

Submission by the European Union Agency for Fundamental Rights to the European Commission in the context of the preparation of the annual Rule of Law Report 2023

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Introduction

The European Commissioner for Justice, Didier Reynders, asked the European Union Agency for Fundamental Rights (FRA) for input to the European Commission's rule of law report 2023. The Commissioner called for a contribution covering the relevant information available in the European Union Fundamental Rights Information System (EFRIS) "as well as any existing data or information on rule of law-relevant matters such as the FRA civic space monitoring".¹ This submission is meant to contribute to the European Commission's work on its upcoming rule of law report 2023.

The submission deals with the international normative framework (United Nations and Council of Europe conventions and mechanisms), a key rule of law actor (civil society organisations and human rights defenders) and a selected policy area that appears to come under increased pressure (asylum and border management). The normative framework (part 1), the situation of civil society organisations and human rights defenders (part 2) and the situation at the external borders (part 3) are all connected. International human rights law offers tools for measuring rule of law performance in EU Member States via its standards and monitoring mechanisms. Civil society organisations and human rights defenders are contributing significantly not only to the general rule of law culture in any given State but also to the resilience against concrete threats to the rule of law. Finally, the area of migration and border management is an area where civil society organisations and human rights defenders play an especially relevant role in upholding the law and fundamental rights. In addition, it is an area in which international human rights law but also EU law appears to be ignored to a degree that raises concerns. In combination with instances of lack of judicial redress and lack of implementation of European court rulings, developments in this policy area appear to increasingly represent a threat to the rule of law which is why this thematic area is dealt with in part 3.

To allow for quick access to the main findings, this year's submission offers also an executive summary. Activity boxes point to relevant FRA projects and related 2022 activities to illustrate what the Agency is contributing in the field of the rule of law.

Vienna, 19 April 2023

¹ Letter Ares(2022)7857411 of 14.11.2023. The benefits of EFRIS were pointed out in European Commission (2019), Strengthening the rule of law within the Union A blueprint for action, COM/2019/343 final, at p. 10.

Executive Summary

This submission looks at 2022 rule of law developments within the European Union (EU) by, firstly, focusing on relevant international human rights monitoring data and, secondly, on consultation and research data on the situation of civil society actors that play an essential role in promoting and guarding the rule of law. Thirdly, the submission focuses on the area of migration & asylum dealing with worrying issues related to border management constituting a rule of law concern.

Whereas international human rights monitoring data does not cover all EU Member States in any given year, the assessments delivered in 2022 confirm that these data nevertheless provide relevant insights for ‘measuring the rule of law temperature’ in the EU. In total, 21 EU Member States received a report or a communication under a United Nations (UN) Special Procedure. 16 EU Member States were scrutinised in Concluding Observations by key UN monitoring bodies in 2022. A fourth of the EU Member States received in 2022 a country-visit by UN Special Rapporteurs or other Special Procedures. The submission shows that 2022 findings of the UN monitoring mechanisms often stressed the relevance of civil society organisations and the civic space, including for upholding of the rule of law. This applies especially for human rights defenders whose important role and often difficult situation in several EU Member States was highlighted by various UN Special Procedures.

Next to the UN instruments, EU Member States were also scrutinised by mechanisms under the Council of Europe. Within the framework of Group of States against Corruption (GRECO), reports were submitted for more than half of the EU Member States. The European Commission against Racism and Intolerance (ECRI) submitted reports or conclusions for 8 EU Member States, while 10 EU Member States received visits by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The case law on the European Convention on Human Rights (ECHR) – which was characterised by the European Court of Human Rights (ECtHR) in 2022 as “essentially a rule-of law instrument” – provides further insights on the status of the rule of law in EU Member States. Next to judgments identifying a violation of Convention rights, the non-implementation of judgments is also indicative for rule of law issues. This is especially obvious in leading ECtHR cases, including those that identify violations of human rights that are central to the rule of law. In this context, EU Member States, notably Bulgaria, Romania, Italy, Greece, Hungary and Poland, show a poor track-record in quickly and fully implementing such judgments. Poland was addressed by the Secretary General under Article 52 of the European Convention on Human Rights on the consequences of decisions K 6/21 and K 7/21 of the Constitutional Court of the Republic of Poland. All this confirms the relevance of the mechanisms established under the United Nations and the Council of Europe when assessing the rule of law performance and the status of the civic space within the EU. **The EU institutions should use their respective tools and leverage to contribute to a timely and full implementation of the recommendations and judgments delivered under the various UN and Council of Europe mechanisms and make full use of them when assessing themselves the rule of law within the EU.**

The second part of this submission deals with the situation of the civic space within the EU. It builds on a comprehensive consultation as well as desk research: almost 400 civil society organisations (CSOs), umbrellas and networks from all EU Member States have responded to the Agency’s annual consultation 2022 on civic space (over 90 % of them are NGOs). In addition, the Agency’s multidisciplinary research and data collection network FRANET delivered country reports on legal and policy developments in 2022 related to the enabling space for civil society in the 27 EU Member States. What emerges is a higher number of organisations that perceive their general situation as having improved in 2022, notably due to a normalisation after the COVID-period when emergency measures put considerable additional pressure on CSOs. However, in many subareas such as threats and attacks, the 2022 results confirm earlier, sobering findings. Moreover, reports about experiences of suspected surveillance by law enforcement have increased considerably. Strategic Lawsuits Against Public Participation (SLAPPs) remain common forms of attacks. Instead, positive examples were reported as regards enhanced forms and methods of cooperation between public authorities and CSOs. In addition, in some Member States pressure continues to be exercised on certain CSOs, notably among those working on issues such as migration and refugee support, environmental protection, women’s rights, LGBTIQ rights and anti-racism, as well as – in a few EU countries – child rights. The evidence collected points to the critical role of CSOs for the rule of law, ranging from fostering a rule of law culture to concrete efforts to improve access to justice, accountability and legality. **Against this background, it appears important that EU institutions further step up their efforts to strengthen both civil society organisations working on human rights and rule of law issues at national level as well as individual human rights defenders, so that the rule of law is strengthened ‘from below’.**

The third part of this submission deals with the area of asylum and migration – a policy area that is linked to both international obligations covered in part 1 as well as with the efforts of CSOs as described in part 2. A first subsection deals with the 2022 experiences made in the context of the immigration and integration of people displaced due to Russia’s aggression against Ukraine. It shows how the EU reacted quickly in providing a legal framework for temporary protection and was able to build on the remarkable efforts of civil society actors engaged in providing assistance to persons fleeing Ukraine. A second subsection deals with the handling of migration more broadly at the EU’s external borders. It sheds light on a problematic situation in which a persisting deviance between national and EU law, as well as international human rights law, the continued documentation of serious, recurrent and widespread violations of human rights, and ineffective judicial protection can develop into a rule of law concern. **Given the issues identified in this third part, EU institutions should increase their efforts to urge Member States to fully implement their obligations under EU and international law and ensure that European border management does not lead to a situation where the rule of law is put at risk.**

The submission also contains FRA activity boxes pointing to rule of law related activities such as EFRIS (the European Union Fundamental Rights Information System co-developed with the Council of Europe and United Nations), an upcoming FRA report on Human Rights Defenders, the Agency’s annual reporting on civic space developments across the EU, or the Agency’s new cooperation with the European Commission to organise rule of law dialogues at national level.

1. United Nations and the Council of Europe: important available data and information

1.1. The relevance of international human rights law for the EU

EU membership comes with a series of fundamental rights and rule of law related obligations while Member States remain bound by their obligations under UN human rights treaties and conventions concluded under the Council of Europe system.² Moreover, the EU may itself be directly bound by international human rights law - as is already the case for the UN Convention on the Rights of Persons with Disabilities and will become even more visible when the EU has concluded the accession process to the European Convention on Human Rights. Finally, the EU is contributing to the development of international human rights law in various fora when areas of EU competence are concerned.

All EU Member States have ratified core human rights treaties under the UN system such as the CCPR, CESCR, CRC, CRPD, CERD, CAT, CEDAW.³ Each of the UN human rights treaties has a monitoring committee, so called Treaty Bodies, consisting of independent experts. The treaty bodies scrutinise compliance with the treaties of all States parties at regular intervals of usually five years. This generates every year relevant data and information regarding the rule of law related performance of EU Member States.⁴

Both the UN Human Rights Office and the Council of Europe submit, on a country-by-country basis, information to the European Commission in the context of the Rule of Law Report. These submissions⁵ point to available monitoring data for all EU Member States. In fact, any rule of law assessment within the EU should consider the findings and recommendations that international and European monitoring mechanisms regularly submit. Further to this, national rule of law performance can only be measured comprehensively if the analyses of national human rights institutions, equality bodies, ombuds institutions and civil society are taken into account.⁶ In this regard, the Agency draws attention to the work of the European Network of National Human Rights Institutions (ENNHRI) and its submission in the context of the Rule of Law Report 2023.⁷

² See e.g. UNOHCHR (2020), [The European Union and international human rights law](#).

³ Children Rights Convention; Convention on the Rights of Persons with Disabilities; Convention on Economic, Social and Cultural Rights; Convention against the Elimination of Racial Discrimination; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment; Convention on the Elimination of All Forms of Discrimination against Women.

⁴ This submission focuses on the assessments delivered by the Treaty Bodies, mechanisms, supranational Courts etc rather than on the Member States' reactions to these assessments (most of these reactions would not fall under the reporting period 1.1.2022-31.12.2022).

⁵ The UN submissions will be made available at the European Commission's website on the 2023 rule of law report.

⁶ See e.g. Recommendation CM/Rec(2021)1 of the Committee of Ministers to member States on the development and strengthening of effective, pluralist and independent national human rights institutions (adopted by the Committee of Ministers on 31 March 2021, at the 1400th meeting of the Ministers' Deputies, see online [here](#)).

⁷ The ENNHRI submission will be made available at the European Commission's website on the 2023 rule of law report.

1.2. UN reports and observations submitted on EU Member States in 2022

1.2.1 Universal Periodic Review

EU Member States receive recommendations under the Universal Periodic Review (UPR), the UN's peer review system conducted by the UN Human Rights Council for all UN member states at regular intervals of about five years. Any UN member state can make recommendations to the state under review.

In the reporting period of this submission two EU Member States ([Greece](#) and [Lithuania](#)) received the Working Group report as part of the UPR review.

The Working Group report for Greece issued 239 recommendations, including 15 recommendations directly related to the rule of law⁸ and 10 recommendations related to CSOs.⁹ Greece, in its [views](#), accepted most of the recommendations proposed by the Working Group and took note of 3,¹⁰ with clarifications on matters related to the prosecution of CSOs, notably in the context of maritime search and rescue activities and on conscientious objectors.

The Working Group report for Lithuania issued 232 recommendations, including 9 recommendations directly related to the rule of law¹¹ and 3 recommendations related to civic space organisations, including the freedom of expression.¹² Lithuania, in its [views](#), examined and supported 4¹³ and will examine further 4 others¹⁴. Lithuania did not support 1 recommendation (from Russia) which concerned the necessity for the State to stop the practice of initiating criminal cases for political reasons and cancel earlier “illegal sentences”.¹⁵

1.2.2 Concluding Observations and Individual Complaints

In the course of 2022, UN monitoring committees delivered their Concluding Observations on 16 EU Member States. Most observations were submitted under the CRC (Croatia, Cyprus, Germany, Greece, Netherlands) and the CERD (Denmark, Estonia, France, Luxembourg and

⁸ United Nations (UN), Human Rights Council (HRC) (2022), [Report of the Working Group on the Universal Periodic Review for Greece](#), 16 December 2021, recommendations 130.8, 130.11, 130.26, 130.29, 130.35, 130.42, 130.54, 130.62, 130.67, 130.72, 130.73, 130.74, 130.172, 130.199 and 130.209.

⁹ United Nations (UN), Human Rights Council (HRC) (2022), [Report of the Working Group on the Universal Periodic Review for Greece](#), 16 December 2021, recommendations 130.88, 130.90, 130.91, 130.92, 130.93, 130.94, 130.95, 10.96, 130.97 and 130.239.

¹⁰ United Nations (UN), Human Rights Council (HRC) (2022), [Report of the Working Group on the Universal Periodic Review for Greece](#), 16 December 2021, recommendations 130.88, 130.96 and 130.97.

¹¹ United Nations (UN), Human Rights Council (HRC) (2022), [Report of the Working Group on the Universal Periodic Review for Lithuania](#), 14 April 2022, recommendations 137.24, 137.25, 137.36, 137.60, 138.10, 138.34, 138.35 and 138.36.

¹² United Nations (UN), Human Rights Council (HRC) (2022), [Report of the Working Group on the Universal Periodic Review for Lithuania](#), 14 April 2022, recommendations 137.65, 137.105 and 138.85.

¹³ United Nations (UN), Human Rights Council (HRC) (2022), [Report of the Working Group on the Universal Periodic Review for Lithuania](#), 14 April 2022, recommendations 137.24, 137.25, 137.36 and 137.60.

¹⁴ United Nations (UN), Human Rights Council (HRC) (2022), [Report of the Working Group on the Universal Periodic Review for Lithuania](#), 14 April 2022, recommendations 138.10, 138.34, 138.35 and 138.36.

¹⁵ United Nations (UN), Human Rights Council (HRC) (2022), [Report of the Working Group on the Universal Periodic Review for Lithuania](#), 14 April 2022, recommendation 139.3.

Slovakia). Follow-up reports to the Concluding Observations were submitted by the CCPR for Lithuania and Bulgaria.

For the year 2022, the UN treaty Bodies received 71 Individual Communications from the EU Member States.¹⁶ 9 rule of law relevant individual complaints were decided upon by the Treaty Bodies. In the individual complaints involving Italy (CCPR and CEDAW), Latvia (CCPR), Netherlands (CCPR) and Slovenia (CCPR), the rule of law was one of the main issues raised in front of the Committees, notably regarding equality before the law, fair trial, the legality principle, right to an effective remedy and access to justice.

¹⁶ On individual communications to UN treaty bodies see: <https://www.ohchr.org/en/treaty-bodies/individual-communications>

Table 1.1.: UN Treaty bodies' Concluding Observations (all) and decisions on individual complaints (only those related to the rule of law)

- Concluding observations
- Individual communications*
- Report on the follow-up to concluding observations

* The 2022 report relied on a lower threshold than the 2021 report concerning the connection to the topic of rule of law.

	CCPR	CESCR	CERD	CEDAW	CRC	CED	CRPD
Austria							IC 50/2018
Belgium				CO/8	IC 73/2019 IC 55/2018		
Bulgaria	Other						
Croatia					CO/5-6		
Cyprus					CO/5-6		
Czechia		CO/3				CO/1	
Denmark			CO/22-24				
Estonia			CO/12-13				
Finland				CO/8			
France			CO/22-23				
Germany					CO/5-6		
Greece					CO/4-6	CO /1	
Hungary							CO/2-3
Italy	IC 3589/2019 IC 3587/2019	CO/6		IC 148/2019			
Latvia	IC 3254/2018						
Lithuania	Other						
Luxembourg	CO/4	CO/4	CO/18-20				
Netherlands	IC 3015/2017				CO/5-6		
Portugal				CO/10			
Slovakia			CO/13				
Slovenia	IC 3024/2017						

1.2.3 Special Procedures

In addition to Concluding Observations on core treaties, data and information presented by the Special Procedures of the Human Rights Council can be consulted when assessing the rule of law performance of EU Member States. There are 45 thematic mandates and 14 [country](#) mandates. The Special Procedures involve independent human rights experts.¹⁷ They are either [individual experts \(so-called Special Rapporteurs\) or a working group](#). One of the ways the Special Procedures conduct their work is through country visits. Their country visits' reports or thematic reports include information and recommendations on the rule of law. Special Rapporteurs and Working Groups can also issue communications, which are letters sent to governments in which past human rights violations are addressed (letter of allegation), potential human rights violations are pointed at (urgent appeal) or concerns about national norms and practices which are expressed.

FRA Activity

EFRIS, a gateway to international human rights information on EU Member States and selected candidate countries

The European Union Fundamental Rights Information System (EFRIS) is a common online search interface that brings together the wealth of resources, data and analysis, produced under the monitoring systems of the United Nations and the Council of Europe. The tool, developed in cooperation with these partner organisations, is online since 2019 and facilitates access to and overview of EU Member States' commitments to human rights treaties, including detailed aspects, such as States' acceptance of individual complaints. It provides direct access to the assessments made by the monitoring mechanisms, and where feasible, offers comparison across the EU. The Agency is working on upgrading the tool by:

- Adding new data sources such as case law of the Court of Justice of the European Union dealing with the EU Charter of Fundamental Rights, monitoring data submitted under the Council of Europe Framework Convention for the Protection of National Minorities (FCNM) and in the future possibly the European Commission for Democracy through Law (the Venice Commission);
- Developing new functionalities including enhanced data management, visualisations, and an AI-based search tool.

EFRIS can be accessed here: <https://fra.europa.eu/en/databases/efris/>

In the reporting period (2022), UN Special Procedures issued in total report and/or communications on 21 EU Member States (see table in Annex) and 7 EU Member States received a visit by a Special Rapporteur, namely Cyprus, Hungary, Italy, Germany, Greece, Lithuania,

¹⁷ On the Special Procedures see: [Special Procedures of the Human Rights Council | OHCHR](#)

Slovenia and Portugal. Country Visits reports were issued to Cyprus, Hungary, Italy, Portugal and Slovenia. 17 Member States received joint letters issued by Special Rapporteurs. Various Special Rapporteurs reported on more than a quarter of the EU Member States in the year 2022. This was for instance the case for the Special Rapporteur on the right to the enjoyment of the highest attainable standard of physical and mental health who reported on Austria, Bulgaria, Croatia, France, Ireland, Germany, Sweden and Poland. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment reported on Austria, France, Germany, Netherlands, Spain, Sweden and Poland. Finally, the Special Rapporteur on human rights defenders reported on Austria, France, Ireland, Italy, Greece, Spain and Poland. Annex 1 lists all communications, country visits and country reports which were issued during the year 2022 involving EU Member States.

1.3 Civil society issues as addressed in UN monitoring data

A considerable number of UN reports on EU Member States addressed issues related to the civic space ranging from the registration of associations, their (foreign) funding, the banning of demonstrations to instances of harassment and physical threats and the need to allow civil society organisations to participate in relevant processes.

