

10	EU Member States and international obligations .....	233
10.1	Fundamental rights landscape grows ever more intricate .....	233
10.2	Member States accept new Council of Europe instruments .....	234
10.2.1	Monitoring .....	236
10.2.2	Economic and social rights: standards and compliance .....	237
10.2.3	Civil and political rights: standards and compliance .....	238
10.3	OSCE monitoring provides human rights feedback ...	240
10.4	Member States accept UN treaties .....	240
10.4.1	Monitoring .....	242
10.5	National-level monitoring and follow-up supports human rights performance .....	246
10.5.1	National human rights institutions .....	246
10.5.2	Designation as national mechanisms .....	247
10.5.3	Human rights and business .....	247
	Outlook .....	249

## UN & CoE

January

February

March

17 April – UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression submits a report on the implications of states' surveillance of communications for the exercise of the human rights to privacy and to freedom of opinion and expression

April

5 May – The 2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights enters into force after 10 required ratifications

28 May – At the 23rd session of the UN Human Rights Council, the Special Rapporteur on the human rights of migrants presents a study on the rights of migrants in the Euro-Mediterranean region focusing in particular on the management of the external borders of the EU

May

24 June – Protocol 15 to the European Convention on Human Rights opens for signature

June

July

August

5 September – ILO Convention 189 (2011) on Domestic Workers enters into force

September

2 October – Protocol 16 to the ECHR opens for signature

October

26–29 November – Council of Europe, Steering Committee for Human Rights, Draft Declaration of the Committee of Ministers on the United Nations Guiding Principles on Business and Human Rights adopted

November

December

## EU

January

February

March

5 April – Negotiations between the EU and the 47 Council of Europe member states are concluded at negotiators' level with a draft agreement setting out the modalities of EU accession to the European Convention on Human Rights (ECHR)

April

13 May – *EU Annual report on human rights and democracy in the world in 2012* published with a strong commitment to the rule of law

May

June

July

August

September

October

November

December



# 10

## EU Member States and international obligations

*The EU, underlining its desire to put Europe at the heart of the international human rights framework, pursued its accession in 2013 to such key instruments as the European Convention on Human Rights. At the same time, it encouraged its Member States as well as third countries to engage more with the international human rights machinery. EU Member States assumed a large number of new Council of Europe and United Nations human rights commitments in 2013 through signatures, ratifications and accessions. Although reluctant to join certain conventions, such as those on access to official documents or on migrant work, a number of Member States took decisive action on more recent instruments, such as those related to violence against women or to the rights of the child. These new commitments offer testimony to the EU's and its Member States' determination to lead the field of fundamental rights from the front, while they also contribute to the ongoing evolution, and ever more tightly interwoven fabric, of international human rights protection.*

### 10.1 Fundamental rights landscape grows ever more intricate

The standards, procedures and institutions that ensure human and fundamental rights in the EU, or what could be called the EU's fundamental rights landscape, is a multi-layered system, covering local, national and international organisations, the last of which include the EU itself, the Council of Europe, the Organization for Security and Co-operation in Europe (OSCE) and the United Nations (UN). In this intricate and networked system, all levels contribute to the overall improvement of fundamental rights.<sup>1</sup> This chapter focuses on the core international obligations the EU and its Member States have taken on, by looking at their formal acceptance of international human rights instruments, as well as the results of the international- and national-level monitoring linked to these instruments. For the first time, a number of chapter tables and figures have been moved online to ensure they can be updated in a timely fashion. They are available on the FRA website under

#### Key developments

- The 2012 EU Strategic Framework and Action Plan on Human Rights and Democracy, which runs until 2014, pays increased attention to the ratification of human rights instruments in the EU.
- The EU and Council of Europe member states reach in April 2013 an agreement on the negotiations of the Union's accession to the European Convention of Human Rights.
- The individual complaints mechanism under the third optional protocol to the United Nations Convention on the Rights of the Child is set to enter into force, with just one ratification outstanding at the end of 2013.
- The European Court of Human Rights finds violations regarding the length of court proceedings in a large number of EU Member State cases.
- The European Committee on Social Rights delivers decisions on five cases initiated by Greek pensioners' organisations regarding pension cuts driven by austerity measures. The committee finds violations. Of the 16 cases the committee considers in 2013, nine centre on corporal punishment of children and children's social rights.
- No EU Member States sign or ratify the core United Nations Convention on the Rights of Migrant Workers, nor are there any changes in the accreditation of national human rights institutions under the Paris Principles in 2013.

'International obligations' at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>.

*"[F]ormulaic references to fundamental rights do not make for better [...] policies. [...] A first step could be to establish an internal EU fundamental rights strategy to complement the external strategy."*

*Morten Kjaerum, FRA Director, commenting on the future of the EU's Justice and Home Affairs strategy, available at: <http://fra.europa.eu/en/speech/2014/open-and-safe-europe-what-next>, and in response to Amnesty International's call in 2013 for an internal EU action plan for human rights, mirroring the EU's external strategic framework on human rights, available at: [http://ec.europa.eu/justice/events/assises-justice-2013/files/contributions/02.amnestyinzernationalassisesdelajustice\\_amnesty\\_international\\_en.pdf](http://ec.europa.eu/justice/events/assises-justice-2013/files/contributions/02.amnestyinzernationalassisesdelajustice_amnesty_international_en.pdf)*

States formally express their commitment to international human rights law by becoming parties to treaties. The EU increased and underlined its collective commitment to international human rights law in 2013. In the *EU Annual report on human rights and democracy in the world in 2012*,<sup>2</sup> the EU and its Member States reiterated pledges undertaken at the 2012 UN High-Level Conference on the Rule of Law to strengthen the rule of law at the international level, by considering their accession to a number of human rights instruments. This commitment to the rule of law at a more global level is parallel to the increased efforts in 2013 to ensure the rule of law in the EU (see **Chapter 8** on access to justice and judicial cooperation). The list of instruments considered includes the Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the UN Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict, as well as the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT). The pledge also extends to considering the acceptance of the individual complaints mechanisms established under the Convention against Torture, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Rights of Persons with Disabilities (CRDP).

The collective call for EU Member States to become parties to key instruments also follows from the 2012 *EU strategic framework and action plan on human rights and democracy*.<sup>3</sup> This document, which covers 2013 and stretches until the end of 2014, calls on Member States, as well as the EU, to "[i]ntensify the promotion of ratification and effective implementation of key international human rights treaties, including regional [instruments]".<sup>4</sup> More specific language calls on Member States to push for "ratification and effective implementation" of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), including its Optional Protocol, which requires the establishment of independent monitoring bodies (see **Section 10.5.2** below).<sup>5</sup> Another example

where the EU-internal aspect is clear is the development of action plans on the implementation of the UN guiding principles on business and human rights (see **Section 10.5.3**).<sup>6</sup>

The EU also encouraged Member States in 2013 to become parties to international human rights instruments related to areas of EU competence. In particular, the European Commission proposed a Council Decision 'authorising' Member States to become parties to the International Labour Organization's 2011 Convention (No. 189) on domestic workers; the convention also entered into force in 2013. The EU would hold the power to authorise, since some elements of the convention fall within EU competence.<sup>7</sup>

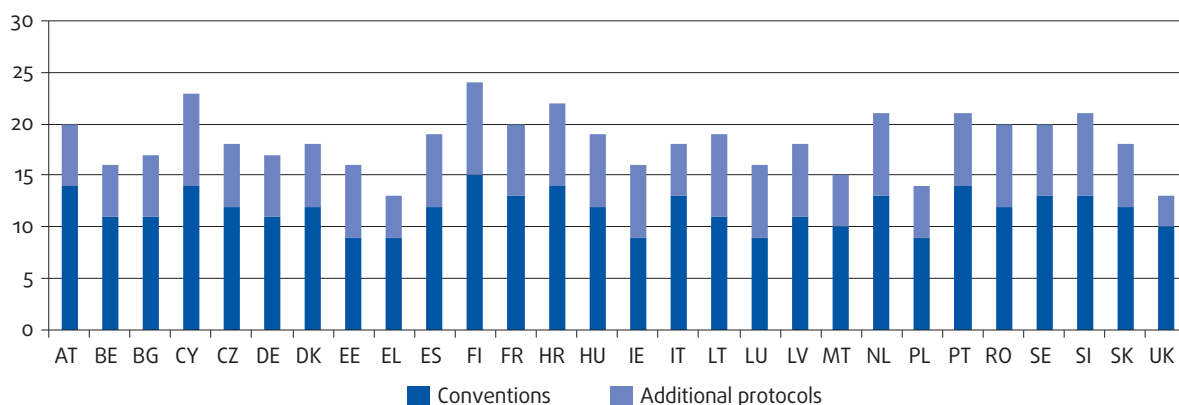
The EU itself may also become party to Council of Europe Convention 108 on the Protection of Individuals with regard to Automatic Processing of Personal Data. The convention is currently restricted to states, but its ongoing modernisation – in which the European Commission is participating – should also allow for the accession of regional organisations, including the EU.<sup>8</sup> Another possible development concerns refugee law. The Stockholm Programme encourages the EU to become party to the 1951 Geneva Convention and its 1967 Protocol.<sup>9</sup> As can be seen from these examples, the EU and its Member States are picking up the pace at which they accept international monitoring. The speed and the scope of this development could, nonetheless, be further improved.

