

CORONAVIRUS PANDEMIC IN THE EU — FUNDAMENTAL RIGHTS IMPLICATIONS

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Acronyms and abbreviations

ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EU	European Union
FRA	European Union Agency for Fundamental Rights
JHA	Justice and Home Affairs Council
ODIHR	Office for Democratic Institutions and Human Rights (OSCE)
OJ	Official Journal of the European Union
OSCE	Organization for Security and Co-operation in Europe
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Foreword

The coronavirus pandemic poses an unprecedented collective challenge to the right to life and to health for people living in the European Union (EU). The wide-ranging measures Member State governments are putting in place to control the spread of the virus have changed daily life in ways that were unthinkable at the start of 2020. In taking swift steps to limit infection rates, governments are seeking to fulfill their obligations to protect the population.

The current situation powerfully underlines that human rights and public health are not an 'either/or' choice. We know from experience in responding to other epidemics that public health measures that respect human rights will prove to be the most effective in terms of health outcomes.

In our responses to the COVID-19 outbreak, we can look to each other – across Member States – for a joined-up response that draws on best practices from across our Union. We can also draw on experience gained from previous crises: both the things we got right and the mistakes we made can teach us useful lessons for this fight. I hope that in showcasing just some of the efforts of those who are embarking on effective, rights-respectful responses to COVID-19, this report can support policymakers across the EU to ensure that measures to control the pandemic reflect the fundamental rights protections.

Public health responses to COVID-19 are constantly changing in light of changing circumstances. These measures, to the extent that they restrict rights need to be rigorously assessed in terms of their necessity, proportionality and respect for the principle of non-discrimination.

While COVID-19 affects all of us, we need to recognise that our populations are not homogeneous. Certain individuals and groups are particularly vulnerable during the pandemic including because of their overall health and socio-economic situation. This includes older persons, Roma, asylum seekers, and persons with disabilities, to name just a few. A human and fundamental rights approach to the pandemic will ensure that they remain to the forefront of our attention so that government measures respond to the needs of our populations in all their diversity.

Michael O'Flaherty
Director



Key findings

“We clearly need strong public health responses to protect life during the pandemic. But we can protect our health and respect human rights. It is not a zero sum game. The more we respect human rights, the better will be our public health strategies. Our health strategies must also ensure that any limitations to people’s fundamental rights should only last as long as necessary.”

Michael O’Flaherty, Director of the EU Agency for Fundamental Rights, **Protect human rights and public health in fighting COVID-19**, March 2020

The outbreak of COVID-19 affects people’s daily life in the 27 EU Member States. As the number of infected people in the EU territory began to mount rapidly in February and March, governments put in place a raft of measures – often introduced in a period of only a few days – in an effort to contain the spread of the virus. Many of these measures reflect how, in exceptional emergency situations, the urgent need to save lives – itself a core fundamental rights obligation – justifies restrictions on other rights, such as the freedom of movement and of assembly.

International human rights law allows for the limitation of certain rights, especially when addressing a major health crisis. Moreover, states can also introduce emergency laws when exceptional circumstances arise. These laws can derogate from some human rights but they need to be in force for a limited time and in a supervised manner. States need to notify formally the derogation, which needs to be prescribed by law, proportionate and necessary. Once the exceptional circumstances are over, governments must lift the emergency measures.

This report outlines some of the measures EU Member States have put in place to protect public health during the Coronavirus pandemic. It highlights how they may affect fundamental rights; where specific Articles are mentioned in the report, these refer to the **Charter of Fundamental Rights of the EU**. It covers the period 1 February – 20 March 2020 and focuses on four interrelated issues:

- measures to contain COVID-19 and mitigate its impact in the areas of social life, education, work, and freedom of movement, as well as asylum and migration;
- the impact of the virus and efforts to limit its spread on particular groups in society;
- incidents of xenophobic and racist discrimination, including hate crime;
- the spread of disinformation concerning the outbreak and the implications of related containment measures on data protection and privacy.

The combination of the most widespread restrictions on daily life experienced in peacetime in modern Europe impact on all of us. They affect in particular certain, often already vulnerable, groups in society, with profound implications for the enjoyment of fundamental rights in the EU. The following paragraphs outline key findings from FRA’s data collection across the 27 EU Member States, illustrating the impact of the virus and the measures to contain it.

FRA will continue to examine the impact on fundamental rights of the virus and measures to contain it in follow-up reports in the coming months.

Impact on daily life: EU Member States' measures to address the outbreak

The measures taken to manage the public health crisis and prevent health systems being overwhelmed have put equal treatment in – and equal access to – **healthcare**, including preventive healthcare, at risk. The right to life (Article 2), the right to health (Article 35) in combination with the prohibition of discrimination (Article 21) call for preventive healthcare and medical treatment to be available to all.

- Information provided to FRA indicate that in some Member States limited intensive care resources to treat COVID-19 patients risked leading to a de-prioritisation of older patients affected by the virus. Prioritising treatment of patients with COVID-19 may also affect patients with other critical conditions, such as cancer.
- Reports emerged of COVID-19 related deaths of older people in nursing homes not being reported to the authorities. There are also reports of insufficient preventive measures in these settings where people are at increased risk of infection due to close proximity to others and at increased risk of adverse outcomes due to older age.
- On the prevention side, evidence collected by FRA shows that vulnerable groups, including people living in institutional settings, people with disabilities, homeless people, Roma and migrants, can be at increased risk of infection. This reflects their limited access to information on protection measures, their housing conditions and socio-economic disadvantages.

All EU Member States introduced **physical and social distancing measures** to contain the COVID-19 outbreak, including forms of quarantine. Such measures can affect many fundamental rights, including the rights to liberty and security (Article 6), respect for private and family life (Article 7), freedom of thought, conscience and religion (Article 10), freedom of expression and information keep together on one line, freedom of assembly and of association (Article 12), freedom of the arts and sciences (Article 13), and freedom of movement and of residence (Article 45). They can also affect the rights of specific groups including children, older persons and persons with disabilities.

- Most Member States have instituted mandatory social distancing measures for the entire population, such as suspension of mass gatherings, stay-at-home requirements - including quarantine measures, closure of non-essential businesses and public spaces, and physical distancing when outside the house.
- Some have placed whole provinces, regions or cities under quarantine, or prohibited all movement in the public sphere without a permit.
- Most Member States have introduced sanctions for those not complying with the newly introduced measures. These typically take the form of fines, but in some cases include the possibility for custodial sentences.

Schools were largely closed down in EU Member States. The impact of switching from regular to home schooling depends on a variety of factors, including the socio-economic background of children's families. According to the 'best interests of the child' principle enshrined in Article 24 of the Charter and the right to education (Article 14), every child has the right to **education**, which shall be provided without discrimination (Article 21).

- Almost all governments across the EU closed down education facilities in February and March 2020 to limit the spread of COVID-19. In some Member States, however, selected schools have remained open for the children of essential workers or for those with no other available childcare.

- To guarantee the continuation of education, Member States encouraged educational institutions to switch to distance learning. However, not all schools or children, particularly those from disadvantaged backgrounds, have the computers, other IT tools or internet access necessary to participate in online learning.
- Around a third of Member States introduced the possibility for some workers to apply for special leave or for an allowance to support them while staying at home to look after their children.

The measures drastically affected the economy across the EU, in effect **shutting down many sectors of the economy**. The ‘lockdown’ of the population has had an immediate impact on particularly exposed sectors such as catering and tourism, with most other industries also hit hard. This is prompting sharp increases in unemployment. Related measures may impact on workers’ right to information and consultation (Article 27), protection in the event of unjustified dismissal (Article 30), social security and social assistance (Article 34), but also the freedom to choose an occupation and right to engage in work (Article 15), and the freedom to conduct a business (Article 16). At the same time, governments took steps to mitigate the most immediate effects.

- A large majority of Member State governments have committed to paying a proportion of the wages of employees who have been or are at risk of being made redundant as a result of the Coronavirus pandemic. Additional financial support in the form of moratoriums on mortgage payments and support for renters further ease immediate financial pressures on people.
- While self-employed people were not included in some initial economic support packages, many Member States have now introduced measures specifically focused on or including this group.
- Some Member States introduced financial support for certain societal groups who may be particularly affected by the outbreak, including older people. Others put in place specific additional benefits for people with caring responsibilities, or for people on sick leave or placed into quarantine because of COVID-19.
- Information collected by FRA show that workers in precarious employment may not be eligible for the income support schemes, which governments implemented following the employment restrictions instigated during the pandemic.
- Reports also arose of some employers not heeding government requirements to contain the virus, for example those concerning physical distancing, putting workers at risk of infection. A number of Member States relaxed or suspended restrictions on working time, given the additional pressure on certain sectors – such as health and social care, and the production and distribution of food – resulting from the pandemic.

Due to the exceptional circumstances, EU Member States temporarily reintroduced controls at the internal borders. Article 28 of the **Schengen Borders Code (Regulation (EU) 2016/399)** allows this possibility under strict conditions and for a limited period. EU Member States also introduced restrictions for third-country nationals crossing the EU’s external borders. The principle of *non-refoulement* set out in Article 78 (1) of the Treaty on the Functioning of the EU and in Articles 18 and 19 of the Charter requires that nobody be returned to a situation of persecution or serious harm. Under Articles 3 and 4 of the Schengen Borders Code, border control authorities must respect the rights of refugees and international protection obligations. The suspension of removal operations has left a significant number of migrants in an irregular situation detained in pre-removal facilities. When there is no reasonable prospect for removal, under Article 15 (4) of the Return Directive, detention ceases to be justified and the person concerned must be released immediately. Especially in the context of the current pandemic, measures to ensure that migrants are housed in appropriate accommodation should accompany their release from detention.

- The vast majority of countries that are part of the Schengen area have introduced restrictions at their internal borders, for example introducing requirements to undergo health checks, self-isolation after entry and permitting entry to only certain non-nationals.
- Some Member States banned asylum applicants from entering their territory.
- With airlines cancelling international flights, several EU Member States also suspended operations to remove third-country nationals, including for people detained in pre-removal facilities.

The COVID-19 pandemic has also affected **the judiciary**. Some of the measures taken substantially affect the work of courts. It is important to avoid ensuing impacts on the right to access justice, in particular the right to an effective remedy and a fair trial (Article 47).

- Against the backdrop of the COVID-19 outbreak, some hearings are postponed, while others are held via videolink. In some cases, the public is excluded due to distancing measures.
- Issues arise surrounding the effective participation of those directly concerned, such as defendants and victims who can only attend remotely. Limitations also emerge in the judicial system's ability to work remotely using electronic devices for communication, to access files through databases, and in the conduct of proceedings via video conference. This affects in particular those Member States with less developed IT systems in their judiciary.
- Using video technology on a case-by-case basis can mitigate some effects, and has – to date – been successfully employed for certain vulnerable victims and witnesses in some Member States. However, use of this technology by default risks affecting the minimum standards developed under Articles 47 or 48 of the Charter and Article 6 of the ECHR, to ensure effective participation in proceedings, including one's right to be present.

Impact on particular groups in society

The virus and the measures Member States introduced to prevent and mitigate the impact of the pandemic affect the rights of everyone but in different ways. Member States adopted special measures to prevent the spread of COVID-19 in specific settings, for example, in institutional settings, including prisons, residential care settings and refugee camps/reception facilities and shelters where people are more at risk of infection due to the difficulty of applying physical distancing measures, especially in often-overcrowded settings. EU Member States took various measures that acknowledge these asymmetries in vulnerability – including of groups such as older people, people with disabilities, homeless people and Roma communities.

- Most Member States suspended or restricted visits to people in institutional settings (including in prisons; in residential care settings; and in refugee camps/reception facilities). While preventing the spread of the disease, such measures can also heighten the **risk of neglect**.
- Some EU countries stopped semi-freedom regimes for prisoners (where they could work outside the prison during the day and return to the prison at night); others further restricted freedom of movement in refugee centres.
- In some Member States, crucial day services for the homeless such as services that provide food or medical services for this group have **ceased to operate** due to the pandemic.