Regarding the registration of associations, the UN Human Rights Committee reiterated its recommendation vis-à-vis Bulgaria to monitor closely the registration process of associations and refrain from any action that may restrict it beyond the narrowly construed restrictions permitted under article 22 of the ICCPR.¹⁸ The UN Committee on Economic, Social and Cultural Rights in its concluding observations vis-à-vis Luxembourg noted with concern that “national legislation concerning the establishment and dissolution of trade unions is not fully in conformity with the International Covenant on Economic, Social and Cultural Rights”,¹⁹ and recommended that Luxembourg takes the necessary measures to guarantee the exercise of trade union rights, in particular the right to form trade unions and the right to strike.²⁰

With regard to foreign funding of civil society organisations, the UN Special Rapporteur on the freedom of opinion and expression in her report on the mission to Hungary referred to a CJEU decision²¹ as an important development for the freedom of expression of civil society organisations advocating in this field. She noted that the controversial 2017 NGO Transparency Law has been repealed and a new “Law on the transparency of civil society organisations capable of influencing public life” was adopted in Hungary. The Special Rapporteur urged the Ombudsperson office to monitor the application of this law to ensure it will not infringe on the ability of civil society to play its essential role, nor result in the stigmatisation and discrimination against those active in the public domain. She noted that access to funding from abroad to promote human rights should not be seen as a threat, but as a measure of international solidarity.²²

Regarding the protection of civil society actors from criminalisation, the UN Human Rights Committee called on Luxembourg to consider decriminalizing defamation and to resort to criminal law only in the most serious cases.²³ Key is also the protection from harassment and attacks. In its Concluding Observations vis-a-vis Italy, the UN Committee on Economic, Social and Cultural Rights expressed its concern about “repeated allegations of harassment, physical threats and verbal attacks by both State and non-State actors on human rights defenders and journalists advocating economic, social and cultural rights, particularly in the context of the

¹⁸ United Nations (UN), Human Rights Committee (HRC) (2022), [Report on follow-up to the concluding observations on Bulgaria of the Human Rights Committee](#), 5 December 2022, page 3, paragraph 36(e). The Human Rights Committee requested Bulgaria to provide the information on measures taken to implement the recommendation since the adoption of the Concluding Observations issued in October 2018.

¹⁹ United Nations (UN), Committee on Economic, Social and Cultural Rights (CESC) (2022), [Concluding observations on the fourth periodic report of Luxembourg](#), 15 November 2022, page 6, paragraph 27.

²⁰ United Nations (UN), Committee on Economic, Social and Cultural Rights (CESC) (2022), [Concluding observations on the fourth periodic report of Luxembourg](#), 15 November 2022, page 6, paragraphs 26-27.

²¹ Court of Justice of the European Union (CJEU), case C-78/18, [European Commission v. Hungary](#), June 2020.

²² United Nations (UN), Human Rights Council (HRC) (2022), [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#), 11 May 2022, pages 12-13, paragraphs 53 to 58.

²³ United Nations (UN), Human Rights Committee (HRC) (2022), [Concluding Observations on the fourth periodic report of Luxembourg](#), 14 September 2022, pages 5-6, paragraphs 23-24.

protection of refugees”.²⁴ The Committee recommended that Italy should guarantee the “effective protection of independent journalists, human rights defenders and other activists, including by expanding personal protection programmes”.²⁵ The UN Special Rapporteur on human rights and the environment, in his statement at the conclusion of the country visit to Slovenia, informed that he was surprised “to hear from civil society organizations, activists, doctors and youth that they had been threatened, harassed, and subjected to lawsuits because of their work to protect human rights and the environment”.²⁶ He recommended that Slovenia should investigate and prosecute any individuals or businesses that engage in unlawful intimidation activities and encouraged the government to enact proposed whistle-blower legislation.²⁷

Another important aspect of the civic space is the opportunity of civil society organisations to participate in the public discourse as protected by the freedom of opinion and freedom of assembly. In this regard, the UN Human Rights Committee called on Luxembourg to take the necessary legislative measures to lift the ban on demonstrations that have not been notified in advance referring to the Committee’s general comment No. 37 (2020) on the right of peaceful assembly. The authorities should provide local authorities and police officers with clear guidance on obligations under article 21 of the International Covenant on Civil and Political Rights.²⁸ It is key that civil society organisation dispose over efficient channels to make their views heard in the context of law and policy making. The UN Special Rapporteur on the freedom of opinion and expression urged Hungary to “strengthen its relationship with civil society actors, including by ensuring their meaningful participation in public consultations” in her country visit report .²⁹ With regard to Portugal, the UN Committee on the Elimination of Discrimination against Women noted in its Concluding Observations the lack of a specific mechanism to “empower and ensure the meaningful participation of civil society organisations for women in the Commission for Citizenship and Gender Equality, even though some of them are members of its Advisory Council”.³⁰ In its Concluding Observations vis-à-vis Estonia, the UN Committee on the Elimination of Racial Discrimination expressed concern about the low number of non-governmental organisations involved in the process of review and report of Estonia’s implementation of its obligation pursuant to the CERD.³¹ The Committee called for more efforts in the context of the next periodic report and its review.³² The UN Committee on the Rights of

²⁴ United Nations (UN), Committee on Economic, Social and Cultural Rights (CESC) (2022), [Concluding observations on the sixth periodic report of Italy](#), 7 December 2022, page 2, paragraph 9.

²⁵ United Nations (UN), Committee on Economic, Social and Cultural Rights (CESC) (2022), [Concluding observations on the sixth periodic report of Italy](#), 7 December 2022, page 2, paragraph 10.

²⁶ United Nations (UN), Human Rights Council (HRC) (2022), [Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, healthy and sustainable environment, visit to Slovenia](#), 4 January 2023, Page 17, paragraph 92.

²⁷ United Nations (UN), Human Rights Council (HRC) (2022), [Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, healthy and sustainable environment, visit to Slovenia](#), 4 January 2023, Page 17, paragraph 92.

²⁸ United Nations (UN), Human Rights Committee (HRC) (2022), [Concluding Observations on the fourth periodic report of Luxembourg](#), 14 September 2022, page 6, paragraph 26.

²⁹ United Nations (UN), Human Rights Council (HRC) (2022), [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, visit to Hungary](#), 11 May 2022, page 13, paragraph 58.

³⁰ United Nations (UN), Committee on the Elimination of all forms of Discrimination against Women (CEDAW) (2022), [Concluding observations on the tenth periodic report of Portugal](#), 12 July 2022, page 5, paragraph 14(c).

³¹ United Nations (UN), Committee on the Elimination of Racial Discrimination (CERD) (2022), [Concluding observations on the combined twelfth and thirteenth reports of Estonia](#), 26 May 2022, page 2, paragraph 4.

³² United Nations (UN), Committee on the Elimination of Racial Discrimination (CERD) (2022), [Concluding observations on the combined twelfth and thirteenth reports of Estonia](#), 26 May 2022, page 2, paragraph 5.

the Child in its Concluding Observations on Greece recommended to “intensify cooperation with NGOs, including those representing children belonging to the Muslim minority in Thrace, and meaningfully involve them in the development, implementation and evaluation of policies, programmes and legislation relating to children’s rights, and in preparing periodic reports under the Convention on the Rights of the Child”.³³

1.4. The situation of Human Rights Defenders as evidenced by UN Special Procedures

As the European Commission acknowledged in its 2022 rule of law report, human rights defenders “play an essential role as watchdogs against breaches of the rule of law and actively contribute to fostering the rule of law, democracy and fundamental rights on the ground”.³⁴ However, international monitoring data shows that human rights defenders within the EU also stand under pressure.

The Working Group of Experts on African Descent in the report on its mission to Portugal urged the State to better fund and strengthen “the capacity of civil society of African descent and adopt effective measures to prevent reprisals against anti-racism human rights defenders”.³⁵ In its Concluding Observations vis-à-vis France, the UN Committee on the Elimination of Racial Discrimination stressed its concern over the fact that human rights defenders were subjected to intimidation and threats, in particular when they cooperated with the Committee, which represented an obstacle to its effective functioning.³⁶

<p style="text-align: center;">FRA activity</p> <p style="text-align: center;">Protecting human rights defenders from third countries entering the EU</p> <p>FRA has been requested by the European Parliament to issue a report on entry and stay of human rights defenders from third countries. The report will provide an overview of EU Member States’ support for human rights defenders at risk, and here notably on access to visas as a protection measure. Promising practices from EU Member States will be described and analysed. It will look into administrative and practical challenges and will outline practical ways for to enhancing support to HRDs from third countries. This includes effective access to visas, as well as other support such as financial and psychological; family accompaniment; the rights to work, access health and education, and the possibility to open a bank account, as well as capacity building for relocated HRDs. The report will be published in summer 2023.</p>

³³ United Nations (UN), Committee on the Rights of the Child (CRC) (2022), [Concluding observations on the combined fourth and sixth periodic reports of Greece](#), 28 June 2022, page 3, paragraph 14.

³⁴ European Commission (2022) [Rule of Law Report](#), COM(2022) 500 final, 13 July 2022, p. 25; See also European Commission (2022), [Commission Recommendation protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings](#), 2022-2428, 27 April 2022.

³⁵ United Nations (UN), Human Rights Committee (HRC) (2022), [Report of the working group of experts on people of African descent, visit to Portugal](#), 16 August 2022, page 16, paragraph 102.

³⁶ United Nations (UN) (2022), Committee on the Elimination of Racial Discrimination (CERD), Concluding Observations on the combined twenty-second and twenty-third periodic reports of France, 14 December 2022, page 7, paragraphs 27 and 28.

Various UN Special Procedures³⁷ started a dialogue with Poland expressing their concern of the alleged attacks, short-term detentions, stop and search, harassment, and ill-treatment of human rights defenders assisting migrants and asylum-seekers near the Poland-Belarus border and monitoring and publicizing their human rights situation, as well as the alleged lack of legal basis for the actions of the military. They also raised concern over the restricted access of journalists and human rights defenders to the Poland-Belarus border area by the implementation of the amendment to the Protection of the State Border Act.³⁸ The mandate-holders asked Poland to provide information about measures taken to ensure that human rights defenders helping migrants and asylum seekers are able to carry out their work in a safe and enabling environment.³⁹ The Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity continued a dialogue with Poland expressing their concern over acts of discrimination against LGBTI persons and LGBTI human rights defenders in the country. They referred to 2 legal cases brought against Atlas of Hate for defending the rights of LGBTI persons in what appeared to be a widespread strategic litigation against public participation (SLAPPs) and asked the State to provide information on measures to prevent SLAPPs.⁴⁰

In her preliminary observations and recommendations after her official country visit to Greece, the UN Special Rapporteur on the situation of human rights defenders informed that the overall perception about the role of civil society and human rights defenders in the State had undergone a significant shift since 2019. Human rights defenders have found it increasingly difficult to carry out their work, especially those who defend the rights of asylum seekers, migrants and refugees. She stressed that one of the biggest concerns is “an increasingly restrictive legislative environment, which, among other requirements, forces NGOs working in the field of migration, asylum and social inclusion to register on an NGO Registry maintained by the Ministry of migration and asylum”.⁴¹ The mandate-holder criticised the “imposition of a registration requirement on a specific segment of civil society, and the disproportionate requirements within the registration process itself”.⁴² She also criticised charges in ongoing criminal cases against human rights defenders given that Greek law did not define which acts or omissions constituted

³⁷ Namely the Special Rapporteur on the situation of human rights defenders, the Working Group on arbitrary detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment.

³⁸ United Nations (UN), [The Special Rapporteur on the situation of human rights defenders, the Working Group on arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment](#), AL POL 1/2022, 24 January 2022, pages 1 to 5.

³⁹ United Nations (UN), [The Special Rapporteur on the situation of human rights defenders, the Working Group on arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment](#), AL POL 1/2022, 24 January 2022, pages 5 to 6.

⁴⁰ United Nations (UN), [The Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity](#), AL POL 2/2022, 15 February 2022, page 4.

⁴¹ United Nations (UN), [End of the Mission Statement of the Special Rapporteur on the situation of human rights defenders, visit to Greece](#), 22 June 2022, page 2, paragraph 11.

⁴² United Nations (UN), [End of the Mission Statement of the Special Rapporteur on the situation of human rights defenders, visit to Greece](#), 22 June 2022, page 2, paragraph 11.

“facilitation” in this regard.⁴³ Finally, she expressed concern about “reports of the arrest, intimidation and mistreatment of women human rights defenders (WHRD) in police precincts”.⁴⁴ She also informed that defenders of LGBTI communities had “faced anonymous threats, online attacks and physical attacks for their work, including by far-right extremists and others”⁴⁵ and reported a lack of access to funding and support from the government and a general uncondusive climate for their work.⁴⁶

Still on Greece, it is noteworthy that four UN Special Procedures (the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on minority issues and the Special Rapporteur on freedom of religion or belief) entered into a dialogue with the country expressing concern about the conviction and sentencing of certain human rights defenders. The mandate holders were concerned that these human rights defenders may have been pursued in the case in retaliation for having raised concerns as to possible human rights violations, or incitement thereof, via established judicial mechanisms, and that the judicial proceedings launched against them in response may represent an attempt to deter them from exercising their right to bring such complaints in the future.⁴⁷ Moreover, three UN Special Procedures (the Special Rapporteur on the situation of human rights defenders, the Independent Expert on human rights and international solidarity and the Special Rapporteur on the human rights of migrants) expressed concerns about smears and threats directed at a human rights defender who works in search and rescue operations at the sea borders of the European Union.⁴⁸ The mandate holders asked for information as to any investigations that had been carried out into threats made against the defender.⁴⁹

In regard to Italy, four Special Procedures (the Special Rapporteur on the situation of human rights defenders, the Independent Expert on human rights and international solidarity, the Special Rapporteur on the human rights of migrants and the Special Rapporteur on trafficking in persons, especially women and children) entered into a dialogue with the Government concerning the criminal prosecution of three human rights activists for providing assistance to

⁴³ She also noted that the provisions of the Migration Code provided an exception from punishment (although not from prosecution) for humanitarian actions, which was arguably applicable in the ongoing trials, however, the mere possibility of a criminal prosecution and judicial proceedings was a heavy burden for human rights defenders and acts as a deterrent. See United Nations (UN), [End of the Mission Statement of the Special Rapporteur on the situation of human rights defenders, visit to Greece](#), 22 June 2022, page 3, paragraph 15.

⁴⁴ United Nations (UN), [End of the Mission Statement of the Special Rapporteur on the situation of human rights defenders, visit to Greece](#), 22 June 2022, page 3, paragraph 19.

⁴⁵ United Nations (UN), [End of the Mission Statement of the Special Rapporteur on the situation of human rights defenders, visit to Greece](#), 22 June 2022, page 4, paragraph 20.

⁴⁶ United Nations (UN), [End of the Mission Statement of the Special Rapporteur on the situation of human rights defenders, visit to Greece](#), 22 June 2022, page 4, paragraph 20.

⁴⁷ United Nations (UN), [The Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on minority issues and the Special Rapporteur on freedom of religion or belief](#), AL GRC 1/2022, 21 April 2022, pages 1 and 2.

⁴⁸ United Nations (UN), [The Special Rapporteur on the situation of human rights defenders, the Independent Expert on human rights and international solidarity and the Special Rapporteur on the human rights of migrants](#), AL GRC 2/2022, 19 July 2022, pages 1 and 2.

⁴⁹ United Nations (UN), [The Special Rapporteur on the situation of human rights defenders, the Independent Expert on human rights and international solidarity and the Special Rapporteur on the human rights of migrants](#), AL GRC 2/2022, 19 July 2022, pages 2 and 3.

migrants and asylum seekers.⁵⁰ They asked for detailed information to clarify the legal and factual basis for their prosecution and their pre-trial detention, along with information as to the assessments taken to evaluate the necessity of such detention and information concerning the reasons for its extended duration, as well as on any measures to ensure that criminal justice laws are not misused to punish migration-related humanitarian acts or to harass human rights defenders or civil society organizations that work with migrants.⁵¹ State replies to these 2022 communications fall outside the reporting period, but will become available at a later point at: <https://spcommreports.ohchr.org/TmSearch/TMDocuments>.

1.5. Council of Europe 2022 monitoring data on EU Member States

In addition to the UN instruments, all EU Member States have ratified a series of Council of Europe conventions that are key for the rule of law. A prominent example in this regard are the legal instruments dealing with corruption in the public and private sectors, liability and compensation for damage caused by corruption, conduct of public officials and the financing of political parties. The monitoring of compliance with these standards is entrusted to the Group of States against Corruption, GRECO (Groupe d'Etats contre la Corruption).⁹ All EU Member States are members of GRECO and the EU itself is an observer since 2019.¹⁰

The mechanism of the Council of Europe which monitors and interprets the European Convention of Human Rights (ECHR) is the European Court of Human Rights (ECtHR). Its preamble states that “the governments of European countries ... are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law”.

1.6. The European Convention on Human Rights as a rule of law instrument

The Convention or any other binding Council of Europe document do not provide a definition of the rule of law. However, the European Court of Human Rights found that the rule of law is one of the “fundamental principles of a democratic society”⁵² and has become a guiding principle for the Court that “inspires the whole Convention”⁵³ and is “inherent in all the Articles of the Convention”.⁵⁴ In 2022 the Court qualified the ECHR as “*essentially a rule-of-law instrument*”.⁵⁵

Some ECHR rights can be considered of special relevance for the rule of law given that the rule of law is mainly related to the principle of legality or foreseeability, legal certainty, equality of individuals before the law, judicial independence and availability of remedies and the control of the executive. In terms of judicial procedures, the right to a fair trial as laid down in Article 6 of

⁵⁰ United Nations (UN), [The Special Rapporteur on the situation of human rights defenders, the Independent Expert on human rights and international solidarity, the Special Rapporteur on the human rights of migrants and the Special Rapporteur on trafficking in persons, especially women and children](#), AL ITA 1/2022, 19 May 2022, pages 1 to 3.

⁵¹ United Nations (UN), [The Special Rapporteur on the situation of human rights defenders, the Independent Expert on human rights and international solidarity, the Special Rapporteur on the human rights of migrants and the Special Rapporteur on trafficking in persons, especially women and children](#), AL ITA 1/2022, 19 May 2022, pages 3 to 4.

⁵² European Court of Human Rights (ECtHR), [Klass v. Germany](#), No. 5029/71, 8 September 1978, paragraph 55. The link between democracy and the rule of law was also stressed in [Winterwerp v. Netherlands](#), No. 6301/73, 24 October 1979, paragraph 39; [Vereiniging Weekblad Bluf! v. Netherlands](#), No. 16616/90, 9 February 1995, paragraph 35; [Malone v. United Kingdom](#), No. 8691/79, 2 August 1984, paragraph 79.

⁵³ European Court of Human Rights (ECtHR), [Engel v. the Netherlands](#), No. 5370/72, 8 June 1976, paragraph 69.

⁵⁴ European Court of Human Rights (ECtHR), [Amuur v. France](#), No. 19776/92, 25 June 1996, paragraph 50.

⁵⁵ European Court of Human Rights (ECtHR), [Grzęda v. Poland](#), No. 43572/18, 15 March 2022, paragraph 339.

the ECHR and the right to an effective remedy as laid down in Article 13 are of key relevance. Next to the health of the judicial system, the robustness of other independent actors with a watchdog function is equally relevant. Civil society organisations and human rights defenders need to rely on Article 10 (freedom of expression) and Article 11 (Freedom of assembly and association) being fully respected in practice to be able to fulfil their function in society. Against this background figure 2.7. shows the number of judgments handed down in 2022 which found at least one violation of Articles 6, 10, 11 and 13 by EU Member States.