## 10.2 Member States accept new Council of Europe instruments

States demonstrate their commitment to human rights by, for instance, signing and ratifying human rights treaties – making it publicly clear to which standards they want to be held accountable and to which monitoring mechanisms they choose to submit. **Figure 10.1** provides an overview of EU Member States' acceptance of key Council of Europe instruments, including additional protocols. For more details on Member State acceptance of Council of Europe instruments, see also the table on acceptance of selected Council of Europe instruments, at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>. For the corresponding information on UN instruments, see **Figure 10.3** and the table on the acceptance of selected UN instruments, available at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>.

In 2013, 60 years after the European Convention on Human Rights (ECHR) entered into force, several developments occurred in relation to Council of Europe conventions and protocols. Notably, many EU Member

Figure 10.1: Acceptance of key Council of Europe human rights instruments, by EU Member State



Source: Council of Europe, information, available at: [http://conventions.coe.int/?pg=/Treaty/MenuTraites\\_en.asp](http://conventions.coe.int/?pg=/Treaty/MenuTraites_en.asp)

States signed the ECHR Additional Protocols 15 and 16 (see the table on acceptance of selected Council of Europe instruments, available at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>). These instruments have been adopted as a result of the work carried out on the reform of the European Court of Human Rights (ECtHR), which was initiated at the third summit of heads of state and government of the Council of Europe in Warsaw in 2005. It was shaped particularly by the high-level conferences in Interlaken (2010), Izmir (2011) and Brighton (2012). The reform process gradually introduces changes to the ECHR that intend to adjust the ECtHR's work to evolving circumstances and reduce its workload. Ireland signed and ratified and 17 additional EU Member States signed ECHR Additional Protocol 15 in 2013, which adds a reference to the subsidiarity principle and the ECHR doctrine of margin of appreciation. It also amends the admissibility criteria (see also Chapter 8 on Access to justice and judicial cooperation). Six EU Member States also signed ECHR Additional Protocol 16, which enables the State Parties' highest courts to request ECtHR advisory opinions on key questions regarding the interpretation and application of the ECHR and its protocols.<sup>10</sup>

Furthermore, a number of EU Member States accepted some key Council of Europe instruments in 2013 (in parentheses are shown the total numbers of ratifications and additional signatures by EU Member States, thereby showing the situation at the close of 2013).

- **Latvia**, which is already a contracting party to the original European Social Charter (1961) (23 ratifications and an additional two signatures by EU Member States), also ratified the European Social Charter (1996) (19 ratifications and an additional nine signatures by EU Member States).
- **Belgium, Italy, Lithuania, Slovenia** and **Sweden** ratified the 2007 Convention on the Protection of

Children against Sexual Exploitation and Sexual Abuse, and it was signed by **Latvia**; this leaves the **Czech Republic** as the last EU Member State that has yet to sign the document (18 ratifications and an additional nine signatures by EU Member States).

- **Austria, Italy** and **Portugal** ratified the 2011 Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), and it was signed by **Croatia, Denmark** and **Lithuania**. In the 2.5 years since its adoption, 32 of the Council of Europe's 47 member states have signed the convention, with eight of these states also ratifying it (three ratifications and an additional 20 signatures by EU Member States).
- **Hungary** ratified the 2005 Convention on Action against Trafficking in Human Beings; the **Czech Republic** is the last EU Member State that has yet to sign the convention (25 ratifications and an additional two signatures by EU Member States).<sup>11</sup>
- The **Czech Republic** ratified the 2001 Cybercrime Convention (23 ratifications and an additional five signatures by EU Member States).
- The **Czech Republic** and **Spain** signed the 2003 Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, which aims to enhance cross-border police and judicial cooperation (12 ratifications and an additional 11 signatures by EU Member States).
- The **United Kingdom** accepted the applicability of the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as amended by its two 1993 protocols,

to its sovereign base areas in Cyprus (ratified by all EU Member States).

- All EU Member States except **Poland** are party to Protocol 13 to the ECHR, on “the abolition of the death penalty in all circumstances”. Poland signed in 2002 when the instrument was adopted but has yet to ratify it. The Committee of Ministers of the Council of Europe brought up the issue at its meeting on 10 April 2013, where Poland declared that the process of ratification was under way.<sup>12</sup>

The Council of Europe also released a number of human rights monitoring and evaluation reports on EU Member States in 2013 (see Table 10.1) containing information on a range of issues including the rights of minorities, the conditions in prisons and other places of involuntary confinement, and racism and intolerance. In this respect, the Council of Europe has also begun implementing measures for the better coordination of its monitoring activities, which should increase their effectiveness in the future. Among these measures, the Council of Europe plans to develop synergies with the monitoring work of other international organisations, particularly in follow-up activities.<sup>13</sup>

### 10.2.1 Monitoring

The Council of Europe’s Human Rights Commissioner visited a number of member states in 2013, including

in the EU. In February, he visited **Greece**, where he focused on the impunity of perpetrators of hate crime as well as asylum- and migration-related problems, such as the prolonged detention of irregular migrants.<sup>14</sup> In March, the commissioner visited **Estonia**, where he tackled in particular the effects of the economic crisis on the enjoyment of human rights, the independence and effectiveness of national human rights structures and the protection of the rights of stateless children.<sup>15</sup> In June, he visited **Spain**, where he addressed the impact of austerity measures on children with disabilities, ill-treatment by and impunity of police officers, detention *incommunicado* and ethnic profiling by law enforcement officials.<sup>16</sup> In November, the commissioner visited **Denmark**, where he focused on children in migration and asylum procedures, rights of persons with disabilities, and the use of coercion in psychiatric institutions.<sup>17</sup>

There are six monitoring bodies of the Council of Europe on central human rights issues with a regular reporting cycle: the European Committee for the Prevention of Torture, the Committee of Independent Experts under the European Charter for Regional and Minority Languages, the Advisory Committee under the Framework Convention on National Minorities, the European Commission against Racism and Intolerance and the Group of Experts on Action against Trafficking in Human Beings (GRETA), and the Committee of the Parties of the Council of Europe on the protection of Children against Sexual Abuse and Sexual Exploitation

**Table 10.1: Council of Europe monitoring reports released in 2013, by EU Member State**

		AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	
CPT	Reports										✓				
	Visits		✓		✓		✓			✓					
ECRML							✓								
FCNM															
ECRI		✓	✓				✓		✓		✓	✓	✓		
GRETA			✓								✓		✓		
<b>Total</b>		1	3	0	1	0	3	0	1	1	3	1	2	0	
CPT		(European) Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment													
ECRML		Committee of Experts of the European Charter for Regional and Minority Languages													
FCNM		Advisory Committee on the Framework Convention for the Protection of National Minorities													
ECRI		European Commission against Racism and Intolerance													
GRETA		Group of Experts on Action against Trafficking in Human Beings													

Note: For the European Committee for the Prevention of Torture, the visits to EU Member States during 2013 are also included in a separate row.