Some Member States tried to provide solutions that address the particular needs of **certain social groups**:

- Some of the institutions that suspended family visits allowed **more frequent phone or video calls** so that people can remain in contact with friends and relatives.
- Institutions made efforts to introduce **measures to prevent** the spread of COVID-19 (provision of sanitiser and face-masks; quarantine and physical distancing measures).
- Some Member States **released certain prisoners early**.
- Some Member States are making **efforts to house homeless people**, including in special housing units for those who become infected.
- FRA evidence reflects an increased risk of **gender-based violence** occurring, with some Member States reporting that more women are calling support hotlines since the beginning of the COVID-19 outbreak. Several Member States increased support measures for women and children at risk of such violence.

Discrimination and racist and xenophobic incidents

The Coronavirus pandemic triggered an increase in racist and xenophobic incidents against people of (perceived) Chinese or Asian origin, including verbal insults, harassment, physical aggression and online hate speech. **Discrimination and bias-motivated harassment and violence** are illegal under Article 21 of the Charter, Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia, and Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

- Alongside incidents of hate crime against people of (perceived) Chinese or Asian origin, cases of hate speech targeting other groups, including Roma and persons with disabilities, were reported in some Member States.
- People of Chinese or Asian origin also experienced discrimination in accessing goods and services, including access to health services and education.
- FRA's research into minorities' experiences of discrimination consistently shows that victims of discriminatory incidents seldom report their cases to relevant authorities. As such, the racist and xenophobic incidents related to the COVID-19 outbreak are likely to be an undercount of the real situation.
- Reports emerged from several Member States of politicians and other public figures using derogatory and xenophobic language towards people of Chinese and Asian origin, and against migrants. In other countries, governments took steps to condemn such scapegoating.
- Evidence collected by FRA shows that xenophobic language is also present in the media and online. However, some civil society organisations used social media for anti-hate speech campaigns.

Disinformation, privacy and data protection

The evidence collected by FRA shows that **disinformation – that is verifiably false or misleading information** – around the COVID-19 pandemic is widespread. Disinformation undermines democracy affecting political decision-making, and can weaken freedom of expression and information safeguards (Article 11). The European Commission is active in tackling online disinformation and provides useful guidance in this regard.

- Evidence collected by FRA indicates that disinformation around the Coronavirus pandemic is widespread in almost all Member States. Authorities in the EU Member States moved quickly to warn citizens to be wary of disinformation concerning the COVID-19 outbreak and instead seek reliable sources of information. Many established dedicated government websites set out to proactively provide reliable information.
- Several Member States recalled that spreading disinformation is illegal and may have legal consequences.
- Governments, the private sector and civil society organisations implemented self-regulatory actions to combat disinformation, such as teams to flag and respond to it, statements emphasising the principles of quality journalism, and guidance to journalists and social media influencers.
- To ensure that everyone can access the correct information, many Member States provide this information in multiple languages. However, challenges remain in that this information is accessible to persons with disabilities, those with literacy issues, and hard to reach groups such as those in asylum reception centres.

All EU data protection authorities (DPAs) issued statements and/or opinions linked to the Coronavirus pandemic, providing guidance to public authorities, employers and the media on how to uphold data protection standards in their efforts to combat COVID-19. These statements reaffirm that **the rights to health and to the protection of personal data go hand-in-hand**. They also underline that any measure which would infringe the rights to private life and data protection (Articles 7 and 8 of the Charter) should be grounded in law, necessary, and proportionate.

- In the area of employment, advice from DPAs was not always harmonised across the EU. For example, in some Member States DPAs indicated that employers may not collect and process personal data related to either symptoms or infection among employees unless workers have voluntarily provided their personal data and agreed to their processing. Others indicated that employers can request personal information related to symptoms and/or infection, if such collection is proven to be necessary.
- The evidence collected by FRA indicates that generally the information concerning COVID-19 published in the media does not contain personal data.

Introduction

“European governments are fighting against the spread of the pandemic with strong measures. This is necessary to respond to the unprecedented challenge we are facing. At the same time, it is clear that the enjoyment of human rights is affected by the pandemic and the measures adopted to encounter it. [...] It is therefore crucial that the authorities take measures that do not lead to discrimination and are proportionate to the aims pursued.”

Dunja Mijatović, Council of Europe Commissioner for Human Rights, **We must respect human rights and stand united against the coronavirus pandemic**, 16 March 2020.

“COVID-19 is a test for our societies, and we are all learning and adapting as we respond to the virus. Human dignity and rights need to be front and centre in that effort, not an afterthought”

Michelle Bachelet, United Nations High Commissioner for Human Rights, **Coronavirus: Human rights need to be front and centre in response**, 6 March 2020

Europe is at the epicentre of the global Coronavirus pandemic, according to the **World Health Organization** (WHO). Since the first confirmed case on 24 January 2020, all 27 EU Member States have been recording cases. As of 6 April 2020, the virus has infected 527,544 people in the European Union (EU) and 42,744 have died from it, according to the **European Centre for Disease Prevention and Control**. The **number of cases continues to grow rapidly**, with many experts anticipating that infections may not peak for several weeks or months. The pandemic poses grave challenges to the rights to life and health for people living in the EU, which states have a duty to report.

To ensure the right to life and health for everyone, the governments of EU Member States have put in place wide-ranging measures to contain the spread of the virus. These include restrictions on public gatherings, requirements to stay at home except for limited essential activities such as food shopping, and orders to close businesses and cultural and educational institutions. Taken together, these measures have prompted unprecedented changes to daily life across the EU and have affected the enjoyment of many of the rights set out in the Charter of Fundamental Rights of the EU.

On 11 March 2020, WHO declared that the COVID-19 outbreak had reached the level of a global pandemic. This prompted a large majority of EU Member States to adopt emergency measures of varying forms and durations; Italy had already adopted such measures given its high number of COVID-19 cases. Three EU Member States (Estonia, Latvia and Romania) used the possibility to derogate from the European Convention on Human Rights (ECHR) in time of emergency, as set out in Article 15 of the Convention. It is a basic principle of international human rights standards that any restrictions to a right must be legal, proportionate and necessary. Well-established case law of the European Court of Human Rights provides that derogations should happen only in exceptional circumstances and in a limited and supervised manner to secure certain rights and freedoms under the ECHR.¹

This report outlines some of the measures that EU Member States have adopted to halt the spread of COVID-19 and highlights the impact they may have on the civil, political and socio-economic rights set out in the Charter. In this way, it contributes to efforts to ensure that the limitations of rights resulting from such measures are consistent with legal standards safeguarding fundamental rights, and that their impact on particular groups is adequately considered. Many of the public health and economic measures implemented since the outbreak of COVID-19 are closely interrelated; often their impact on fundamental rights will not be traceable to a single measure but rather to the combined effects of various legal and policy initiatives. Reflecting this reality, this report incorporates a wide spectrum of measures. Many, but not all, fall wholly or in part within the scope of EU law.

Early evidence suggests that there is currently widespread acceptance of the measures governments take to mitigate the impact of COVID-19 (see p. 14). However, social acceptance can diminish if measures are perceived to be disproportionately intrusive to basic rights. Measures that strictly conform with fundamental rights obligations will be more sustainable and thus effective in the long run. This will also contribute to maintaining social acceptance of changes to daily life.

Against this backdrop, the report first looks at some of the most widespread steps to contain the virus – such as limits to freedom of movement, closure of schools and universities and disruption to work – and the impact they may have on fundamental rights. It then describes the impact of the pandemic and measures to tackle it on certain population groups and sets out examples of discriminatory and racist incidents targeting particular national or ethnic communities linked to COVID-19. Finally, it considers how Member States are looking to tackle disinformation regarding the virus and how to contain it, and explores guidance on upholding data protection standards during the pandemic. Examples of positive initiatives to mitigate the impact of public health measures on fundamental rights are included throughout. The selected examples of practices in EU Member States presented in the report do not comprehensively cover the huge number of actions taken across the EU.

The report also contains some examples of how responses to COVID-19, in selected Member States, affect asylum seekers and refugees in reception centres within the EU. However, the broader situation concerning COVID-19 among migrants and refugees at the EU's external borders is beyond the scope of this report. More information on this issue is available in [FRA's regular reporting on migration](#) and in the [note by FRA and the Council of Europe](#) stating the main fundamental rights safeguards applicable at Member States' borders published in late March 2020.

BULLETIN #1: COVERAGE AND TIMELINE

Bulletin #1 on COVID-19 documents the situation in 27 EU Member States between **1 February and 20 March 2020**. It looks at selected areas of life and groups affected by the COVID-19 outbreak. It focuses on the first wave of government measures, including negative and positive examples, to contain the COVID-19 outbreak and mitigate its impact on people's health, the economy and society – underlining the fundamental rights implications.

Given the speed with which the pandemic and policy responses have unfolded, the report does not present an in-depth socio-legal analysis of measures and their impact, nor does it offer recommendations for future policies. It is beyond the scope of this current report to present an analysis of relevant international human rights law as it applies to the EU and its Member States. This could warrant a separate – future – FRA study.

The report addresses several areas of life affected by the COVID-19 outbreak, which – while all reflected in various articles of the EU Charter of Fundamental Rights – are not all covered by secondary EU law. For example, it encompasses core areas affected by measures enacted in response to COVID-19 – such as health and education. These are, in the main, questions of national competence. But in combination, they might have implications in EU law relevant fields such as non-discrimination and others.

FRA's multidisciplinary research network, [Franet](#), collected the data across all 27 EU Member States. It gathered information from sources in the public domain at the time of data collection.

FRA's next report, **Bulletin #2 on COVID-19**, will cover measures adopted after 20 March 2020.

POLLS SUGGEST STRONG PUBLIC SUPPORT FOR RESTRICTIVE MEASURES

The results of national and international public opinion polls on perceptions and impact of COVID-19 conducted in March 2020 show strong public support for the restrictions introduced in EU Member States. When asked what they think about the restrictive measures their governments had put in place, respondents in Italy, Spain and France were overwhelmingly supportive (90 %, 88 %, and 86 %, respectively), according to a [Redfield & Wilton Strategies online survey](#) of 1,500 individuals aged 18 and above in each country on 22 March 2020.

More than half of respondents (53 %) polled in a [YouGov omnibus survey](#) in Germany on 16 March said that the country should impose a general curfew to limit the spread of the virus as best as possible. The online survey asked 2,063 persons aged 18 and above.

There is also some evidence that the public is willing to accept restrictions on their fundamental rights. In Austria, 94 % of respondents indicated that they are willing to sacrifice some of their civil liberties if it helps to prevent the spread of the disease; this proportion increased by 16 percentage points in one week, according to the online [Austrian Gallup Institute Barometer](#) conducted between 16 and 18 March. The survey included persons aged 16 and above.

1

IMPACT ON DAILY LIFE: EU MEMBER STATES' MEASURES TO ADDRESS THE OUTBREAK

▼ ROME, ITALY 10 MARCH 2020

A city police officer wearing a face mask walks across the deserted Trevi Fountain square, Rome, Italy. On that day, the Italian government implemented measures including travel and gathering bans, limited opening hours for shops and venues, and emergency health measures to fight the coronavirus pandemic.

This section presents some of the most common measures EU Member States implemented to contain the COVID-19 outbreak in key areas of life and looks at their potential impact on fundamental rights, namely:

- physical and social distancing measures;
- disruption to education;
- disruption to work;
- restrictions on freedom of movement within and into the EU.

It shows how these restrictions are having a profound impact on fundamental rights relating to freedom of movement, education and employment. Moreover, some measures may affect particular groups, for example children and people living in or at risk of poverty, raising questions concerning equal treatment.

But FRA evidence also points to concerted efforts by governments and other actors to mitigate the impact on fundamental rights, particularly in the areas of education and work.





1.1 DISRUPTION TO DAILY INTERACTION: PHYSICAL AND SOCIAL DISTANCING MEASURES

On 12 March, the European Centre for Disease Prevention and Control (ECDC) identified necessary **measures to mitigate the impact of the pandemic**,² including:

- immediately isolating symptomatic persons suspected or confirmed to be infected with COVID-19;
- suspending mass gatherings;
- social and physical distancing measures at workplaces (e.g. teleworking);
- closure of schools;
- lockdown of residential areas with high levels of community transmission.

Such measures can affect many of the rights enshrined in the Charter, including the rights to: liberty and security (Article 6), respect for private and family life (Article 7), freedom of thought, conscience and religion (Article 10), freedom of expression and information (Article 11), freedom of assembly and of association (Article 12), freedom of the arts and sciences (Article 13) and freedom of movement and of residence (Article 45). They can also affect the rights of specific groups including children, older persons, and persons with disabilities.

