

CORONAVIRUS PANDEMIC IN THE EU – FUNDAMENTAL RIGHTS IMPLICATIONS: WITH A FOCUS ON CONTACT-TRACING APPS

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Acronyms and abbreviations

Charter	Charter of Fundamental Rights of the European Union
DPA	Data Protection Authority
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EDPB	European Data Protection Board
EU	European Union
FRA	European Union Agency for Fundamental Rights
JHA	Justice and Home Affairs Council
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 European Union (EU) is slowly reopening as governments gradually lift some of the measures put in place to contain the spread of COVID-19. More people are returning to work, children are starting back at school, and many of us can see our families and friends once more – albeit all at a distance.

With these changes come new fundamental rights concerns, of how to ensure the right to health as people return to work and school, and of the long-term social and economic impact. As with the initial lockdown measures, the gradual reopening of our economies and societies affects everyone. Yet some among us – older persons, Roma, persons with disabilities, homeless people, people in precarious employment – are particularly vulnerable. Protecting their rights now, and in the future stages of the pandemic, will be a litmus test of our commitment to all members of our diverse societies.

Technology is being held up as a crucial component of so called ‘exit strategies’, in particular apps and other tools to trace and track COVID-19 cases across the EU. These technologies raise profound fundamental rights issues, of privacy and data protection, but also of free speech, freedom of assembly and association, and of discrimination.

The extensive engagement of national human rights bodies, academia and civil society in how to design, develop and use fundamental rights-compliant contact-tracing apps is a concrete example of the joined-up approach necessary to put rights at the centre of our responses to the pandemic. I welcome the extent to which many Member State governments have actively consulted which data protection authorities.

As our authorities proceed with the development of contact-tracing apps and related technology, they – and we – must keep in mind the boundary conditions. Any limitation on rights linked to these apps must have a clear basis in law. Downloading and using the apps must always be entirely voluntary, the free choice of each individual. And finally, data collected by these tools can only ever be used for the purpose for which it was collected. In exceptional circumstances, rights can be limited. But we must never forget the principles of necessity, proportionality and the avoidance of discrimination.

Michael O’Flaherty
Director



Key findings

The COVID-19 pandemic is a public health emergency – but it is far more. It is an economic crisis. A social crisis. And a human crisis that is fast becoming a human rights crisis.

United Nations Secretary-General António Guterres, **We are all in this Together: Human Rights and COVID-19 Response and Recovery**, 23 April 2020

The COVID-19 pandemic continues to interrupt everyday life in the EU in unprecedented ways. The way it affects our societies is shifting, however. As numbers of deaths and infections peaked in late March and early April, governments across the EU continued to introduce new and extend existing measures to contain the spread of the virus (for developments from 1 February – 20 March 2020 see [FRA Bulletin #1](#) on COVID-19). By the end of the reporting period on 30 April, however, many Member States announced plans to lift some of the most restrictive measures implemented at the start of the pandemic, including limits on leaving the house and meeting people outside the household, and closure of all non-essential businesses. In these cases, it is paramount to ensure that the rights to life and to health are upheld as daily life transitions to a ‘new normal’.

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 European Union](#) as a proxy also for the many other human rights standards that apply at national level.¹ It covers the period 21 March – 30 April 2020 and focuses on four interrelated issues:

- states of emergency or equivalent measures;
- measures to contain the spread of COVID-19 and mitigate its impact on social life, education, work, the justice system, and travel to and within the EU;
- the impact of the virus and efforts to limit its spread on particular groups in society, namely older persons and persons with disabilities, Roma and Travellers, detainees, and homeless persons;
- how tracing apps and other technologies to monitor the spread of COVID-19 can impact fundamental rights, in particular data protection and privacy.

The combination of the most widespread restrictions on daily life experienced in peacetime in modern Europe affect everyone living in the EU, albeit in different ways. This has profound implications for the enjoyment across our societies of nearly of all the fundamental rights enshrined in the Charter. 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.

States of emergency

Many Member States **introduced or prolonged states of emergency** – or equivalent – to respond to the crisis presented by COVID-19. States of emergency typically allow certain rights to be limited, such as freedom of movement (Article 45 of the Charter), freedom of assembly and of association (Article 12), and private and family life (Article 7).

- Several EU Member States made new declarations of states of emergency, others prolonged states of emergency declared earlier in the pandemic. Around a third of EU Member States extended existing states of emergency – or similar – declared as COVID-19 spread across the EU in February and March 2020.
- Parliaments in a small number of Member States adopted changes to the typical law-making process, giving the executive greater powers, including to introduce legal regulations or suspend or derogate from existing laws.
- Courts in several Member States assessed the legality of emergency measures and their impact on fundamental rights, in particular freedom of movement and of assembly. National human rights bodies and civil society raised concerns about limitations on fundamental rights linked to states of emergencies and their enforcement.

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

Physical distancing measures remained in place in all EU Member States, including stay-at-home requirements, suspension of mass gatherings and physical distancing when in public. Such measures affected many fundamental rights, including the rights to liberty and security (Article 6 of the Charter), 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 (Article 24), older persons (Article 25) and persons with disabilities (Article 26).

- All Member States maintained physical and social distancing measures, with varying degrees of strictness and enforcement.
- Many Member States began re-opening sectors of the economy and society by the end of April, with strict hygiene and physical distancing rules.
- Some Member States introduced new regulations regarding sanctions for infringing measures to curb the spread of COVID-19, in some cases introducing harsher penalties. Violations of measures occurred in most Member States; fines were the most common penalty.
- Several countries enforced stricter rules over the Easter period to discourage family and friends from gathering.
- There were reports of heavy-handed enforcement of sanctions by police in some Member States.

Almost all education facilities across the EU remained closed in April. Distance learning from home replaced in-person teaching in schools, with consequences for the right to education of all children living in the EU, without discrimination (Articles 14 and 21 of the Charter).

- Almost all education facilities across the EU remained closed in April, with the exception of some kindergartens and school services for children of essential workers.
- Certain children faced particular challenges in accessing and participating in distance learning, including those with a migrant or minority ethnic background, children from socioeconomically disadvantaged families, and children with disabilities. This exacerbates existing inequalities for these children.
- Some Member States, local and regional authorities made efforts to tackle inequalities by providing computers and internet connections to children without these.