Source: Council of Europe, available at: [www.coe.int/t/dgi/default\\_en.asp](http://www.coe.int/t/dgi/default_en.asp)





(Lanzarote Committee) also launched its first monitoring cycle in 2013. Table 10.1 provides an overview of EU Member States that were covered by monitoring reports by these expert bodies in 2013. For economic and social rights, and for civil and political rights, the dedicated Council of Europe monitoring bodies are dealt with in the following subsections.

## 10.2.2 Economic and social rights: standards and compliance

All EU Member States are among the 43 parties to either the 1961 European Social Charter (ESC) or the 1996 ESC, which guarantee social and economic rights. **Latvia's** 2013 ratification of the 1996 ESC raised the number of Member States that have ratified the more developed version to 19 (see the table on acceptance of key Council of Europe human rights instruments, available at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>). It is possible to accept some but not all ESC provisions. For an overview of which states have accepted which rights, see the table on acceptance of ESC provisions at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>.

Fourteen EU Member States are bound by the 1995 Additional Protocol to the ESC Providing for a System of Collective Complaints (Collective Complaints Procedure Protocol) and another four

have signed but not yet ratified the instrument (see the table on acceptance of selected Council of Europe instruments: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>). No change occurred in 2013 regarding this protocol. **Finland** remains the sole Member State which, in addition to the Collective Complaints Procedure Protocol itself, has accepted the submission of collective complaints not only from international non-governmental organisations (NGOs) and national trade unions (mandated under Article 1 of the collective complaints protocol) but also from national NGOs – a possibility available under Article 2 of the protocol.

Applications under this protocol to the ESC monitoring body, the European Committee of Social Rights (ECSR), help illuminate current issues in the area of economic and social rights. Of the 15 cases filed in 2013, of which 14 were against EU Member States,<sup>18</sup> seven concern the alleged failure to prohibit corporal punishment or other cruel or degrading forms of punishment of children in individual EU Member States, either in a domestic setting or in educational institutions. Two complaints focus on other social rights of children. The remaining cases concern other rights granted under the ESC, such as the right of employees to organise or the right to social security and welfare protection.

The ECSR also delivered 14 decisions, of which 13 related to EU Member States, on the merits of complaints filed in previous years. These included the decisions on

Table 10.1: (continued)

	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	Total
			✓			✓	✓			✓			✓		✓	7
	✓					✓		✓	✓	✓				✓		10
					✓								✓		✓	4
				✓		✓		✓	✓							4
		✓					✓	✓	✓	✓					✓	13
		✓				✓	✓		✓	✓						8
	1	2	1	1	1	4	3	3	4	4	0	0	2	1	3	46

five cases initiated by Greek pensioners' organisations regarding pension cuts introduced as austerity measures in response to the economic crisis. The applicants claimed that these cuts were in breach of Article 12 (3) of the ESC, which stipulates the Contracting Parties' obligation to "endeavour to raise progressively the system of social security to a higher level". The ECSR held that, although austerity measures may be necessary in the given situation, the cuts' severity and the state's failure to look for less drastic measures for vulnerable members of society constituted a breach of social rights under the ESC.<sup>19</sup>

Other decisions in 2013 concerned issues such as the rights of migrants to social protection and assistance, or the right to the protection of health in case of serious environmental pollution. In the area of employment and labour rights, the ECSR delivered decisions relating to the right to work or freedom of association and the right to bargain collectively.

The review of the reporting procedure focused in 2013 on health, social security and social protection, relating to Articles 3, 11, 12, 13, 14, 23 and 30 of the ESC and Article 4 of the 1988 Additional Protocol (for the content of these provisions, see the table on acceptance of ESC provisions at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>). They cover rights appearing also under Title IV of the Charter of Fundamental Rights of the EU. During 2013, the ECSR examined the application of the 1961 ESC by eight EU Member States: the **Czech Republic, Denmark, Germany, Greece, Latvia, Poland, Spain** and the **United Kingdom**. During the same time, the ECSR also examined the application of the 1996 ESC by 17 Member States: **Austria, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Hungary, Ireland, Italy, Lithuania, Malta, the Netherlands, Romania, Slovakia, Slovenia** and **Sweden**. Several Member States submitted their

reports too late to be reviewed in 2013, so conclusions will be available only in early 2014: **Luxembourg** and **Croatia** for the 1961 ESC and **Portugal** for the 1996 ESC.

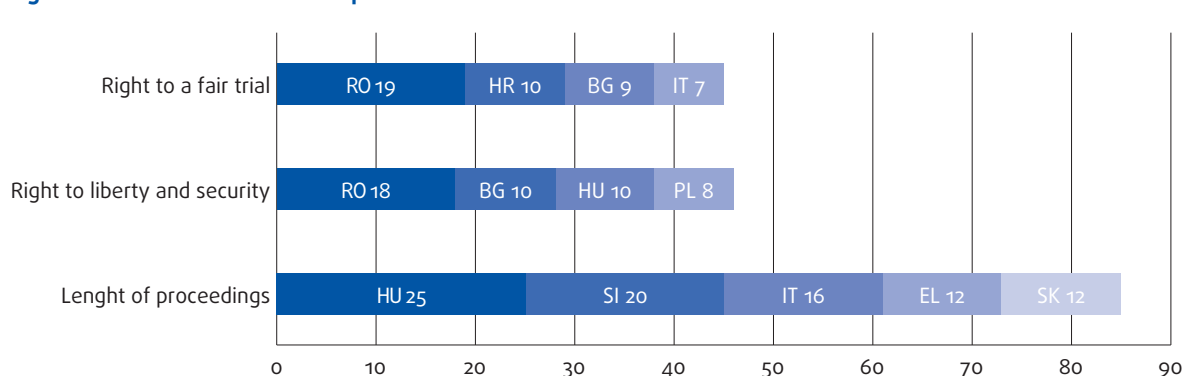
On the conformity of national law and practice with ESC provisions, see the table at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>. **Romania** emerges with the highest level of non-conformity (62 %), followed by **Greece** (56 %) and **Poland** (46 %). Other EU Member States with non-conformity above 40 % are **Latvia** (44 %), **Ireland** (42 %) and **Malta** (41 %). Romania scored poorly in the application of the right to health (high infant and maternal mortality), the right to health and safety at work and the right to social and medical assistance.<sup>20</sup> At the other end of the spectrum, showing strong conformity with the ESC, are the **United Kingdom** (8 %, actually only one conclusion out of 13), **Slovenia** (12 %), **Cyprus** (14 %), **Denmark** (18 %), **Sweden** (12 %), **Estonia** (20 %), the **Netherlands** (21 %), **Austria** (24 %) and **Finland** (24 %).

### 10.2.3 Civil and political rights: standards and compliance

According to its annual statistics, the ECtHR handed down 497 judgments in 2013 in cases brought against the 28 EU Member States, 410 (82 %) of which proved to be violations. The corresponding numbers in 2012 were 648 and 486 judgments (75 %), respectively.<sup>21</sup> These numbers suggest a downward trend, which could be due to changes in how the ECtHR prioritises cases and the number of actual violations reaching the court.

The most frequent subjects of proceedings related to EU Member States before the ECtHR concerned length of proceedings (118 judgments), the right to liberty and security (89), the right to fair trial (80) and inhuman or degrading treatment (58). For an overview of these

**Figure 10.2: Most violated ECHR provisions**



Notes: Table covers ECtHR judgments in 2013.

The darkest shade of blue is used for the highest number of ECHR violations, medium blue for a medium number of violations and light blue for a lower number of violations.

Source: ECtHR (2014), Annual report 2013, Strasbourg, ECtHR



subjects, see the table on the number of ECtHR judgments finding a violation in 2013 at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>. The subjects of proceedings were almost the same as those in 2012; the only difference was that in the third place the right to an effective remedy was replaced with that to a fair trial. A trend to fewer judgments finding EU Member State violations continued in 2013, with the number falling to 410 cases from 509 in 2011 and 486 in 2012, although the percentage of judgments finding a violation rose from 75 % in 2012 to 82 % in 2013. The ECtHR handed down considerably fewer judgments in EU Member States in 2013 on the length of proceedings (from 151 to 118). Similarly, cases concluding a lack of effective investigation fell from 34 to 11, violations of the right to an effective remedy from 74 to 56 and the right to property from 59 to 37. However, the right to a fair trial increased from 50 to 80 and non-enforcement related to a fair trial from 3 to 14.