All EU Member States introduced physical and social distancing measures at different times and with varying intensity. At the early stages of the outbreak, countries ordered infected and at-risk individuals to self-quarantine.³ As numbers of infections rose, most countries instituted social distancing measures for the general population, such as suspension of mass gatherings, stay-at-home requirements, closure of non-essential businesses and public spaces, and physical distancing when outside the house.



A few examples illustrate the severity of some such measures:

- As of 25 March 2020, all EU Member States advise self-isolation/self-quarantine of identified contacts of COVID-19 sufferers.
- Countries placed entire provinces, regions or cities under quarantine, for example in Austria,⁴ Bulgaria⁵ and Italy⁶. Some states in federal countries such as Germany adopted **their own quarantine measures**.⁷
- Some Member States prohibited all movement in the public sphere without a special permit as, for example, in Greece⁸, France⁹, Italy¹⁰ and Spain.¹¹
- A few Member States, such as Croatia¹², largely suspended public transport, with significant consequences for those who need to continue to go to work.

France¹³ **postponed the second round of its municipal elections** in light of the pandemic. The **first round took place on 15 March 2020** despite the introduction of a prohibition on mass gatherings.¹⁴ Hungary¹⁵ proposed to postpone by-elections and referendums as long as the declared state of emergency (referred to as 'state of danger' [*veszélyhelyzet*] in the Constitution)¹⁶ lasts.

To minimise the impact on the right of assembly and on freedom of thought, conscience and religion, several Member States announced specific exceptions to the general ban on public gatherings. For example, in Denmark,¹⁷ the prohibition of gatherings does not apply to assemblies for political or other purposes. In Austria¹⁸ and Croatia¹⁹, churches shall, where possible, remain open for individual prayer.

1.1.1 Enforcement and penalties

EU Member States have implemented different strategies to enforce these measures. In Hungary, authorities put a red warning label on the door of the person who is obliged to stay in quarantine, and the police regularly check on them. People breaking the rules face misdemeanour proceedings and fines of up to HUF 150,000 (€ 425).²⁰ In Poland,²¹ police check whether people in quarantine are at home. Those who disobey the rules face fines of up to € 1,250.

Financial sanctions for those not complying with newly introduced emergency measures were put in place in most Member States. Some also introduced custodial sentences, for example from 8 days to 3 months in **Belgium** for breaking the rules regarding assembly,²² to up to five years in **Bulgaria** for not observing quarantine measures or violating other measures imposed to prevent the spread of infectious diseases.²³ **Czechia**²⁴ introduced sanctions for individuals not following quarantine rules, not wearing facemasks, or for gathering in large groups.

1.2 DISRUPTION TO EDUCATION

All EU Member States gradually closed all education facilities temporarily to limit the spread of COVID-19 by late March, with **the exception of Sweden**.²⁵ This has significant consequences for the rights of the child and the right to education. However, at least a third of Member States (Austria²⁶, Belgium²⁷, Czechia²⁸, Denmark²⁹, Estonia³⁰, Germany³¹, Hungary³², the Netherlands³³ and Slovenia³⁴) kept a number of schools open for children of parents working in selected 'essential' professions or for families where there is no other solution but childcare provided by grandparents.

Almost all Member States introduced distance learning to ensure the continuity of education. A few, including Estonia,³⁵ Italy³⁶ and Latvia,³⁷ published guidelines on distance learning, sometimes including how to evaluate students and how to guarantee education for students with disabilities.

In practice, remote schooling is often organised on a school-by-school basis, by emailing homework to students and parents, recording classes and putting them online, and using educational apps and online platforms to communicate with students. Austria³⁸, France³⁹ and Slovenia⁴⁰ provided governmental online platforms for distance learning, while in Croatia⁴¹, Hungary⁴² and Cyprus⁴³, educational or school programmes are broadcast on television. However, not all educational establishments or students have the equipment necessary for effective distance learning. For example, Eurostat data show that in 2019, on average, 10 % of households in the 27 EU Member States **did not have access to the internet**.

Students from disadvantaged backgrounds are less likely to have access to computers and digital equipment or the internet, making it more difficult for them to continue their education remotely. In some countries, such as Cyprus, teachers have reported **problems reaching migrant or refugee families**.⁴⁴ There are also reports, from Bulgaria⁴⁵ and the Greek hotspots for example, of the suspension of education and group activities in refugee centres. On the other hand, in Croatia, the government introduced the possibility for children in reception centres to follow school programmes broadcast on television.

Actors in some countries, such as Lithuania,⁴⁶ raised the issue of children from disadvantaged backgrounds **losing access to free meals** in schools and day-care centres following the closure of educational facilities. Measures to address this were taken in Estonia⁴⁷ and Finland,⁴⁸ for example, where some schools organised lunches for students in need through home delivery.

1.2.1 Measures allowing parents to deal with school closure

Governments across the EU encouraged employers to allow teleworking for parents who need to look after their children. In addition, about a third of Member States introduced the possibility for some workers to apply for special leave or an allowance to enable them to stay at home to look after their children. For example the allowance is 80% of the salary in Poland⁴⁹ and 60% in Czechia.⁵⁰ In Malta, the government will pay two months of leave (€800 per month) for parents who have to stay at home to take care of children because of school closures.⁵¹ Greece has mandated special leave for parents of children or adults with disabilities attending school while these are closed.⁵²

PROMISING PRACTICE: PROVIDING DIGITAL EQUIPMENT TO STUDENTS WITH LOWER INCOME

In Croatia, the media reported that schools were instructed to provide devices from school reserves to students who did not have them. The government earmarked HRK 4 million (approximately € 500,000) to purchase computers for secondary school students. Schools will also provide free SIM cards for unlimited internet use to students who do not have internet at home. Similarly, in Latvia, following an agreement with the Ministry of Education, mobile phone companies/retailers will supply smart devices and provide internet access to all children in need.

Croatia, *Jutarnji Vijesti* (2020), *Najdetaljniji Vodič Kroz Online I Tv Nastavu*, 14 March 2020.

Latvia, Cabinet of Ministers (*Ministru kabinets*) (2020), *Rikojums Nr.117 Par iekārtu un dāvinājuma pieņemšanu attālināta mācību procesa nodrošināšanai ārkārtējās situācijas laikā*, 19 March 2020.





Some Member States specified that such support only applies to parents of children under a certain age, ranging from under 16 in France, as described by the country's Minister of Labour **in a recent interview**,⁵³ for example, to under 11 in Slovakia.⁵⁴

1.3 DISRUPTION TO WORK

According to **data compiled by Eurofound**, the huge consequences of the outbreak on employment are already being felt. Data – for example from Austria,⁵⁵ Belgium,⁵⁶ Ireland⁵⁷ and Latvia⁵⁸ – indicate large-scale lay-offs linked to COVID-19, with the hospitality and tourism sectors among those particularly affected. Most Member States have required or recommended people to work from home wherever possible; however, this is not an option for many, often lower-paid, areas of work.

Restrictions on work may pose particular challenges to those who are particularly vulnerable to the reductions in income prompted by redundancies. These include women,⁵⁹ single parent families, migrant workers, those in less secure employment such as the so-called 'gig workers' or certain of the self-employed,⁶⁰ and anyone living in, or at risk of, poverty⁶¹. This will in turn have an impact on children living in these households.

1.3.1 Mitigating the impact on workers and families

The International Labour Organization (ILO) published a **note on measures** governments could take to protect and support workers and the economy in light of COVID-19.⁶² Most Member States have put in place wide-ranging economic support measures in line with the ILO's recommendations to mitigate the impact on workers and their families. These include:

- Supplementing wages
- Other financial support, including relief for home owners and renters
- Support for the self-employed
- Support for particular groups in society
- Support for people with caring responsibilities
- Sick leave and support for people in quarantine

A large majority of EU Member States have introduced legislation to compensate for loss of income related to the outbreak. In many cases, this takes the form of the government committing to paying a proportion of the wages of employees that have been or are at risk of being made redundant. Such measures – which also often involve contributions from the employer – will see staff receive 90% of their salary in Sweden,⁶³ 80% in Slovenia,⁶⁴ 75% in Romania,⁶⁵ 70% in Estonia⁶⁶ and France,⁶⁷ and 65-70% in Belgium,⁶⁸ for example. Greece, in contrast, proposes a fixed sum compensation of €800 in April to employees working in enterprises which suspend their operations;⁶⁹ a Maltese or any other EU citizen who becomes redundant in Malta will receive the same monthly amount as unemployment benefit.⁷⁰ Ireland has instituted a specific 'COVID-19 Pandemic Unemployment Payment' of €203 per week, which aims to enable the newly unemployed to receive financial support quickly, while waiting for the government to calculate their longer-term entitlement.⁷¹

Some Member States set out eligibility criteria for companies applying for such support, related for instance to the extent of the company's anticipated decrease in turnover or its past payment of tax obligations. In the Netherlands, for example, companies expecting a loss of turnover of at least 20% can apply for a contribution to pay employees for three months.⁷² Similar provisions covering two months have been introduced in Estonia.⁷³

In addition to direct financial support, Member States have taken steps to ease the immediate economic pressures on households. The Spanish government introduced a moratorium on the payment of mortgages on the main residence for workers and self-employed persons in a situation of economic vulnerability and for those affected by COVID-19.⁷⁴ The same law also includes a ban on cutting off basic utilities to vulnerable groups. The private sector has taken similar initiatives: some banks in Portugal will allow customers to **suspend mortgage payments** for six months,⁷⁵ while the Czech Banking Association⁷⁶ and Irish banks⁷⁷ introduced a three month delay. For renters, which disproportionately include those on lower incomes, the German⁷⁸ and Irish⁷⁹ governments have proposed additional restrictions on evictions, while measures in Greece provide for a special reduction in rent for employees of businesses that have suspended operations⁸⁰ and Prague City Council in Czechia will not charge interest on delayed rent payments for their tenants.⁸¹ The Hungarian government ordered a moratorium on debt repayments for individuals and businesses until the end of 2020.⁸²

Evidence collected by FRA suggests that self-employed people were not included in some of the initial support packages adopted by Member States. However, many have now introduced measures specifically focused on this group or ensured that packages for other employees also apply to the self-employed, for example Italy,⁸³ Slovenia⁸³ and Sweden.⁸⁴ The measures typically include a combination of income support, deferments of social security, pension and tax contributions, suspension of health insurance payments, access to credit on favourable terms or one-off allowances.

Further measures target certain societal groups, who may be more vulnerable to COVID-19. The Cypriot government announced special leave for persons aged over 60, persons with specific chronic illnesses and pregnant women working in the public sector.⁸⁵ Similarly, amendments to the Bulgarian Labour code oblige employers to grant annual paid leave, upon request, to employees including pregnant women, in-vitro patients, mothers of children up to 12 years of age or children with disabilities, and employees with a certain degree of disability.⁸⁶

Decisions to close or limit the provision of some social services to contain the outbreak may result in additional responsibilities for the family members or carers of service users. To mitigate these impacts, the Lithuanian Parliament passed a package introducing sickness benefits for people supporting people with disabilities and grandparents in need of care following the suspension of the activities of day centres.⁸⁷ Similarly, financial support to parents looking after children **was extended** to people with care obligations for persons with disabilities in Austria⁸⁸ and to people taking care of relatives due to care facilities closing in Czechia.⁸⁹ Wider measures to support parents looking after their children at home due to widespread school closures are discussed in Section 1.2.1.

Several Member States have also introduced or enhanced financial support for individuals on sick leave or placed into quarantine because of COVID-19. In Sweden, the state will assume all sick leave costs in April and May, including

CHALLENGES TO THE DELIVERY OF SOCIAL SERVICES

The impact of the outbreak on the delivery of crucial services such as the payment of social security benefits can have a significant impact on those facing loss of income and higher utility bills because of more time spent at home. In Belgium, the NGO *Orbit Vzw* reported that access to public social action centres has been restricted due to COVID-19. The impact has been a delay in decisions regarding access to a living wage and other benefits such as housing, food and health care. The NGO points out that this could have a significant impact on people with a migration background, who are more likely to live in poverty.



SUPPORTING PEOPLE IN PRECARIOUS WORK

The *Business and Human Rights Resource Centre* maintains that COVID-19 highlights a **lack of social protections for 'gig economy' workers**.