COVID-19 and the measures taken to tackle it continued to have a **crippling effect on the EU economy and labour market**, with huge numbers of workers made redundant, furloughed or put on 'short-time work' with a reduced salary. Measures can affect workers' right to information and consultation (Article 27), protection in the event of unjustified dismissal (Article 30), the right to fair and just working conditions (Article 31) and social security and social assistance (Article 34), and the right to health (Article 35), but also the freedom to choose an occupation and the right to engage in work (Article 15), and the freedom to conduct a business (Article 16). **People in precarious work, already among the most vulnerable members of the workforce, are especially affected.** Some governments - and the EU - continued their efforts to mitigate the negative effects of the pandemic on the economy and the workforce:

- Some Member States introduced programmes to support people in precarious work, such as seasonal workers, who were often excluded from initial support measures. Member States also stepped up efforts to ensure support packages apply to self-employed people.
- Most Member States set out standards and guidelines to prevent the spread of COVID-19 in the workplace as people started to return to work in April 2020.
- Continued efforts were needed to protect health and social care workers at the frontline of the COVID-19 crisis. Recognising their contribution, around a third of Member States have introduced additional financial benefits for healthcare workers.

The **pandemic continued to disrupt judicial proceedings** across the EU, with many court proceedings postponed. Such disruption affects people's right to access justice, in particular the right to an effective remedy and a fair trial (Article 47). It has also possible implications for the right to equality before the law (Article 20) and the right to good administration (Article 41).

- Court proceedings were postponed in most Member States with the exception of 'urgent cases' that typically related to criminal cases with elements of violence or detention.
- Member States handled litigation in writing, where possible, and held hearings via videoconference. Challenges persisted in some countries concerning the effective functioning of the judiciary when using digital tools.

Most Member States followed the **European Commission's guidelines** to **extend restrictions on non-essential travel to the EU** until 15 May 2020, allowing certain categories of people – such as citizens and medical professionals – to enter while restricting or banning entry for third-country nationals, with exceptions. Temporary controls at the internal borders continued due to the exceptional circumstances (as per Article 28 of the **Schengen Borders Code (Regulation (EU) 2016/399)**). Coupled with restrictions on freedom of movement within some Member States, such measures affected the right to free movement of persons in the EU.

- EU Member States made special provisions to allow cross-border commuters or certain categories of workers, including health and care professionals and seasonal workers, to enter.
- Internal free movement rights were affected in many countries. Some towns and cities were fully quarantined, resulting in protests in some places.
- Several Member States temporarily suspended asylum procedures for public health reasons.

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.

Migrants in an irregular situation in some Member States remained in detention in pre-removal facilities due to suspended removal operations. 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.

Impact on particular groups in society

COVID-19 continued to severely impact people at increased risk of infection in specific settings due to the difficulty of applying physical distancing measures; for example, people in residential care settings and prisons. This increased risk of getting sick impacts people's right to health (Article 35 of the Charter), human dignity (Article 1) and right to life (Article 2). EU Member States took steps to mitigate the risk of COVID-19 spreading further and to protect people living and working in such settings. While preventing the spread of the disease, restrictive measures in institutional settings increased psychological strain and heightened the risk of neglect.

The situation in residential settings for older persons and persons with disabilities gives particular cause for concern:

- Worrying outbreaks of the virus were detected in nursing and care homes for older people. Severe staff shortages due to sickness or self-isolation, and a lack of protective gear and systematic testing, compounded this situation.
- Many Member States sought to reduce the social isolation felt by older people and persons with disabilities, for example by helping them to use digital tools to maintain contact with friends and relatives.
- Towards the end of April, some Member States began to relax restrictions on visits in institutional settings following a decrease in infection rates. Temporary visiting bans remained in place in other Member States.
- In some countries, in-home care or support services were cut back or suspended due to physical distancing requirements and pressures on health and social care services.

Governments faced criticism for **not doing enough to protect Roma**. Some Member States took steps to provide clean water and sanitisers to people in Roma settlements.

- Physical distancing and stay at home measures disproportionately affected occupations in which Roma were overrepresented, such as working as street vendors or at markets. This resulted in many losing their income, which increased food deprivation, debt and tension within communities.
- Many Roma children struggled to access distance education, raising concerns about a long-term widening of the education gap between Roma and non-Roma.
- Roma experienced discrimination and harassment in connection to COVID-19, with incidents of local authorities and the media blaming Roma for the spread of the virus reported in several Member States.

Detention conditions and measures to contain the COVID-19 pandemic continued to **severely impact detainees' rights across the EU**:

- COVID-19 infections were detected among prisoners and prison staff. Overcrowded conditions made implementing physical distancing rules difficult.
- Restrictions on visits and external activities were creating tension in some prisons, leading to several instances of disturbances or riots.
- Some Member States stepped up use of alternatives to detention, such as house arrest and early release, to reduce overcrowding and the risk of infection.

Homeless people faced particular challenges in abiding by physical distancing measures, and also struggled to access important health information and services.

- The crisis prompted an increase in demand for shelters for homeless people, which were already overcrowded or reducing their capacities to comply with physical distancing rules.
- Municipalities in some Member States were making efforts to house homeless people during the pandemic.
- Some Member States adopted measures to ban evictions of tenants during the crisis.

Users' data - privacy and data protection

Member States explored how **technology can support efforts to monitor and track the spread of COVID-19, in particular by using contact-tracing apps**. The processing of personal data involved in such applications raised significant fundamental rights concerns, particularly concerning privacy and data protection (Articles 7 and 8 of the Charter). Evidence collected by FRA indicates a lack of in-depth analysis of the potential impact on other fundamental rights of using new technologies to curb the spread of the virus.

The eHealth network of EU Member States with the European Commission and the European Data Protection Board adopted guidance on how to uphold data protection standards in the development and use of contact-tracing apps. At national level, data protection authorities (DPAs) provided extensive guidance on how to employ contact-tracing apps in line with data protection rules. Various actors also questioned the efficiency of mobile apps. Most experts agreed that apps should complement other measures to contain the transmission of the virus, such as established epidemiological methods for contact-tracing.

- Contact-tracing apps are or will be available in the majority of EU Member States as part of the exit strategy from lockdown measures. Use of the apps available or under development for contact-tracing purposes in the EU remained voluntary.

- Most Member States did not have legislation in place to determine the legal basis for processing personal data or set specific safeguards for contact-tracing apps, although a small number were preparing such legislation.
- Governments in some Member States actively consulted DPAs as part of discussions on the use of contact-tracing apps, while some others involved expert groups or other public bodies. Some DPAs were directly involved in the development and assessment of such apps, helping to ensure data protection compliance.
- In most Member States, contact-tracing apps used Bluetooth proximity data. But in some countries apps used location data.
- While for most apps, users' data were produced and stored locally on their device (decentralised architecture), such data were stored and processed on a central server in around a third of Member States (backend architecture). A similarly mixed picture emerged concerning access to users' data: in some Member States authorities had access to the data, while in others users could voluntarily share such data.
- Some apps included additional functionalities, such as symptom reporting, medical screening and communication with health authorities, while in other Member States different apps were available for reporting and communicating health data to authorities.
- Evidence suggests that the source code of tracing apps was or would be made public in most EU Member States, enhancing transparency and public scrutiny of their functioning.
- Apps and websites allowing users to upload data and symptoms were available in many Member States, but raised concerns about collecting and sharing of data, transparency, storage periods of data and encryption.