Figure 10.2 presents the three most violated provisions of the ECHR, and the EU Member States with the highest number of violations by respective right.

The ECtHR also details the number of complaints it allocates to its internal judicial formations per 10,000 population. Applications that are allocated to a judicial formation are those for which the ECtHR has received a correctly completed form, accompanied by copies of relevant documents. (See the figure on applications allocated to a judicial formation at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>). While some EU Member States experienced a relative increase (Malta, Cyprus, Hungary and Slovenia) or decline (Estonia, Romania, Sweden and the United Kingdom) in the number of applications in 2013, in general terms the number of allocated applications by Member State remained stable. The number of EU 28 allocated cases dropped by 1,744 cases, or 6 %, from 29,103 in 2012 to 27,359 in 2013. Romania accounted for the bulk of the decline, followed by the United Kingdom. Member States that still saw larger increases were France, Hungary and the Netherlands.

The 2012 trend of fewer cases pending before the ECtHR continued in 2013. The number fell to 99,000 cases, or by some 22 %, from 128,100 at the beginning of the year. EU Member States together account for 38,303 cases, or some 38 %, a similar share to the previous year. **Italy, Romania** and the **United Kingdom** have the largest number of pending cases, at 14,379, 6,173 and 2,519 cases, respectively. (See the figure on the number of cases pending before ECtHR judicial formations at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>.)

In 2013 as in 2012, the highest number of leading pending cases with execution times longer than five years was in Italy, which also had the highest amount of just

satisfaction awarded, at over €71,000,000, down from almost €120,000,000 in 2012. For more details on the number of leading cases with an average execution time of more than five years and the total compensation awarded for cases in 2011, 2012 and 2013 by EU Member State, see the table on the number of leading pending cases with average execution time of more than five years at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>.

The Council of Europe Committee of Ministers examined the implementation of ECtHR judgments in a number of member states, including 14 EU Member States: **Belgium, Bulgaria, Greece, France, Hungary, Ireland, Italy, Malta, Poland, Portugal, Romania, Slovenia, Spain** and the **United Kingdom**.<sup>22</sup>

The Committee of Ministers requested more information from **Bulgaria** and **Romania** on certain allegations of ill-treatment by the police. In **Greece**, the focus was on the availability of effective domestic remedies for excessive length of criminal and civil proceedings following pilot judgments rendered by the ECtHR. The length of proceedings was also examined in relation to **Belgium, Bulgaria, Italy, Poland** and **Portugal**. In relation to **Romania**, the committee supervised the introduction of a mechanism of compensation for or restitution of nationalised property. The committee noted with satisfaction that **Ireland** had made significant progress towards adopting a legislative and regulatory framework for a procedure that would help women establish whether or not they qualify for a lawful abortion. The committee welcomed **Malta's** diligence shown in putting rapidly in place a mechanism to provide access to court in certain childcare cases. The Committee of Ministers examined overcrowding in prisons in **Poland** and **Italy**. The **United Kingdom** authorities were urged to adopt legislation to remove the blanket ban on prisoners' voting rights. In **Slovenia**, the committee welcomed the introduction of the compensation scheme for the 'erased'.<sup>23</sup> Finally, the Committee considered that **Spain** acted in accordance with the ECtHR by ensuring the immediate release of an applicant whose detention had been retrospectively extended.<sup>24</sup>

The process of the accession of the EU to the ECHR, foreseen by the Treaty of Lisbon, reached an important milestone in April 2013 when the negotiators of the 47 Council of Europe member states and the EU finalised a draft accession agreement.<sup>25</sup> The lengthy 12-page document, accompanied by a 20-page explanatory report, reflects the intricacies of the EU legal order. Much discussion surrounded the issue of attribution of responsibility for the implementation of EU law. In the draft, EU Member States are the primary respondents; the EU could become party to any such dispute with equal rights to and joint responsibility with a Member State under the new 'co-respondent' mechanism.

The European Commission subsequently submitted a request to the Court of Justice of the European Union (CJEU) for an opinion on whether or not the draft accession agreement is compatible with the EU Treaties. Among other issues, the CJEU will have to assess the fundamental questions of the autonomy of the EU legal order and the primacy of EU law, therefore pronouncing to what degree the influence of the ECtHR on EU issues is acceptable under the treaties.

### 10.3 OSCE monitoring provides human rights feedback

The Organization for Security and Co-operation in Europe (OSCE), whose work often focuses on areas outside the EU-28 involving others of its 57 participating states, also looked into the situation in EU Member States during 2013. The OSCE engages directly with EU Member States, including in the often confidential conflict prevention work of the organisation's High Commissioner for National Minorities.<sup>26</sup>

OSCE entities that operate more publicly include the Representative on Freedom of the Media,<sup>27</sup> who issued statements, for example, on 14 EU Member States during 2013. These statements dealt with issues including the intimidation of journalists in **Bulgaria**; the treatment of journalists in **Croatia**; freedom of expression and media freedom in **France**; media access to courtrooms in **Germany**; risks to media diversity in **Greece**; the proposed criminalisation of particular online publications in **Hungary**; criminal defamation legislation in **Italy**; the criminalisation of some speech in **Romania**; freedom of expression and media pluralism in **Lithuania**; judicial pressure on journalists in **Slovakia**; the decriminalisation of defamation in **Slovenia**; draft legislation limiting access to information in **Spain**; and concerns about a planned agency to regulate print media in the **United Kingdom**. The representative also visited **Denmark** in November 2013 to discuss a new public information law.

The OSCE's Special Representative and Co-ordinator for Combating Trafficking in Human Beings visited **Italy** in June and **Romania** in September.<sup>28</sup>

The three Personal Representatives of the OSCE Chairperson-in-Office on tolerance and non-discrimination visited six EU Member States in 2013, recommending improvements. They jointly visited **Belgium** (June) and **Greece** (September). The country visit to **Belgium** led to recommendations on action in relation to Muslim and Jewish communities, concerns with religious dress, and hate crime.<sup>29</sup> The Personal Representative on combating antisemitism undertook four separate visits to France (April), Italy (June–July), Latvia (July) and Romania (October). Following up on the visit to

**France**, the representative recommended enhanced data collection on hate crime, police training, security assistance to Jewish communities and steps to combat cyberhate.<sup>30</sup> In **Italy**,<sup>31</sup> the representative recommended preventative educational and awareness-raising efforts and training for police and prosecutors,<sup>32</sup> and in **Latvia** the representative recommended enhancing teaching about antisemitism in schools, training for judges and prosecutors, providing the Ombudsman's office with more resources, and resolving outstanding Second World War property restitution processes, since they provide fodder for antisemitic discourse.<sup>33</sup> In **Romania**, the recommendations focused on hate crime and training of police and prosecutors.<sup>34</sup>

The OSCE levelled sharp criticism at **Spain** in particular in 2013. Against an earlier pledge of full cooperation, Spain denied the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) the right to monitor an anti-monarchy assembly in Madrid. The country had earlier said it would cooperate fully with ODIHR on monitoring freedom of assembly in the country.<sup>35</sup>

### 10.4 Member States accept UN treaties

As mentioned earlier, one way to assess states' commitment to human rights is the extent of international human rights treaties, and additional features under them, that bind the states. Figure 10.3 provides an overview of EU Member States' acceptance of key UN instruments, including additional protocols and acceptance of additional features such as individual complaints. For a detailed overview, see the table on acceptance of selected UN instruments at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>. For the corresponding information on Council of Europe treaties, see Figure 10.1 and the table on acceptance of selected Council of Europe instruments at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>.

Nine of the UN conventions are labelled core human rights conventions.<sup>36</sup> These nine and their related features, the optional protocols and elective mechanisms built into the actual conventions, are displayed in shades of blue in Figure 10.3. Other UN treaties and their additional protocols are shaded in red.

The following list highlights key developments related to the acceptance of UN human rights instruments in 2013.