The evidence gathered by FRA shows that workers in precarious employment situations are often ineligible for the benefit and compensation schemes governments offer following the employment restrictions in place during the COVID-19 pandemic. However, several Member States have implemented measures to support such workers. The Wallonian Government in **Belgium** announced **23 million euros in support** for the domestic cleaning sector (composed of 140,000 workers, with a large number of women, working on a part-time basis). The **Spanish** government has also introduced special benefits for domestic workers affected by the economic crisis.²⁶⁰

Other Member States have taken steps to include precarious workers in benefit schemes. In the **Netherlands**, temporary workers and people with zero-hour contracts are included in an emergency scheme allowing companies expecting a 20% loss of turnover to apply for a salary contribution for a period of three months to pay employees.²⁶¹ In **Italy**, self-employed workers and people with other types of precarious contracts are entitled to a one-off payment of € 600 for the month of March under a package to support people suffering financially from the Coronavirus pandemic.²⁶²

for the self-employed.⁹⁰ People placed in quarantine in **Finland** will receive an infectious diseases sickness allowance.⁹¹ The payment is also available for parents or guardians of children under 16 who are placed in quarantine, preventing caregivers from going to work. Similarly, persons in **Croatia** unable to work due to being placed in quarantine have the right to compensation of their salary.⁹² However, the General Workers' Union in **Malta** reported **complaints from workers sent home** to quarantine who had been informed that this would be unpaid or deducted from their vacation or sick leave allowances.⁹³

1.3.2 Fair and just working conditions

Working from home is not possible for many employees, including those classified as 'essential workers' providing key services during the pandemic. Most Member States have developed lists of such workers, which typically include those working for the emergency services, health and social care, and the production and distribution of food.



Additional pressures on these sectors have prompted a number of Member States to relax or suspend restrictions on working time, with potential consequences for the right to fair and just working conditions. For example, a decree in Italy suspended the limits for medical staff, while legislation in Bulgaria suspended restrictions on overtime work for part-time employees and civil servants providing or assisting in the provision of medical assistance, police and fire safety authorities.⁹⁴ Portugal has restricted leave for health professionals.⁹⁵ Reflecting the significant extra burden, the Latvian government announced that frontline health staff will receive a 50% pay rise in March and a wider range of staff will receive an additional 20% in April and May.⁹⁶

Reports also emerged in many Member States of employers not heeding government instructions to contain the virus. For example, the Slovenian Labour Inspectorate received a number of complaints about employers either failing to implement measures to prevent the spread of COVID-19 or only doing so partially or ineffectively prompting it to embark on stricter supervision.⁹⁷ Similarly, an online platform set up by the General Confederation of Greek Workers has received a large number of complaints, mostly concerning employers not granting special purpose leave to their employees, businesses converting full-time contracts to part-time or granting unpaid leave instead, businesses remaining open, non-adoption of decontamination measures, and exceeding the maximum working hours in the supermarket industry.⁹⁸



1.4 RESTRICTIONS ON FREEDOM OF MOVEMENT WITHIN AND INTO THE EU

To address the COVID-19 outbreak, in March 2020 many Member States introduced partial or almost complete closure of their external and internal borders, restricting movements of those entering the country as well as movements out of the country.

1.4.1 Travel restrictions within the EU

Under Article 28 of the **Schengen Border Code**, Member States may, in certain circumstances and under strict conditions, temporarily reintroduce controls at internal borders.⁹⁹ Such reintroduction must be limited in time and notified to the European Commission.¹⁰⁰ As an **overview by the European Parliament** shows, the vast majority of countries that are part of the Schengen area have introduced restrictions at their internal borders.

Restrictions take different forms. Some Member States reduced the number of border crossing points. For example, on 18 March 2020, **27 border crossings were closed** between Croatia and Slovenia. Many EU countries closed airports and a few Member States almost completely closed their borders. As of 17 March 2020, persons and vehicles (other than freight transport) were generally prohibited from moving through Latvian airport, port, railway and road border crossing points at the EU's external and internal borders. In other cases, those entering, including nationals and residents, must meet new requirements including undergoing health checks, committing to self-quarantine or presenting a medical statement showing a negative COVID-19 test result. People (other than citizens, residency holders or third-country nationals travelling via air from outside Schengen) entering Austria must have an accredited medical statement showing a negative COVID-19 test result no older than four days, irrespective of nationality.¹⁰¹

EU citizens and their family members have the right to move and reside freely within the territory of EU Member States. Articles 27 and 29 of the Free Movement Directive (2004/38/EC) justifies measures restricting the freedom of movement in case of "diseases with epidemic potential", such as COVID-19, provided they comply with the principle of proportionality. In this context, when implementing public health measures, the European

Commission noted that these must not discriminate between Member States' own nationals and resident EU-citizens. It underlined also that a Member State must not deny entry to EU citizens or third-country nationals residing on its territory and must facilitate transit of other EU citizens and residents that are returning home.¹⁰²





PROMISING PRACTICE – EXTENDING TEMPORARY STAY

The European Commission provided **guidance** on how to deal with overstay caused by travel restrictions, including for visa-waived third country nationals. In Luxembourg, the government foresees an automatic extension of temporary stay for people currently staying in Luxembourg with travel documents that are expiring during the current movement restrictions. The status of people who are in the process of applying for international protection is also automatically extended.

*Source: Luxembourg, **Grand-ducal decree of 18 March 2020 introducing a series of measures to combat the Covid-19** (Règlement grand-ducal du 18 mars 2020 portant introduction d'une série de mesures dans le cadre de la lutte contre le Covid-19).*

In practice obstacles emerged as the following examples illustrate. In Hungary, as of 17 March 2020, only Hungarian citizens and EEA nationals holding a permanent residence card, are allowed to enter the territory.¹⁰³ Exceptions can be granted by the police provided that the person concerned undergoes a medical examination that does not result in the suspicion of COVID-19 infection and that the person is listed in the registry of the epidemiological authority.¹⁰⁴

1.4.2 Closure of EU external borders

Following the outbreak of the COVID-19 pandemic, the majority of EU Member States introduced restrictions for third-country nationals crossing the EU's external border. This created difficulties, leaving many people stranded. The European Commission clarified that the stay of visa holders present in the Schengen area who cannot leave may be extended up to a maximum stay of 90 days within a 180 days period. If this period has elapsed it recommended to Member State to issue a national long-stay visa or a temporary residence permit.¹⁰⁵

To promote a uniform approach to border controls, on 16 March 2020, the European Commission recommended the temporary restriction – initially for 30 days – of non-essential travel to the EU to prevent the further spread of COVID-19.¹⁰⁶ The European Council supported this approach by a Joint Statement on 26 March 2020.¹⁰⁷ The travel restrictions the Commission suggests allow for exceptions, for example - for EU nationals and their family members, third-country nationals living in the EU on a long-term basis, healthcare workers and persons in need of international protection. Suggested measures also discourage EU citizens and other persons residing in the Schengen area from traveling outside the EU.

The United Nations High Commissioner for Refugees (UNHCR) released **additional guidance** to ensure that travel restrictions are implemented in compliance with the principle of *non-refoulement*.¹⁰⁸

In some cases, EU Member States banned entry to asylum applicants, a move which can raise issues under Articles 18 (right to asylum) and 19 (protection from refoulement) of the Charter, as the following three examples illustrate. On 20 March 2020, the Cypriot coastguards pushed back a boat with approximately 175 Syrians seeking asylum on board, including 30 women and 69 children, the **first recorded incident of its kind**.¹⁰⁹ Hungary suspended admission of asylum seekers to the transit zones located at the Serbian border due to public health risks related to COVID-19,¹¹⁰ whereas Greece had already temporarily suspended access to asylum for March 2020, as migrants and refugees gathered in large numbers at the land border with Turkey.¹¹¹ Other Member States took a more nuanced approach. Austria, for example, requires applicants coming by air to show evidence of a negative COVID-19 test not older than four days, in the absence of which they would be placed for two weeks in quarantine.¹¹²

Amid fears of infection and with airlines cancelling international flights, several EU Member States also suspended operations to remove third-country nationals, including for people detained in pre-removal facilities. Under both EU and ECHR law, pre-removal detention is only justified where there is a realistic prospect of removal within a reasonable time.¹¹³ With this in mind, in Italy, the National Guarantor for the Rights of Persons Detained or Deprived of Liberty **asked to assess the need for early release**.¹¹⁴

More broadly, in light of heightened risk of infections, on 31 March, four UN organisations called for the release of refugees and migrants held in formal and informal places of detention.¹¹⁵ On 26 March 2020, the Council of Europe called on Member States to release rejected asylum seekers and irregular migrants in immigration detention who could not be returned to their countries of origin due to the suspension of return procedures in the context of the Covid-19 outbreak.

2

IMPACT ON PARTICULAR GROUPS IN SOCIETY

The measures instigated in light of the Coronavirus pandemic affect people in different ways. This raises concerns about enjoyment of a wide range of rights, in particular the right to equal treatment. This section looks at the impact on persons in a number of vulnerable situations, namely:

- people living in institutional settings, including nursing homes, prisons and refugee camps or reception facilities;
- particular groups, including persons with disabilities, older people, Roma and Travellers, and women and children at risk of domestic violence.



2.1 IMPACT ON PEOPLE IN INSTITUTIONAL SETTINGS

Containing the spread of COVID-19 through institutions where people live in close quarters, such as prisons, nursing homes or refugee camps poses particular challenges. Measures such as physical distancing are not effective in overcrowded settings, yet failure to contain the spread of COVID-19 in such institutions, poses serious risks to the right to health, and sometimes even to life.



ACCESS TO HEALTH AND AVAILABILITY OF HEALTH SUPPLIES

The prioritisation of tackling the spread of COVID-19 puts the right to equal access to healthcare enshrined in Article 35 of the Charter at risk. Several Member States have postponed non-urgent surgical interventions and diverted resources from other health issues to free up health workers to treat those affected by COVID-19. This may present risks to patients suffering from other illnesses. Members of the Lithuanian parliament expressed unease that new measures may impact patients with critical conditions, such as cancer.²⁶³

Media in some Member States, for example France,²⁶⁴ reported that the high number of severe cases of COVID-19 and stretched resources may force doctors to make difficult choices about which patients to prioritise for treatment. There are reports that older patients have been de-prioritised. For example, doctors working in Strasbourg, on the French-German border, expressed concern that only

patients under the age of 80 would be provided with ventilation, with the age threshold being lower in other municipalities.²⁶⁵

Medical guidelines supporting doctors to determine which patients to prioritise for life-saving treatment were published in some Member States, for instance Italy²⁶⁶ and Spain.²⁶⁷ Certain of these suggest a patient's age as a key criteria for this decision, together with other factors such as comorbidity.

Concerns have also been raised about access to healthcare for certain groups. Members of ethnic minorities might be at increased risk of infection due to their disadvantaged living conditions, for example. In Sweden, at least five of the first 15 COVID-19 related deaths in the Stockholm area were of people of Somali descent who lived in the same overcrowded and socio-economically deprived area.²⁶⁸ The National Assembly in Bulgaria raised concerns about the situation of segregated ethnic groups, who may not have access to preventative equipment.²⁶⁹

Accessing preventive healthcare may also be difficult for people in prisons and asylum reception facilities, for example (see also Sections 2.1.2 and 2.1.3).

The European Public Health Association expressed concerns about the impact of confinement on undocumented migrants' mental health and wellbeing given their often already difficult social and economic living conditions.²⁷⁰

Access to health supplies can also affect consumer rights, if prices increase amid high demand for certain supplies during the pandemic. Several countries adopted exceptional price control measures to protect consumers from an abnormal market situation, which can disproportionately affect people on low incomes or who have lost their jobs because of the COVID-19 outbreak. Bulgaria, Czechia and France²⁷¹ introduced upper price limits, while Portugal initiated criminal proceedings for those making illegitimate profit on the sale of alcohol-based gel.²⁷²

AGE PLATFORM

AGE Platform Europe (AGE) has looked into how the COVID-19 outbreak and measures to respond to it affect the rights of older persons. It asserts that governments must give special attention to balancing the need for safety and protection and the risk of social isolation. It argues that "[w]hereas restrictive measures can be legitimate for reasons of public health and safety, these need to be proportionate and to take into account human rights implications,"²⁷³ and notes that alternatives to face-to-face contacts, such as telephone or video calls with relatives, can help to combat isolation, as is done by nursing homes in Belgium.²⁷⁴

For more good practices, see:
www.age-platform.eu/coronavirus-covid-19

INFORMATION HUBS ON COVID-19 AND PERSONS DEPRIVED OF LIBERTY

The Association for the prevention of torture (APT) has launched an **information hub** on how different actors (for example criminal justice, penitentiary, healthcare and monitoring bodies) are responding to the COVID-19 outbreak. Information can be fed in directly by APT partners, in particular National Preventive Mechanisms (national monitoring mechanisms established by the Optional Protocol (of 2002) to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)).