Article 6 was especially often found to be violated in cases involving Hungary (10), Romania (12), Poland (12), Greece (11) and Croatia (10). Article 10 was violated in cases involving Romania (3), France (2), Poland (2) and Portugal (2). Article 11 was violated in cases involving Croatia (1), Latvia (1) and Romania (1). Finally, article 13 was violated mostly in cases involving Poland (3), Greece (2) and Italy (2).

Table 1.3: Violations of Articles 6, 10, 11 and 13 found by the ECtHR vis-à-vis Member States in 2022

	Violations and conditional violations ⁵⁶ of article 6, right to a fair trial	Violations and conditional violations of article 6, length of proceedings	Violations and conditional violations of article 6, non-enforcement	Violations and conditional violations of article 10, freedom of expression	Violations and conditional violations of article 11, freedom of assembly and association	Violations and conditional violations of article 13, right to an effective remedy	Total
Austria	1	1	0	0	0	0	2
Belgium	7	1	0	1	0	0	9
Bulgaria	3	0	1	0	0	1	5
Croatia	8	1	1	0	1	0	11
Cyprus	1	1	0	1	0	0	3
Czechia	1	0	0	0	0	0	1
Denmark	0	0	0	0	0	0	0
Estonia	0	0	0	0	0	0	0
Finland	0	0	0	0	0	0	0
France	4	1	1	2	0	1	9
Germany	0	0	0	0	0	0	0
Greece	4	2	5	0	0	2	13
Hungary	1	15	0	0	0	0	16
Ireland	0	0	0	0	0	0	0
Italy	4	2	3	0	0	2	11
Latvia	3	0	0	0	1	1	5
Lithuania	0	0	0	1	0	0	1

⁵⁶ A conditional violation can be defined as the possibility for a right to be violated in the event of the enforcement of a judgment. (See [NEULINGER AND SHURUK v. SWITZERLAND](#) dissenting opinion)

Luxembourg	1	0	0	0	0	0	1
Malta	0	1	0	0	0	1	2
Netherlands	0	0	0	0	0	0	0
Poland	5	7	0	2	0	3	17
Portugal	0	0	0	2	0	0	2
Romania	10	1	1	3	1	0	16
Slovakia	3	3	0	0	0	0	6
Slovenia	2	1	0	0	0	0	3
Spain	4	0	0	1	0	0	5
Sweden	0	0	0	0	0	0	0

According to Article 46 of the ECHR, States must abide by the final judgment of the ECtHR in any case to which they are parties. The final judgment of the Court is transmitted to the Committee of Ministers, which supervises its execution. Within six months of the judgment becoming final, the State concerned must provide its action plan describing the steps it has taken and still needs to take to fully implement the judgment. An action plan is an evolving document that is updated in line with the progress. When all the measures are adopted, the State transforms the plan in an action report and requests the Committee of Ministers to end its supervision of the case. As a report underlined in 2022, EU Member States are not performing well under their duty to implement ECtHR judgments.⁵⁷ This is – from a systemic perspective – especially problematic for “leading cases”, which are cases revealing structural and/or systemic problems that require general measures and are therefore relevant for the entire legal system. According to the report “Justice Delayed and Justice Denied: Non-Implementation of European Courts’ Judgments and the Rule of Law”, at the beginning of 2022 37.5% of leading judgments concerning EU Member States from the last ten years are yet to be implemented.⁵⁸ In absolute figures: 602 leading ECtHR judgments were not yet implemented. The state with the highest number of leading judgments waiting to be implemented was Romania with 106. The best performer was Luxembourg with no judgement pending implementation. In relative figures: At the beginning of 2022, the EU Member States with the highest proportion of leading ECtHR judgments pending from the last ten years were Cyprus and Hungary, both with 71%. In around a quarter of the EU Member States, namely Bulgaria, Greece, Hungary, Italy, Poland, and Romania, over 30 leading cases are waiting for their implementation and the proportion of leading cases pending from the last ten years is above 30%.⁵⁹

Non-implementation of judgments is a rule of law problem because key human rights issues remain unaddressed while the legitimacy and efficiency of the judiciary as a corrective to the

⁵⁷ Stafford, G (EIN), Iliescu, I (EIN), Jaraczewski, J (DRI), Ciccarone, A (EIN) (2022), [Justice Delayed and Justice Denied: Non-Implementation of European Courts’ Judgments and the Rule of Law](#), Berlin, European Implementation Network and Democracy Reporting International.

⁵⁸ Stafford, G (EIN), Iliescu, I (EIN), Jaraczewski, J (DRI), Ciccarone, A (EIN) (2022), [Justice Delayed and Justice Denied: Non-Implementation of European Courts’ Judgments and the Rule of Law](#), Berlin, European Implementation Network and Democracy Reporting International.

⁵⁹ Stafford, G (EIN), Iliescu, I (EIN), Jaraczewski, J (DRI), Ciccarone, A (EIN) (2022), [Justice Delayed and Justice Denied: Non-Implementation of European Courts’ Judgments and the Rule of Law](#), Berlin, European Implementation Network and Democracy Reporting International, pp. 12 and 13.

executive branch of government is undermined. Table 1.4. shows the amount of leading judgments that have not yet been implemented (as of 31 December 2022) and the relative share of these judgments concerning a violation of Articles 6, 10, 11, 13 which are here, for the mentioned reasons, considered as especially relevant for the rule of law. Bulgaria, Romania and Italy but also Greece, Hungary and Poland are underperformers when it comes to the execution of leading judgments, including those that are especially relevant for the rule of law.

Table 1.4: Leading cases which implementation is still pending as of 31.12.2022, per EU Member States

	Total amount of non-executed leading judgments	Amount of non-executed leading judgments that establish violations of Articles 6, 10, 11 or 13	Amount of non-executed leading judgments supervised under enhanced procedure
Austria	3	2	0
Belgium	22	12	7
Bulgaria	94	52	30
Croatia	26	16	2
Cyprus	9	4	1
Czechia	4	1	1
Denmark	3	0	0
Estonia	3	0	0
Finland	9	3	1
France	27	10	5
Germany	12	6	0
Greece	26	22	7
Hungary	41	22	14
Ireland	2	2	1
Italy	59	40	25
Latvia	8	5	0
Lithuania	19	7	2
Luxembourg	1	1	0
Malta	15	6	5
Netherlands	4	1	1
Poland	47	22	15
Portugal	15	9	3
Romania	114	49	36
Slovakia	25	12	4
Slovenia	4	2	1
Spain	21	13	1
Sweden	2	1	2

1.7. The Group of States against Corruption (GRECO)

In 2022, GRECO delivered monitoring reports on about two thirds of the EU Member States. These reports concern the fourth and fifth evaluation round (GRECO's monitoring work is organised in rounds and each of the rounds has its thematic scope). The fourth round concerns the prevention of corruption in respect of members of parliament, judges, and prosecutors. The fifth round concerns preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies. In the evaluation process, reports are adopted that contain the GRECO recommendations and observations. In the compliance procedure, reports are adopted that provide a (mid-term) assessment on the implementation of the recommendations (first or second interim compliance reports or final compliance reports). Addenda to compliance reports comment on further progress in the implementation of the recommendations. Table 1.5. provides an overview of the reports adopted with regard to EU Member States in 2022 and provides the links leading to the respective documents.

Table 1.5.: Reports on EU Member States submitted by GRECO in 2022

	Cycle	Type	Date
Austria	Fourth	2nd Interim	20/04/2022
Belgium	Fifth	Compliance	21/01/2022
	Fourth	3rd Interim	12/09/2022
Croatia	Fourth	2nd Addendum	28/10/2022
Denmark	Third	2nd Addendum	28/09/2022
France	Fifth	Compliance	07/01/2022
	Fourth	Addendum	31/03/2022
Germany	Fourth	2nd Interim	22/11/2022
Greece	Fifth	Evaluation	03/03/2022
	Fourth	Addendum	01/06/2022
	Ad Hoc (Rule 34)	2nd Follow-up	03/03/2022
Hungary	Fourth	3rd Interim	08/09/2022
Ireland	Fourth	2nd Compliance	13/07/2022
Italy	Fourth	Addendum	14/09/2022
Lithuania	Fifth	Evaluation	26/04/2022
Luxembourg	Fifth	2nd Compliance	08/12/2022
	Fourth	3rd Interim	28/03/2022
Malta	Fifth	Compliance	24/05/2022
Portugal	Fourth	2nd Compliance	06/10/2022
Slovakia	Fifth	Compliance	19/01/2022
Spain	Fifth	Compliance	29/03/2022
	Fourth	Addendum	05/12/2022

1.8. The European Commission against Racism and Intolerance (ECRI)

An area that prominently links fundamental rights and the rule of law is equality and non-discrimination. In the Council of Europe system, monitoring in this regard is carried out by ECRI, the European Commission against Racism and Intolerance. The work is organised in five-year cycles, covering eight to ten countries per year. In 2022 ECRI adopted monitoring reports for 5 EU Member States, namely for Bulgaria, Denmark, Estonia, France and Greece.

Table 1.6.: EU Member States that received reports and conclusions by ECRI in 2022

	Reports	Date of adoption
Austria	Conclusions	29/06/2022
Belgium	Conclusions	29/06/2022
Bulgaria	6th Report	28/06/2022
Denmark	6th Report	29/03/2022
Estonia	6th Report	29/03/2022
France	6th Report	28/06/2022
Germany	Conclusions	29/06/2022
Greece	6th Report	28/06/2022

1.9. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

Another set of rule of law relevant Council of Europe sources are the reports submitted under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which has been ratified by all EU Member States. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visits prisons, juvenile detention centres, police stations, holding centres for immigration detainees, psychiatric hospitals, social care homes, etc. After each visit, the CPT sends a detailed report to the State concerned.

In 2022, visits were carried out in ten EU Member States, namely in Belgium, Croatia, Cyprus, Greece, Italy, Latvia, Netherlands, Poland, Portugal and Romania. Table 1.7. provides the dates of the relevant visits and reports.⁶⁰

⁶⁰ See for more information, Council of Europe, Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment (2022), [32nd General Report of the CPT](#), Strasbourg, Council of Europe, March 2023.

Table 1.7: Visits by the CPT in EU Member States in 2022

	Type	Dates of visits by the CPT
Belgium	Ad Hoc Visit Report under preparation	07/11/2022-10/11/2022
Croatia	Periodic Visit	19/09/2022-29/09/2022
	High-level talks	04/02/2022
Cyprus	Ad Hoc Visit Report under preparation	07/11/2022-09/11/2022
Greece	Ad Hoc Visit Report under preparation	08/11/2022-11/11/2022
	High-level talks	07/09/2022-08/09/2022
Italy	Periodic Visit Report not yet published	28/03/2022-08/04/2022
Latvia	Periodic Visit	10/05/2022-20/05/2022
Netherlands	Periodic Visit Report not yet published	10/05/2022-25/05/2022
Poland	Periodic Visit Report not yet published	21/03/2022-01/04/2022
Portugal	Periodic Visit Report under preparation	23/05/2022-03/06/2022
Romania	Ad Hoc Visit Report under preparation	19/09/2022-30/09/2022

1.10. The Commissioner for Human Rights and other CoE bodies

Various CoE mechanisms are not (yet) covered by the agency’s EFRIS system, mainly those that are not yet part of the Council of Europe’s HUDOC database. Nevertheless these mechanisms offer important rule of law relevant information.

For instance, in the context of the role of civil society organisations, the Commissioner for Human rights addressed [Hungary](#), [Malta and Spain](#) in that regard.

The Commissioner asked Hungary to establish an “effective and fair asylum system in line with the State’s international protection obligations, for the benefit of those fleeing Ukraine who do not fall under the temporary protection scheme and for everyone else who seeks the fair and thorough assessment of their eligibility for asylum in Hungary”.⁶¹ In her letter, the Commissioner stressed the important role played by Hungarian civil society organisations in this field, and called on the authorities to acknowledge, value and support their activities in every possible way to ensure that essential legal advice and information is provided to all those in need.⁶²

⁶¹ Council of Europe (CoE), [Letter of the Commissioner for Human Rights to the Minister of the Interior of Hungary](#), CommHR/DM/sf 019-2022, 10 June 2022, page 2, paragraph 6.

⁶² Council of Europe (CoE), [Letter of the Commissioner for Human Rights to the Minister of the Interior of Hungary](#), CommHR/DM/sf 019-2022, 10 June 2022, page 1, paragraph 2.

In her letter addressed to Malta, the Commissioner urged the Maltese authorities to ensure that legislative work concerning the media sector and restrictions on the use of strategic lawsuits against public participation (SLAPPs) is carried out with full consultation of civil society and of the journalism community.⁶³ She stressed the importance of upholding the rule of law and freedom of expression and of ensuring journalists' access to information of public interest.⁶⁴

In her letter addressed to Spain, the Commissioner discussed how the passing of a law "on citizen's safety" could contravene the rights of freedom of expression and peaceful assembly, inter alia. She added that the provisions on sanction in the context of disobedience against authorities went against the principles of legality, including that of foreseeability of the law, and could lead to an arbitrary and disproportionate punishment.⁶⁵

In her 1st, 2nd, 3rd and 4th quarterly reports, the Commissioner evoked the topic of freedom of assembly and of association and recommended "conducting impact assessments of regulatory initiatives affecting civil society organisations and repealing any legislation hindering the rights of human rights defenders and encouraged participants to contribute to further developing international guidelines in this area."⁶⁶ She also delivered a speech during the European anti-SLAPP conference, pushing States to "ensure that national legislations allow the early dismissal of SLAPPs, foresee measures to punish abuse of the justice system and guarantee practical support and free legal aid to those who are sued."⁶⁷ On the theme of media freedom, the Commissioner delivered a speech on the necessity to end impunity for crimes against journalists, to implement already existing national and international standards, to shift the political vision of the press and finally, to better support journalists under attack.⁶⁸

Key for the rule of law is obviously the work of CEPEJ, the Council of Europe Commission for the efficiency of Justice. The 2022 CEPEJ evaluation report was published on 5 October and measures the efficiency and quality of 44 European States and 3 observer States. The results are presented in tables, graphs and analysis; country profiles and, thirdly, a CEPEJ STAT database.⁶⁹ Related to the judiciary, another rare development is to be underlined: In November 2022, the Secretary General published a report under Article 52 of the European Convention on Human Rights⁷⁰ on the consequences of decisions K 6/21 and K 7/21 of the Constitutional Court of the Republic of

⁶³ Council of Europe (CoE), [Letter of the commissioner for Human Rights to the Prime Minister of Malta](#), CommHR/DM/sf 032-2022, 23 December 2022, page 1, paragraphs 4 and 5.

⁶⁴ Council of Europe (CoE), [Letter of the commissioner for Human Rights to the Prime Minister of Malta](#), CommHR/DM/sf 032-2022, 23 December 2022, page 1, paragraph 2.

⁶⁵ Council of Europe (CoE), [Letter of the Commissioner for Human Rights to Spain officials](#), CommHR/DM/sf 005-2022, 8 February 2022, pages 1-2, paragraphs 4-5.

⁶⁶ Council of Europe (CoE) (2022), [3rd quarterly activity report](#), part 3; see also Council of Europe (CoE) (2022), [1st, 2nd and 4th quarterly reports](#).

⁶⁷ Council of Europe (CoE) (2022), [Speech by Dunja Mijatović](#) at the *European anti-SLAPP Conference*, Comm/DH/Speech(2022)6, 20 October 2022.

⁶⁸ Council of Europe (CoE) (2022), [Speech by Dunja Mijatović](#) at the *Seminar on Safeguarding Media Freedom: the role of the European Union*, CommDH/Speech(2022)5, 19 October 2022.

⁶⁹ See online here: <https://www.coe.int/en/web/cepej/special-file-report-european-judicial-systems-cepej-evaluation-report-2022-evaluation-cycle-2020-data>.

⁷⁰ Art. 52 ECHR: "On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention."

Poland.⁷¹ The document contains in annexes the exchange of letters between the CoE Secretary General and the Minister for Foreign Affairs of the Republic of Poland as well as the two judgments of the Polish Constitutional Court. The arguments put forward by the Republic of Poland did not prevent the Secretary General from concluding that “Poland has not been released from its unconditional obligation under Article 46 of the Convention to abide by the European Court’s judgments fully, effectively and promptly”. Quite to the contrary, the Secretary General points to the “rising number of similar applications pending before the European Court reveal[ing] an actual shortcoming within the national legal order, affecting a whole class of persons whose right to a “tribunal established by law” might be affected by deficient judicial appointments.”⁷²

Moreover, the Venice Commission - also not covered by HUDOC (and consequently neither by EFRIS) - has delivered relevant opinions. An opinion on Croatia dealt with the procedure of renewal of security vetting through amendments to the Courts Act.⁷³ Various opinions dealt with judicial reforms in Romania, namely the Draft Law on the dismantling of the Section for investigating criminal offences within the judiciary⁷⁴ and with other laws concerning the judicial reform⁷⁵. Other opinions concerned Bulgaria and dealt with the Judicial Systems Act⁷⁶, the draft law on amendments and supplements to the criminal procedure code⁷⁷ and the draft amendments to the judicial system act concerning the inspectorate to the Supreme Court⁷⁸.

⁷¹ See [SG/Inf\(2022\)39](#), 9.9.2022.

⁷² Op.cit., p. 10.

⁷³ See opinion [CDL-AD\(2022\)005](#), 21.02.2022.

⁷⁴ See e.g. [CDL-REF\(2022\)008](#), 21.2.2022; [CDL\(2022\)010](#), 07.03.2022

⁷⁵ See e.g. urgent opinion [CDL-AD\(2022\)045](#), 19.12.2022

⁷⁶ See e.g. [CDL-REF\(2022\)025](#), 9.9.2022.

⁷⁷ See e.g. [CDL-REF\(2022\)028](#), 19.09.2022.

⁷⁸ See [CDL-REF\(2022\)22](#), 24.10.2022.

2. Civic space and the rule of law: findings from FRA research and consultation of civil society in 2022

FRA cooperates with CSOs active in the field of fundamental rights through its [Fundamental Rights Platform](#). In this context, the Agency consults civil society actors on their experiences regarding civic space annually. Moreover, the Agency's research network [FRANET](#) collects every year information on legal and policy developments related to an enabling space for human rights civil society across the EU and in accession countries covered by FRA.

