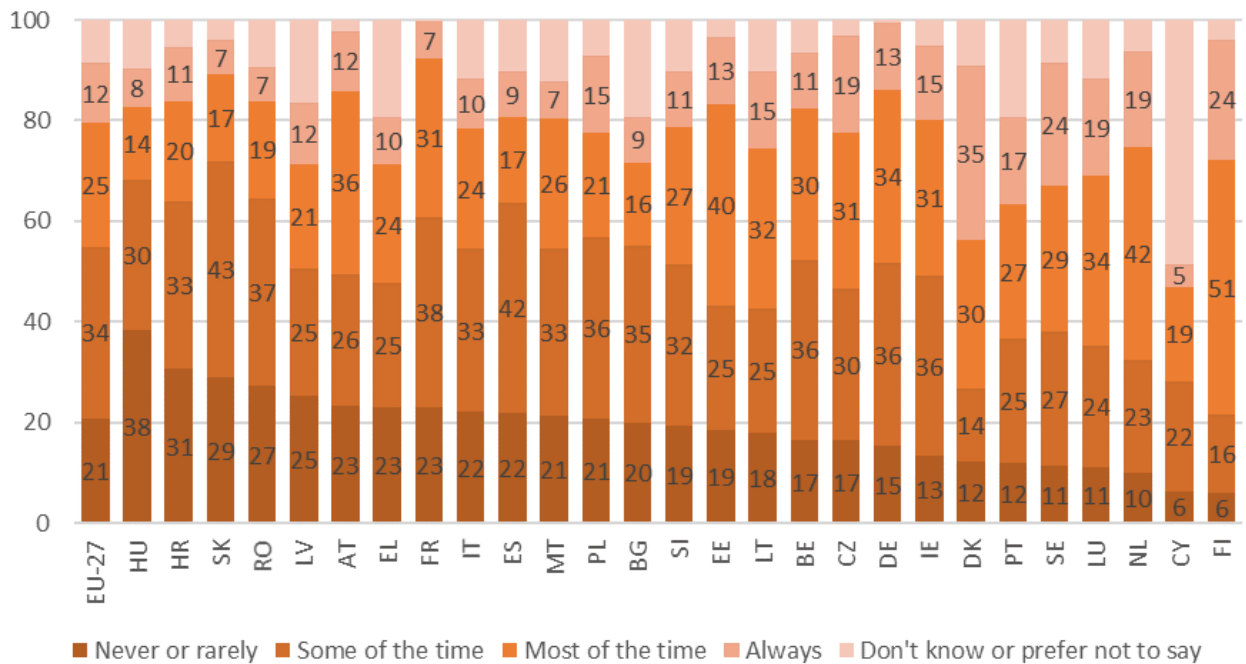
D. The enabling framework for civil society

42. Measures regarding the framework for civil society organisations

FRA's Fundamental Rights Survey asked questions related to civil society: 'In [this country], are non-governmental organisations and charities able to do their work free from government intimidation if they oppose the current government's policies?' Figure 13 provides the responses by EU Member State.

Figure 13: Question 'In [your country], are non-governmental organisations and charities able to do their work free from government intimidation if they oppose the current government's policies?', by