Further information:
Information hub

2.1.1 People living in residential care settings

The WHO highlights that older people living in facilities such as nursing homes are at greater risk of COVID-19 due to their age, their often underlying chronic medical conditions and living in close proximity to others.¹¹⁶ The majority of Member States temporarily limited or suspended visits to residential care facilities in an attempt to prevent the spread of COVID-19.¹¹⁷ The Slovenian Human Rights Ombuds Institution noted that, while medical experts saw suspending visits to nursing homes as necessary, it is crucial that residents experience such limitations as little as possible.

Despite these measures, COVID-19 cases have already been detected in some nursing homes, with devastating consequences. Military teams sent to provide emergency healthcare assistance in Spain found that staff in several privately-run centres in Madrid had stopped going to work after residents began to fall ill with COVID-19 reportedly, leaving the sick and dying unattended.¹¹⁸ In one case, the military found 25 older people in a home who had died as a result of COVID-19.¹¹⁹ In a pensioners' home in Wuerzburg, Germany, nine residents died of COVID-19, 15 were infected and 23 employees had to be quarantined in their homes. The organisation representing the interests of patients and persons in care institutions issued an urgent appeal not to keep infected persons in the institution.¹²⁰

Similar concerns also affect persons with disabilities living in institutional settings. The UN Special Rapporteur on the rights of persons with disabilities highlighted the high risk of contamination in institutions and called for restrictions on contact with loved ones to be narrowly tailored.¹²¹ Unia, the Belgian equality body, noted that parents of children with disabilities living in institutions have to make a choice between bringing their child home or going for long periods without seeing them.¹²²

2.1.2 Prisons

The majority of Member States introduced measures in March 2020 temporarily prohibiting or at least restricting visits to prisons. Some still allow lawyers to enter the prison in compliance with social distancing rules. This is the case, for example, in Belgium, Estonia (which also allows consular officers and religious representatives), Lithuania, the Netherlands, Slovakia and Sweden. Others provide options for telephone or videoconferences, for example in Italy, Latvia, Luxembourg, the Netherlands and Portugal. In the Netherlands, juvenile offenders may still receive visits from their parents or legal guardians.¹²³ Several Member States have also limited the time granted to prisoners outside their cells, suspended prison transfers or banned temporary day release.

Some Member States have granted certain prisoners temporary or early release. In the Netherlands, for example, detainees in the latter part of their sentences who spend most of their time outside the prison working are temporarily permitted to sleep at home.¹²⁴ In contrast in Italy, authorities suspended the semi-freedom regime (where prisoners work outside the prison during the day but return to the prison at night).¹²⁵ Organisations and detention monitoring bodies in Belgium, France and Germany¹²⁶ have called for measures such as the release of certain detainees, such as those in pre-trial detention who do not pose a danger to others or those who are old or sick.¹²⁷

In Italy, some of the new measures introduced resulted in widespread revolts in detention facilities, during which several prisoners and prison officers were injured, and 12 prisoners died.¹²⁸ After the revolts, the Authority for the Protection of the People who are Detained or Deprived of their Personal

Freedom started releasing a periodic bulletin on the situation of detained people, which also cover the situation of irregular immigrants in administrative detention, nursing homes and judicial psychiatric institutions.

Other measures to protect people in prisons from an outbreak include the establishment of a risk assessment procedure for new prisoners entering prison in Austria¹²⁹ and quarantine measures for infected prisoners. In France, the Minister of Justice announced the distribution of 100,000 face masks in prisons.¹³⁰ In Italy, manufacturing facilities within prisons – which employ prisoners – will produce face-masks.¹³¹ In Belgium, a public service trade union raised concerns about the lack of disinfectant products and the ability to respect social distancing rules in prisons, as well as about the risk of rioting.¹³²

DISRUPTIONS TO THE JUDICIAL SYSTEM

The Coronavirus pandemic has also seen Member States struggle to balance access to justice rights with ensuring the health and security of all persons involved in judicial proceedings.

In many Member States, courts are still functioning, but with various restrictions. Whenever possible, judicial proceedings take place in written form or via videoconference rather than through hearings (for example in Estonia), or only urgent cases and cases not involving witnesses are being heard (for example in Ireland). In Denmark, an assessment of critical cases is done in close cooperation between a number of judges and the Danish Court Administration. The Netherlands closed down all courts, allowing only urgent cases to continue.

For certain areas of law that are crucial to guarantee the rights of vulnerable groups, exceptions are made to the general restrictions in proceedings. The new laws in Italy, Portugal and Slovenia²⁷⁵ stipulate that urgent acts in which fundamental rights are at stake – such as proceedings

concerning minors at risk or urgent guardianship and domestic violence proceedings – be carried out.

The consequences of the COVID-19 outbreak demonstrate the limitations of the judicial system's ability to work remotely using electronic devices for communication, to access files held in databases and to conduct proceedings via video conference. This is particularly the case where courts are not fully adapted to using such technology.

Technology has proved to be a good practice in ensuring protection for vulnerable victims or witnesses and allowing them to participate in proceedings, and in allowing defendants who might otherwise not be able to attend to participate. Video conferencing could be used where deemed appropriate following a case-by-case assessment. However, if used "by default" there could be a negative impact on the minimum standards as developed under Articles 47 or 48 of the Charter and Article 6 of the ECHR, in particular in relation to effective participation in proceedings, including one's right to be present.

In addition, the suspension of all non-urgent cases and investigations, as is the case in Belgium for

example,²⁷⁶ will affect the overall length of procedures. Investigations will be further extended, negatively impacting due process and defence rights. Moreover, the suspension of all non-urgent requests to access files will affect equality of arms, as the time and facilities to prepare the file may not be adequate, for instance where there is no secure means for accessing it online.²⁷⁷ Mitigating measures will be needed to address these new challenges.

The Council of Bars and Law Societies of Europe (CCBE) compiled an overview of COVID-19 related measures and their effects on the criminal judicial system in various EU Member States (based on a survey of its members). The overview includes, among many other issues, safety measures implemented in courts (many Member States report postponement of hearings and some report closing courts) and measures to ensure prisoners' access to a lawyer (some Member States still allow lawyers to visit clients in prisons, following precautionary measures, although many encourage finding technical solutions to avoid physical contact).²⁷⁸ Meanwhile, the organisation **Fair Trials is compiling information** on how the COVID-19 outbreak is affecting criminal justice systems around the world.²⁷⁹

2.1.3 Refugee camps / reception facilities

Several Member States have introduced measures in reception facilities to contain the spread of COVID-19, including social distancing/quarantine measures¹³³ and the temporary banning or restriction of visitors.¹³⁴ This often means that providers of social services or legal aid cannot visit facilities.

Some Member States have set up 'closed camps' or new centres to accommodate people under quarantine. A refugee centre in Austria with 162 residents was **put under quarantine**, banning residents from leaving.¹³⁵ In Cyprus, the Parliamentary Committee on Internal Affairs is investigating allegations that a military camp will be converted into a closed camp for asylum seekers.¹³⁶ In Ireland, the Department of Justice announced that it will pilot **an off-site self-isolation** facility for some asylum seekers who have tested positive for or are suspected of having COVID-19.¹³⁷

Some Member States focus on monitoring the health of workers and people housed in reception facilities. For example in Croatia, a doctor is present at the reception centres every day and staff closely monitor the health of international protection seekers.¹³⁸

There are encouraging reports about providing information on COVID-19 to residents of asylum and reception centres. For example in Portugal, the Refugee Council held information sessions, issued recommendations in several languages, put up posters with guidelines and handed out kits with alcohol-based gel and disinfectants. UNHCR Malta produced guidance in several languages¹³⁹ and established a Facebook group. Organisations in some Member States, however, urged authorities to do more: for instance, the association *Women in Exile & Friends* in Germany **points to the lack of information** about COVID-19 in languages spoken by asylum seekers.¹⁴⁰

Organisations in some Member States highlight issues of overcrowding in some facilities and the risk this poses to their residents. Migrant support organisations in Ireland have expressed concern about the conditions in reception facilities, **warning that an outbreak would be devastating**, due to the inability of those living there to self-isolate or maintain social distance.¹⁴¹ In Germany, the Bavarian Refugee Council **appealed for an immediate dissolution of mass accommodation in refugee centres** because of the risk of infection, proposing that refugees be housed in apartments or hotels.¹⁴² In Cyprus, despite the fact that the Kokkinotrimithia camp was already accommodating almost twice the number of people it has capacity for, 800 more people were to move to the camp in late March, as asylum seekers residing in hotels were told to vacate those premises.¹⁴³

COVID-19 AND THE GREEK ISLAND HOTSPOTS

As of 15 March, the five Aegean islands hotspots (which have a capacity for 6,178 persons) hosted 37,524 asylum applicants. Overcrowding and a complete lack of sanitation, combined with limited access to healthcare and basic services, exacerbate the risk of COVID-19 infections. As highlighted by Médecins Sans Frontières, under these conditions, infection prevention is impossible. In some parts of the Moria camp, there is just one water tap for 1,300 people and no soap.

Greek authorities announced certain measures to prevent the spread of COVID-19 in the hotspots, including restricting residents' movements. Only one person per family or group can exit the hotspot within a stipulated period of time, and only to cover basic needs. Restricting movement in severely overcrowded camps can deepen human suffering, increase existing tensions in the camps and exacerbate the risk of domestic violence. In addition, the authorities announced the possibility to suspend educational and recreational activities, which will have a particularly detrimental effect on children.

An emergency plan for the relocation of vulnerable individuals from the overcrowded camps to other areas on the islands is still discussed between the Greek authorities and the European Commission. The gravity of the situation was also highlighted by many civil society organisations who request the immediate decongestion of hotspots.

Further information:

- Hellenic Police, **National Situational Picture Regarding the Islands at Eastern Aegean Sea (15/3/2020)**.
- Médecins Sans Frontières, **COVID-19: Evacuation of squalid Greek camps more urgent than ever in light of coronavirus pandemic**, 13 March 2020.
- Joint Ministerial decision Δ1α/ΓΠ.οικ. 20030 published in Government Gazette 985/B/22.03.2020.
- Politico, **Senior MEP calls for EU action to stop coronavirus spreading to Greek migrant camps**, 23 March 2020.
- Reuters, **EU asks Greece to move migrants most at risk from coronavirus out of crowded camps**, 24 March 2020.
- EU Agency for Fundamental Rights, **FRA Director speaks with Greek authorities about migration**, 24 March 2020.

2.2 IMPACT ON PARTICULAR GROUPS IN SOCIETY

2.2.1 People with disabilities

On 13 March 2020, the European Disability Forum (EDF) in an open letter to EU leaders and Member States¹⁴⁴ addressed the range of risks persons with disabilities face, including disruption of services and support, pre-existing health conditions which leave them more at risk of developing serious illness or dying, and being excluded from health information and mainstream health provision. This echoes concerns expressed by the Special Rapporteur for persons with disabilities that persons with disabilities are being “left behind” in efforts to contain the pandemic.¹⁴⁵

Member States have taken measures to address the rights and needs of persons with disabilities. Italy introduced home-assistance for students with disabilities.¹⁴⁶ The Bulgarian government included additional funding of BGN 20 million (approximately €10 million) for municipalities to expand their social support services and cover more beneficiaries (including persons with disabilities).¹⁴⁷ Special leave for parents of children with disabilities following school or day-centre closure have been introduced in a number of Member States.