Based on evidence collected by FRA, the following section highlights key developments regarding the civic space in the EU in 2022. The analysis draws on:

- (1) The responses of almost 400 civil society organisations, umbrellas and networks to the Agency's annual consultation 2022 on civic space.⁷⁹
- (2) Research carried out by FRANET in 2022 resulting in country reports on relevant legal and policy developments in all 27 EU Member States, as well as in three accession countries - Albania, North Macedonia and Serbia, which are covered by FRA's mandate.⁸⁰

2.1. Civil society contributions to checks and balances in a rule of law framework

International and regional human rights bodies, including the United Nations Human Rights Council⁸¹, the Council of Europe⁸² but also the OSCE Office for Democratic Institutions and Human Rights (ODIHR)⁸³ have increasingly emphasised over the past years the key contribution of CSOs and other civil society actors, such as human rights defenders (HRDs) and activists, to advance and safeguard the rule of law. They acknowledged in particular the role of CSOs in engaging and empowering citizens on a wide range of social and human rights issues, in monitoring respect for rule of law and human rights standards, in advocating rule of law and human rights-compliant legal and policy responses, in securing transparent and participatory law and policy-making, and demanding that public authorities are held accountable. Public participation and civic space are key focus areas of the UN Call to Action on Human Rights.⁸⁴ Noting the critical contribution of civil society to strengthen and promoting the three pillars of the UN Charter – human rights, development and peacebuilding⁸⁵ – the UN Special Rapporteur

⁷⁹ FRA 2022 consultation with civil society organisations, Experiences of civil society organisations working on human rights in the EU, covering 2021 (data collection: 3 January – 2 February 2023, 381 responding civil society organisations from across the EU), including over 50 umbrella organisations active at EU level). The questionnaire comprised 36 questions covering the general conditions for CSOs working on human rights issues to operate, notably their experiences regarding attacks, access to resources, the legal environment, and access to the decision-making.

⁸⁰ FRA's research through its [FRANET network – 30 national research deliverables](#) (27 EU Member States + Albania + North Macedonia + Serbia), covering 2022 (data collection: December 2022 - January 2023). The consolidated findings of FRA's data collection exercises are scheduled to be published in autumn 2023 in a FRA report on civic space.

⁸¹ See for example UN, Human Rights Committee (HRC) (2016), [Resolution on Civil Society Space](#).

⁸² See lately Council of Europe (CoE), Committee of Ministers (2018), [Recommendation CM/Rec\(2018\)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe](#), 18 November 2018.

⁸³ See among others the foreword to the [Guidelines on Freedom of Association](#) jointly drafted by OSCE/ODIHR and the Council of Europe Venice Commission (2015).

⁸⁴ United Nations (UN), [Secretary General's Call to Action on Human Rights](#) (2020).

⁸⁵ United Nations (UN), Human Rights Council (2017), [Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association](#), 8 May 2017, para. 22.

on the freedom of peaceful assembly and of association has recently recalled the importance of civil society space to achieve the 2030 Agenda for Sustainable Development.⁸⁶

A series of statements at EU level show that a free and active civil society is considered:

- an essential component of a strong rule of law ecosystem,⁸⁷
- key parties in promoting the use and awareness of the EU Charter and a culture of values,⁸⁸
- a precondition for healthy democracies,⁸⁹
- a safeguard for citizens preventing and reacting to violations or abuses.⁹⁰

Civil society organisations contribute to the functioning of the rule of law in many ways. They:

- contribute to law and policy-making through participation and consultation
- foster a rule of law culture
- support and cooperate with independent authorities and bodies
- contribute to checks and balances through monitoring, advocacy and litigation
- improve participating of vulnerable groups
- promote good governance, strengthen transparency and accountability of public authorities
- promote access to justice
- promote and safeguard media freedom and pluralism, enabling an inclusive and balanced debate
- contribute to the fight against corruption⁹¹

At the same time, CSOs and HRDs are hampered in their important work for human rights and for the rule of law, through various challenges and pressures – defined as ‘civic space challenges’. The EU has since long recognised civic space pressures and supported CSOs and HRDs externally, notably through the EU Guidelines on HRDs and through its “protect-defenders mechanism”.⁹² In 2022-23, for the first time all three EU institutions acknowledged civic space pressures inside the EU in official documents:

⁸⁶ United Nations (UN), General Assembly (GA) (2018), [Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association](#), 7 August 2018. See also United Nations (UN), General Assembly (GA) (2019), [Report on the rights to freedom of peaceful assembly and of association: Civic space, poverty and exclusion](#), 11 September 2019 and United Nations (UN), Office of the High Commissioner for Human Rights (OHCHR) (2015), [A central role for a civil society is the only way to guarantee inclusive post-2015 development goals](#), 18 May 2015.

⁸⁷ See the European Commission Rule of Law Reports, available at https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en

⁸⁸ European Commission (2020), [Strategy to strengthen the application of the Charter of Fundamental Rights in the EU](#), COM(2020)711 final, 2 December 2020, p. 10.

⁸⁹ European Commission (2020), [Communication on the European democracy action plan](#), COM(2020)790 final, 3 December 2020, p. 3.

⁹⁰ Council of the European Union (2021), [Council conclusions on strengthening the application of the Charter of Fundamental Rights in the European Union](#), 6795/21, 8 March 2021.

⁹¹ For details, see FRA’s civic space report 2022, [Europe’s civil society – still under pressure](#), p. 7-18

⁹² European Union External Action Service (EEAS) (2016), [EU Guidelines on Human Rights Defenders](#); and [ProtectDefenders](#)

- European Parliament resolution on civic space in the EU (March 2022)⁹³
- European Commission report on the application of the Charter and civic space (December 2022)⁹⁴
- Council Conclusions on the role of the civic space in protecting and promoting fundamental rights in the EU (March 2023)⁹⁵

FRA activity
Monitoring the civic space in the EU

Since 2018, FRA reports annually on civic space developments across the EU. The Agency's regulation tasks FRA to cooperate with civil society to raise awareness on fundamental rights. It is in this context that the Agency also analyses the conditions for CSOs working on human rights issues to operate freely. The Agency consults civil society actors in its Fundamental Rights Platform annually on their experiences regarding civic space. The responding organisations are active at international, EU, national or local level and work in a range of different areas, including advocacy, campaigning and awareness raising, service provision, community engagement, victim support, research and data collection, and litigation.

Complementing the information from civil society itself, the Agency's research network FRANET collects information on legal and policy developments annually. This information examines the enabling space for civil society across the EU Member States and the accession countries covered by FRA. Based on this evidence, FRA issues an annual update on civic space, contributes to the European Commission's rule of law consultation, and provides assistance and expertise on the issue to EU institutions, Member States and international partners.

2.2. An enabling framework for civil society

FRA research and the findings from its annual civil society consultations point to patterns of challenges for CSOs in the following contexts:

- The relevant legal framework;
- Access to resources;
- Participation in policy and decision-making; and
- Operating in a safe environment.

The nature and extent of these challenges vary considerably across the EU. FRA findings show that in a number of countries, in the different areas covered, the environment for the operation

⁹³ European Parliament (2022), [Resolution on the shrinking space for civil society in Europe \(2021/2103\(INI\)\)](#) (8 March 2022)

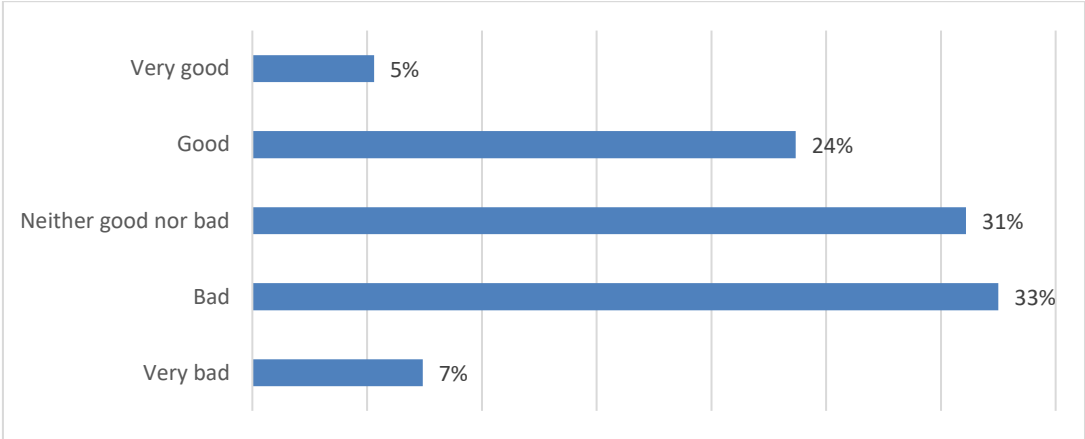
⁹⁴ European Commission (2022), [A thriving civic space for upholding fundamental rights in the EU - 2022 Annual Report on the Application of the EU Charter of Fundamental Rights](#)

⁹⁵ Council of the European Union (2023), [Council Conclusions on the application of the EU Charter of Fundamental Rights; The role of the civic space in protecting and promoting fundamental rights in the EU](#)

of CSOs remains challenging. For a more detailed description of the situation in the different EU Member States, please consult FRANET’s country studies on civic space.⁹⁶

The figures below summarise the replies by close to 400 civil society organisations working on human rights at national and local level in the EU covering their civic space experiences in 2022.

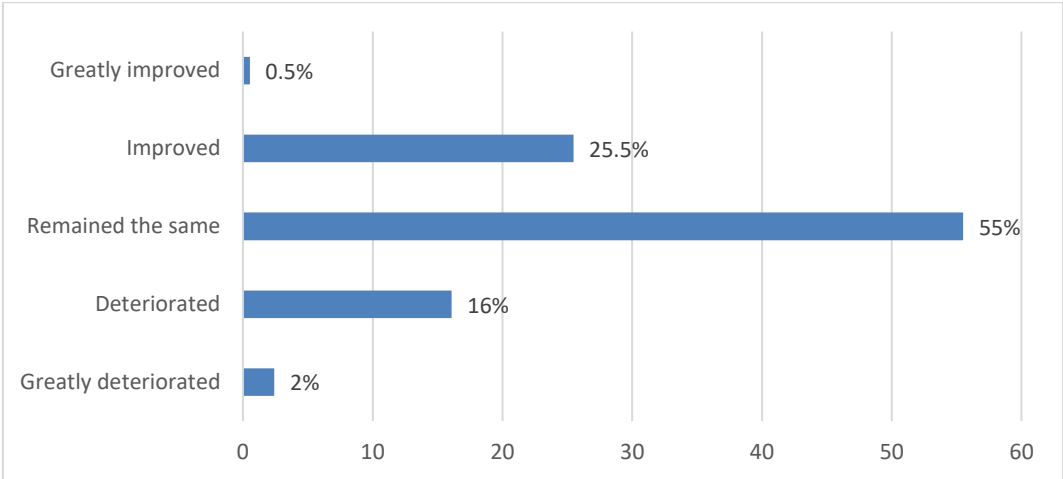
Figure 2.1. General conditions for CSOs working on human rights in the EU at national and local level in 2022



Note: Question: “How would you describe in general the conditions for civil society organisations working on human rights issues in your country today?” (N=283, that is those responding organisations indicating that they work at national or local level)

Source: FRA civic space consultation covering 2022

Figure 2.2. Perceived change of situation of own organisation in 2022



Note: Question: “Thinking about your own organisation, how has its situation changed in the past 12 months?” (N=373)

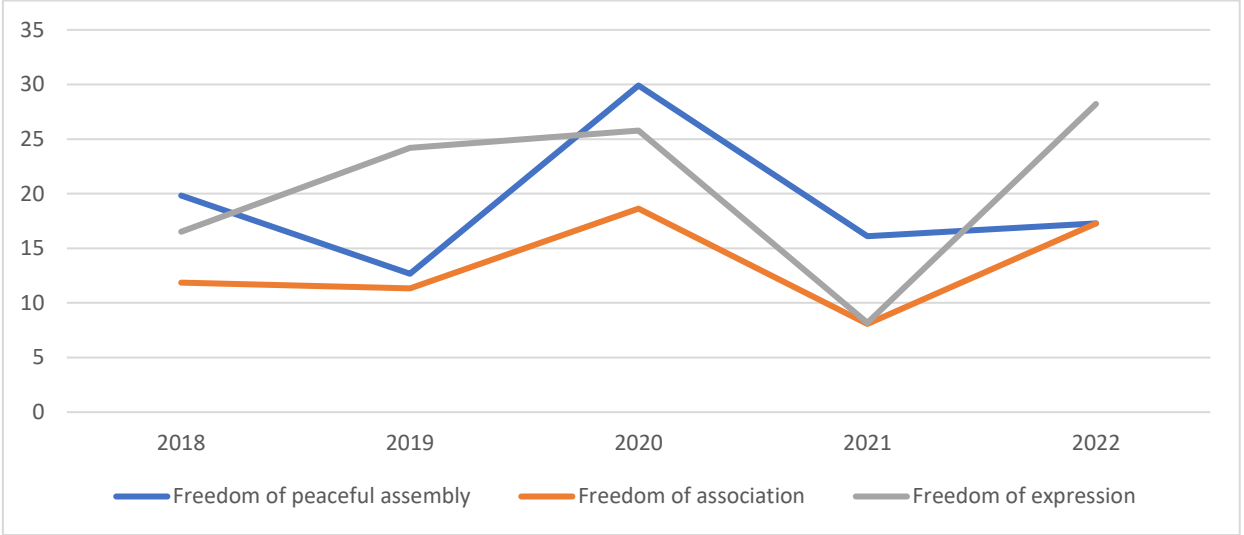
Source: FRA civic space consultation covering 2022

In comparison with the results from the 2021 consultation, a higher number of organisations perceive their situation as having improved in 2022. At the same time, a lower number of CSOs

⁹⁶ [FRANET country studies for 27 Member States](#)

among the responding organisations have witnessed a deterioration in their situations (overall 18% compared to 28% in the 2021 consultation).⁹⁷

Figure 2.3: Percentage of respondents indicating difficulties in freedom of association, assembly and expression over time



Note: Question: “In the past 12 months, has your organisation faced difficulties in any of the following areas?” [freedoms]

Source: FRA civic space consultations 2018, 2019, 202, 2021, 2022

Overall, the consultation shows little improvement over the past five years as regards freedom of association, assembly and expression. At the same time, the impact of COVID and related measures is clearly visible for 2020-21, in particular as regards freedom of expression, which is perceived to have deteriorated considerably.

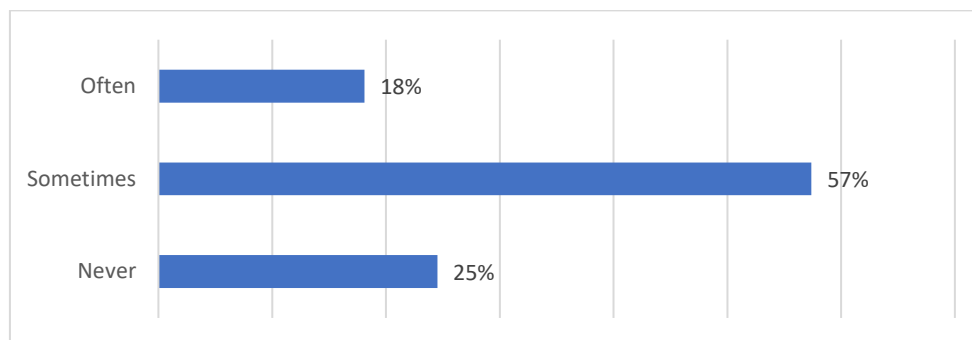
Governments can support the development of the civil society sector and strengthen mutual engagement between public authorities and CSOs through relevant policy frameworks and permanent dialogue structures. In this regard, FRA’s research reveals both positive and negative developments in 2022 across the EU. Positive steps taken in several Member States include policy measures creating an environment more conducive to civil society development and the strengthening of cooperation between public authorities and CSOs, as well as improved frameworks for participation. For example, some Member States have created infrastructures aimed at providing space for dialogue, channelled targeted support to civil society, or undertook specific commitments to create an enabling environment in national action plans on open government. CSOs have also been active in their efforts to improve the policy framework in which they operate, including through coalition building.

⁹⁷ FRA, civic space consultation (2021; 2022)

2.3. Challenges experienced by CSOs in doing their work

Reports by international organisations and a range of CSOs, as well as by FRA⁹⁸, have pointed to persisting, serious challenges for civil society in the EU, limiting their role and contribution to the functioning of democracy and the rule of law. In 2022, the effects of the war in Ukraine have further exacerbated some of these challenges.

Figure 2.4. CSOs facing barriers in conducting their activities for human rights and the rule of law in 2022



Note: Question: “In the last 12 months, did you face any barriers in conducting your activities for human rights and the rule of law?” (N=359)

Source: FRA civic space consultation covering 2022

2.3.1. Legal environment

In 2022, the legal situation remained, overall, relatively unchanged in comparison to 2021, as indicated both by consultation findings and FRANET research. Most notably, challenges to the exercise of fundamental rights such as freedom of assembly, association and expression did not improve. Freedom of expression results as the third legal challenge most encountered by CSOs.

Some forms of pressure on the right to freedom of peaceful assembly continue to be reported in a number of countries⁹⁹. FRA’s civic space consultation 2022 shows that access to information represented the most common challenge in the legal environment for CSOs. At the same time, a decrease in challenges related to emergency laws is visible, in comparison with figures from the 2020 and 2021 consultations.¹⁰⁰ This change correlates with the gradual lifting of emergency provisions adopted in response to the COVID-19 pandemic in 2020, which were still in force during 2021. The same applies to challenges linked to travel restrictions and visa bans, which represent, for the consulted CSOs in 2022, a lesser challenge. At the same time, there was a deterioration in terms of challenges related to political campaigning compared to 2021.