A significant number of Member States were allowing health and police authorities to access traffic and location data from telecommunication providers to track individuals, for example those subject to quarantine measures. Authorities in some Member States were also using aggregate data from telecommunication providers for statistical and other purposes relating to COVID-19.

- Access to traffic and location data were not always subject to consent or judicial authorisation. Politicians, the media and civil society raised concerns about the legality of such measures, their purposes and the transparency of their operation. This prompted some governments to withdraw proposed legislation.
- In some Member States, public authorities and researchers could access aggregate telecommunications data for statistical and other purposes. This raised issues of whether, for example, anonymisation could be reversed and third parties could access the data.

A wide range of **other technologies were being employed to support efforts to contain COVID-19**, with potential serious implications for the rights to data protection and privacy. Some Member States were using drones to monitor compliance with physical distancing measures in public spaces, for example; others used thermal cameras to measure people's temperatures, particularly at work. Examples of public authorities collecting and sharing lists of COVID-19 patients or through the forms individuals in some countries had to complete before leaving the house also raised serious concerns around storage and access to personal data. Evidence indicates DPAs were engaging actively, in both their advisory and enforcement functions.

Introduction

By 20 May 2020, COVID-19 had infected 1,065,223 people in the EU and 122,549 have died from it, according to the [European Centre for Disease Prevention and Control](#). Infection rates are, however, falling suggesting that the most acute phase of the pandemic has passed.

Many EU Member States entered a new phase in the COVID-19 pandemic. So much attention was on how to 'reopen' economies and societies shut down during most of March and April. The staged lifting of coronavirus containment measures varied across EU Member States. Yet all face the challenge of how to protect the rights to life and to health as people return to school and work, as well as to ensure that existing inequalities are not further entrenched as a result of the pandemic.

This second FRA bulletin on how the Coronavirus pandemic affects fundamental rights outlines some of the measures that EU Member States have adopted to halt the spread of COVID-19. It highlights the impact they may have on civil, political and socioeconomic rights. It starts by looking at declarations of states of emergency, or equivalent, including how they are coming under scrutiny in EU Member States. The bulletin then considers the impact on fundamental rights of measures to contain the virus on important areas of daily life, including social life, work, education, travel and the judicial system. Section 3 describes the impact of the pandemic and containment measures on certain population groups. The bulletin closes with a thematic focus on the processing of users' data to help contain COVID-19, in particular by contact-tracing apps, and the implications of such technical tools for privacy and data protection.

Given the speed with which the pandemic and policy responses have unfolded, the Bulletin 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 its scope to present an analysis of relevant international human rights law since it applies to the situation in the EU and its Member States. This could warrant a separate – future – FRA study.

Bulletin #2 addresses several areas of life affected by the COVID-19 outbreak. While these are all reflected in various articles of the EU Charter of Fundamental Rights, they are not all comprehensively covered by secondary EU law. For example, the bulletin encompasses core areas affected by measures enacted in response to COVID-19 – such as education. These are, in the main, questions of national competence. But in combination, they might nevertheless have implications in EU law relevant fields such as non-discrimination.

Selected examples of promising practices to mitigate the impact of public health measures on fundamental rights are included throughout. These examples of practices in EU Member States presented in the report do not comprehensively cover the huge number of actions taken across the EU Member States. The 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](#).

BULLETIN #2: COVERAGE AND TIMELINE

Bulletin #2 on COVID-19 documents the situation in 27 EU Member States between **21 March and 30 April 2020**. It retains the main structure of Bulletin #1, published on 8 April 2020, in looking at the impact on both society as a whole and particular groups within it, with some differences in the specific issues considered. In addition, a specific focus section in this second bulletin considers the use of technological tools – in particular contact-tracing apps – to monitor and contain the spread of COVID-19. It explores how these tools can affect fundamental rights, in particular data protection and privacy.

Future bulletins will also have a thematic focus, allowing FRA to explore selected issues raising particular fundamental rights challenges.

FRA's multidisciplinary research network, Franet, collected the data for the report across 26 EU Member States. It gathered information from sources that were publicly available at the moment of the data collection. FRA staff collected the data for the report on Germany.

FRA's next report, **Bulletin #3 on COVID-19**, will cover measures adopted during May 2020. It will have a focus section on the situation of older people.

1

STATES OF EMERGENCY

“It’s of utmost importance that emergency measures are not at the expense of our fundamental principles and values. Democracy cannot work without free and independent media. Respect of freedom of expression and legal certainty are essential in these uncertain times. The European Commission will closely monitor, in a spirit of cooperation, the application of emergency measures in all Member States. We all need to work together to master this crisis. On this path, we’ll uphold our European values & human rights. This is who we are & what we stand for.”

Ursula von der Leyen, President of the European Commission, [Twitter](#), 31 March 2020

As reported in Bulletin #1, EU Member States reacted to the COVID-19 pandemic in adopting a variety of measures to match the extraordinary situation. Depending on national legal frameworks, a great majority of States resorted to emergency legislation. In some cases states declared a state of emergency or equivalent – this report uses the respective national terminology, without prejudice to the specific legal states different terms may refer to. The notifications by three EU Member States (Estonia, Latvia and Romania) of a derogation from the European Convention on Human Rights (ECHR) in time of emergency, as set out in Article 15 of the Convention, remained in place on 30 April.

States of emergency typically allow certain rights to be limited, such as freedom of movement, freedom of assembly and private and family life. It is a basic principle of international human rights standards that any restrictions to a right must be legal, proportionate and necessary, and be of limited duration. Well-established case law of the European Court of Human Rights provides that derogations need to be notified and should happen only in exceptional circumstances and in a limited and supervised manner to secure certain rights and freedoms under the ECHR.²

The Council of Europe published a **toolkit** to support its member states to ensure that, despite the unprecedented situation, they uphold democracy, rule of law and human rights.³ **The European Commission is closely monitoring the evolution in the EU Member States** to ensure that democracy, rule of law and fundamental rights are respected.

1.1 ADAPTATIONS TO EXISTING STATES OF EMERGENCY

During the reporting period, many EU Member States made amendments to the states of emergency – or similar – they had declared as COVID-19 spread across the EU in March 2020. These took several forms:

- New declarations: **France declared a two-month ‘state of health emergency’** on 23 March, providing a specific legal framework for special measures to combat the spread of COVID-19. Two days later, the government adopted 25 ordinances adapting the way institutions operate and the rules applicable in different areas of public action, for example those applicable to criminal courts and social and medico-social establishments.⁴ On 4 April, Malta declared a ‘public health emergency’, backdated to 7 March, under the Public Health Act.⁵ The Act gives the Superintendent of Public Health wide-ranging powers to take necessary measures to “reduce, remove or eliminate” the threat to public health.