Challenges remain, however. On 20 March, the Belgian rail operator, SNCB, announced that it would **no longer assist persons with disabilities**.¹⁴⁸ In response, the National Superior Council of Persons with Disabilities in Belgium has **called on SCNB** to ensure that any measures taken are properly publicised and that there is the possibility to provide assistance in urgent situations.¹⁴⁹ In Slovakia, the Association for Persons with Intellectual Disabilities suspended all group sessions for self-advocates and closed their sheltered workshop.¹⁵⁰





2.2.2 Homeless people

The European Federation of National Organisations Working with the Homeless (FEANTSA) points out that staying at home is **not an option for homeless people**, many of whom have other underlying conditions, putting them at particular risk of COVID-19.¹⁵¹

Authorities and organisations in several Member States have taken the vulnerability of homeless people into account when planning and implementing containment measures. People entering shelters in Latvia are also checked for COVID-19 symptoms.¹⁵² In Croatia, homeless persons who consume food in public kitchens must follow hygiene and social distancing measures.¹⁵³ Municipalities in the Netherlands have set up special housing units for homeless people who become infected.¹⁵⁴ Homeless centres in Belgium are also opening special sectors to house COVID-19 patients.¹⁵⁵ On 20 March, the French Housing Minister announced that the state will spend an additional €50 million for accommodation and that hotel rooms would be made available for homeless people.¹⁵⁶

However, reports from Germany and Luxembourg¹⁵⁷ indicate that medical and other services for homeless people are being closed, partly because workers lack protective equipment, or because staff have to care for their own families at home. In Ireland, many homeless people are housed in emergency accommodation, which sometimes requires that they vacate it during the day, despite the fact that facilities such as schools, restaurants and libraries are shut.¹⁵⁸

2.2.3 Older people

According to the WHO, older people and people with pre-existing medical conditions (such as asthma or diabetes) are more likely to become severely ill or die if they contract COVID-19.¹⁵⁹ In addition, they may lack access to necessary services, in particular as more services move online in light of social distancing measures. There are widespread reports of online grocery services being booked out for weeks in advance, for example, making

them difficult for older people to access. Older people who live alone are at particular risk of isolation.¹⁶⁰

Some Member States have taken positive steps to ensure older people can access essential services and information. In Malta, older people enrolled in the **Pharmacy Of Your Choice scheme**¹⁶¹ are eligible to receive a two-month stock of medicine, helping them to avoid health centres and pharmacies.¹⁶² In Luxembourg, the government launched an easy to use online shopping platform for older people and people with health issues,¹⁶³ while the Slovakian city of Bratislava has launched a helpline for seniors¹⁶⁴ and published information on their official Facebook page on how individuals can help older people.¹⁶⁵

Volunteers and civil society are also active in most Member States. The French Government launched an online service to find volunteers to help older and isolated people,¹⁶⁶ for example, while in the Netherlands civil society is using the hashtag 'coronahulp'¹⁶⁷ to coordinate support. In many Member States supermarkets have designated opening hours for older people. Age Platform Europe points out that measures should not assume that older persons are vulnerable, frail, passive and inactive, but should reflect on how they can support older people's participation in paid and unpaid work, caregiving, voluntary activities and civic activism, for example.¹⁶⁸

2.2.4 Roma and Travellers

Roma communities in several EU countries are especially vulnerable. Often living in substandard and overcrowded housing conditions, they are at increased risk of contracting COVID-19, according to the European Public Health Association.¹⁶⁹ Civil society organisations in some Member States, for example in Slovakia¹⁷⁰, highlighted the lack of coordinated action to protect the health of Roma at the start of the pandemic. Some countries also restrict access to and from Roma neighbourhoods as a measure to prevent the spread of infection. In Bulgaria¹⁷¹, for example, the media reported that some municipalities organised temporary checkpoints and checked identification papers.¹⁷²

Some positive initiatives were noticed, however. In Slovakia, information in the Roma language was made available to 272 communities by the government¹⁷³ and NGOs,¹⁷⁴ including through a dedicated website.¹⁷⁵ In Ireland, the Department of Housing asked local authorities to make arrangements to make Traveller sites safer to allow self-isolation.¹⁷⁶ In Greece, the government allocated on 27 March 2,255,000 EUR to 98 municipalities for the provision of medical supplies and equipment in Roma communities.¹⁷⁷

2.2.5 Women and children at risk of domestic violence

As more people stay at home, the risk of intimate partner violence is likely to increase, according to the WHO.¹⁷⁸ This is exacerbated by additional stresses on families prompted by school closures and potential job losses. Evidence is already starting to reflect this increased risk. Reports in Austria and Cyprus¹⁷⁹ indicate that more women are calling support hotlines since the beginning of the COVID-19 outbreak.

Several Member States announced specific measures to tackle the increased risk of gender-based violence. In **Portugal**, the Commission for Citizenship and Gender Equality **created an email service** to reply to questions and requests for support related to domestic violence.¹⁸⁰ In **Austria**, the government introduced a 24h help-hotline for victims of gender-based violence and has enabled the police to immediately hand out application forms for preliminary injunctions.¹⁸¹ In **Italy**, media reported that women who are victims of gender-based and domestic violence would be allowed to leave their homes and go to the nearest women-support service, without being reported and sanctioned by police authorities for violating confinement measures.¹⁸²

3

DISCRIMINATION AND RACIST AND XENOPHOBIC INCIDENTS

Media and civil society organisations have reported incidents of racism, xenophobia and intolerance targeted certain national or ethnic communities linked to the COVID-19 pandemic in most EU Member States. Most are related to incidents against people of Chinese and of Asian origin or those perceived to be of Chinese or Asian origin. As yet, however, there is very little official data on the prevalence of these incidents available. FRA's research into minorities' experiences of discrimination consistently shows that victims of discriminatory incidents seldom report their cases to relevant authorities.¹⁸³ As such, the racist and xenophobic incidents shown in the media could be just the tip of the iceberg.

Some reports show other groups also being targeted. The Finnish Association of People with Physical Disabilities reports several cases of hate speech directed against persons with disabilities in the context of the outbreak, e.g. people accusing disabled persons for taking health care resources needed to combat the virus.¹⁸⁴

3.1 INCREASE IN RACIST AND XENOPHOBIC INCIDENTS

Typically, incidents involved people being shouted at or insulted in public. Children of assumed Asian origin were also harassed on the street and bullied at school (for example in Austria and Belgium¹⁸⁵). Two small-scale surveys looking into discrimination experiences of people of Chinese origin linked to COVID-19 reveal a high prevalence of racist and xenophobic incidents. A survey of 300 persons with a Chinese background in the Netherlands was published on 13 February 2020.¹⁸⁶ It showed that half of respondents (49 %) had experienced racism since the outbreak of COVID-19. Similarly, more than half of respondents to a survey of Chinese students in the German city of Tübingen published on 5 March¹⁸⁷ experienced discriminatory incidents once or more in the past months, mostly related to the outbreak. Equality bodies in several Member States also reported an increase in complaints linked to the COVID-19 outbreak. For example, the Anti-Discrimination Office of Styria (Austria) stated that on their **app "Ban Hate"**,¹⁸⁸ which allows to report online hate speech, there had been an increase in posts blaming refugees in particular for the spread of the COVID-19 virus.

Media in Denmark, in Finland and in Estonia¹⁸⁹ reported incidents of persons of Asian origin experiencing prejudice and/or discrimination connected with COVID-19, such as name-calling, inappropriate staring and being avoided. A group of students at Gdansk University in Poland verbally attacked Chinese students for allegedly spreading COVID-19. University authorities initiated disciplinary proceedings against the aggressors.¹⁹⁰

The most severe cases of racist incidents involved physical violence. On 8 February, a Filipino waiter in Sardinia (Italy) was assaulted on the bus because he was mistaken for “a Chinese bringing the Coronavirus”. He was taken to hospital suffering from facial injuries.¹⁹¹ In France, a girl of Vietnamese origin was insulted and punched when returning from school, and a young man of Chinese origin was beaten up after leaving a night club.¹⁹² In Berlin (Germany) the police reported that two women had racially insulted a Chinese woman and physically attacked her. She was treated in a hospital for head injuries.¹⁹³

Roma activists in Slovakia shared on social media incidents of hate speech against Roma. For instance, a Roma teacher reported that Roma people waiting in line at post offices are targeted by non-Roma neighbours for alleged abuse of social benefits and for “causing” the COVID-19 outbreak in Slovakia.¹⁹⁴

Bias motivated incidents impact not only their direct victims but also the wider community. Evidence collected by the European Network Against Racism indicates that at times of crisis, minorities suffer heightened anxiety, fear and worries about their safety and possibility to access health services.¹⁹⁵ In Czechia for example, the chairman of the largest NGO for Czech Vietnamese said that people with a Vietnamese ethnic background are worried that if they contract the virus the medical care they receive will be inferior to that given to ethnic Czechs.¹⁹⁶ The Government Human Rights Commissioner assured him that medical care is provided based on need and no other criteria.



3.2 DISCRIMINATION IN ACCESS TO GOODS AND SERVICES

Persons of Asian origin also encountered racial discrimination in accessing to goods and services during the reporting period, including access to health services and education. In early February, the Santa Cecilia conservatory of Rome (Italy) suspended classes for students of Chinese, Korean and Japanese origin until they passed a medical examination as part of preventative quarantine measures.¹⁹⁷ In Estonia, a dental clinic suspended the provision of dental care to patients from China. The Gender Equality and Equal Treatment Commissioner condemned this decision.¹⁹⁸

The Federal Antidiscrimination Agency in Germany received complaints about a doctor refusing to treat a patient of Chinese origin who had no COVID-19 symptoms but had recently been to China; a Chinese student who was prevented from renting a flat on the grounds that the owner “did not want to have Coronavirus”; and the owner of a grocery store denying Chinese tourists access to his shop. In Poland, the staff of a wedding dress shop refused to serve two Asian clients.¹⁹⁹ The Equality Ombudsman of Sweden reported on a complaint against a restaurant discriminating against persons of Chinese origin.²⁰⁰





In some Member States, there were reports of intolerance and discrimination on the grounds of health status and of nationality. In Slovenia, cases were reported of patients released from hospitals not returning to their homes for fear of hostility and intolerance from their neighbours.²⁰¹ The Human Rights Ombudsman and the Advocate of the Principle of Equality warned against stigmatisation of and intolerance against individuals who contracted the infection.²⁰²

In Romania, a complaint was filed against a TV show which discussed in a discriminatory manner the situation of Romanians who decide to return to Romania after working abroad.²⁰³ The Latvian Centre for Human Rights has noted rising hate speech against Latvian nationals repatriating from abroad due to COVID-19.²⁰⁴

3.3 XENOPHOBIC STATEMENTS BY POLITICIANS AND PUBLIC FIGURES

Politicians and public authorities have a special responsibility in times of crisis. Their statements can convey a message of social cohesion and solidarity or stir xenophobic feelings, for example by linking COVID-19 to certain minority groups and/or migration. In Czechia, a renowned medical authority said that the virus was nature's solution for overpopulation in China and that Chinese people are responsible for the pandemic due to unhygienic food-consumption practices in China.²⁰⁵ A Spanish member of parliament and secretary general of the political party 'Vox' (after testing positive for COVID-19) stated that "his Spanish antibodies" would defeat the "damned Chinese virus".²⁰⁶

Other examples include politicians linking immigration to the COVID-19 outbreaks in Hungary²⁰⁷, Denmark²⁰⁸ and Slovakia, where the leader of the political party *Peoples' party – Our Slovakia* stated that "due to the open borders within the EU [...], there are many migrants wandering across Europe without any control. And those people brought the coronavirus to Europe."²⁰⁹

In contrast, some political authorities have countered xenophobic rumours and incidents. The Croatian Ministry of Interior responded to rumours about asylum seekers allegedly spreading COVID-19 by clarifying that asylum seekers residing in Croatian shelters were not infected.²¹⁰ The Spanish government condemned in a press statement any manifestation of xenophobia linked to COVID-19.²¹¹



3.4 MEDIA – STIRRING AND COUNTERING HATRED

Sensationalising media reports on the origin and development of COVID-19 can result in scapegoating, stirring racist and xenophobic attitudes. In February, the Spiegel (the largest German weekly) featured the title “Coronavirus. Made in China” on the front page.²¹² A German tabloid showed a picture of a Chinese family at lunchtime on a page reporting on how COVID-19 arrived in Germany.²¹³ Newspapers in Denmark, France and Ireland²¹⁴ published similar stories and images, subsequently apologising for being inappropriate or for offence caused.