Freedom of association was seen to be affected by too strict legal requirements in terms of formation and registration of associations, and organisations were faced with challenges in the

⁹⁸ FRA (2021), [Protecting Civic space in the EU](#); FRA (2022) [Europe’s civil society – still under pressure](#),

⁹⁹ [FRANET country studies for 27 Member States](#)

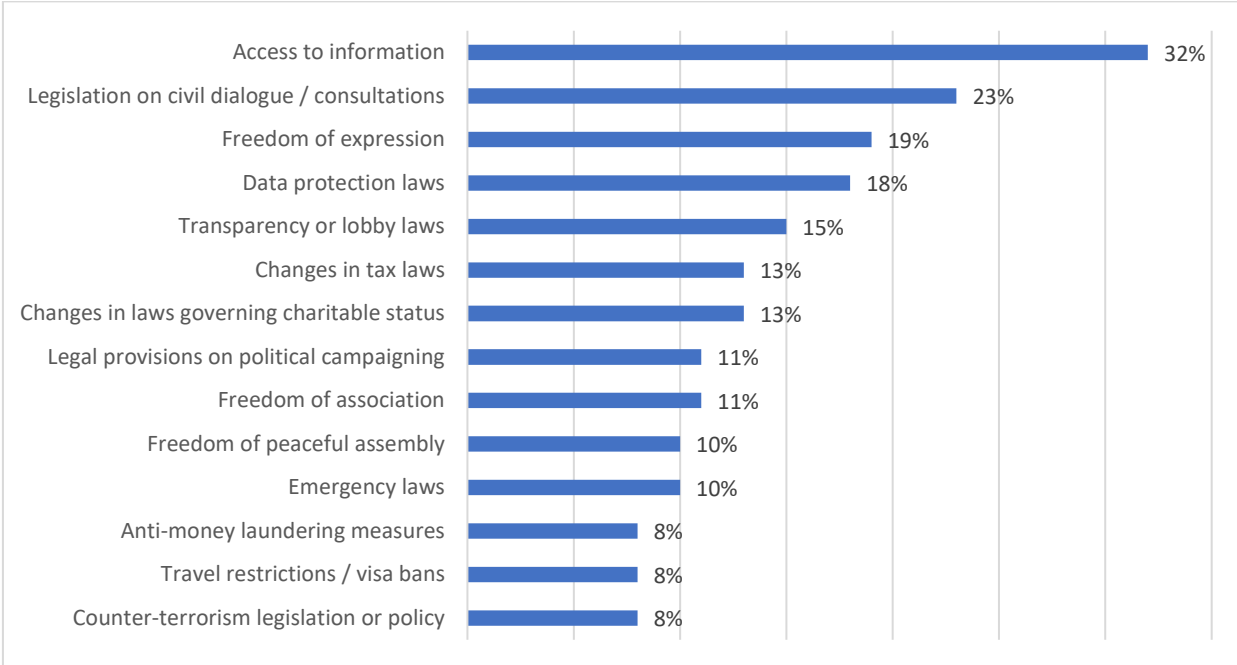
¹⁰⁰ FRA civic space consultation covering 2022, [FRANET country studies for 27 Member States](#)

legal environment when establishing their activities and conducting their work.¹⁰¹ Government-level measures, such as data protection, transparency, anti-money laundering and tax laws, were perceived as challenging the regular work conducted by CSOs.¹⁰²

Freedom of expression was challenged by hampered access to information, criminalisation of expression, removal of online content, online and offline verbal harassment, censorship and defamation. Regarding access to information, national provisions grant access to public documents, albeit with broad exceptions, therefore *de facto* impeding the proper exercise of the right. Governments’ responses to cases of harassment and violence targeting individuals exercising their freedom of expression have increased. Most notably, Strategic Lawsuits Against Public Participation (SLAPPs) remain common forms of attacks.¹⁰³

Figure 2.5. shows the answers of respondents to FRA’s civic space consultation for 2022 who reported facing challenges in the legal environment.

Figure 2.5. Challenges encountered by civil society in the legal environment in the EU in 2022



Note: Question: “In the past 12 months, has your organisation encountered difficulties in conducting its work due to legal challenges in any of the following areas? You can tick all boxes that are relevant.” (N=381)

Source: FRA civic space consultation covering 2022

¹⁰¹ [FRANET country studies for 27 Member States](#)

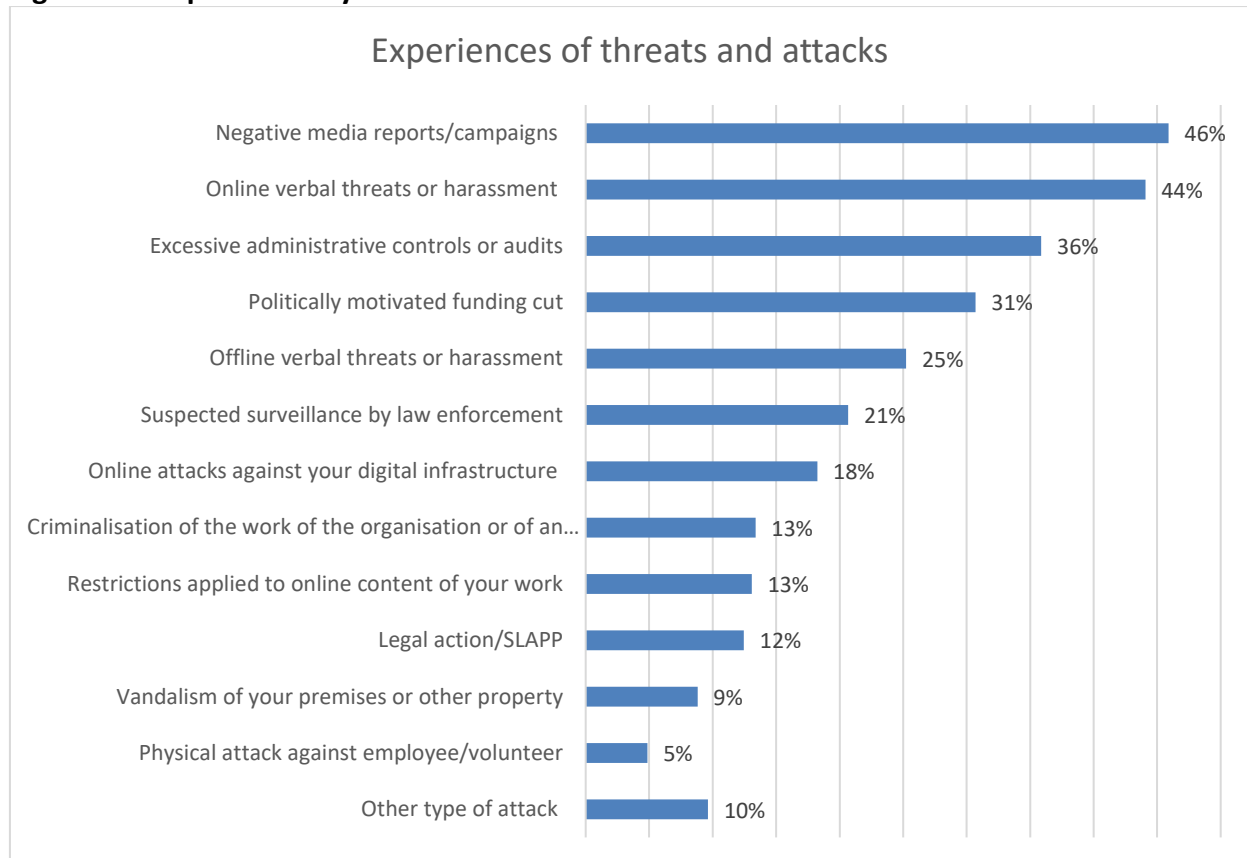
¹⁰² FRA civic space consultation covering 2022

¹⁰³ FRA civic space consultation covering 2022, [The Coalition against SLAPPs in Europe \(the-case.eu\)](#)

2.3.2. Threats and Attacks

CSOs and HRDs continue to experience threats and attacks across the EU. They include threats and attacks against organisations, as well as against their staff or volunteers, ranging from online and offline intimidation and harassment, negative public statements and smear campaigns and verbal threats, to legal and physical attacks.¹⁰⁴

Figure 2.6. Experiences by CSOs of threats and attacks in the EU in 2022



Note: Question: “In the last 12 months, has your organisation, or any of your employees/volunteers, experienced any of the following? [Type of attacks]” (N=301). CSOs considered half of the incidents as “not serious enough” to warrant reporting (see below).

Source: FRA civic space consultation covering 2022

The results from the 2022 consultation consolidate FRA findings from previous years. Negative media reports and campaigns were, again, the most experienced (46%) forms of threat and attacks by responding CSOs in 2022. Similarly, the consultation shows that online verbal threats and harassment targeting organisations continue to affect a majority of the respondents. In addition, more than a third of the responding CSOs claim having been targets of excessive administrative controls and audits. The percentage of organisations being victim of legal action such as SLAPPs remained stable around 1 in 8 from 2021 consultation.¹⁰⁵ Moreover, reports

¹⁰⁴ FRA, civic space consultations 2021, 2020, 2019, 2018

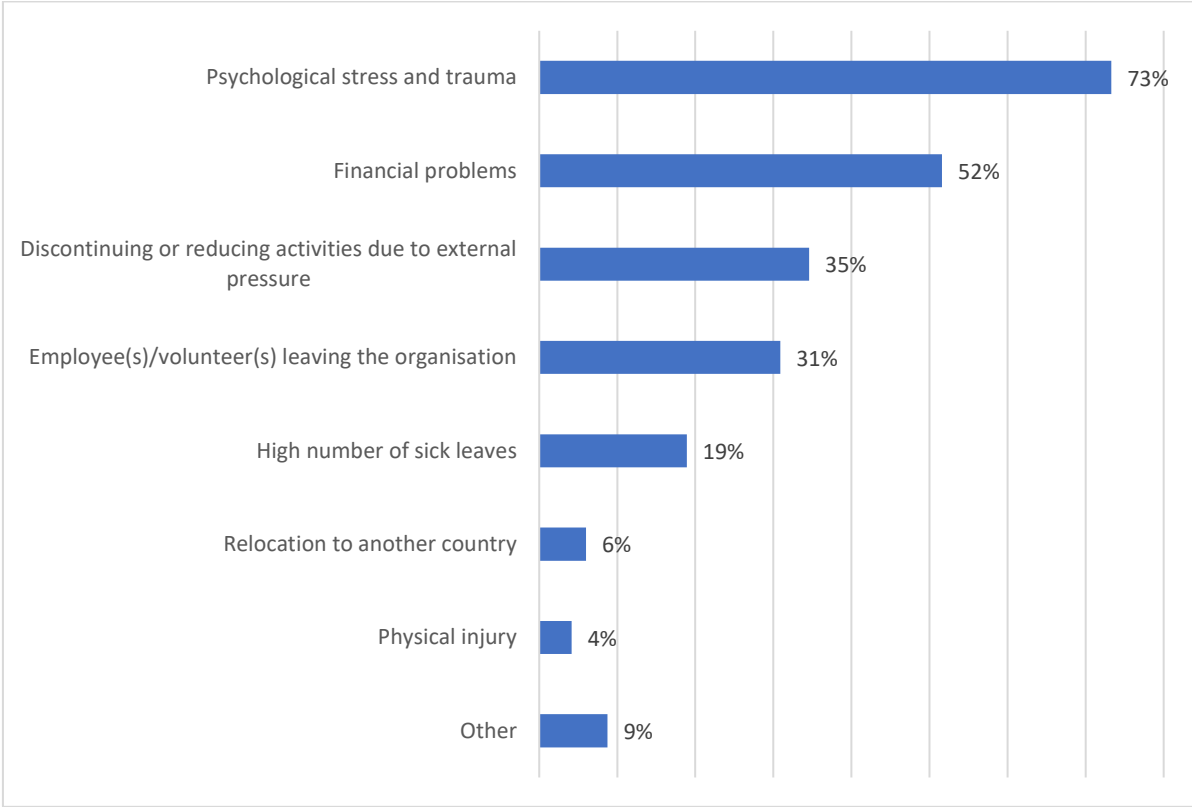
¹⁰⁵ FRA, civic space consultation (2022)

about experiences of suspected surveillance by law enforcement have much increased to 21% of respondents, compared with 7% in the 2021 consultation.

Overall, around half (48%) of the respondents identified a State/public actor as the main perpetrator of attacks against their organisation, whereas an approximate other half (46%) suspected or knew that the perpetrators were non-state/private actors. Moreover, a wide majority of the participating CSOs believes that the causes behind the perpetrated attacks were linked to the activities and issues the organisations worked on, as well as to their source of funding. Among the consequences and impact of such attacks on the consulted organisations and their employees and volunteers, one can find, *inter alia*, psychological stress and trauma, financial issues and interruption or reduction of activities following external pressure, as well as employees leaving the organisation. In a few cases an organisation or an individual HRD even needed to relocate to another country as indicated in Figure 2.7.¹⁰⁶

Yet, only one in five organisations reported these incidents to a competent body or the media. The main reasons given by respondents for not reporting was that the incident was not regarded as serious enough (52%), they felt nothing would come out of reporting (34%), lack of trust in the authorities or the police (17%), or finding it too much trouble to report (17%).

Figure 2.7. Impact of attacks in 2022



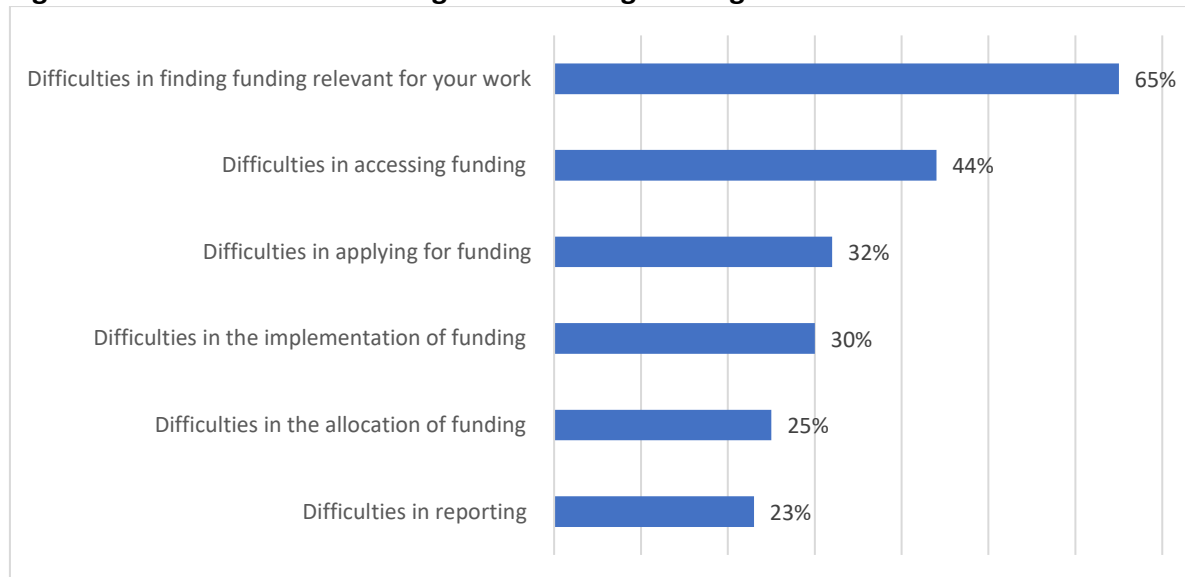
Note: Question: “What was the impact of these attacks in the last 12 months on your organisation and its employees/volunteers?” [Type of impact]” (N=191)
Source: FRA civic space consultation covering 2022

¹⁰⁶ FRA, civic space consultation (2022)

2.3.3. Access to resources

Finding and accessing resources and funding for their work remains an ongoing concern for CSOs¹⁰⁷. Where funding is available, CSOs face hurdles in accessing it, including competition with other CSOs when funds are limited, lack of public information about available funding, limited capacity to apply for funding, restrictive eligibility criteria, or lack of core funding.¹⁰⁸

Figure 2.10. Difficulties in finding and accessing funding



Note: Question: “In the last 12 months, did you experience any of the following difficulties when trying to find and access funding? Please tick the three most relevant difficulties.” [type of difficulty] (N=204)

Source: FRA civic space consultation covering 2022

At the same time, FRA’s research identified a range of positive developments at national level. Several countries improved their general financing frameworks, while others explored a more favourable taxation framework for CSOs. A number of funding programmes were launched, in the course of 2022, notably in support of CSOs operating in activities of support to refugees from Ukraine.¹⁰⁹

¹⁰⁷ FRA, civic space reports 2018, 2021, 2022

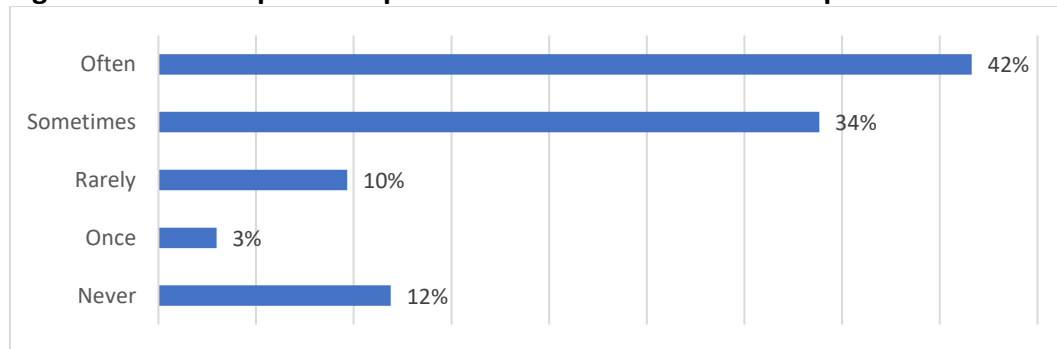
¹⁰⁸ FRA, Protecting civic space in the EU (2021), civic space consultation 2021

¹⁰⁹ See FRANET reports

2.3.4. Participation

The participation of civil society in policy and decision-making processes is an indicator of democracy and contributes to the quality and sustainability of laws and policies. The majority (76 %) of responding CSOs to FRA’s consultation participate often or sometimes in public consultations on laws and policies.

Figure 2.11. Participation in public consultations on laws and policies in 2022



Note: Question: “In the past 12 months, did your organisation participate in public consultations for law and policy making – either through online consultations, meetings, focus groups, interviews or other means?” (N=269)

Source: FRA civic space consultation covering 2022

Despite efforts in some Member States to improve consultation practices, channels for CSOs’ access to and participation in policy and decision-making remain patchy. For the CSOs participating in FRA’s consultation timing of consultations represented the most common obstacle (54%) to national consultation and participation. Another recurrent issue (50%) for the responding CSOs concerned the outcomes and feedback of national consultations and participation processes. Further difficulties frequently reported by CSOs relate to the overall process of consultation (45%), information about consultation (38%), capacity of organisation (28%) and, finally, access to consultation (16%).¹¹⁰ See figures 2.12 and 2.13. in the Annex.

At the same time, positive practices of enhanced forms of cooperation between public authorities and CSOs were reported in a number of countries, and FRA’s research in the Member States identified a range of efforts to improve consultation and participation processes.¹¹¹ EU action can serve as a catalyst in this regard, as many EU strategies require adoption of national action plans with the involvement of CSOs.

Several countries developed or adopted strategies or policies on participation, aimed at strengthening participatory and deliberative democratic processes and at promoting civic participation. Oftentimes, efforts to increase participation of civil society in policymaking were also made in response to the Ukrainian refugee crisis, to effectively tackle the emergency in a cooperative way.

¹¹⁰ FRA, civic space consultation (2022)

¹¹¹ [FRANET reports on civic space 2022](#); FRA (2022) [Europe’s civil society - still under pressure](#)

FRA Activity

National rule of law dialogues to strengthen the rule of law

In cooperation with the European Commission and national actors, FRA is supporting national rule of law dialogues, discussing the Commission's annual rule of law report and aiming to implement the country-specific recommendations contained there. The dialogues serve to increase awareness of the importance of the rule of law at national level in Member States, and the role played by civil society organisations and rights defenders for promoting and upholding it. They bring together key stakeholders (government, parliament, judiciary, civil society, media, human rights bodies...) to discuss the findings of the country chapters in an open exchange of views. The ultimate purpose is to engage all relevant actors in the concrete implementation of the Commission's recommendations. The first such dialogues took place in Belgium, Germany and Croatia in late 2022 and early 2023.