- The 2008 Optional Protocol on individual complaints to the International Covenant on Economic, Social and Cultural Rights (ICESCR-OP), which was adopted in 2008, came into force in May 2013.<sup>37</sup> **Portugal** ratified it in 2013, joining **Spain** and **Slovakia**, which had become parties earlier.



## Championing human rights

The Council of the European Union emphasises the EU's and its Member States' commitment to set an example in ensuring respect for human rights within their respective areas of competence, according to the EU Annual report on human rights and democracy in the world in 2012. In that report, published in 2013, the council also says the EU and its Member States seek to promote human rights and the rule of law worldwide through their relations with third countries. EU Member States as well as the EU itself made a number of pledges in this field at the UN High-Level Conference on the Rule of Law in 2012, concerning issues ranging from the ratification of various human rights instruments to adopting specific national laws, programmes or action plans.

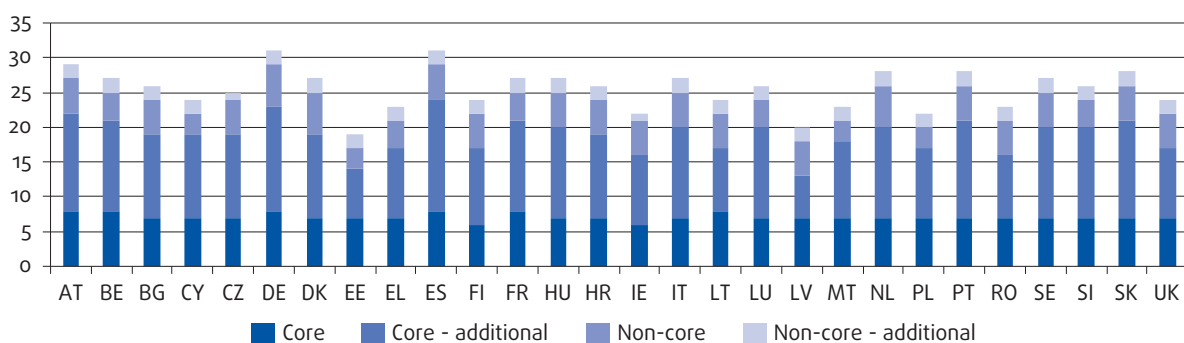
For more information, see Council of the European Union, 9431/13, 13 May 2013, pp. 174–175, and the UN voluntary pledge site on the rule of law, available at: [www.unrol.org/article.aspx?article\\_id=170](http://www.unrol.org/article.aspx?article_id=170)

- **Latvia** in 2013 was the second-last of the EU Member States to become a party to the 1989 Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) on the abolition of the death penalty (ICCPR-OP2). **Poland** is the remaining signatory EU Member State yet to ratify it.
- **Lithuania** signed and ratified the 2006 International Convention for the Protection of All Persons from Enforced Disappearance (CPED), including Article 31, which provides for individual complaints. **Poland** signed the convention.<sup>38</sup>
- Two EU Member States, **Italy** and **Portugal**, ratified in 2013 the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), bringing the total number of EU Member States party to this instrument to 21.<sup>39</sup>

- In 2013, the 2011 Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (CRC-OP3) received a large number of acceptances from EU Member States. **Germany, Portugal, Slovakia** and **Spain** ratified the protocol, while **Croatia** and **Poland** signed it. The protocol was set to come into force in early 2014. There are still 13 EU Member States that have not yet signed the protocol.<sup>40</sup>
- The **Czech Republic** ratified the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (CRC-OP2) in 2013, leaving **Ireland** as the sole EU Member State yet to ratify it.
- The **Czech Republic** ratified the United Nations 2000 Convention against Transnational Organized Crime (UNTOC) in 2013, meaning that all EU Member States are now parties. The Czech Republic also ratified the 2000 Optional Protocol to UNTOC on the Smuggling of Migrants by Land, Sea and Air, leaving Ireland as the sole EU Member State yet to ratify it.
- **Italy** and **Germany** are the first two EU Member States to become parties to the 2011 ILO convention No. 189 concerning decent work for domestic workers (see earlier in relation to EU action on 'authorising' the Member States in this regard). They join nine others worldwide. ILO conventions cannot be signed in a separate stage indicating commitment before ratification. The convention entered into force on 5 September 2013.

The UN Convention on the Rights of Persons with Disabilities (CRPD) deserves particular attention as a relatively new instrument that already boasts a large number of State Parties, including the EU itself. EU Member States continued to implement the CRPD in 2013. The number of EU Member States

Figure 10.3: Acceptance of key UN human rights instruments, by EU Member State



Note: For more details, see the table on acceptance of selected UN instruments, available at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>.

Sources: United Nations, information available at: <https://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en>; International Labour Organization, information available at: [www.ilo.org/global/standards/lang--en/index.htm](http://www.ilo.org/global/standards/lang--en/index.htm)

that have ratified the CRPD remains unchanged at 25, of which 20 have also ratified its Optional Protocol, enabling individual complaints to be made to the CRPD monitoring committee.

The three EU Member States yet to ratify the CRPD – Finland, Ireland and the Netherlands<sup>41</sup> – took further steps towards ratification. In **Ireland**, the major obstacle to ratification remains the reform of legal capacity legislation in line with the supported decision-making model required by Article 12 of the CRPD on equal recognition before the law.<sup>42</sup> On 15 July 2013, the Irish government published the Assisted Decision-Making (Capacity) Bill, which aims to provide a statutory framework that maximises individual autonomy.<sup>43</sup> The bill also provides for the establishment of a new statutory office, the Office of the Public Guardian, which will supervise those who provide support for decision making. The bill is expected to be passed in 2014, paving the way for ratification of the CRPD.<sup>44</sup> In **Finland**, the working group set up to prepare for the convention's ratification was, at the end of 2013, preparing a report outlining the revisions needed to bring existing legislation into line with the CRPD. The report, currently out for consultation, will incorporate the consultation's comments into the legislative proposal for ratification, to be presented to parliament during 2014.<sup>45</sup>

Following impact assessment studies conducted in 2012, the Ministry of Health, Welfare and Sport in the **Netherlands** published two draft bills on the ratification of the CRPD for online consultation: a Ratification Act<sup>46</sup> and an Implementation Act defining the legal reforms necessary to implement the CRPD.<sup>47</sup> Details of the respective monitoring bodies required at national level under the CRPD are provided in Section 10.5.2 and the table on CRPD data at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>.

### 10.4.1 Monitoring

The UN human rights treaties include international monitoring bodies (UN treaty bodies) that supervise the compliance of State Parties with that convention. Among the means used to do this are periodic reporting procedures as well as an examination of individual complaints (communications). The UN Human Rights Council, the 47-member intergovernmental body served by the Office of the High Commissioner for Human Rights (OHCHR), offers two additional main forms of monitoring: the Universal Periodic Review (UPR) and the special procedures. The former is a peer review exercise and the latter is carried out by individual experts or working groups. The UN monitoring system is also supported by, and partly integrated with, a universal system of accredited National Human Rights Institutions (NHRIs) (see Section 10.5).

## Universal Periodic Review

Through the UPR, the implementation of human rights by each UN member is reviewed once every 4.5 years, based on sources including a report submitted by the state under review, a report compiled by the OHCHR, which contains information gathered by the treaty bodies and the special procedures, and information received from other relevant stakeholders such as NGOs, NHRIs and regional human rights organisations, including FRA. Since its establishment, the UPR and the recommendations it issues have earned states' respect.

### FRA ACTIVITY

#### Contributing to UN human rights monitoring

Starting in early 2013, at the request of the OHCHR, FRA submits in the formal Universal Periodic Review exercise extracts of relevant reports it has issued in recent years related to the EU Member State under review. This involved the following Member States in 2013: **Cyprus, Malta, Portugal and Slovakia**.