Political and media statements linking online COVID-19 to migration or minorities can also stir hate speech. For example, the mayor of a city in Slovakia called on his Facebook page for locking down a Roma settlement, as people returning from abroad were not obeying the obligatory 14-day quarantine period,²¹⁵ gathering a large number of racial and xenophobic reactions in comments. In January 2020, a blogger in Latvia posted a video about the alleged arrival of a person with COVID-19 in Riga. He stated “generally those Chinese [censored] should be liquidated, the entire country should be [...]” He was arrested on the same day and charged with incitement to ethnic hatred.²¹⁶ The video was removed.

Civil society organisations and people of Asian origin are also using social media to respond to hate speech by collecting information about xenophobic incidents and raising awareness. The campaign “hashtag lamnovirus” reportedly started in France (#Jenesuispasunvirus)²¹⁷, but similar initiatives followed in many other countries, such as Austria, Italy, Germany and Spain²¹⁸. In the Netherlands the online petition “We are no viruses!” (“Wij zijn geen virussen!”)²¹⁹ was launched on 8 February in response to a song titled “Prevention is better than Chinese” broadcast on the radio.

PROMISING PRACTICE: ETHICAL AND RESPONSIBLE MEDIA REPORTING ABOUT COVID-19

The Ethical Journalism Network published guidance with tips on how to report accurately on COVID-19, including how to avoid racial profiling, sensationalism and scaremongering.

*Ethical journalism network (2020),
Media ethics, safety and mental
health: reporting in the time of
Covid-19, available at
<https://ethicaljournalismnetwork.org/media-ethics-safety-and-mental-health-reporting-in-the-time-of-covid-19>*



4

DISINFORMATION, PRIVACY AND DATA PROTECTION

Accurate, reliable and trustworthy data and information is an essential resource in times of crisis, such as that created by COVID-19. This includes both the dissemination of information about the virus and measures to contain it, and ensuring that any collection of personal data – in particular health data – complies with data protection standards. This section details some of the steps taken by different actors in Member States to counter misinformation about COVID-19, and then outlines the guidance provided by data protection authorities on how to ensure the rights to privacy and data protection are upheld during the pandemic.

4.1 FIGHTING DISINFORMATION

Evidence collected by FRA indicates that disinformation – spread either by individuals or, on occasion, by politicians – around the COVID-19 pandemic is widespread in almost all Member States. At a time when the population is

asked to strictly obey emergency measures that affect their daily life, disinformation can lead the members of the public to take harmful action. Wrongly announcing that all food stores are closed, that martial law entered into force or that a city will be totally confined, are just few examples that can have detrimental consequences. Disinformation can also undermine people’s trust in institutions, such as government, health agencies and the media. It is clear that disinformation needs to be addressed quickly at the highest level of government, in partnership with private companies and media professionals.



4.1.1 Proactive communication and sanctions against disinformation

Governments and public authorities quickly sought to address the issue of disinformation regarding the outbreak. In Germany, Chancellor Angela Merkel urged citizens to disregard disinformation about COVID-19 and invited them to rely on official information,²²⁰ while the Swedish Minister of Defence used a newspaper article to highlight the ‘disinformation pandemic’.²²¹ To proactively provide reliable information, many Member States established dedicated websites, hosted either by government or a specialised ministry (Austria, France, Hungary, Poland,²²²) and/or by a health agency (Austria, Belgium, Estonia, Finland, Portugal, Slovenia²²³). In Finland, all public authorities linked their websites to the National Institute for Health and Welfare COVID-19 information website.²²⁴ In Sweden, specialised agencies hold a joint daily press conference.²²⁵ Slovakian law enforcement is very active in communicating through its Facebook page or in publishing the daily WHO bulletin.²²⁶ Several Member States recalled that spreading disinformation is illegal, and may have legal consequences. The Estonian Prime Minister, for instance, warned that knowingly spreading false information may be considered a breach of public order.²²⁷ Other Member States have already taken action to sanction those disseminating disinformation:

- In Romania, the Decree declaring the state of emergency allows the Minister of Interior to suspend access to online media, or the license of traditional media, if outlets are found to be spreading disinformation on the COVID-19 outbreak.²²⁸ This new power was used against a website for publishing disinformation.²²⁹
- Other Member States initiated legal proceedings against individuals accused of deliberately publishing misinformation. In Hungary, disinformation related to a coming city-wide quarantine and lockdown in Budapest was investigated, prompting criminal procedures to be initiated against the alleged perpetrators.²³⁰ In Latvia, an individual suspected of disseminating disinformation about COVID-19 was arrested, but later released on the condition of not moving from their place of residence.²³¹

“We share the concern that false information about the pandemic could lead to health concerns, panic and disorder. [...] It is essential that governments and internet companies address disinformation in the first instance by themselves providing reliable information. That may come in the form of robust public messaging, support for public service announcements, and emergency support for public broadcasting and local journalism [...].

Resorting to other measures, such as content take-downs and censorship, may result in limiting access to important information for public health and should only be undertaken where they meet the standards of necessity and proportionality. Any attempts to criminalise information relating to the pandemic may create distrust in institutional information, delay access to reliable information and have a chilling effect on freedom of expression.”

UN Office of the High Commissioner (2020), COVID-19: Governments must promote and protect access to and free flow of information during pandemic – International experts, Press release, 19 March 2020

Disinformation is verifiably false or misleading information created, presented and disseminated for economic gain or to intentionally deceive the public.

European Commission,
<https://ec.europa.eu/digital-single-market/en/tackling-online-disinformation>

In Bulgaria, the President, based on freedom of expression, vetoed two provisions of the initially adopted law. These were subsequently not adopted during re-voting in parliament. The first incriminated the dissemination of incorrect information on the spread of infectious disease, which, according to the President, was not in compliance with human rights standards on freedom of speech.²³²



RIGHT TO ACCESSIBLE INFORMATION

Most Member States disseminated information about COVID-19 and measures taken to prevent its spread through mainstream media, as well as through the internet and social media. Many states set up dedicated websites and hotlines with up to date information. Some Member States (for example Luxembourg²⁸⁰ and Slovenia²⁸¹) delivered leaflets to private households about COVID-19 and how to prevent infection.

Many Member States provided information in multiple languages. Bulgarian National Radio provides information on COVID-19 on its website in ten languages.²⁸² Sweden also publishes information on its website in multiple languages.²⁸³ The Austrian Integration Fund offers up-to-date information in 14 languages, as well as a multi-lingual hotline.²⁸⁴

Despite efforts by many Member States to provide information in multiple languages, challenges remain in terms of equality of access to information for harder to reach groups within society, which in turn affects equality of access to health. For example, Member States face challenges in providing information to people in asylum reception centres in different languages.

Some Member States have taken steps to make information accessible to persons with disabilities, in some cases following criticism from civil society. For example, the deaf and hard of hearing could not understand the Dutch government said during its first press conference.²⁸⁵ The Austrian Broadcasting Service has made major press conferences available in Austrian Sign Language and in an easy-to-understand version.²⁸⁶

The Slovenian National Institute of Public Health produced basic information and instructions aimed at persons with visual impairments.²⁸⁷

In addition, mediators are often needed to effectively reach out to certain groups within society, where other barriers to accessing information may arise in addition to language (such as literacy issues, for example, in the case of written information). In Bulgaria, human rights activists expressed concerns about the lack of information in Roma language on national television.²⁸⁸ Within the Roma communities, health mediators took on the task of disseminating information about the symptoms and prevention of COVID-19, including through a special easy-to-read leaflet.²⁸⁹

4.1.2 Self-regulatory measures, quality journalism and fact-checking

The spread of disinformation on COVID-19 triggered various self-regulatory actions. Major social media, telecommunication and media companies issued a joint statement describing their actions and commitment to fight disinformation.²³³ Organisations of traditional media professionals underlined the importance of quality journalism, recalling essential ethical principles of the profession (Czech Republic,²³⁴ Germany,²³⁵ Greece,²³⁶ and Slovenia²³⁷). In Finland, a media house published advice targeting social media influencers, who have a critical role in combatting disinformation.²³⁸ Similarly, dedicated civil society organisations specialised in combatting online disinformation created focal points on COVID-19 (Austria,²³⁹ Italy,²⁴⁰ Germany,²⁴¹ Slovakia,²⁴² Slovenia,²⁴³ and Spain²⁴⁴).

This was complemented by government action. The Czech government published guidance for journalists on factual reporting in connection with COVID-19.²⁴⁵ In Austria, the Federal Chancellery established a “digital crisis team”, tasked with flagging and responding to disinformation related to the virus.²⁴⁶ It also set up an investigative network of around 20 media representatives and experts to enable exchange about disinformation;²⁴⁷ within one week almost 150 disinformation items were identified.

4.1.3 Public-Private partnership

In some Member States, such as France,²⁴⁸ the government partnered with search engines and social media (Google, Qwant, Facebook, Twitter, Instagram, TikTok, or LinkedIn) to fight disinformation online. Several social media companies added dedicated links to government websites presenting reliable information when users search COVID-19 or use a special hashtag. This is the case in Poland, for example.²⁴⁹

PROMISING PRACTICE

The Portuguese Directorate-General for Health partnered with online fact checker “Polígrafo” to combat disinformation about the COVID-19. This partnership identifies, evaluates and classifies information that is shared publicly. All fact-checks published by Polígrafo are validated by a specialist designated by the Directorate-General. All information produced under this agreement can be freely used by other publications, provided the original source is mentioned.

For more information, see the Directorate-General for Health website on this partnership

“Asking people to choose between privacy and health is, in fact, the very root of the problem. Because this is a false choice. We can and should enjoy both privacy and health.”

Harari, Y. N., The world after coronavirus, Financial Times, 22 March 2020

“We are confident that data protection requirements will not stop the critical sharing of information to support efforts to tackle this global pandemic. The universal data protection principles in all our laws will enable the use of data in the public interest and still provide the protections the public expects.”

Global Privacy Assembly,
Statement by the GPA Executive Committee on the Coronavirus (COVID-19) pandemic,
17 March 2020

4.2 PRIVACY AND DATA PROTECTION

In the fight against COVID-19, data can save lives. This puts data protection issues at the forefront of responses to the pandemic. It is important to highlight that data protection standards are not hindering the fight against COVID-19. International institutions, such as the Global Privacy Assembly,²⁵⁰ the European Data Protection Board,²⁵¹ the Council of Europe²⁵² and national data protection regulators published statements affirming that data protection requirements ensure the safe and trustworthy collection and processing of data.

The evidence collected by FRA shows that nearly all EU data protection authorities (DPAs) issued guidelines related to the pandemic (see Table 1 in the Annex). These statements reaffirm that the rights to health and protection of personal data go hand in hand. They also underline that any measure which would infringe the rights to private life and data protection should be grounded in law, necessary, and proportionate.

Several of these statements coincided with the adoption of extraordinary measures or emergency acts, for example in Czechia, Italy and Poland. In Italy, the DPA (*Garante*) issued an Opinion on the government Decision²⁵³ declaring a six-month state of emergency, which included a provision on the collection and treatment of personal data by civil protection authorities. The *Garante* stressed that the Decision was in line with the rights and guarantees envisaged by existing legislation, and underlined that – after the emergency ends – all public administrations involved in civil protection must ensure that data collected during the emergency is treated according to ordinary procedures.

4.2.1 Data processing by employers

The potential for COVID-19 to be transmitted in workplaces prompted some employers to consider whether to collect and process staff personal data, including health data. This could include data on experiences of symptoms or cases of the virus among their workforce, as well as information on employees' recent travel or contact with confirmed sufferers. This in turn raises questions about the permissibility of employers disclosing the health data of some employees to other staff members.



These concerns saw employers turn to DPAs for advice on the legal requirements relating to the collection and processing of such data. A large majority of DPAs' statements considered data processing in the context of employment, with authorities agreeing that data protection must not be jeopardised by emergency measures, although appropriate derogations may apply.

However, evidence collected by FRA suggests that the guidance provided by the supervisory authorities is not harmonised across Member States. For some DPAs (Belgium, Estonia, France, Hungary, Italy, Luxembourg or the Netherlands (see Table 1 in the Annex), employers may not collect and process personal data related to either symptoms or infection among employees unless workers have voluntarily provided their personal data and agreed to their processing. Others (Austria, Denmark, Finland, Germany, Ireland, Lithuania, Poland, Slovakia or Spain), however, indicated that employers can request personal information related to symptoms and/or infection, if such collection is proven to be necessary.