country (%)^{a,b}

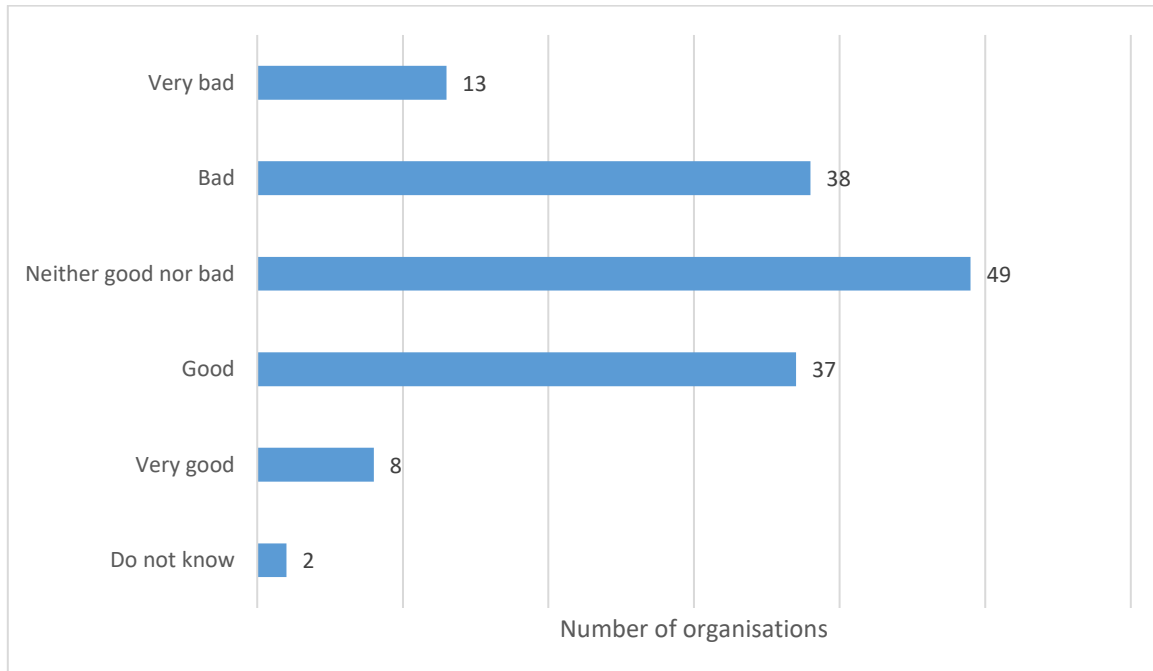


Notes: ^a Out of all respondents in EU-27 who were asked to complete the section 'Rights awareness & responsibilities' of the survey (n = 24,354); weighted results.
^b The question asked in the survey was 'In [your country], are non-governmental organisations and charities able to do their work free from government intimidation if they oppose the current government's policies?'. The answer categories used in the survey were 'Never', 'Rarely', 'Some of the time', 'Most of the time', 'Always', 'Prefer not to say' and 'Don't know'. In the figure above, some of the original answer categories have been combined, as indicated in the category labels.

Source: FRA, Fundamental Rights Survey 2019. Data collection in cooperation with CBS (NL), CTIE (LU) and Statistics Austria (AT).

FRA's regular consultation with its Fundamental Rights Platform asks questions on issues such as general conditions for civil society organisations to work on human rights. Figure 14 provides an overview of the responses. For statistical reasons, the results cannot be broken down by Member State.

Figure 14: Perception of the general conditions for civil society organisations working on human rights in 2019 (number of organisations)



Note: Question: “How would you describe the general conditions for CSOs working towards the respect and promotion of human rights (including advocacy, research etc.) in your country?” (number of responding organisations = 147, those working at local/national level)

Source: FRA, 2020 (FRP consultation on experiences by organisations in 2019)



United Nations CRC (2019) – **Italy** was recommended to guarantee the rights and freedom of action of civil society and to ensure that the rescue of migrants is not considered a crime. Continuing smear campaigns against some civil society organizations engaged in search and rescue operations for migrants, including children, in the Mediterranean.



United Nations CRC (2019) – **Malta** was recommended to guarantee the rights and freedom of action of civil society and to ensure that the rescue of migrants is not considered a crime. Instances of criminalizing search and rescue operations for refugees and migrants, including children, carried out in the Mediterranean Sea by some civil society organizations.



United Nations Special Rapporteur on human rights defenders (2016) – **Hungary** was recommended to:

- ensure full compliance with the international standards related to respect for human rights, democracy and the rule of law by, inter

alia, promptly implementing the outstanding recommendations and decisions of international and regional human rights mechanisms and courts;

- review all administrative and legislative provisions that restrict the rights of human rights defenders and ensure that domestic legislation is in line with international human rights law and standards;
- ensure procedural safeguards in the legislative process to provide for a reasonable time for genuine public consultation between policymakers, civil society and other stakeholders;
- mainstream human rights into the institutional and policy framework, including by adopting a national action plan on human rights with clear and specific goals and indicators;
- adopt a zero tolerance approach, whether by public officials or non-State actors, towards the stigmatization and intimidation of defenders, and ensure they carry out their work in a safe and enabling environment;
- formulate national guidelines on the promotion of human rights defenders and consider establishing a national mechanism to protect them, in consultation with civil society organizations;
- make registrations of associations simpler, non-onerous and expeditious and adopt a notification procedure;
- ensure that restrictions on peaceful assembly do not impair the essence of the right to such assembly, are prescribed by law, are proportionate and necessary in a democratic society, and still allow demonstrations to take place within sight and sound of their object and target audience;
- provide protection during peaceful assemblies from individuals or groups who aim to disrupt or disperse such assemblies;
- reinforce the existing legislation on the protection of whistle blowers and establish a strong and independent agency with the power to grant legal protection and support for whistle blowers;
- ensure that both public and private actors, including companies, respect the rights of human rights defenders, and investigate instances where non State actors commit violations against defenders, resulting in the prosecution of those responsible and providing remedy to the survivors.

Vienna, 8 May 2020