- Extensions of existing states of emergency: Bulgaria (extension to 13 May 2020), Czechia (17 May), Estonia (17 May), Finland (13 May), Portugal (2 May) and Romania (14 May)⁵ extended their states of emergency into May 2020; **Luxembourg extended its state of emergency for up to 3 months** on 24 March. The Latvian parliament amended the Law on the state of emergency to allow an unlimited number of extensions of the state of emergency by the government for up to three months.⁷ Spain extended its state of alarm until 10 May.⁸
- Regional states of emergency: Several Member States introduced measures for specific regions particularly affected by COVID-19. For example, Finland introduced restrictions on movement to and from the Region of Uusimaa on 28 March,⁹ while Portugal declared a situation of public calamity in certain municipalities in the Autonomous Region of Madeira on 18 April.¹⁰
- Change of scope: the state of emergency in the healthcare system declared by Slovakia on 16 March was further extended on 18 April to cover outpatient doctors, general practitioners and specialists.¹¹
- Several Member States, including Austria, Cyprus, Croatia, Poland and Slovenia,¹² have not declared a state of emergency – or equivalent – although this would be permitted under their respective constitutions. The German and Swedish constitutions, for example, do not provide for the proclamation of a ‘state of emergency’. All measures taken by the German federal government and public authorities to contain the spread of COVID-19 are instead based on the Protection against Infectious Diseases Act, which was substantially modified by the Population Protection Act adopted on 27 March 2020.¹³ Similarly, emergency measures in Sweden are rooted in the Communicable Diseases Act (see **Section 1.2**).¹⁴



CRIMINALISING ACTIVITY AROUND COVID-19

The **Hungarian Act on defence against the Coronavirus** also introduced amendments to the Criminal Code concerning the criminal offence of fearmongering.¹⁵ It now includes stating or disseminating any untrue fact or any misrepresented true fact that is capable of hindering or preventing the efficiency of protection in a special legal order (such as the state of danger). The new provision introduces more severe sentences – imprisonment for one

to five years – for those committing the new form of fearmongering. Other forms of fearmongering are punished by imprisonment up to only three years.¹⁶ **The Hungarian Helsinki Committee argued that the amendment is too broad and does not respect the principle of predictability, thus restricting freedom of speech.**

On 2 April 2020, a **law enhancing penalties for COVID-19 related offences**, including document forgery, theft and embezzlement, entered into force in Denmark. It introduces a new section to

the Criminal Code (Section 81d) potentially doubling penalties in cases where such offences are based on or related to the COVID-19 pandemic. The penalty is further strengthened – up to four times as high as the current level – if the offence involved unjustly obtaining or seeking to obtain a loan, credit, support, subsidy or similar compensation from COVID-19 related relief packages. The law also provides for the possibility of blocking websites used to commit certain criminal offences connected to the pandemic.

1.2 CHANGES TO THE LAW-MAKING PROCESS

A number of Member States saw parliaments adopt changes to the typical law-making process. On 30 March, the Hungarian parliament adopted the **Act on defence against the Coronavirus** (Authorisation Act). It extends the provisions of the previously declared state of danger. The Act entitles the government to issue decrees – to remain in force for 15 days, with the possibility for parliament to extend them – to suspend the application of certain laws, to derogate from the provisions of laws and to take other extraordinary measures.¹⁷ The Act further entitles the government to suspend the application of any laws adopted by parliament, to derogate from these laws and to establish extraordinary measures to prevent mass infection and ease the negative consequences of COVID-19. Unlike previously, these decrees do not require parliamentary authorisation to remain in force for a government-determined period. International organisations, governments, civil society organisations and academics raised concerns about the significant additional powers these reforms grant the government to adopt laws without parliamentary approval and oversight.¹⁸ They also highlighted the absence of a time limitation on these powers. The government argued that, as it is – in its view – impossible to foresee how long the threat of COVID-19 will persist, it is important to be able to respond to problems promptly, including when parliament is not in session.¹⁹

While not concerning a declared state of emergency, on 16 April the Swedish parliament adopted amendments to the Communicable Diseases Act, which will remain in force until the end of June. The changes give the government the right to introduce certain legal regulations without prior parliamentary approval – if the changes are considered necessary to combat COVID-19.²⁰ The government is only authorised to introduce regulations or measures based on the new amendments if it is impossible to wait for parliament's approval. It must immediately refer any such decision to parliament for consideration.²¹

1.3 STATES OF EMERGENCY AND EMERGENCY MEASURES UNDER SCRUTINY

The reporting period saw greater scrutiny by courts, national human rights bodies and civil society of the limitations on fundamental rights linked to states of emergency – and their enforcement. The following selected examples show how different actors have examined emergency measures within their respective areas competence.

Courts in several Member States assessed the legality of measures, with a focus on those restricting freedom of movement and of assembly. The Slovenian Constitutional Court received a request to assess the constitutionality of a government ordinance restricting freedom of movement and assembly of people in public places, and banning the movement of residents outside their municipalities.²² The court found that the encroachments on human rights and fundamental freedoms laid down in the ordinance are of a lasting nature because they are not time-bound. According to the court, such regulation is not necessary to achieve the purpose pursued by the ordinance. The same objectives could rather be achieved by stipulating a periodic review of the proportionality of the measures. An extension of such measure should only be approved if, in light of the circumstances and expert opinion, it is still deemed necessary to achieve the objectives pursued. This would reduce the possibility of disproportionate encroachments on human rights and fundamental freedoms. The court ordered the government to assess, at least every seven days, whether the measures introduced remain necessary to achieve the objectives pursued. Based on expert opinion, it shall decide whether to continue with the measures, modify or lift them, and shall inform the public of the decision.²³

In Germany, an application for a temporary injunction against a ban on an assembly filed with the Federal Constitutional Court was partially successful. The Court found that the local authorities of Giessen had infringed the freedom of assembly when they banned an

assembly based on an understanding that a regulation in Hesse generally prohibited any meeting of more than two persons. According to the Court, the local authorities did not take into account their discretionary powers under the regulation, which include authorising the assembly subject to precautions. The court asked the local authorities to decide anew whether or not to ban the assembly, subject to conditions.²⁴ In a separate case, the Federal Constitutional Court provisionally annulled a provision of a COVID-19-related regulation in Lower Saxony, as it did not allow case-by-case exceptions to the general ban on religious services and other religious gatherings, even where there was no significant increase in the infection risk.²⁵ The Court had previously ruled that prohibitions of religious services are severe limitations of religious freedom requiring strict scrutiny of proportionality in light of new developments in the pandemic.²⁶



A judgment of the Municipal Court in Prague, Czechia,²⁷ annulled four protection measures adopted by the Ministry of Health setting out restrictions on retail and the free movement of people. The court found that the Ministry of Health had exceeded its competence by adopting these measures. The court considered the fact that the government had not adopted the measures under the Czech Republic²⁸ and the Crisis Act,²⁹ but that the Ministry of Health under the Protection of Public Health Act,³⁰ violated constitutional guarantees of the separation of powers. Measures adopted under the Crisis Act fall under the supervision of parliament, and can only be adopted for the period of the state of emergency, which is limited to 30 days unless parliament grants an extension.³¹ In contrast, the timeframe for protection measures adopted by the Ministry of Health is not directly set and depends on the measures' necessity.