Similarly, DPAs are divided regarding the possibility to disclose the identity of infected staff. In Belgium, Finland, Ireland, Latvia, Lithuania, Luxembourg and the Netherlands, the identity of affected employees cannot be disclosed, but staff may be informed that there is a verified case in the company. For the Danish, French, German, Italian or Spanish DPAs, however, employers may disclose the identity of sick colleagues.

The same applies to a lesser extent concerning the collection of personal data on recent travel. Some DPAs consider that employers have the right to request information related to a recent trip to a "risk area". This is the case for the data protection authorities of Denmark, France, Ireland, Latvia, Lithuania, Luxembourg, Poland and Spain. However, other DPAs advised that employers should not oblige employees to disclose personal information related to a recent trip. This is the case in Belgium, and to some extent in Finland, Hungary, Italy and the Netherlands, where such information may be processed, but not requested. These DPAs indicate that employers can only collect such information when employees have voluntarily accepted to disclose it.

4.2.2 Data processing by the media

Some media have also faced questions about the legality of processing personal data, mainly in relation to the public disclosure of personal information about infected individuals. In Cyprus, the DPA explicitly recalled that publishing the personal data of patients is illegal.²⁵⁴ The evidence collected by FRA suggests that the media largely apply this rule publishing only aggregated information related to COVID-19 that does not contain personal data.

The way forward

The measures outlined in this report represent the first wave of governmental efforts to address the public health crisis caused by the COVID-19 pandemic. As the situation is developing very quickly, further measures are likely to address both on-going and emerging challenges. These will continue to have a significant bearing on many of fundamental rights. The courts will have a crucial role to play in assessing the necessity and proportionality of governmental measures.

In addition to the immediate medical challenges for containing the spread of the virus and saving lives, some indications of the longer-term consequences of the outbreak on fundamental rights already begin to emerge. The effective closure of many industries has prompted the European Central Bank to anticipate a substantial reduction in economic output,²⁵⁵ while the greater public debt associated with the economic support measures being implemented across the EU will put further strain on public finances. This combination places protection of economic and social rights, including those reflected in the Sustainable Development Goals, at significant risk. Moreover, the possibility for extended 'state of emergency' periods to contain the spread of the virus suggests that some restrictions on civil and political rights may be prolonged. FRA will continue collecting data and information to assess both short-term implications and long-term consequences of measures on fundamental rights.

Looking ahead, the availability and appropriate use of data will be decisive in curbing the spread of COVID-19. The European Commission initiated talks with telecommunication operators to assess how data from telecom providers could be transferred to competent scientific authorities – while respecting data protection.²⁵⁶ While confirming the flexibility of the data protection legal framework, the EDPS recalled the principles that must apply to ensure efficient and legally compliant data processing.²⁵⁷ By the end of the reporting period (20 March 2020), FRA noted that several Member States started to collect data from telecom operators and to develop dedicated mobile phone applications to track, collect and assess data from individuals' mobile phones or use geolocation technologies. At this stage, most initiatives are in development, and discussions continue concerning the appropriate legal framework. It is too early to have a full picture of the fundamental rights impact of these measures.

What is, however, already clear is that fundamental rights-compliant responses to the outbreak and its consequences for different areas of life will be more effective in the long term. Grounding actions in fundamental rights will help to ensure that they retain public support and promote social cohesion. Ensuring this entails a role for the full range of fundamental rights actors, from governments, to international, regional and national monitoring mechanisms, national human rights bodies and civil society. In this and other respects, lessons can be learned from previous crises,²⁵⁸ including the aftermath of the 2008 economic crisis or the HIV/AIDS epidemic.²⁵⁹

FRA will continue to collect evidence to support policymakers to devise rights-compliant responses to the current pandemic. The agency acknowledges that at present the main goal of all Member States is to ensure the life of people living in the EU. For its next report on responses to the COVID-19 outbreak, FRA will select a number of key areas to focus on which raise particular fundamental rights challenges.

ANNEX: DPAS STATEMENTS ON COVID-19

EU MEMBER STATE	DATA PROTECTION AUTHORITY	STATEMENT (NATIONAL LANGUAGE)	ENGLISH TRANSLATION
AUSTRIA	Datenschutzbehörde [Data Protection Authority]	Information der Datenschutzbehörde zum Coronavirus (Covid-19)	Data Protection Authority Information on Coronavirus (Covid-19)
BELGIUM	Autorité de protection des données/ Gegevensbeschermingsautoriteit [Data Protection Authority]	COVID-19 et traitement de données à caractère personnel sur le lieu de travail	COVID-19 and processing of personal data at work
BULGARIA	Комисия за защита на личните данни, КЗЛД [Commission for Personal Data Protection (CPDP)]	Законосъобразност на обработването на лични данни от МВР чрез събиране на декларации от преминаващите през КПП граждани в областните градове на страната	Legality of the processing of personal data by the MoI by collecting declarations from citizens passing through the checkpoint in the regional cities of the country
CYPRUS	Γραφείο Επιτρόπου Προστασίας Δεδομένων [Commissioner for Personal Data Protection]	Press statement N/A. The Office shared the EDPB's statement on its website. The Commissioner discussed personal data issues in an interview.	
CROATIA	Agencija za zaštitu osobnih podataka [Personal Data Protection Agency]	Obrada Osobnih Podataka O Zdravlju U Kontekstu Izvanredne Situacije Izazvane Covid-19 Virusom	Processing Of Personal Health Information In The Context Of A Covid-19 Virus Emergency
CZECH REPUBLIC	Úřad pro ochranu osobních údajů (ÚOÚ) [The office for personal data protection]	ÚOÚ ke zpracování osobních údajů v souvislosti s šířením koronaviru Ke zpracování osobních údajů v rámci opatření proti šíření koronaviru	DPO for processing personal data in connection with the spread of coronavirus For the processing of personal data in the framework of measures against the spread of coronavirus
DENMARK	Datatilsynet [Data Inspectorate]	Gode råd om hjemmearbejde Hvordan er det med GDPR og coronavirus?	Good advice on homeworking How about GDPR and coronavirus?
ESTONIA	Andmekaitse Inspektsioon [Data Protection Inspectorate]	Kas töötajat saab kohustada rääkima kõike oma tervislikust seisundist?	Can a worker be required to talk about everything about their health?
FINLAND	Tietosuojavaltuutettu/ Dataskyddombudsmannen [Data Protection Ombudsman]	Tietosuoja ja koronaviruksen leviämisen hillitseminen Dataskydd och begränsning av coronavirusets spridning [SE]	Data protection and limiting the spread of coronavirus English version available here.
FRANCE	Commission Nationale de l'Informatique et des Libertés (CNIL) [National Commission for Data Protection]	Coronavirus (Covid-19) : les rappels de la CNIL sur la collecte de données personnelles	Coronavirus (Covid-19): reminders from the CNIL on the collection of personal data
GREECE	Αρχή Προστασίας Δεδομένων Προσωπικού Χαρακτήρα [Hellenic Data Authority]	Δελτίο Τύπου για την επεξεργασία δεδομένων προσωπικού χαρακτήρα στο πλαίσιο της διαχείρισης του COVID-19 Guidelines: [EL, PDF]	Press Release for the processing of personal data under the management of COVID-19

EU MEMBER STATE	DATA PROTECTION AUTHORITY	STATEMENT (NATIONAL LANGUAGE)	ENGLISH TRANSLATION
GERMANY	<p>Bundesbeauftragte für den Datenschutz und die Informationsfreiheit <i>[Federal Commissioner for Data Protection and Freedom of Information]</i></p> <p>Landesdatenschutzbeauftragte <i>[State Commissioners for Data Protection]</i></p>	Datenschutzrechtliche Informationen zur Corona-Krise	Data protection information on the Corona crisis
HUNGARY	<p>Nemzeti Adatvédelmi és Információszabadság Hatóság <i>[National Authority for Data Protection and Information Freedom]</i></p>	Tájékoztató a koronavírus járvánnyal kapcsolatos adatkezelésekről [PDF]	Information on processing data related to the coronavirus epidemic English version available here .
IRELAND	An Coimisiún um Chosaint Sonraí / Data Protection Commission (DPC)	Cosaint Sonraí agus COVID-19 Data Protection and COVID-19	
ITALY	<p>Garante per la Protezione dei Dati Personali <i>[Italian Authority for the Protection of Personal Data]</i></p>	<p>Coronavirus: Garante Privacy, no a iniziative “fai da te” nella raccolta dei dati</p> <p>Opinion [IT] on the Government’s Decision (implementing state of emergency measures)</p>	Coronavirus: No do-it-yourself (DIY) data collection, says the Italian DPA
LATVIA	<p>Datu valsts inspekcija <i>[State Data Inspectorate]</i></p>	<p>DVI vērš uzmanību uz personu tiesībām un pienākumiem datu aizsardzības jomā veselības informācijas kontekstā</p> <p>Par sensitīvo datu publiskošanu</p>	<p>The DSI draws attention to the rights and obligations of individuals with regard to data protection in the context of health information</p> <p>On the disclosure of sensitive data</p>
LITHUANIA	<p>Valstybinė duomenų apsaugos inspekcija <i>[State Data Protection Inspectorate]</i></p>	Asmens duomenų apsauga ir koronavirusas COVID-19 PAPILDYTA kovo 23 d.	Personal Data Protection and Coronavirus COVID-19 UPDATED March 23
LUXEMBOURG	<p>Commission Nationale des Protections des Données <i>[National Commission on Data Protection]</i></p>	Coronavirus (Covid-19): Recommandations De La CNPD Relatives À La Collecte De Données Personnelles Dans Un Contexte De Crise Sanitaire	Coronavirus (Covid-19): CNPD Recommendations Relating To The Collection Of Personal Data In The Context Of A Health Crisis
MALTA	Office of the Information and Data Protection Commissioner (IDPC)	Processing of personal data in the context of COVID-19	
NETHERLANDS	<p>Autoriteit Persoonsgegevens <i>[Data Protection Authority]</i></p>	Press statement N/A. Website page for all relevant subtopics: “Privacy & corona” [NL]	
POLAND	<p>Urząd Ochrony Danych Osobowych <i>[Personal Data Protection Office]</i></p>	Oświadczenie Prezesa UODO w sprawie koronawirusa	Statement by the President of UODO on the coronavirus

EU MEMBER STATE	DATA PROTECTION AUTHORITY	STATEMENT (NATIONAL LANGUAGE)	ENGLISH TRANSLATION
PORTUGAL	Comissão Nacional de Protecção de Dados <i>[National Data Protection Commission]</i>	Press statement N/A.	
ROMANIA	Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal <i>[National Supervisory Authority For Personal Data Processing]</i>	Prelucrarea datelor privind starea de sănătate	Processing of health status data
SLOVAKIA	Úrad na ochranu osobných údajov <i>[Office for personal data protection]</i>	Koronavírus a spracúvanie osobných údajov (aktualizované 13.3.2020)	Coronavirus and processing of personal data (updated 13.3.2020)
SLOVENIA	Informacijski pooblaščenec <i>[Information Commissioner]</i>	Odgovorno ravnanje vseh je ključno v času virusne krize Obveščanje v primeru pojava virusa med učenci, zaposlenimi v šolah in vrtcih	Responsible behaviour is crucial during a viral crisis Communication in case of virus occurrence among pupils, schools and kindergartens
SPAIN	Agencia Española de Protección de Datos <i>[Spanish Data Protection Agency]</i>	La AEPD publica un informe sobre los tratamientos de datos en relación con el COVID-19 PDF: [ES], [EN] FAQ: [ES, PDF]	The AEPD publishes a report on data processing in relation to COVID-19
SWEDEN	Datainspektionen <i>[Data Protection Authority]</i>	Coronaviruset och personuppgifter	Corona virus and personal data

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Endnotes

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PROMOTING AND PROTECTING YOUR FUNDAMENTAL RIGHTS ACROSS THE EU —


The coronavirus pandemic poses an unprecedented collective challenge to the right to life and to health for people living in the European Union (EU). The wide-ranging measures Member State governments are putting in place to control the spread of the virus have changed people's daily life in ways that were unthinkable at the start of 2020. This report looks at the first wave of government measures to contain the COVID-19 outbreak and mitigate its impact on people's health, the economy and society – underlining the fundamental rights implications. It showcases some of the efforts of those who are embarking on effective, rights-respectful responses to COVID-19.

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