The UPR covered all states between 2006 and 2011. Each EU Member State has therefore undergone the monitoring procedure at least once. Within the second cycle, five EU Member States were reviewed in 2012 and a further five in 2013: **France, Germany, Luxembourg, Malta and Romania**.<sup>48</sup>

States generally accept the majority of recommendations received under the UPR, but they can also reject, in part or in full, their implementation. Of the 165 recommendations received in the second review cycle, **France** accepted 124 (75 %), partially accepted 12 (7 %) and noted (rejected) 29 (18 %). Most of the recommendations addressed to France concerned racial discrimination, the rights of minorities and migrants, torture, cruel, inhuman and degrading treatment or punishment and prison conditions. **Germany** received 200 recommendations, accepting 167 (83.5 %), partially accepting two (1 %) and rejecting 31 (15.5 %). The recommendations emphasised issues such as racial discrimination, rights of women and migrants and the ratification or implementation of various human rights instruments. As for **Luxembourg**, of the 121 recommendations received, 112 (93 %) were accepted and nine (7 %) rejected. The recommendations focused on migration, the rights of the child and women's rights, including in connection with combating trafficking in human beings. For **Romania**, of a total of 157 recommendations, 129 (82 %) were accepted, three (2 %) were partially accepted and 25 (16 %) were rejected. The recommendations addressed the rights of the child, migration and stepping



**Table 10.2: Universal Periodic Review recommendations in 2013, by EU Member State**

	Total	Accepted	% accepted	Partially accepted	% partially accepted	Rejected	% rejected
FR	165	124	75	12	7	29	18
DE	200	167	83.5	2	1	31	15.5
LU	121	112	93	0	0	9	7
MT*							
RO	157	129	82	3	2	25	16

Notes: Numbers are approximate as reasoning for rejection varies from state to state and the distinction between the two is not always clear.

\* Numbers were not yet available at the time of writing.

Source: United Nations, OHCHR, information available at: [www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx](http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx)

up efforts to ratify or implement various international human rights instruments.<sup>49</sup> Table 10.2 provides an overview of the recommendations from the UPR for the EU Member States reviewed in 2013.

## Treaty bodies

UN treaty bodies monitor the implementation of rights guaranteed under the respective treaty, offering more targeted feedback than the UPR. There are currently 10 such bodies, one for each of the nine core UN human rights conventions and the Subcommittee on Prevention of Torture, established under the OP-CAT, which monitors places of detention in State Parties to the Optional Protocol (see the legend of Table 10.3 for an overview of these treaties).

Treaty bodies follow a regular review cycle, during which they review the reports the states submit. These typically range from four to five years, with the exception of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which has in principle a two-year cycle. Efforts have continued in 2013 to synchronise and integrate the reporting under the different regimes.

The treaty bodies reviewed several EU Member States in 2013. Table 10.3 shows those EU Member States for which a treaty body or the UPR working group issued in 2013 a final report on their review. For the UPR, the table includes a separate row for actual reviews during 2013. The table shows that EU Member States are subject to a range of monitoring activities at the UN level and, for instance, that the Committee against Torture reviewed the largest number of EU Member States in 2013.

In addition to states' reporting, most of the human rights treaties also have individual complaints mechanisms. (For more detail, see the table on

UN conventions with individual complaint mechanisms and number of cases at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>.) Of the nine core UN human rights conventions, two do not yet allow for individual complaints to the respective treaty body. This includes the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW), which has no EU Member States among the 37 signatories and 47 parties worldwide. Of the State Parties, only two of the required 10 have recognised the Committee on Migrant Workers' competence in respect of the complaint mechanism. The third Optional Protocol to the CRC still fell short, with nine ratifications and an additional 36 signatures at the end of 2013, including four ratifications and 15 signatures by EU Member States, of the 10 ratifications necessary for its entry into force.<sup>50</sup>

On 5 May 2013, the 2008 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights entered into force after obtaining the 10 required ratifications. At the end of 2013, the protocol had 11 ratifications and 34 additional signatures worldwide, including eight signatures and three additional ratifications from EU Member States. With the protocol in force, an individual complaints mechanism similar to those under the first Optional Protocol to the ICCPR and under the CRPD has been established. The protocol also contains an inquiry mechanism; however, only two of the current parties, one of them an EU Member State, **Portugal**, have accepted it. The individual complaints mechanism itself can, nevertheless, attract significant attention from complainants, including those from EU Member States, given the increased strain on the implementation of economic and social rights due to the austerity measures introduced by many states in the face of the economic crisis (see also Section 10.2.1 on Economic and social rights for the cases filed with the ECSR in this area).

**Table 10.3: Reports released under UN monitoring procedures in 2013, by EU Member State**

	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	
CERD				✓										
CESCR	✓	✓					✓							
HRC (CCPR)					✓						✓			
CEDAW	✓			✓					✓					
CAT								✓						
SPT						✓								
CRC														
CMW														
CRPD	✓													
CED										✓		✓		
UPR	Report				✓	✓						✓		
	Review					✓						✓		
<b>Total</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>0</b>	
<b>Committee</b>	<b>Convention</b>		<b>Committee name in full</b>											
CERD	ICERD		Committee on the Elimination of All Forms of Racial Discrimination											
CESCR	ICESCR		Committee on Economic, Social and Cultural Rights											
HRC (CCPR)	ICCPR		Human Rights Committee											
CEDAW	CEDAW		Committee on the Elimination of Discrimination Against Women											
CAT	CAT		Committee Against Torture											
SPT	OP-CAT		Sub-Committee on prevention of torture (including advisory visits for National Preventive Mechanisms)											

Source: Compiled by FRA using data from United Nations, OHCHR, 2014

### UN special procedures

The special procedures system is a central element of the UN human rights machinery and covers the full spectrum of human rights. Special procedures undertake country visits, send communications on individual cases, conduct thematic studies and convene expert consultations, contribute to the development of international human rights standards, engage in advocacy, raise public awareness and provide advice for technical cooperation. At the end of 2013, there were 37 thematic and 14 country mandates. None of the country mandates concerned EU Member States.

On various occasions, EU Member States have expressed their support for the system of special procedures and pledged to cooperate fully with them. All EU Member States have extended a standing invitation to all thematic special procedures of the Human Rights Council, thereby announcing that they will always accept 'requests to visit' from all special procedures.

In this context, several special procedures mandate holders visited one or more EU Member States in 2013.

- The Special Rapporteur on trafficking in persons, especially women and children, visited **Italy**. The country also received a visit from the Special Rapporteur on freedom of opinion and expression.
- The Special Rapporteur on the situation of human rights in Eritrea visited **Malta**.
- The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance visited **Spain**. The country also received a visit from the Working Group on enforced or involuntary disappearances.
- The Special Rapporteur on freedom of peaceful assembly and association visited the **United Kingdom**. The country also received a visit from the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context.
- The Independent Expert on foreign debt and other related international financial obligations of States on the full enjoyment of all human rights,





Table 10.3: (continued)

	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	Total
					✓							✓		✓		4
																3
																2
	✓														✓	5
						✓		✓	✓	✓					✓	6
																1
					✓									✓		2
																0
																1
																2
					✓		✓				✓					6
					✓		✓				✓					5
	1	0	0	0	4	1	2	1	1	1	2	1	0	2	2	<b>32</b>
	<b>Committee</b>	<b>Convention</b>	<b>Committee name in full</b>													
	CRC	CRC	Committee on the Rights of the Child (including monitoring of the optional protocols)													
	CMW	ICMW	Committee on Migrant Workers													
	CRPD	CRPD	Convention on the Rights of Persons with Disabilities													
	CED	CPED	Committee on Enforced Disappearances													
	UPR		Universal Periodic Review													

particularly economic, social and cultural rights, visited **Greece**.

- **Greece** and **Hungary** received visits from the Working Group on arbitrary detention.

The results of these visits are presented in written reports submitted to the UN Human Rights Council and can be found on the website of each special procedures mandate holder.<sup>51</sup>

Special procedures mandate holders sent 35 communications to several EU Member States in 2013: the **Czech Republic** (3), **Denmark** (1), **Greece** (2), **Hungary** (3), **Ireland** (2), **Italy** (2), **Latvia** (1), **Malta** (1), the **Netherlands** (2), **Portugal** (2), **Romania** (1), **Slovakia** (2), **Spain** (7), **Sweden** (2) and the **United Kingdom** (4).

Special procedures publish reports and undertake studies on issues of particular relevance for the EU. At the 23rd session of the Human Rights Council in May 2013, the Special Rapporteur on the human rights of migrants presented a report on the rights of

migrants in the Euro-Mediterranean region. The study was conducted in 2012 and focused in particular on the ► EU's external border management.<sup>52</sup> (See also **Chapter 1** on asylum, immigration and integration.)