FRA Activity

Rule of law and National Human Rights Institutions: mutual learning

In National Human Rights Institutions (NHRIs) play an important role for EU fundamental rights and rule of law processes in a variety of contexts. FRA research indicates, however, that in a number of EU Member States NHRIs suffer from a lack of capacity (technical and financial), challenges to their independent mandate, and lack of knowledge regarding EU law. Against this background, a new regional FRA project funded by the Norway Grants will seek to strengthen the role of NHRIs in promoting and protecting fundamental rights and the rule of law in selected beneficiary States of the Grants, namely Bulgaria, Croatia, Slovakia, Cyprus, Poland, Portugal, Latvia and Slovenia.

3. Migration: the role of civil society and the risk of a systemic rule of law issue

3.1. Experiences with the reception of people fleeing from Ukraine: the key role of civil society

The year 2022 was characterised by the forced displacement of millions of persons from Ukraine due to the Russian aggression – a development that came as a test to the capacity of EU and its Member States to quickly react to major reception and integration needs. While not a challenge to the rule of law as such, this new phase of migration wave was a test to the civic space which is a key asset for safeguarding the rule of law as underlined by the European Commission in its annual rule of law reports.

The activation of the Temporary Protection Directive on 4 March 2022¹¹² “*offered a clear legal framework for protection and enabled convergences in operational responses and relevant procedures*”.¹¹³ At the political level, there was a solid consensus to assist the people fleeing from the war in Ukraine, as well as massive popular support. In this case the contribution of civil society, often in close cooperation with local authorities, as well as international organisations, was of critical importance for providing humanitarian aid to those escaping the war.

Some 5.5 million people had fled Ukrainian territory for the EU by mid-May 2022, according to the UN High Commissioner for Refugees.¹¹⁴ CSOs, HRDs and volunteers have been at the forefront of providing humanitarian aid and support to those fleeing the war. They also delivered aid and assistance to Ukraine.¹¹⁵ In the following this key role of the ‘civic space’ in the context of migration is exemplified by providing examples of how these actors helped addressing the crisis in the course of 2022.

¹¹² Council of the European Union (2001), [Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof](#), OJ 2001 L 212, 7 August 2001.

¹¹³ European Union Agency for Asylum (2023), [Providing Temporary Protection to Displaced Persons from Ukraine: A Year in Review](#), p. 29.

¹¹⁴ For more information, see the UN High Commissioner for Refugees Operational Data Portal on [Refugees fleeing Ukraine](#).

¹¹⁵ See, for example, Thompson, L., and Wolfe, E. (2022) ‘[How to respond to the humanitarian crisis in Ukraine: 4 NGOs explain](#)’, *World Economic Forum*, 1 April 2022; FRA (2022), ‘[EU-Ukrainian border check points: First field observations](#)’, 23 March 2022; FRA (2022), [The war in Ukraine: Fundamental rights implications within the EU – Bulletin 1](#), Luxembourg, Publications office; Melzer, C. (2022), ‘[People across Poland show solidarity with refugees from Ukraine](#)’, Relief Web, 1 March 2022; Polish Commissioner for Human Rights (2022), ‘[Pomoc UE na rzecz uchodźców z Ukrainy – także dla organizacji pozarządowych. MFiPR: doceniamy NGOS-y](#)’, 12 April 2022; and Marits, M. (2022), ‘[Enormer Zulauf an freiwilligen Helfern für Ukraine-Flüchtlinge](#)’, *Die Presse*, 7 March 2022. See, for example, Thompson, L., and Wolfe, E. (2022) ‘[How to respond to the humanitarian crisis in Ukraine: 4 NGOs explain](#)’, *World Economic Forum*, 1 April 2022; FRA (2022), ‘[EU-Ukrainian border check points: First field observations](#)’, 23 March 2022; FRA (2022), [The war in Ukraine: Fundamental rights implications within the EU – Bulletin 1](#), Luxembourg, Publications office; Melzer, C. (2022), ‘[People across Poland show solidarity with refugees from Ukraine](#)’, Relief Web, 1 March 2022; Polish Commissioner for Human Rights (2022), ‘[Pomoc UE na rzecz uchodźców z Ukrainy – także dla organizacji pozarządowych. MFiPR: doceniamy NGOS-y](#)’, 12 April 2022; and Marits, M. (2022), ‘[Enormer Zulauf an freiwilligen Helfern für Ukraine-Flüchtlinge](#)’, *Die Presse*, 7 March 2022.

3.1.1. The role of civil society in supporting Ukrainian refugees

Civil society across the EU not only voiced its solidarity with people fleeing the war in Ukraine, but actively engaged in providing humanitarian aid, transportation, housing and information.¹¹⁶ Many of the specialist NGOs advocated for their target groups. They provided guidance to authorities, service providers and volunteers on how best to support specific groups. They also offered practical assistance themselves, for example to persons with disabilities,¹¹⁷ Roma,¹¹⁸

FRA activity

Reporting on the experiences of persons fleeing Ukraine.

FRA collected evidence through field missions and from other sources reporting on the situation in March, May and October 2022. The FRA Bulletins look at the fundamental rights situation of all persons fleeing the Russian war in Ukraine to the four EU Member States neighbouring Ukraine. The second Bulletin also looked at issues of trafficking, sexual and gender-based violence and xenophobic disinformation and hate crimes. Special attention was given to the application of the EU Temporary Protection Directive.

In parallel, the agency launched a large-scale online survey of those fleeing Ukraine. This aimed to gather personal experiences of their journey to, arrival in, and settling in the EU. The survey covered displaced people, including many children, in the 10 EU Member States hosting large numbers of people registered for temporary protection: Bulgaria, Czechia, Estonia, Germany, Hungary, Italy, Poland, Romania, Slovakia and Spain. There were 14,685 respondents to the survey.

- FRA (2022), [The war in Ukraine – Fundamental rights implications within the EU - Bulletin 1](#), 19.5.2022
- FRA (2022), [The Russian war of aggression against Ukraine – The broad fundamental rights impact in the EU - Bulletin 2](#), 21.10.2022
- FRA (2023), [Fleeing Ukraine: Displaced people’s experiences in the EU](#), 28.2.2023

¹¹⁶ See, for example, Civil Society Europe (2022), [EU civil society: #WESTANDWITHUKRAINE](#), 1 March 2022. See also European Economic and Social Committee (2022), [‘EU organised civil society stands with Ukraine and its people’](#), 24 March 2022; and European Youth Forum (2022), [‘Young people call for international solidarity with Ukraine in response to Russian aggression’](#), 24 February 2022.

¹¹⁷ See, for example, Social Services Europe (2022), [‘Open Letter to the EU Institutions on the situation in Ukraine \(Council, European Parliament, European Commission, French Presidency of EU Council\)’](#), 4 March 2022. The statement links to an additional 13 statements from member organisations. See also European Disability Forum, Inclusion Europe and the European Association of Service Providers for Persons with Disabilities (2022), [‘Joint contribution to Commissioner Dalli meeting with civil society on support to Ukrainians’](#), 6 April 2022.

¹¹⁸ See, for example, Coakley, A. (2022), [‘Ukraine’s Roma refugees face uncertain future under threat of discrimination in Hungary’](#), *The Independent*, 12 March 2022; Index (2022), [‘Egyre több Kárpátaljáról érkező roma menekült fordul vissza Ukrajnába’](#), 8 April 2022; and Rozanova, A. (2022), [‘End the war against Ukraine: Letters to EU and United Nations in support of Ukraine Roma’](#), *ERGO Network*, 1 March 2022. See, for example, Coakley, A. (2022), [‘Ukraine’s Roma refugees face uncertain future under threat of discrimination in Hungary’](#), *The Independent*, 12 March 2022; Index (2022), [‘Egyre több Kárpátaljáról érkező roma menekült fordul vissza Ukrajnába’](#), 8 April 2022; and Rozanova, A. (2022), [‘End the war against Ukraine: Letters to EU and United Nations in support of Ukraine Roma’](#), *ERGO Network*, 1 March 2022.

children,¹¹⁹ women¹²⁰ and LGBTQI+ forcibly displaced people.¹²¹ CSOs supplemented the multilingual information authorities provide, notably¹²² by making information available online, setting up information hotlines and distributing printed information at the border and in reception centres in multiple languages.¹²³ Volunteer interpreters played a crucial role in supporting people trying to access services by providing information in a language they can understand.¹²⁴

CSOs also made extensive use of social media, notably Facebook, Twitter, Telegram, Signal and WhatsApp, to set up new groups or chat rooms. Some newly created groups on various social media platforms attracted hundreds of thousands of members within weeks. For example, one Facebook group created at the end of February 2022 had over 594,700 members by 25 April 2022.¹²⁵

NGOs and volunteers were also instrumental in supporting or even setting up centres for first reception for Ukrainian displaced persons. This was often, but not always, in cooperation with and supported by public authorities, particularly at local level. FRA observed these activities during a ten-day mission at the external EU borders with Ukraine and informed about the lack of control and registration of volunteers in the first weeks which created risks regarding human trafficking, labour exploitation and sexual violence.¹²⁶ Civil society soon started distributing flyers and alerts about such risks.¹²⁷

Many NGOs and volunteer groups also provided humanitarian assistance in the EU and/or in Ukraine.¹²⁸ Examples include assistance in new reception centres in Poland,¹²⁹ or the volunteer

¹¹⁹ See, for example, the Eurochild web page on [solidarity with the children of Ukraine](#).

¹²⁰ See, for example, Women Against Violence in Europe (2022), '[Information for women fleeing the war in Ukraine to various European countries](#)', 27 April 2022.

¹²¹ See, for example, the ILGA Europe web page on [Ukraine](#); Žureková, M. (2022), '[Doklady tvrdia, že je muž. Aby utiekla z Ukrajiny, preplávala Dunaj](#)', *SME*, 31 March 2022; and the Facebook page for [Queer Base – Welcome and Support for LGBTIQ Refugees](#). See, for example, the ILGA Europe web page on [Ukraine](#); Žureková, M. (2022), '[Doklady tvrdia, že je muž. Aby utiekla z Ukrajiny, preplávala Dunaj](#)', *SME*, 31 March 2022; and the Facebook page for [Queer Base – Welcome and Support for LGBTIQ Refugees](#).

¹²² FRA (2022), [The war in Ukraine: Fundamental rights implications within the EU – Bulletin 1](#), Luxembourg, Publications Office.

¹²³ Slovakia: see the main web page of [Who will help Ukraine? \(Kto pomôže Ukrajine?\)](#); Hungary: see the Hungarian Helsinki Committee web page on [information and legal assistance for refugees from Ukraine](#); Austria: see the Asylkoordination web page providing information on fleeing Ukraine ([Informationen zur Flucht aus der Ukraine](#)); Germany: International Rescue Committee Deutschland (2022), '[Anlaufstellen für Ukrainer*innen und Angehörige](#)', 28 February 2022; Slovakia: see the Migrant Information Centre (*Migračné informačné centrum*) web page on its [hotlines](#); Austria: see the Caritas Österreich web page on its [Ukraine information hotline](#). Slovakia: see the main web page of [Who will help Ukraine? \(Kto pomôže Ukrajine?\)](#); Hungary: see the Hungarian Helsinki Committee web page on [information and legal assistance for refugees from Ukraine](#); Austria: see the Asylkoordination web page providing information on fleeing Ukraine ([Informationen zur Flucht aus der Ukraine](#)); Germany: International Rescue Committee Deutschland (2022), '[Anlaufstellen für Ukrainer*innen und Angehörige](#)', 28 February 2022; Slovakia: see the Migrant Information Centre (*Migračné informačné centrum*) web page on its [hotlines](#); Austria: see the Caritas Österreich web page on its [Ukraine information hotline](#).

¹²⁴ FRA (2022), [The war in Ukraine: Fundamental rights implications within the EU – Bulletin 1](#), Luxembourg, Publications Office.

¹²⁵ See the Facebook page for [Pomoc dla Ukrainy / Допомога Україні: mieszkanie oraz inna pomoc obywatel](#).

¹²⁶ FRA (2022), '[EU-Ukrainian border check points: First field observations](#)', 23 March 2022 – in particular, see '[trafficking in human beings](#)'; FRA (2022), [The war in Ukraine: Fundamental rights implications within the EU – Bulletin 1](#), Luxembourg, Publications Office.

¹²⁷ See, for example, the Facebook page for the initiative [Stop human trafficking in Ukraine](#).

¹²⁸ See, for example, the Jesuit Refugee Service web page on [how the service is responding](#).

¹²⁹ Norwegian Refugee Council (2022), '[New refugee reception centre opens in overwhelmed Poland](#)', 25 March 2022. In addition, in Poland, several hundred local humanitarian points are run entirely by volunteers (Interview with a representative of the NGO All-Poland Women's Strike on 26 April 2022).

group Vienna Mission for Ukraine. Volunteers also assisted people to leave Ukraine or to get from the border to their countries and cities of destination.¹³⁰

People displaced by the war received other forms of support not only from national authorities, but also by service NGOs and local volunteer groups and networks, for example in legal registration processes, facilitating access to language courses or assisting with medical services. They also supported the placement of children in pre-school settings and schools. For example, in Czechia, the dedicated web portal 'Shkola' allowed Ukrainian families to find a kindergarten, primary or secondary school.¹³¹

Civil society organisations also provided support to displaced persons seeking employment. For example, in Austria, a private initiative created the website Jobs for Ukraine.¹³² In Czechia, the Tech Resistance initiative collected laptops, tablets, phones and other electronics via five points in Prague. These devices were distributed to displaced people through non-profit organisations to support them in learning Czech and securing employment.¹³³ In Germany, a private initiative created the website Job Aid With volunteers providing support through interpretation, by helping draft CVs and by accompanying displaced people to employment services.

NGOs also cooperated with state authorities to provide housing. Volunteer activities – often conducted through social media, such as Facebook – helped match displaced people and host families.¹³⁴ For instance, a German-speaking Facebook group, set up at the end of February 2022,¹³⁵ gathered over 90,000 members within a few weeks and offered and organised housing in Germany, Austria and Switzerland. The Ukrainian Community in Austria programmed the Homes for Ukraine web page in three languages within days. The page matched displaced people with private host families,¹³⁶ as did a similar page in the Netherlands.¹³⁷ In Germany, a similar matching initiative from civil society collected accommodation offers from private hosts in 150 cities, offering a total of more than 350,000 available beds.¹³⁸ A Polish Facebook group called Helping Ukraine has almost 600,000 members.¹³⁹

Service NGOs and, to some extent, volunteer initiatives also provided legal, medical and psychological support to displaced persons. Examples include the Organization for Aid to Refugees in Czechia that published a manual on how to talk to people affected by the war.¹⁴⁰ In Austria, the church-based organisation Diakonie maintains the telephone helpline 'Amike',

¹³⁰ See, for example, the Facebook pages for [Taxiservice for peace](#), [Transport a sister/help Ukraine 2022](#) and [Die Allesfahrer](#); the main web page of [Vienna Mission for Ukraine \(VMFU\)](#); and the Signal chat group TransUkraina.

¹³¹ See the main web page for the portal [Shkola](#).

¹³² See the web page [Jobs for Ukraine](#)

¹³³ Dolejš, R. (2022), '[Vzniká Sbirka IT, pomoz i Ty UA](#)', *Computerworld*, 3 March 2022. Dolejš, R. (2022), '[Vzniká Sbirka IT, pomoz i Ty UA](#)', *Computerworld*, 3 March 2022.

¹³⁴ See, for example, Hell, C., and Hinterdorfer, R. (2022), '[Platz für Ukraine-Flüchtlinge im früheren Neulengbacher Flüchtlingsheim](#)', 9 March 2022.

¹³⁵ See the Facebook page for the group [Wohnraum für die flüchtenden Ukrainer/ житло для біженців з України](#).

¹³⁶ See the main web page of [Homes For Ukraine](#).

¹³⁷ See the main web page of [Houses for Ukraine](#).

¹³⁸ See the main web page for [#Unterkunft Ukraine](#).

¹³⁹ See the Facebook page of the group [Pomoc dla Ukrainy Допомора України: mieszkanie oraz inna pomoc obywatel](#). See also the government web page [#PomagamUkrainie portal](#).

¹⁴⁰ Organization for Aid to Refugees (2022), [Jak mluvit s lidmi zasaženými válkou \(pro jejich blízké a dobrovolníky\)](#), Prague, Organization for Aid to Refugees.

providing psychological support in multiple languages, also for displaced people from Ukraine.¹⁴¹ In Germany, the German Society for Psychology offered free support for displaced persons and people supporting them.¹⁴²

3.1.2. Challenges faced by civil society

Cooperation and coordination between public authorities, professional NGOs, and volunteers can be challenging. The goodwill of civil society and volunteer initiatives is not always matched by organisational structures, experience. They often lack funding, bearing a risk that activities become unsustainable over time.¹⁴³

In the case of Ukraine, funding for civil society organisations who do not usually work on refugee related issues was not easily accessible. Moreover, spontaneous volunteer networks that were not legally registered could not directly apply for funding from most public and private donors.

3.2. Other experiences at the EU's external border: potential rule of law issues

Under EU law, any third-country national has the right to seek asylum, including those who enter or stay in the EU in an irregular manner.¹⁴⁴ This well-established rule derives from the 1951 Convention Relating to the Status of Refugees and from primary EU law.¹⁴⁵ It is a core refugee law safeguard of customary international law character,¹⁴⁶ that acknowledges that refugees are often not able to obtain the necessary papers to seek safety.

Some EU Member States consider that the common European asylum system combined with a low rate of returns constitutes a pull-factor for irregular migration and favours migrant smuggling.¹⁴⁷ Member States are thus taking enhanced action to control their borders and stem irregular migration. Some of these actions and measures led to arbitrariness, legal uncertainty, and ineffective judicial protection against widespread rights violations at borders as well as restrictions to the work of civil society actors that work there which could be considered as a risk

¹⁴¹ Diakonie Flüchtlingsdienst (2022), [AMIKE-Telefon](#), Vienna, Diakonie Flüchtlingsdienst.

¹⁴² See the German Society for Psychology web page on [psychological help for Ukrainians \(psychologische hilfe Ukraine\)](#).

¹⁴³ FRA (2022), Europe's civil society – still under pressure

¹⁴⁴ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ L 180, 29.6.2013, pp. 60-95, Arts. 2, 6 and 7 as interpreted by the CJEU, in [C-72/22 PPU](#), M.A., 30 June 2022. See also Schengen Borders Code, Regulation (EU) 2016/399, OJ L 77, 23.3.2016, pp. 1-52, Arts. 3 and 4; and European Border and Coast Guard Regulation (EU) 2019/1896, OJ L 295, 14.11.2019, pp. 1-131, recital (103).

¹⁴⁵ Treaty on the Functioning of the EU, Art. 78 (1); Charter of Fundamental Rights of the EU, Art. 18.

¹⁴⁶ Universal Declaration of Human Rights, Art. 14 (1); Declaration and Program of Action adopted by consensus at the 1993 Vienna World Conference on Human Rights, para. 23. See also Schabas, W. (2021), *The Customary international Law of Human Rights*, Oxford, Oxford University Press, 2021, pp. 247-253.