Academics in the Netherlands raised similar concerns. They argued that the regional emergency ordinances adopted by the chairs of the country's 25 'safety regions' are illegal because only an Act by parliament and not regional legislation can impose such restrictions.³² They state that the emergency ordinances restricted a number of fundamental rights enshrined in the constitution, including the rights of association and assembly, and to privacy, religion and respect of the home.

Ombuds institutions and civil society organisations in Romania and Spain focused on enforcement measures (see also [Section 2.1.2](#)). The **Spanish Ministry of the Interior published data** showing that 7,183 people were detained and 805,875 proposals for sanctions were registered for breaches of legislation relating to COVID-19 between the start of the state of alarm on 14 March and 28 April. Following its publication, the Ombuds institution requested further information to analyse whether such action is correct and proportional.³³ The Romanian Ombuds body challenged the constitutionality of the fines for not respecting measures implemented during the state of emergency and asked the Minister of Interior to be more precise in defining the offenses to avoid abusive sanctions.³⁴ Several non-governmental organisations warned that the level of the fines – between RON 2,000 and 20,000 (€ 415-€4,150) for individuals – is disproportionate to the average income.³⁵

2

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

The information presented in this section reflects the arc of developments during the reporting period. In the latter part of March, a number of Member States were still at the stage of introducing additional measures to contain the spread of the virus. By the end of April, however, many had started to implement so-called 'exit strategies' setting out a staged re-opening of sectors of the economy and society.

2.1 DISRUPTIONS TO DAILY INTERACTION: PHYSICAL DISTANCING

Physical distancing measures remained in place in all EU Member States at the end of April. As FRA reported in its first COVID-19 bulletin, these included stay-at-home requirements (with exceptions), closure of non-essential businesses and public spaces such as playgrounds and sports facilities, suspension of mass gatherings and physical distancing when in public. See [Section 2.5](#) for further information on limits to persons' free movement.

2.1.1 Stay-at-home orders and quarantine measures

In most Member States, people were allowed to leave the house to exercise, travel to (essential) work or medical appointments, or help family members or persons in need. Evidence collected by FRA shows a number of differences in the severity of restrictions, however.

Confinement measures were particularly restrictive in some Member States. People in France, for example, **had to print out a certificate stating the reason** for leaving the house. Strict stay at home orders remained in place in France, Italy and Spain, among others.

With regard to strict confinement measures in Spain, the Spanish Ombuds body³⁶ expressed concern about the physical and mental health of children who could not leave their homes. It recommended to allow children to leave the house in accordance with physical distancing rules. Following this recommendation, the government amended legislation to permit children under 14 to go outside from 26 April, after 43 days of confinement.³⁷



Some governments set out stricter rules or advice for groups at particular risk of COVID-19. For example, Finland, Ireland and Portugal³⁸ recommended persons over 70 and with chronic illnesses to stay at home, with similar recommendations in place in Malta for people over 65, people with chronic illness and pregnant women.³⁹

In contrast to countries that have adopted strict measures, Sweden has opted for distancing guidance rather than prohibitions, with the Swedish government adopting an approach based on responsibility of individuals, organisations, and businesses, for example.⁴⁰

Many Member States required persons returning from abroad to self-quarantine, typically for 14 days and mostly in their own home or another private residence. However, these rules were subject to a number of exceptions. Some countries, for example Austria and Czechia,⁴¹ exempt people with a medical certificate showing a recent negative COVID-19 test result. People arriving in Slovakia,

with the exception of pregnant women, cancer patients, persons with disabilities, persons over 75 and persons with diplomatic immunity, had to first undergo a COVID-19 test in a state facility and then self-quarantine at home if they tested negative. The total period of quarantine had to be 14 days, and members of the person's household had to also self-quarantine until this period is over.⁴² Greece also required even those who had tested negative for COVID-19 to self-quarantine (all persons travelling from abroad were tested).⁴³



Alongside disruption to daily life in areas such as work and education, as a result of government measures in response to COVID-19, freedom of religion (Article 10 in the Charter) has also been impacted. Evidence indicates that practices differed significantly between Member States: some countries entirely closed places of worship, while others allowed them to remain open or limit their use to private worship. Religious ceremonies were also affected, with a number of Member States suspending particular ceremonies, such as weddings, or limiting the number of attendees, for example at funerals.

The Conversation, Coronavirus: how new restrictions on religious liberty vary across Europe, 8 April 2020

2.1.2 Enforcement and sanctions

Some Member States introduced new regulations on sanctions and penalties for infringing physical distancing measures between 21 March and 30 April, in some cases introducing harsher penalties. For example, Latvia, Lithuania and Slovenia increased fines for violations of physical distancing rules.⁴⁴ Lithuania also amended its penal code: people who are informed about having an infectious disease but do not observe the necessary protective measures can now face up to a year in prison.⁴⁵ Violating the prohibition of public gatherings (if the gathering consists of more than 10 persons), as well as the prohibition of events, was criminalised in North Rhine-Westphalia, Germany.⁴⁶ Some Member States, including Austria, Latvia and Lithuania allowed police to impose on the spot fines for violation of newly introduced laws to tackle COVID-19.⁴⁷

New provisions of the Polish Misdemeanour Code came into force on 31 March, introducing the new petty offence – punishable by detention or a fine – of not subordinating to police or border guard orders.⁴⁸ The Ombuds Office and civil society organisations expressed concern about the ambiguity of this provision and its implementation by law enforcement officers. They noted that the provision will remain in force after the state of epidemic ends and may impact the freedom of assembly.⁴⁹

The nature of common violations of physical distancing requirements include: not wearing protective masks in public places (e.g. in Bulgaria);⁵⁰ non-compliance with stay-at-home orders (Estonia, Latvia and Romania); non-essential businesses staying open (Malta and Portugal), and group gatherings (Luxembourg and Malta). Other data indicate cases, for example, of a homeless woman who was sentenced to three weeks in prison in the Netherlands because

she refused to keep a 1.5m distance,⁵¹ or 31 incidents of spitting or coughing at police in Ireland from 8 to 25 April. Such incidents typically resulted in fines for the individuals or businesses involved. Authorities in Greece and Italy, and in Düsseldorf and Dortmund in Germany, used drones to tell pedestrians to go home and leave public squares (see [Section 4.2.3](#)).⁵²



Amid concerns that families would get together over the Easter weekend, several Member States took particular measures to restrict gatherings. Portugal and Slovakia placed additional restrictions on free movement over the Easter weekend, prohibiting people leaving their municipality of residence.⁵³ The Greek government doubled the fines for contravening physical distancing restrictions over the Orthodox Easter holiday and introduced the additional penalty of suspending the driving licenses of drivers breaching the restrictions.⁵⁴ The **Dutch police reportedly issued more than 1,800 fines** for violations of physical distancing rules over the Easter weekend.