In April 2013, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression submitted a report on the implications of states' surveillance of communications for the exercise of the human rights to privacy and to freedom of opinion and expression. The report underlines the urgent need to study further new modalities of surveillance and to revise national laws regulating these practices in line with human rights standards.<sup>53</sup> (See ► also **Chapter 3** on information society, respect for private life and data protection.)

In September 2013, the Special Rapporteur on freedom of religion or belief took part in the first interreligious round table held in Cyprus. In a subsequent press release, he hailed a key breakthrough in inter-faith communication, which allowed Muslim and Greek Orthodox religious leaders to cross the Green Line which still divides the island.<sup>54</sup> These efforts follow

up the recommendations in the Special Rapporteur's report on Cyprus to the 22<sup>nd</sup> session of the Human Rights Council, in which he stressed the importance of ensuring that there are no human rights protection gaps and that all persons can effectively enjoy their fundamental rights, including freedom of religion or belief, wherever they live.<sup>55</sup>

At the margins of the 68th session of the General Assembly, the Special Rapporteur in the field of cultural rights convened an event about history teaching. The event, which was organised by the OHCHR and sponsored by Germany and Switzerland, also included the participation of the Special Rapporteur on truth, justice, reparation and guarantees of non-recurrence and the Special Rapporteur on freedom of opinion and expression. Whereas many studies and research papers have been devoted to the issue of reconciliation and reconstruction in post-conflict societies, the human rights and, in particular, cultural rights angles have been neglected in the past. It was stressed that issues related to the elaboration of cultural and historical narratives in divided societies, especially through textbooks, need to be carefully considered, given their importance in reconciliation processes.<sup>56</sup>

## 10.5 National-level monitoring and follow-up supports human rights performance

Several of the international treaties and mechanisms mentioned make use of or even require (CRPD and OP-CAT) the appointment or establishment of national bodies to monitor human rights. The UN is giving increasing weight to the role of NHRIs, enhancing their interaction with UN monitoring of human rights. Many of the bodies under CRPD and OP-CAT are NHRIs.

In 2013, the UN emphasised the importance of NHRIs in a resolution that encouraged "Member States to establish effective, independent and pluralistic national institutions or, where they already exist, to strengthen them for the promotion and protection of all human rights and fundamental freedoms for all". It stressed "the importance of the financial and administrative independence and stability of [NHRIs] for the promotion and protection of human rights, and note[d] with satisfaction the efforts of those States that have provided their national institutions with more autonomy and independence, including by giving them an investigative role or enhancing such a role, and encourages other Governments to consider taking similar steps". NHRIs, "including ombudsman and mediator institutions," were also encouraged "to seek accreditation status through

the International Coordinating Committee [of NHRIs]". The resolution also referred to "the strengthening in all regions of regional cooperation among [NHRIs], and noting with appreciation the continuing work of [...] the European Group of [NHRIs]."<sup>57</sup>

As a follow-up to the 1993 Vienna world conference on human rights, a conference was convened in Vienna in 2013. It also called for enhanced interaction between NHRIs and UN mechanisms, including treaty bodies. The conference report also noted "[t]he need for stronger cooperation and integration of human rights mechanisms at national, regional and international level" and called for strengthening of "national and regional mechanisms in order to better enforce human rights obligations and the rule of law."<sup>58</sup>

*"Establish National Human Rights Institutions in full compliance with the Paris Principles, ensuring they are equipped with the right to investigate human rights complaints and to monitor State compliance with international human rights obligations."*

*"Strengthen the role of National Human Rights Institutions in developing indicators and monitoring compliance, since they are bridging the gap between the national and the international levels and are key partners regarding accountability."*

Recommendation addressed to states, in UN, Office of the UN High Commissioner for Human Rights (2013), Conference report, Vienna+20: Advancing the protection of human rights – achievements, challenges and perspectives 20 years after the World Conference, 27–28 June 2013, available at: [www.ohchr.org/Documents/Events/OHCHR20/ConferenceReport.pdf](http://www.ohchr.org/Documents/Events/OHCHR20/ConferenceReport.pdf)

### 10.5.1 National human rights institutions

The UN Human Rights Council in particular has given accredited NHRIs with A-status (see Section on accreditation and international cooperation) an institutionalised role in some of its procedures, for example in the context of the UPR. The accreditation of NHRIs is a peer review process, which is supported by the OHCHR as secretariat. NHRIs play a crucial role in monitoring international obligations. Organisations such as the Council of Europe and FRA similarly work closely with NHRIs and other bodies with a human rights remit, such as equality bodies or ombudsperson institutions. EU legislation requires the existence of equality bodies as well as data protection authorities in each EU Member State. With the accession of the EU to the CRPD in 2010, the EU itself has also had to set up a system of EU-wide monitoring. As reported in earlier FRA Annual reports, the EU has also highlighted the importance of NHRIs.<sup>59</sup>

#### **Accreditation and international cooperation**

NHRIs cooperate globally through the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). The ICC promotes and supports participation of NHRIs



in the international human rights system and facilitates cooperation among NHRIs at the global level. The ICC, through its Sub-Committee on Accreditation, undertakes accreditation of NHRIs for compliance with the Paris Principles – which require, for instance, that NHRIs be independent, created by law, protected against governmental interference and adequately funded.<sup>60</sup> NHRIs fully compliant with the Paris Principles are awarded A-status; those not fully compliant, B-status; and those with major concerns, C-status. There are also institutions with a human rights remit that have not sought or have lost their accreditation.

The number of accredited NHRIs in EU Member States was unchanged at the end of 2013 from the previous year. The A-status NHRIs in **Croatia** and **France** were both up for re-accreditation, which they gained. The A-status NHRI in **Germany** was up for re-accreditation, but this assessment was deferred until 2014 to await the outcome of a government plan to change the NHRI's legal foundation. The federal government plans to strengthen the NHRI's foundation by adopting legislation, as the Paris Principles require;<sup>61</sup> presently, the NHRI is based on a unanimously passed motion of the federal parliament. Similarly, the review of the B-status NHRI in **Hungary** was also deferred, in this case to see better how the new NHRI, the Commissioner for Fundamental Rights,<sup>62</sup> operates before an assessment is made.<sup>63</sup> Several EU Member States took steps to establish NHRIs; see further in ► **Chapter 8** on access to justice and judicial cooperation.

A significant development in 2013 was the deepening cooperation between NHRIs in Europe through the establishment of a permanent secretariat for the European Network of NHRIs, previously known as the European Group of NHRIs.<sup>64</sup>

The number of NHRIs worldwide has steadily risen since the accreditation of NHRIs started in the 1990s, with the total reaching 105 at the end of 2013, including 70 with A-status. The picture in the EU is not as impressive, however. Currently, only 11 of the 28 EU Member States have A-status NHRIs, for a total of 13 such institutions EU-wide, as the United Kingdom has three: one for Northern Ireland, one for Scotland alone and one for England and Wales with aspects of Scotland. An additional seven NHRIs have B-status, for a total of eight, as Bulgaria has two B-status accredited institutions (see [Table 10.4](#)). EU Member States must make further efforts to establish fully accredited NHRIs. Their success would also chime better with the EU's external policy of pushing for such institutions.

### 10.5.2 Designation as national mechanisms

The CRPD and OP-CAT require State Parties to establish or appoint an effective mechanism at the national level

to monitor implementation of state obligations. Both OP-CAT and the CRPD also instruct states to give due regard to the Paris Principles when establishing this national mechanism. Hence, NHRIs fully compliant with the Paris Principles, in other words holding A-status, are the bodies that are most likely to meet these criteria. (For details on the rights of persons with disabilities, ► see **Chapter 5** on Equality and non-discrimination.)

As noted earlier, the CRPD is of great significance for the EU. The convention's Article 33 requires from the parties different types of bodies (government focal point, coordination mechanism, and a monitoring framework). Several of the accredited NHRIs (but also other bodies with a human rights remit), as well as equality bodies, serve as Article 33 (2) frameworks for promoting, protecting and monitoring implementation. About a third of EU Member States use accredited, non-accredited or equality bodies for this role. For more detail, see the table on CRPD data, available at: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/int-obligations>.