¹⁴⁷ See in this context, for example, [the letter](#) by eight Member States to the President of the European Commission and of the European Council on 6 Feb. 2023.

to the respect of the rule of law¹⁴⁸ as enshrined in Article 2 TEU and defined in EU legislation.¹⁴⁹

United Nations (UN) and Council of Europe bodies, National Human Rights Institutions, and civil society have been reporting about serious, recurrent, and widespread human rights violations affecting migrants and refugees attempting to enter the EU's external land and sea borders irregularly for several years.¹⁵⁰ FRA observed that such reports are increasing over the years concerning a growing number of EU Member States.

Incidents concern primarily people who cross EU borders in an unauthorised manner, possibly with the intention to seek asylum. Reported widespread rights violations entailed verbal and physical violence, ill-treatment, failure to rescue, stripping people, stealing of property, forced family separations as well as summary expulsions of those seeking asylum.¹⁵¹ UNHCR interviewed thousands of people across Europe who reported a “disturbing pattern of threats, intimidation, violence and humiliation”, including being left adrift at sea in life rafts and “brutally pushed back in harsh weather conditions”.¹⁵²

¹⁴⁸ See, for instance, Gatta, F. L. (2022), '[Migration and Rule of \(Human Rights\) Law in the EU: A “Constitutional” Crisis](#), *Working Papers, Forum Transregionale Studien* 3/2022; Loxa, A. and Stoyanova, S. V. (2022), 'Migration as a Constitutional Crisis for the European Union'; as well as Grabowska-Moroz, B. and Kochenov, D. V. (2022), 'The Loss of Face for Everyone Concerned: EU Rule of Law in the Context of the “Migration Crisis”' – both are in Stoyanova, S. V. and Smet, S. (eds.), [Migrants' Rights, Populism and Legal Resilience in Europe](#), Cambridge, Cambridge University Press, 2022, pp. 139-164 and 187-208 respectively; Tsourdi, E. (2021), '[Asylum in the EU: One of the Many Faces of Rule of Law Backsliding?](#)' (2021) 17 *European Constitutional Law Review*, pp. 471-497; and [Liberties Rule of Law Report 2023 EU.pdf \(dq4n3btxmr8c9.cloudfront.net\)](#), p. 42 and individual country reports.

¹⁴⁹ [Regulation \(EU, Euratom\) 2020/2092](#) of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22.12.2020, pp. 1-10.

¹⁵⁰ These reports are described in FRA, [Regular overviews of migration-related fundamental rights concerns](#), starting from September 2015; and FRA (2020), [Migration: fundamental rights issues at land borders](#), Luxembourg, Publication Office of the EU, December 2020. Most recently, see European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2023), [32nd General Report of the CPT \(1 January – 31 December 2022\)](#), Council of Europe, Strasbourg, March 2023, paras. 80-107.

¹⁵¹ See, for example, United Nations, Special Rapporteur on the human rights of migrants, [Human rights violations at international borders: trends, prevention and accountability](#), A/HRC/50/3, 26 April 2022; Border Violence Monitoring Network (BVMN), [Black book of pushbacks, expanded and updated edition](#), December 2022; Protecting rights at borders (NGO network), [Beaten, punished and pushed back](#), Jan. 2023.

Human Rights Watch, [Violence and Pushbacks at Poland-Belarus Border](#), 7 June 2022; Danish Refugee Council, [Pushback: PRAB reports](#). Protecting rights at borders, May 2022; six Greek organisations, [Briefing: Systemic breaches of the rule of law and of the EU asylum acquis at Greece's land and sea borders](#), June 2022 (the annex contains a list of interim measures granted by the ECtHR regarding push backs in the Evros area from March to June 2022). See also European Parliamentary Research Service, Briefing, [Addressing pushbacks at the EU's external borders](#), PE 738.191, Oct. 2022. See also European Commission, *European Citizens' Initiative: Commission decides to register a new initiative on safeguarding fundamental rights at the EU's borders*, [press release](#), 12 Jan. 2023.

¹⁵² UNHCR, [News Comment: UNHCR warns of increasing violence and human rights violations at European borders](#), 21 February 2022. See also UN High Commissioner for Refugees (UNHCR), [UNHCR's Recommendations for the Swedish and Spanish Presidencies of the Council of the European Union \(EU\)](#), January 2023.

3.2.1. Tensions between national and European law create legal uncertainty

Legislation in at least four EU Member States – Latvia, Lithuania, Poland and Spain (for the cities of Ceuta and Melilla) – permits the immediate summary return to the neighbouring country of those who entered the state territory in an unauthorised manner.¹⁵³ Estonia may activate similar rules in times of “emergency caused by mass migration”¹⁵⁴ and new legislation enables Finland to limit asylum applications to one or more border crossing points if this is necessary to prevent a serious threat to public order, national security or public health and if certain other conditions are met.¹⁵⁵

Reviewing Lithuanian legislation, in June 2022, the Court of Justice of the EU (CJEU) clarified that legal provisions banning, in times of large arrivals, asylum applications by individuals who entered the country irregularly, violate EU law.¹⁵⁶ Despite this judgement, by end February 2023 legislation restricting the right to seek asylum continued to be applied in all four above-mentioned Member States. In a similar vein, the execution by Member States of some key ECtHR judgements relating to human rights at external borders, including access to asylum, remain pending.¹⁵⁷

In 2020, following infringement procedures by the European Commission, the CJEU obliged Hungary to bring its asylum and return policies in line with EU law and to refrain from systematic deprivation of liberty concerning asylum applicants in its transit zones.¹⁵⁸ Hungary has not to date adjusted its practice of ‘escorting back’ to the border fence. Moreover, Hungary imposed further restrictions to access to asylum by re-directing all asylum applicants at the border or in the country to its embassies in Belgrade and Kyiv to express their intention to apply for international protection.¹⁵⁹ Subsequently, in July 2021, the European Commission referred Hungary again to the CJEU for failing to fulfil its obligations under the EU asylum acquis.¹⁶⁰

Only in two Member States, Lithuania and Poland, using European law, domestic courts have

¹⁵³ Latvia, Cabinet of Ministers (2021), [Order No. 518](#) on declaring a state of emergency, 10 August 2021, Sections 4-6. Lithuania, [Decision No. 10V-20](#) regarding the control and enforcement of the state border during influxes of foreigners, 2 August 2021, and [Law No. XIV-515](#), 10 August 2021; Poland, [Law 1918/2021](#) amending the Act on Foreigners and other acts, 14 October 2021, and Ministry of the Interior and Administration [Regulation No. 1536](#), 20 August 2021; Spain, Aliens Act amended by Organic Law 4/2015 on the protection of citizens’ security ([De protección de la seguridad ciudadana](#)), Official State Bulletin No. 77, 31 March 2015, pp. 27242–27243, special provisions on Ceuta and Melilla.

¹⁵⁴ Estonia, Act amending the State Borders Act and other acts related thereto ([Riigipiiri seaduse muutmise ja sellega seonduvalt teiste seaduste muutmise seadus](#)), 19 July 2022; Council of Europe, Commissioner for Human Rights, [letter dated 16 May 2022](#), CommHR/DM/sf 016-2022; Estonia, Chair of the Constitutional Committee of the Estonian Parliament (2022), [reply to the letter by the Commissioner for Human Rights](#), 16 May 2022.

¹⁵⁵ Finland, Amendments to the Border Guard Act ([Laki rajavartiolaitain muuttamisesta](#)), July 2022, Section 16.

¹⁵⁶ Court of Justice of the EU, Case [C-72/22](#), *M.A.*, 30 June 2022.

¹⁵⁷ See Council of Europe, Secretariat of the Committee of Ministers, [Table of cases and groups of cases under enhanced supervision](#), 26 Sept. 2022 which lists among other cases pending execution *Ilias and Ahmed v. Hungary*, No. 47287/15, 21 Nov. 2019; *Moustahi v. France*, No. 9347/14, 25 June 2020; and *M.K. and Others v. Poland*, No. 40503/17, 23 July 2020.

¹⁵⁸ CJEU, [C-808/18](#), *Commission v. Hungary*, 17 December 2020.

¹⁵⁹ Hungary, Act No. LVIII of 2020 on the transitional rules related to the termination of the state of danger and on epidemiological preparedness ([2020. évi LVIII. törvény a veszélyhelyzet megszűnésével összefüggő átmeneti szabályokról és a járványügyi készségről](#)), Arts. 267–275; Government Decree No. 292/2020 on designating diplomatic missions to receive declarations of intents for lodging asylum applications ([292/2020. \(VI. 17.\) Korm. rendelet a menedékjogi kérelem benyújtására irányuló szándéknyilatkozattal kapcsolatban nagykövetségek kijelöléséről](#)). In application of [Government Decree No. 46/2023 \(II.21\)](#), the ‘state of danger due to mass migration’ was extended anew until 7 September 2023.

¹⁶⁰ European Commission, [press release](#), Commission refers Hungary to the Court of Justice of the European Union for unlawfully restricting access to the asylum procedure, 15 July 2021.

obliged the authorities to accept and register asylum applications,¹⁶¹ but this occurred only exceptionally, for those few people who managed to seek judicial remedies before being summarily expelled.

To prevent irreparable harm, the ECtHR receives many requests for interim measures. For example, in regard to the situation in three EU Member States bordering Belarus, between 20 August 2021 and 18 February 2022, ECtHR received requests for interim measures in 69 cases (concerning a total of 270 applicants) and granted these in most of them (65 cases).¹⁶²

This open tension between European law (EU legislation and the European Convention on Human Rights) and national law, which has remained unresolved for quite some time despite binding rulings from both European courts, creates legal uncertainty, also eroding the principle of legality – all inherent in the concept of ‘rule of law’ under EU law.

3.2.2. Judicial protection

Victims of human rights violations at borders find it difficult to seek redress in national courts. Many incidents reported during apprehensions and summary expulsions include, if proven, conduct which could constitute a criminal offence under national law. However, very few cases are investigated by national judicial authorities. The need for effective investigations of reported serious allegations of ill-treatment is, for example, one of the recommendations in the recent Schengen evaluation of Greece.¹⁶³

Where complaints with the prosecutors are filed, cases tend to be archived, as examples from Croatia, Greece and Spain indicate.¹⁶⁴ One reason for this is the scarce solid evidence about the facts, as incidents occur in remote forested areas or at sea, often at night. In 2022, FRA was only aware of one criminal case, adjudicated in Italy in December 2022.¹⁶⁵

The CPT comes in its 2022 report to the conclusion that “few investigations have been carried out by states into allegations of physical ill-treatment and other forms of inhuman and degrading

¹⁶¹ Lithuania, Vilnius Regional Administrative court (*Vilniaus apygardos administracinis teismas*) decisions in administrative case No. el2-3369-811/2022, 9 May 2022, administrative case No. el2-3355-1066/2022, 24 May 2022, administrative case No. el2-3356-331/2022, 26 May 2022, administrative case No. el2-3358-426/2022, 1 June 2022, administrative case No. el2-3373-1066/2022, 7 June 2022, administrative case No. el2-3357-1161/2022, 23 June 2022. For Poland, see for example Provincial Administrative Court (WSA) of Białystok, [case No. II SA/Bk 492/22](#), 15 Sep. 2022 (which found the summary return to Belarus of a family from Iraq unlawful) and [case No. II SA/Bk 558/22](#), 27 Oct. 2022 (which found the summary return to Belarus of Syrian child unlawful). Both cases were initiated following a complaint by the Polish Commissioner for Human Rights. See also Provincial Administrative Court in Warsaw, case No. [IV SA/Wa 471/22](#), 27 April 2022 and case No. [IV SA/Wa 420/22](#), 26 April 2022 (disallowing the removal to Belarus of the applicants). See also Helsinki Foundation for Human Rights (2022), [Information of the Helsinki Foundation for Human Rights on judgments in cases concerning the return of migrants to Belarus](#) (*Informacja Helsińskiej Fundacji Praw Człowieka na temat wyroków w sprawach dotyczących zawracania migrantów do Białorusi*).

¹⁶² ECtHR, press release, [Update on interim decisions concerning member States’ borders with Belarus](#), 21 February 2022.

¹⁶³ Council of the European Union, [Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2021 evaluation of Greece on the application of the Schengen acquis in the field of management of the external borders](#), Brussels, 12 April 2022, recommendations 2 and 24.

¹⁶⁴ See for example, Croatia, Centre for Peace Studies (CPS), CPS filed one more criminal complaint: [What is the connection between Croatian police and armed men in black?](#) 23 July 2020, which according to the lawyers was closed; for Greece, see the cases described in FRA (2020), Migration: Fundamental rights issues at land borders, p. 24 and Spain, Spanish Commission for Refugees (CEAR), [The accusations of the 16 agents in the Tarajal case are a decisive step for justice](#), 25 September 2019 (case closed in 2020 for lack of evidence) and Defensor Del Pueblo [Spanish Ombudsman], [El Defensor avanza sus primeras conclusiones sobre lo sucedido en el perímetro fronterizo de Melilla](#), [The Ombudsman presents his first conclusions on what happened in the border perimeter of Melilla], 14 October 2022 (case archived on 22 Dec. 2022).

¹⁶⁵ Italy, Rome Tribunal, (*Tribunale di Roma*), [Decision No. 14998, 16 December](#), 2022.

treatment in the context of pushback operations, and that – when carried out – they often do not comply with the criteria of effectiveness. Consequently, law enforcement officials involved in these practices are not identified or held to account and the cycle of ill-treatment remains unchallenged.¹⁶⁶

From July 2021 to – February 2023, the ECtHR issued at least nine judgements finding rights violations at the EU’s land or sea borders.¹⁶⁷ In several, the Court concluded that there were no domestic remedies available for the applicants.¹⁶⁸ In *Safi and Others v. Greece*, the ECtHR noted that the Greek Government did not provide any examples of judgments awarding damages to the persons concerned as a result of acts or omissions by the authorities in similar situations. In the present state of domestic case-law, it was therefore not satisfied that the applicants would have been granted an adequate remedy.¹⁶⁹ In *Shahzad v. Hungary*, the ECtHR concluded that the applicant “did not have at his disposal any remedy which might satisfy the criteria under Article 13 of the Convention”.¹⁷⁰ Furthermore, several cases of alleged rights violations at borders are pending adjudication before the ECtHR.¹⁷¹

¹⁶⁶ Council of Europe, Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2022), *32nd General Report of the CPT*, Strasbourg, Council of Europe, March 2023, paragraph 100.

¹⁶⁷ *M.H. and Others v. Croatia* Nos. 15670/18 and 43115/18, 18 November 2021; *Safi and Others v. Greece*, No. 5418/15, 7 July 2022; *H.K. v. Hungary*, No. 18531/17, 22 Sept. 2022; *Shahzad v. Hungary*, No. 12625/17, 8 July 2021; *Abdullah Mohamed Alhowais v. Hungary*, No. 59435/17, 2 Feb. 2023; *D.A. and Others v. Poland*, No. 51246/17, 8 July 2021; *A.B. and Others v. Poland*, Nos. 42907/17, 30 June 2022; *A.I. and Others v. Poland*, Nos. 39028/17, 30 June 2022; *T.Z. and M.M. and Others v. Poland*, Nos. 41764/17, 13 Oct. 2022.

¹⁶⁸ See, *Abdullah Mohamed Alhowais v. Hungary*, No. 59435/17, 2 Feb. 2023 para. 71-72; *D.A. and Others v. Poland*, No. 51246/17, 8 July 2021, paras. 39-41; *A.B. and Others v. Poland*, Nos. 42907/17, 30 June 2022, paras. 22-24; *A.I. and Others v. Poland*, Nos. 39028/17, 30 June 2022, paras. 25-27; *T.Z. and M.M. and Others v. Poland*, Nos. 41764/17, 13 Oct. 2022, paras. 12-15.

¹⁶⁹ *Affaire Safi Et Autres C. Grèce*, No. 5418/15, 07 July 2022, paras. 105-108.

¹⁷⁰ *Shahzad v. Hungary*, No. 12625/17, 8 July 2021, paras. 78-79.

¹⁷¹ See, for example, *S.B. against Croatia and 2 other applications*, No. 18810/19 (summary return to Bosnia and Herzegovina in Oct. 2018 and alleged inhuman treatment); *Y.K. v. Croatia*, No. 38776/21 (Turkish Kurd not allowed to seek asylum and allegedly convinced to go back to Serbia); M.A. and Z.R. v. Cyprus, *No. 39090/20* (summary return of two Syrians seeking asylum to Lebanon following the interception of their boat); *L.A. and Others v. Greece, and A.A. v. Greece*, Nos. 12237/20 and 12736/20 (summary return of a mother with two children to Turkey over the Evros river in 2020); *Douaa Alkhatib and Others v. Greece*, No. 3566/16 (death of a Syrian in 2015 during anti-smuggling operation against a boat carrying migrants); *Almukhlas and Al-Maliki v. Greece*, Nos. 22776/18, 27/01/2021 (Iraqi who died after being hit by a bullet in 2015 when the coast guards tried to stop smugglers who were bringing a boatload of people to Greece); *S.A.A and Others v. Greece*; No. 22146/21 (summary return of a group of Syrians from Crete to Turkey); *Arab and Arab v. Hungary*; No. 60778/19 (removal of two Afghan families from the Röszke transit zone to Serbia in 2019); *Khurram v. Hungary*, No. 12625/17 (summary expulsion in 2016 over the border fence to Hungary and ill-treatment); R.N. v. Hungary, *No. 71/18* (summary expulsion to Serbia in 2017 after alleged ill-treatment); R.D. v. Hungary, *No. 17695/18* (summary expulsion to Serbia in 2017 after alleged dog attack and beatings); K.P. v. Hungary, *No. 82479/17* (Iraqi national handed over from the Austrian Police to the Hungarian officers in 2017 and summarily returned to Serbia); *H.Q. v. Hungary*; No. 46084/2 (Afghan national who was in Hungary, applied for asylum and was redirected to the Hungarian Embassy in Serbia in 2021, where he had not been before); *A.B. v. Italy*, No. 13755/18; *H.B. v. Italy*, No. 33803/18 (both cases concerning Tunisians arriving by boat and speedily returned to their country); S.S. and others v. Italy, *No 21660/18* (search and rescue event coordinated by Italy which led to abuses by Libyan coast guards); *H.M.M. and Others v. Latvia*, No. 42165/21 (Iraqi Kurds stranded at the border with Belarus in August 2021); *C.O.C.G. and Others v. Lithuania*, No. 17764/22 (summary return accompanied by alleged ill-treatment of a group of Cubans to Belarus); *Jama Sherov and Others v. Poland*, No. 54029/17 (Tajiks not allowed to request asylum at border crossing points); *K.A. and M.A. and Others v. Poland*, Nos. 52405/21 and 53402/21 (Syrians stranded at the Belarus border without food, water and medical assistance in 2021); *F.A. and S.H. v. Poland*, No. 54862/21 and *R.A and Others v. Poland*, No. 42120/21 (Afghans stranded at the Belarus border).