Civil society organisations and the media raised concerns about how the police were enforcing physical distancing rules. A group of French NGOs, unions and lawyers addressed a joint open letter to authorities criticising the methods used by the police and recommending respect for the rule of law when issuing fines;⁵⁵ other organisations highlighted videos and testimonies alleging abusive checks and violence by law enforcement officials.⁵⁶ Criticism in Cyprus focused on fines for migrants and refugees, persons with intellectual disabilities and children who lacked information in a form they could understand about the measures in place,⁵⁷ as well as on police action that allegedly went beyond checking compliance with restrictions on freedom of movement.⁵⁸ Between 12 March and 6 April, Cyprus's **Independent Authority for Complaints against the Police received 13 complaints**, on issues including use of force, and arbitrary and unjustified imposition of fines.



2.1.3 First steps towards easing restrictions

In late April, many Member States started to lift some restrictions, for example allowing non-essential shops, services, parks and playgrounds to open. However, these steps are accompanied by strict hygiene and physical distancing rules in public places, for example:

- Limiting the number of people in supermarkets and shops: one customer is permitted per 25 m² in Slovakia, 20 m² in Austria and 15 m² in Greece, for example.⁵⁹
- Requirements for people queuing outside or inside places such as shops or medical services to keep a distance of one to two metres, for example in Bulgaria and Estonia.⁶⁰
- Wearing masks on public transport, for example in Austria, Czechia, France, Germany, Luxembourg and Slovenia,⁶¹ with exceptions for children under six in Austria, Lithuania and Luxembourg, and under two in Czechia and Slovenia. However, on 9 April, the Administrative Court of Cergy-Pontoise in France ruled that a mayor's decision ordering 'compulsory' masks while outdoors violates the freedom of movement and the right to respect for personal freedom.⁶²



2.2 DISRUPTION TO EDUCATION

Almost all education facilities across the EU remained closed in April, with the exception of some kindergartens and schools for children of essential workers. Distance learning from home replaced in-person teaching in schools. This has consequences for all children living in the EU. But evidence indicates that certain groups of children faced particular challenges in continuing their education, which could affect their right to education (Article 14 of the Charter). This risked exacerbating existing inequalities for children living in poverty, including a number of children who have migrant or minority ethnic backgrounds, and children with disabilities, among others.

2.2.1 Vulnerable children face particular challenges

A **study by the National University of Ireland Maynooth** reported teachers in disadvantaged areas as saying that some pupils were at increased risk of hunger; were living in homes with addiction or violence; lacked parental support for education; or the means to engage in online platforms. They also highlighted children with special educational needs as a group of concern. These issues are reflected in data from other EU Member States, as a few examples illustrate (see also **Section 3.2** on Roma and Travellers):



- A **poll conducted by the Dutch Association of School Leaders** shows that 5,640 pupils have been labelled ‘lost’ by their schools who cannot establish contact with them or their parents.
- Reports in Denmark suggest that needing a social security number to access online material has created difficulties for immigrant children.⁶³
- A petition launched by parents of students with severe disabilities in Italy asked the government to allow teachers and special assistants to provide support to their children at home, given the difficulties they face participating in online teaching.⁶⁴
- Findings from the German School Barometer, a **representative survey of school teachers carried out by the Robert Bosch Stiftung**, show that 86 % of teachers surveyed thought that the closing of schools would increase the impact of social inequalities.

Reflecting the wider social role schools often play, several Member States have sought to ensure the continued provision of meals to students from poorer families. Ireland and Malta altered existing practices so that lunches are delivered to children’s homes.⁶⁵ Similarly, the German federal government informed the *Länder* that warm meals previously served to children from socioeconomically disadvantaged families at schools can be delivered to their homes.⁶⁶ Parents of children entitled to school meals in Poland can apply to the local social care office to receive benefits compensating for the lack of food provided by the school. However, the Polish Ombuds body noted that limited access to public institutions may make this difficult in practice.⁶⁷

The coronavirus pandemic has also affected learning mobility opportunities. Since many higher education institutions have closed, students on mobility might have difficulties finishing their studies and returning back to their home country. Thinking ahead, we need to join efforts in removing obstacles for learning mobility and finding solutions for those who would want to study in another Member State.

Blaženka Divjak, Croatian Minister of Science and Education, **Education ministers discussed the challenges of the distance learning**, 14 April 2020.

PROMISING PRACTICE: SUPPORT AND GUIDANCE TO TEACHERS PROVIDING DISTANCE LEARNING

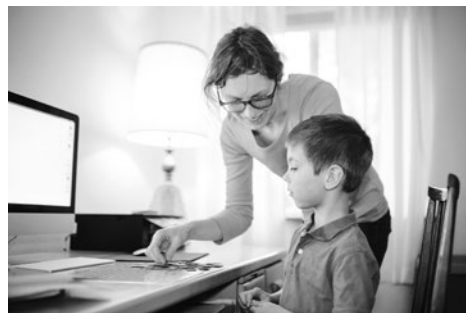
School Education Gateway, Europe's online platform for school education, supports teachers with online teaching and professional teaching. It provides tutorials and other information to support teachers to successfully incorporate online learning during the pandemic.

The **Bulgarian Ministry of Education and Science developed and launched a National Electronic Library for Teachers** to share educational resources, personal experience and innovative practices. The high number of resources and files and the fact that 50,000 users visited the library in the first week indicate that the library was well received.

In Portugal, a **partnership between the Ministry of Education, YouTube and Thumb Media resulted in a Youtube channel** allowing teachers to share their classrooms with the wider education community (YouTube community #EstudoEmCasa). Teachers can upload their lessons and other activities on their own channels. After a validation process, the Directorate-General for Education classifies the uploaded material by school year and subject and makes them available for everyone on the channel.