A number of structural changes for CRPD implementation and monitoring took place in 2013. In **Portugal**, for example, a Commission for Disability will act as an independent mechanism until the new National Independent Commission becomes operational.<sup>65</sup> After the UN Committee on the Rights of Persons with Disabilities<sup>66</sup> and local NGOs<sup>67</sup> criticised the lack of independence of Hungary's monitoring mechanism under Article 33 (2), **Hungary** enacted a new Government Decision<sup>68</sup> on the National Disability Council (NDC). According to the Government Decision, out of the 15 NDC members, only the chair represents the government, whilst the other 14 members are delegated by organisations for persons with disabilities.<sup>69</sup> Nevertheless, NDC members receive a considerable proportion of their funding from the government, which is subject to negotiation every year.<sup>70</sup>

In addition, the governments of **Romania**<sup>71</sup> and **Slovenia**<sup>72</sup> designated frameworks to promote, protect and monitor CRPD implementation under Article 33 (2). Romania, like several other EU Member States, has not allocated any additional budget to realise the independent monitoring framework.<sup>73</sup>

### 10.5.3 Human rights and business

Another increasingly strong link between the UN (but also the Council of Europe) and EU Member States is related to business and human rights. In 2011, the UN Human Rights Council endorsed the *Guiding principles on business and human rights: Implementing the United Nations 'Protect, respect and remedy' framework* (UN Guiding Principles).<sup>74</sup> The UN Guiding Principles have three pillars. The first calls upon states

**Table 10.4: NHRIs, by accreditation status and EU Member State**

	Number of NHRIs (number of EU Member States with NHRI)		Number of Equality Bodies	AT	BE	BG	BG	CY	CZ	DE	DK	EE	EL
<b>A-status</b>	13	(11)	2							✓**	✓*		✓
<b>B-status</b>	8	(7)	4	✓	✓*	✓*	✓						
<b>C-status</b>	1	(1)	0										
<b>No accreditation/institution</b>	9	(9)	n/a					✓*	✓			✓	

Notes: \* Relevant NHRIs also serve as a national equality body under EU law.

\*\* Indicates they have undergone a re-accreditation process but the results have been postponed until 2014.

Bulgaria has two NHRIs, both with B-status: the Ombudsman of the Republic of Bulgaria and the Commission for Protection against Discrimination of the Republic of Bulgaria.

to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation and adjudication. The second pillar invokes the corporate responsibility to respect human rights, according to which business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved. The third pillar concerns the need for greater access by victims to effective remedy, both judicial and non-judicial. The initiative has gained strong support from other relevant actors in the field of human rights, including the Council of Europe Steering Committee for Human Rights. The committee recommends, in a draft declaration from November 2013, recognising the UN Guiding Principles "as the current globally agreed baseline for its own work in the field of business and human rights".<sup>75</sup> The Steering Committee is drawing up a non-binding instrument addressing gaps in the implementation of the UN Guiding Principles at European level, notably as regards access to remedies.

The European Commission reacted to the UN Guiding Principles in its 2011 communication *A renewed EU strategy 2011-2014 for corporate social responsibility*. In it, the Commission invited the EU Member States to develop, by the end of 2012, national plans for the implementation of the UN Guiding Principles.<sup>76</sup> In the 2012 *EU strategic framework and action plan on human rights and democracy* (see Section 10.1), the Council of the EU extended the deadline for this task to 2013.<sup>77</sup> In their replies to a questionnaire distributed by the European Commission in 2013, 10 Member States said that they have or intend to introduce a stand-alone national plan for this purpose, whereas 11 were going to incorporate these issues into existing national plans for promoting the broader concept of corporate social responsibility. The remaining Member States either said that they did not mean to introduce a national plan in this area or did not respond to the questionnaire (see Table 10.5 for an overview of Member States' responses, including whether or not they delivered on their commitment by the end of 2013).

**Table 10.5: National action plans on business and human rights, by EU Member State**

	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR
<b>New for business and human rights</b>							✓			✓	✓	✓
<b>Integrated</b>	✓		✓	✓	✓	✓		✓				
<b>None</b>		?							?			
<b>Delivered</b>												

Source: European Commission, DG Employment, Social Affairs and Inclusion and Members of the High-Level Group of EU Member States representatives on CSR, August 2013

Table 10.4: (continued)

	ES	FI	FR	HR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SK	SE	SI	UK			
																			GB	NI	SC	
	✓		✓	✓		✓			✓				✓	✓						✓*	✓	✓
					✓**							✓*					✓*	✓				
															✓							
		✓					✓	✓		✓	✓					✓						

The United Kingdom has three NHRIs, all with A-status: in Great Britain, the Equality and Human Rights Commission covering human rights issues in England and Wales, and certain human rights issues in Scotland (those not devolved to the Scottish Parliament); in Northern Ireland, the Northern Ireland Human Rights Commission; and in Scotland alone, the Scottish Human Rights Commission. GB stands for Great Britain; NI for Northern Ireland; and SC for Scotland.

Source: United Nations, OHCHR, ICC, available at: <http://nhri.ohchr.org>

## Outlook

Developments in 2013 show that the EU Member States generally – but also the EU itself – continue to accept new commitments stemming from Council of Europe and UN standards and monitoring mechanisms. This is particularly true of some of the more recent instruments, such as the Istanbul Convention related to violence against women or the third optional protocol of the Convention on the Rights of the Child, providing for an individual complaints procedure.

The eagerly awaited accession of the EU to the ECHR lies currently in the hands of the CJEU. It is expected to deliver a comprehensive opinion on the legal elements of this ground-breaking step. Although it is not generally assumed that the CJEU's response will be negative, it is important that it tackle the issues raised by legal professionals on the draft accession agreement, as EU accession will have significant implications for the fundamental rights landscape in Europe.

The EU has the potential to become one of the leading actors in promoting emerging issues, such as the notion of human rights and business. Commitment and follow-up by EU Member States will also be essential. Similarly, Member State action on Paris Principles-compliant NHRIs in the EU will indicate progress. However, the EU itself may also take action on minimum standards for NHRIs and similar entities, such as equality bodies and data protection authorities.

EU action has continued to underline its determination to become a more active player in the field of human rights and one that is fully integrated in the international system. Besides pursuing its own accession to key instruments such as the ECHR or the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, the EU motivates not only its Member States, but also, through various tools, third countries to enhance their participation in the international human rights system, thus fulfilling its role of contributing to the protection of human rights both internally and worldwide. This is projected to increase in intensity.

Table 10.5: (continued)

	HR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	Total
	✓			✓					✓	✓			✓			✓	10
			✓		✓			✓			✓	✓		✓			12
		✓				?	✓								✓		6
									✓							✓	2

## Index of Member State references

EU Member State	Page
AT.....	233, 238
BE.....	235, 238, 239, 240
BG.....	238, 239, 240, 247, 248
CY.....	236, 238, 239, 242, 245, 246
CZ.....	235, 238, 241, 245
DE.....	238, 240, 241, 242, 246, 247
DK.....	235, 236, 238, 240
EE.....	236, 238, 239
EL.....	236, 238, 239, 240, 245
ES.....	235, 236, 238, 239, 240, 241, 244, 245
FI.....	237, 238, 242
FR.....	238, 239, 240, 242, 247
HR.....	235, 238, 240, 241, 247
HU.....	235, 238, 239, 240, 245, 247
IE.....	235, 238, 239, 241, 242, 245
IT.....	235, 238, 239, 240, 241, 244, 245
LT.....	235, 238, 240, 241
LU.....	238, 242
LV.....	235, 237, 238, 240, 245
MT.....	238, 239, 242, 244, 245
NL.....	238, 239, 242, 245
PL.....	236, 238, 239, 241
PT.....	235, 238, 239, 240, 241, 242, 243, 245, 247
RO.....	238, 239, 240, 242, 245, 247
SE.....	235, 238, 239, 245
SI.....	235, 238, 239, 240, 247
SK.....	238, 240, 241, 242, 245
UK.....	235, 238, 239, 240, 244, 245, 247, 249





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