The examples are listed in Member States’ alphabetical order.

3.2.3. Increased pressure on civil society actors

Civil society organisations are important actors promoting the fundamental rights of migrants and asylum seekers/ Civil society actors defending migrants’ and refugees’ rights at borders face increasing pressure by the authorities,¹⁷² as also mentioned in part 2 of this submission. Such pressures include, inter alia, criminal or administrative proceedings¹⁷³ and, as reported by the NGO PICUM, also SLAPP cases¹⁷⁴ in a range of EU Member States, including Greece, Italy, Poland, Cyprus, Spain, Lithuania, Malta, France, Germany, Latvia, Belgium and Croatia.¹⁷⁵ While the overwhelming majority of cases ends with acquittal of civil society activists, this nevertheless has a chilling effect for these activists.¹⁷⁶

CSOs also report smear campaigns that portray activists as ‘people smugglers’ or ‘foreign agents’.¹⁷⁷ As an illustration, activists in Greece supporting migrants, refugees and asylum seekers, are targeted by hostile comments, including by key stakeholders in the government.¹⁷⁸

The UN Special Rapporteur on the situation of human rights defenders issued a report in July 2022 analysing the situation of human rights defenders working on the rights of migrants, asylum-seekers and refugees. The report draws attention to the often vulnerable situation of defenders supporting migrants, refugees and asylum-seekers and the particular administrative, legal, practical and societal barriers they face – including in the EU.¹⁷⁹ Similarly, the Council of Europe Commissioner of Human Rights issued recommendations related to human rights violations at the borders, in which a part was dedicated to enhancing transparency, monitoring and accountability. She evoked the role of National Human Rights Institutions in supporting such monitoring as well as the necessary recognition of civil society and the media as crucial partners in addressing pushbacks.¹⁸⁰

¹⁷² See in this context, Council of Europe (2022), [Pushed beyond the limits, Four areas for urgent action to end human rights violations at Europe’s borders](#), Recommendation by the Council of Europe Commissioner for Human Rights, April 2022, pp. 36-37.

¹⁷³ See for example PICUM (2023), [Over 100 people criminalised for helping migrants in the EU in 2022](#)

¹⁷⁴ See for example CASE – Coalition Against SLAPPs in Europe, [SLAPP cases](#); and [FRANET reports on civic space 2022](#)

¹⁷⁵ See [FRANET reports on civic space 2022](#); and PICUM (2023), [Over 100 people criminalised for helping migrants in the EU in 2022](#)

¹⁷⁶ A World of Neighbours, Webinar on 15.03.2023,

¹⁷⁷ FRA (2022), Europe’s civil society – still under pressure; FRA, civic space consultation covering 2022; [FRANET reports on civic space 2022](#)

¹⁷⁸ United Nations, Special Rapporteur on Human Rights Defenders, [Statement on preliminary observations and recommendations following official visit to Greece](#), 22 June 2022.

¹⁷⁹ United Nations Office of the High Commissioner for Human Rights (2022), A/77/178: [Refusing to turn away: human rights defenders working on the rights of refugees, migrants and asylum-seekers - Report of the Special Rapporteur on the situation of human rights defenders](#).

¹⁸⁰ [Result details \(coe.int\)](#) (to be formatted) chapter 3.

Annex

Annex 1: Reports, communications and visits by Special Rapporteurs and other Special Procedures with regard to EU Member States in 2022

	Ref no.	Date	Mandates
Austria	AUT 1/2022	01/02/2022	11 mandates. Promotion and protection of human rights and fundamental freedom while countering terrorism; arbitrary detention; extrajudicial, summary or arbitrary executions; right to food; enjoyment of the highest attainable standard of physical and mental health; adequate housing; the use of mercenaries as a means of violating human rights; contemporary forms of racism, racial discrimination, xenophobia and related intolerance; torture and other cruel inhuman, degrading treatment or punishment; trafficking of persons; safe drinking water and sanitation.
	AUT 2/2022	20/05/2022	3 mandates. Situation of human rights in the Palestinian territory; promotion and protection of the right to freedom of opinion and expression; rights to freedom of peaceful assembly and of association; situation of human rights defenders.
Bulgaria	BGR 1/2022	26/05/2022	3 mandates. Enjoyment of all human rights by older persons; extrajudicial, summary or arbitrary executions; right of everyone of the highest attainable standard of physical and mental health.
Croatia	CRO 1/2022	24/11/2022	2 mandates. Discrimination against women and girls; right of everyone to the enjoyment of the highest attainable standard of physical and mental health; violence against women and girls, its causes and consequences.
Cyprus	Report	(Visit) 05/04/2022 12/04/2022	1 mandate. Working Group on Enforced or Involuntary Disappearances.
Denmark	DNK 1/2022	02/08/2022	2 mandates. Negative impact of unilateral coercive measures on the enjoyment of human rights; human rights and international solidarity.
Finland	FIN 1/2022	07/04/2022	1 mandate. Freedom of religion or belief; minority issues.
France	FRA 1/2022	01/02/2022	11 mandates. Promotion and protection of human rights and fundamental freedom while countering terrorism; arbitrary detention; extrajudicial, summary or arbitrary execution; right to food; enjoyment of the highest attainable standard of physical and mental health; adequate housing; the use of mercenaries as a means of violating human rights; contemporary forms of racism, racial discrimination, xenophobia and related intolerance; torture and other cruel inhuman, degrading treatment or punishment; trafficking of persons; safe drinking water and sanitation.
	FRA 2/2022	19/04/2022	5 mandates. Promotion and protection of human rights and fundamental freedom while countering terrorism; arbitrary detention; extrajudicial, summary or arbitrary execution; migrants' human rights; religious freedom.
	FRA	31/05/2022	2 mandates.

	3/2022	022	Minority issues; cultural rights; right to education.
	FRA 4/2022	30/06/2 022	3 mandates. Situation of human rights defenders; rights of persons with disability; right to education.
Hungary	Report	(Visit) 15/11/2 021 22/11/2 021	1 mandate. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.
Ireland	IRL 1/2022	12/04/2 022	6 mandates. People of African descent; right to development; right of everyone to the highest enjoyment of the highest attainable standard of physical and mental health; minority issues; contemporary forms of racism, racial discrimination, xenophobia and related intolerance; freedom of religion or belief; promotion of truth, justice, reparation and guarantees of non-recurrence.
	IRL 2/2022	22/07/2 022	3 mandates. Situation of human rights defenders; issue of human rights and transnational corporations and other business enterprises; rights of indigenous people.
	IRL 3/2022	30/09/2 022	4 mandates. Promotion and protection of the rights to freedom of opinion and expression; rights to freedom of peaceful assembly and of association; right to privacy; promotion and protection of human rights and fundamental freedoms while countering terrorism.
Italy	Report	(Visit) 30/11/2 021 13/12/2 021	1 mandate Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.
	ITA 1/2022	19/05/2 022	4 mandates. Situation of human rights defenders; human rights and international solidarity; human rights of migrants; trafficking in persons.
	ITA 2/2022	28/06/2 022	1 mandate. Independence of judges and lawyers.
Germany	DEU 1/2022	01/02/2 022	11 mandates. Promotion and protection of human rights and fundamental freedom while countering terrorism; arbitrary detention; extrajudicial, summary or arbitrary execution; right to food; enjoyment of the highest attainable standard of physical and mental health; adequate housing; the use of mercenaries as a means of violating human rights; contemporary forms of racism, racial discrimination, xenophobia and related intolerance; torture and other cruel inhuman, degrading treatment or punishment; trafficking of persons; safe drinking water and sanitation.
	DEU 2/2022	29/03/2 022	1 mandate. Torture and other cruel, inhuman or degrading treatment or punishment.
	End of missio	(Visit) 28/11/2	1 mandate. Special Rapporteur in the field of cultural rights.

	n statement	022 09/12/2022	
Greece	GRC 1/2022	21/04/2022	4 mandates. Situation of human rights defenders; promotion and protection of the right to freedom of opinion and expression; minority issues; freedom of religion and belief.
	GRC 2/2022	19/07/2022	3 mandates. Situation of human rights defenders; human rights and international solidarity; human rights of migrants.
	End of mission statement	(Visit) 13/06/2022 22/06/2022	1 mandate. Special Rapporteur on the situation of Human Rights Defenders.
Latvia	LVA 1/2022	28/09/2022	3 mandates. Minority issues; cultural rights; right to education.
Lithuania	LTU 1/2022	04/05/2022	1 mandate. Negative impact of unilateral coercive measures on the enjoyment of human rights.
	End of mission statement	(Visit) 12/12/2022 16/12/2022	1 mandate. Special Rapporteur on the right to privacy.
Netherlands	NLD 1/2022	10/01/2022	1 mandate. Torture and other cruel, inhuman or degrading treatment or punishment.
	NLD 2/2022	02/03/2022	4 mandates. Human rights of migrants; arbitrary detention; enforced or involuntary disappearances; torture and other cruel, inhuman or degrading treatment or punishment.
	NLD 3/2022	03/03/2022	3 mandates. Human rights and transnational corporations and other business enterprises; human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; right to food; implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.
	NLD 4/2022	29/03/2022	1 mandate. Torture and other cruel, inhuman or degrading treatment or punishment.
Poland	POL 1/2022	24/01/2022	5 mandates. Situation of human rights defenders; arbitrary detention; promotion and protection of the right to freedom of opinion and expression; human rights of migrants; torture and other cruel, inhuman or degrading treatment or punishment.
	POL 2/2022	15/02/2022	3 mandates. Situation of human rights defenders; promotion and protection of the right to

			freedom of opinion and expression; protection against violence and discrimination based on sexual orientation and gender identity.
	POL 3/2022	30/03/2022	6 mandates. Human rights of migrants; arbitrary detention; enforced or involuntary disappearances; extrajudicial, summary or arbitrary executions; right to everyone to the enjoyment of the highest attainable standard of physical and mental health; torture and other cruel, inhuman or degrading treatment or punishment.
	POL 4/2022	07/04/2022	4 mandates. Discrimination against women and girls; right to everyone to the enjoyment of the highest attainable standard of physical and mental health; situation of human rights defenders; violence against women, its causes and consequences.
Portugal	Report	(Visit) 19/09/2022 27/09/2022	1 mandate. Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.
	Report	(Visit) 29/11/2021 06/12/2021	1 mandate. Report of the Working Group of Experts on People of African Descent.
Romania	ROU 4/2021	17/01/2022	1 mandate. Independence of judges and lawyers.
	ROU 1/2022	15/02/2022	1 mandate. Independence of judges and lawyers.
Slovenia	Report	(Visit) 29/09/2022 06/10/2022	1 mandate. Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.
Spain	ESP 7/2022	06/01/2022	4 mandates. Enforced or involuntary disappearances; torture and other cruel, inhuman or degrading treatment or punishment; trafficking of persons; promotion of truth, justice, reparation and guarantees of non-recurrence.
	ESP 1/2022	21/01/2022	1 mandate. Rights to water and sanitation.
	ESP 3/2022	23/02/2022	1 mandate. Extreme property and human rights.
	ESP 2/2022	03/03/2022	4 mandates. Issue of human rights and transnational corporations and other business enterprises; human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; right to food; implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.

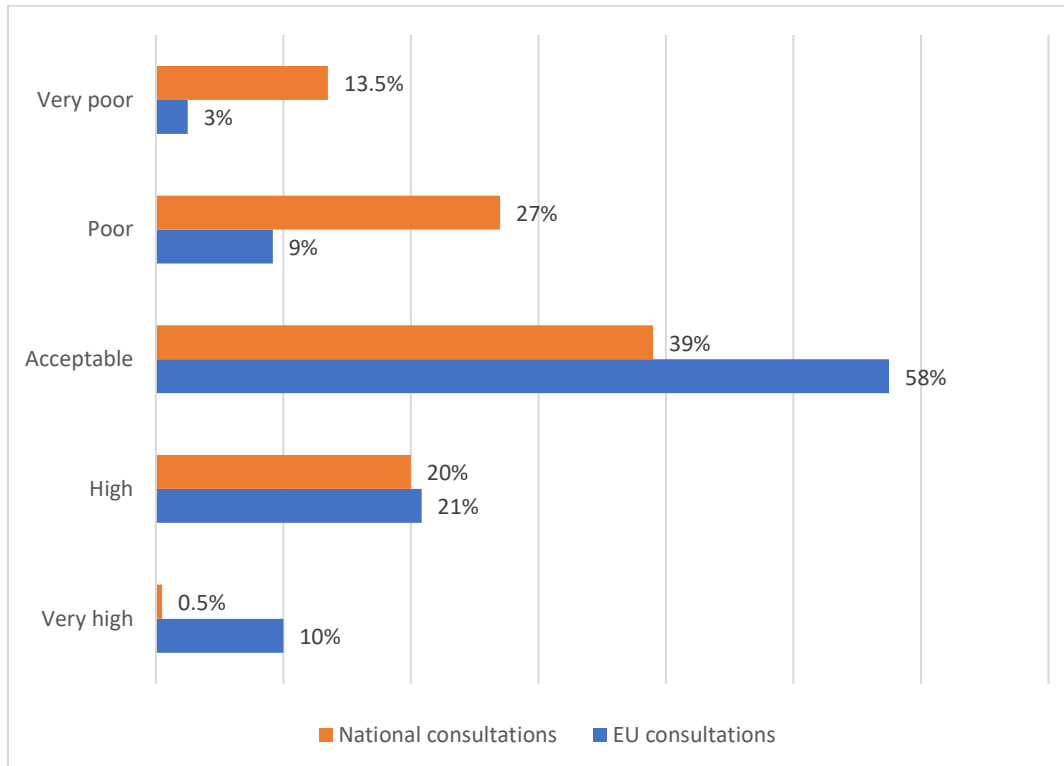
	ESP 4/2022	11/03/2 022	1 mandate. Rights to water and sanitation.
	ESP 5/2022	27/04/2 022	2 mandates. People of African descent; human rights of migrants; contemporary forms of racism, racial discrimination, xenophobia and related intolerance.
	ESP 7/2022	13/07/2 022	4 mandates. Contemporary forms of racism, racial discrimination, xenophobia and related intolerance; people of African descent; extrajudicial, summary or arbitrary executions; human rights of migrants.
	ESP 9/2022	07/10/2 022	1 mandate. Independence of judges and lawyers.
	ESP 8/2022	24/10/2 022	3 mandates. Minority issues; freedom of opinion and expression; freedom of peaceful assembly and of association.
	ESP 10/2022	19/10/2 022	11 mandates. Issue of human rights and transnational corporations and other business enterprises; cultural rights; right to development; human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; promotion and protection of the right to freedom of opinion and expression; freedom of peaceful assembly and of association; right to adequate housing; situation of human rights defenders; independence of judges and lawyers; rights of indigenous people; contemporary forms of racism, racial discrimination, xenophobia and related intolerance.
Sweden	SWE 1/2022	01/02/2 022	11 mandates. Promotion and protection of human rights and fundamental freedom while countering terrorism; arbitrary detention; extrajudicial, summary or arbitrary execution; right to food; enjoyment of the highest attainable standard of physical and mental health; adequate housing; the use of mercenaries as a means of violating human rights; contemporary forms of racism, racial discrimination, xenophobia and related intolerance; torture and other cruel inhuman, degrading treatment or punishment; trafficking of persons; safe drinking water and sanitation.
	SWE 2/2022	03/02/2 022	2 mandates. Rights of indigenous people; human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.
	SWE 3/2022	02/08/2 022	2 mandates. Negative impact of unilateral coercive measures on the enjoyment of human rights; human rights and international solidarity.
	SWE 4/2022	11/10/2 022	5 mandates. Negative impact of unilateral coercive measures on the enjoyment of human rights; issue of human rights and transnational corporations and other business enterprises; right to development; rights of everyone to the enjoyment of the highest attainable standard of physical and mental health; human rights and international solidarity.
	SWE 5/2022	14/11/2 022	8 mandates. Promotion and protection of human rights and fundamental freedom while

			countering terrorism; enforced or involuntary disappearances; extrajudicial, summary or arbitrary executions; right to food; right to everyone to the enjoyment of the highest attainable standard of physical and mental health; sale and sexual exploitation of children; torture and other cruel, inhuman or degrading treatment or punishment; trafficking in person, discrimination against women and girls.
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- Communication
- Country visit
- Report from country visit

Annex 2: Civic Space - Participation

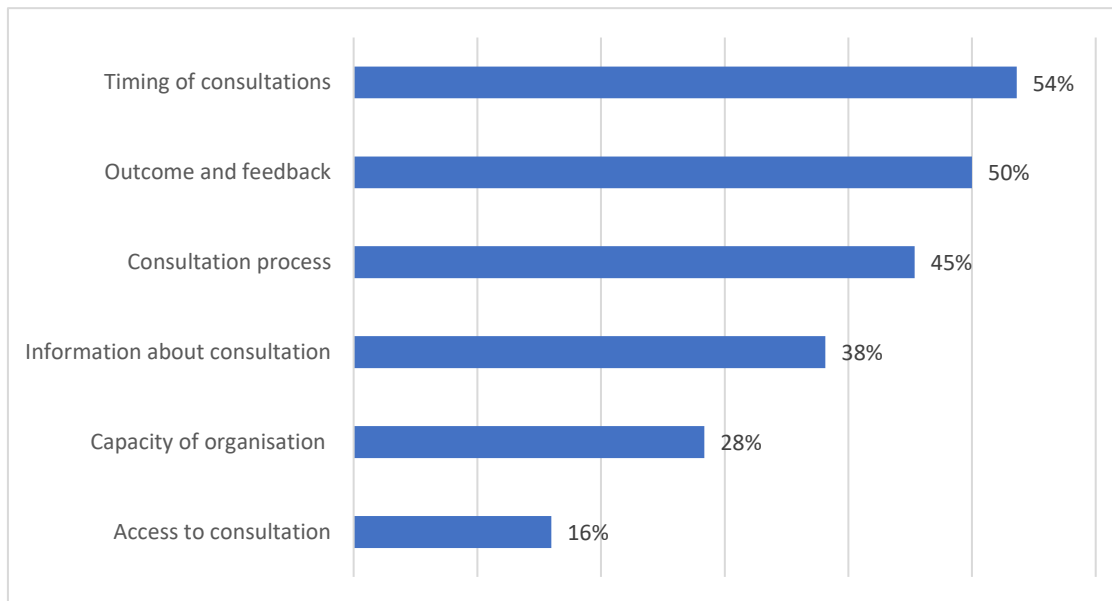
Figure 2.12. Quality of consultation/participation processes at EU and national levels



Note: Question: “How would you rate the overall quality of the consultation/participation processes in which you have participated?” (N=304)

Source: FRA civic space consultation covering 2022

Figure 2.13. Difficulties in national consultations/participation



Note:

Question: “What were the main difficulties you encountered in national consultations/participation? Please tick the three most relevant difficulties.” (N=194; that is those who indicated that they had participated in consultations/participation at the national level in 2022)

Source: FRA civic space consultation covering 2022