2.2.2 Supporting distance learning

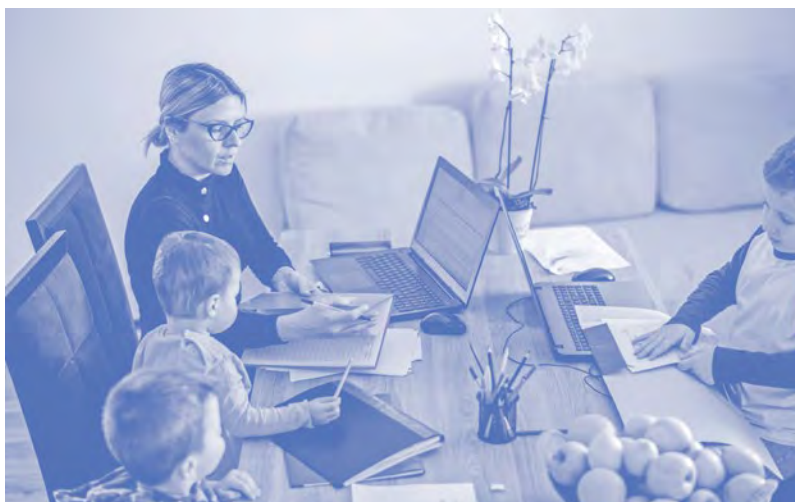
Member States have taken two main types of action to ensure that all children can participate in distance learning, evidence collected by FRA shows: more than half of EU Member States have initiatives in place to provide computers and internet connections to disadvantaged pupils, while



in others national television channels broadcast educational programmes. For example, the **Slovenian government initiated the "DIGI School" (DIGI šola) project**, which collected more than 1,300 computers and 950 modems for children in need of these devices. The Maltese Minister for Education and Employment announced €40,000 to provide free internet access to 250 children receiving free school meals.⁶⁸ In other cases, private donors offered computers. **An Estonian project puts families in need of computers in touch with people or companies willing to give away or lend them**; it distributed more than 1,200 computers during the first month.

Broadcasting educational programmes on television can reach children without reliable internet connections or computers. Starting from 6 April, lessons targeting primary school children were broadcast on two free television channels in Latvia, as well as online.⁶⁹ Distance learning classes in Croatia were broadcast on television and include classes in minority languages. The School of Life webpage and YouTube also made classes available – including lessons specifically designed for pupils with hearing impairments.⁷⁰

'Offline' solutions continue to play a significant role, however. Reports from Czechia indicate teachers supporting students by telephone,⁷¹ while the President of the Hungarian Democratic Union of Teachers explained that **schools in disadvantaged areas print materials and tasks and deliver them** to students' houses twice a week. The President noted that the success of this format depends on how much parents can support their children. Similarly, families without internet access in France can receive teaching materials by post or at the town hall.⁷² The French government also indicated that disadvantaged children would return first when schools start to reopen,⁷³ a move supported by the Public Defender of Rights.⁷⁴



EU ACTION TO SUPPORT JOBS AND THE ECONOMY

2.3 DISRUPTION TO WORK

COVID-19 continues to have a crippling effect on the labour market across the EU, with huge numbers of workers made redundant, furloughed or put on 'short-time work' with a reduced salary. **Data from an ongoing online survey** (with 85,000 respondents from across the EU by 30 April 2020) conducted by Eurofound show that more than one-quarter of respondents lost their job either temporarily (23 %) or permanently (5 %). People in precarious work, already among the most vulnerable members of the workforce, are especially affected. As governments start to announce the gradual reopening of more sectors of the economy, questions arise of how best to protect the health of those returning to work.

Concerns about safe, fair and just working conditions are particularly acute for frontline workers, especially those in the health and social care sectors, who are at heightened risk of contracting the virus.

2.3.1 Supporting people in precarious work

Reflecting widespread concern that people in precarious work, such as seasonal workers, domestic workers or those on 'zero-hours' contracts, may struggle to access some financial support measures, several Member States introduced programmes specifically targeting these workers. France introduced a temporary extension of job seekers' allowance for workers, including intermittent performing artists and technicians, and short-term contract workers. The period of confinement will count towards the reference period for unemployment

The European Commission has proposed a range of measures to provide financial support to workers and small and medium-sized enterprises (SMEs) and help alleviate the financial consequences of the pandemic.

These include:

- a € 37 billion **Coronavirus Response Investment Initiative** to provide liquidity to small businesses and the health care sector;
- the **Support mitigating Unemployment Risks in Emergency (SURE)** initiative to help Member States to cover the costs of national short-time work schemes and measures that allow companies to safeguard jobs.

See the European Commission website on jobs and economy during the coronavirus pandemic.



insurance.⁷⁵ Similarly, the Greek government extended the financial support mechanism⁷⁶ to people in precarious employment (limited to those who had been employed in 2019) due to the seasonality of their profession – including miners, forest workers, tobacco leaf collectors, shoemakers, cinema and theatre cashiers, cinema and television technicians, musicians, dancers and actors, touristic and catering employees.⁷⁷ Efforts in Belgium addressed specific sectors: the Walloon region introduced a monthly bonus for trainees whose contract has been suspended, terminated or expired as a result of measures to combat COVID-19,⁷⁸ while the Flemish government introduced financial support for those engaged in outreach work.⁷⁹

Member States stepped up efforts to ensure self-employed people are included in support packages, following a trend indicated in FRA's first bulletin on the fundamental rights implications of the Coronavirus pandemic in the EU. A temporary revision of the Finnish Employment Protection Act, for example, offers self-employed persons a subsidy if their full-time employment in their business has ended or if their monthly income from self-employment due to the COVID-19 pandemic is less than €1,089.67.⁸⁰ The Slovenian parliament adopted legislation providing a basic monthly income for affected self-employed people of €350 in March and €700 in April and May.⁸¹ The state will cover their social contributions for April and May. Data from the Netherlands underlines the urgency of such support, as there were approximately 343,000 applications for income support or a working capital loan after the temporary bridging measure for self-employed professionals took effect on 22 April 2020.⁸²



CONCERNS FOR AGRICULTURAL WORKERS AS HARVEST SEASON APPROACHES

With the main harvesting season approach, particular concerns arose about how to protect agricultural workers. The German Federal Minister of the Interior, Building and Community and the Federal

Minister of Food and Agriculture issued a draft paper on health and safety protection for harvesters, which outlines minimum standards for companies to follow. Nevertheless, reports point to instances of these standards not being implemented, as large groups are transported to the fields in one vehicle and sleep in crowded rooms.

Cáritas in Spain expressed concern that the government's urgent measures in the field of agricultural employment (Royal Decree 13/2020) are insufficient and do not respond to the needs or the social reality of immigrant agricultural seasonal workers who live in settlements.

2.3.2 Protecting employees' health as they return to work

By late April, many Member States had set out how they plan to reopen the economy. Most are taking a phased approach, with different sectors gradually resuming business. The prospect of large numbers of workers – for example those in the retail, construction, transport and education sectors – returning to work raises questions of how to protect their rights to health and to fair and just working conditions.

Governments and public authorities in most Member States set out standards and guidelines to prevent the spread of COVID-19 as people return to work. In several cases, such as in Czechia, these are complemented by recommendations from trade unions.⁸³ Central to the measures is the maintenance of physical distance: employees and customers must keep a distance of at least 1 m in France and Italy, 1.5 m in Belgium, Bulgaria and Germany, and 2 m in Cyprus, Czechia and Estonia, for example.⁸⁴ Other widespread measures include limiting the number of people per square metre, strict hygiene protocols such as regular cleaning and ventilation, introducing shifts to reduce the number of workers present at one time, and providing hand sanitisers and masks. Some countries such as Austria and Luxembourg require staff and customers to wear facemasks in shops.⁸⁵

Examples from several Member States show different ways to ensure such protective measures are upheld in practice. The Slovenian Labour Inspectorate carried out stricter supervision of measures implemented by employers to ensure the safety and health of workers during the pandemic. The inspectorate reported that from 12 March, the day of the declaration of the pandemic, until 24 April it registered 1,133 complaints of alleged irregularities and found 151 violations, mostly in relation to safety and health at work.⁸⁶ The inspectorate received the most complaints in relation to protective face masks, which were not always provided.⁸⁷ The German Bar Association recalled that employees can file a complaint about employers' non-adherence to protective standards either with their employers or with labour law authorities.⁸⁸



ENSURING ACCESS TO PERSONAL PROTECTIVE EQUIPMENT REMAINS A CHALLENGE

Reports continue to emerge of frontline workers struggling to access sufficient high-quality personal protective equipment (PPE). Workers in health and social services in Czechia and Spain, for example, repeatedly warned that they do not have enough protective gear,^{*} and in Finland expressed concern about the inadequate quality and quantity of PPE. Reports from Belgium, France and Hungary suggest insufficient testing and a lack of PPE and sanitary tools in care and nursing homes.^{**}

Reflecting these challenges, administrative courts and the Council of State in France rejected several requests for the compulsory distribution of facemasks to metalworkers and volunteers caring for people in precarious situations.^{***} The decisions highlighted the priority of ensuring that masks are available to health establishments, nursing homes, medico-social establishments, aid and care services at home and medical transport.

** Šrajbrová, M. (2020), Bez roušek i respirátorů. Sestrám starajícím se o lidi v domácí péči ochrana chybí, Hospodářské noviny, 21 April 2020; La Vanguardia, SATSE denuncia ante la OIT la falta de protección de los sanitarios españoles, 4 April 2020.*

*** Belgium, Baert, D., Aerts, E. and Van Rompuy, H. (2020), Boosheid in woonzorgcentra: "Te laat ingegrepen", minister Beke: "Al bij het begin van de coronacrisis op de agenda, VRT NWS, 8 April 2020; France, France TV Info (2020), "Il y a des gens qui vont mourir d'autres chose que du coronavirus" : les Ehpad appellent à des rencontres entre les résidents et leurs familles, 13 April 2020; France, Biret, V. (2020), Aides à domicile : « Souvent sans masques, toujours en première ligne », Ouest France, 27 March 2020; Hungary, Balázs, P. (2020), Pesti úti idősotthon – Karácsony eddig titkos dokumentumokkal vág vissza a kormánynak, Index, 10 April 2020.*

**** France, Council of State (2020), Decision n° 440012, 18 April 2020; Decision n° 440002, 15 April 2020; Decision n° 439895, 9 April 2020.*

2.3.3 Pressure on and support for healthcare workers

Health and social care workers are at the frontline of the COVID-19 crisis, facing exposure to the virus in their daily work. In a letter calling for greater protection for medical workers, medical organisations in Lithuania suggested that medical staff make up 12 % of all COVID-19 cases in the country, for example.⁸⁹ Moreover, heightened pressures on health services have prompted changes to employment regulations. A decree adopted by the Finnish government provides that healthcare professionals aged 18-67 can be ordered to carry out healthcare work when deemed necessary, although the government has not yet made use of this provision.⁹⁰



Reflecting their contribution to efforts to combat COVID-19, evidence collected by FRA suggests that around a third of Member States have introduced additional financial benefits for healthcare workers. The Lithuanian parliament voted for an increase in salaries of 60-100 % for healthcare workers working in Coronavirus hotspots during the quarantine period.⁹¹ In Hungary, all healthcare workers will receive a 500,000 HUF (€1,400) bonus in 2020.⁹² In Romania, healthcare workers are entitled to accommodation and three meals a day in hotel rooms provided by the government or local public authorities,⁹³ while healthcare workers directly treating COVID-19 patients are entitled to a risk bonus of RON 2,500 (€515), supported from EU funds.⁹⁴ Luxembourg provides temporary free accommodation for cross-border employees living in Belgium, France and Germany who work in the health and care sectors.⁹⁵

Other Member States are working to ensure priority testing for COVID-19 for frontline workers. Health and social care workers, police and border guard officers and rescue workers in Estonia are tested for COVID-19 even when asymptomatic.⁹⁶ After cases of COVID-19 emerged in several facilities, Slovakia launched large scale testing of staff and residents of nursing homes and social services.⁹⁷



2.4 DISRUPTIONS TO THE JUDICIAL SYSTEM

The COVID-19 pandemic continued to disrupt judicial proceedings in most EU Member States in April. Disruptions mostly took the form of the postponement or adjournment of court proceedings, and the extension of deadlines.

In several countries, for example Croatia, Cyprus, Denmark, France and Greece,⁹⁸ courts and prosecution offices completely closed their buildings, with the exception of hearings for 'urgent cases'. This reflects the wider situation, where most Member States made exceptions to ensure that proceedings could take place for cases deemed urgent. The definition of 'urgent' differs across Member States. While some Member States do not provide a definition at all or decide it on a case-by-case basis such as Cyprus and Ireland,⁹⁹ it typically relates to criminal cases with elements of violence or detention. In Austria, Italy and Spain, for example, this included cases concerning domestic violence.¹⁰⁰

Courts and other judicial services gradually recommenced proceedings in some Member States. For example, Cyprus, Czechia, Lithuania and Slovenia¹⁰¹

began relaxing some of their restrictive measures, allowing court hearings, decision making and issuance of judicial documents in non-essential matters to take place (albeit in strict compliance with hygiene and security measures). Controversy arose when lawyers went on strike in Greece after the Ministry of Justice announced that District Courts and Courts of First Instance in Athens would reopen from 24 April 2020. The Athens Bar Association was not consulted and prior approval not sought from the competent public healthcare authorities before the decision to reopen. An assessment later considered the sanitary conditions adequate, but raised concerns about the lack of security staff.¹⁰²

Most Member States replaced physical hearings with digital hearings (using videoconferencing) as a measure to limit the spread of COVID-19. Aware of the limitations of digital hearings, countries made efforts to ensure that constitutional and procedural rights were upheld. For example, in Ireland, where remote technology for all parties to proceedings was used for the first time, journalists were invited to watch proceedings via video link to fulfil the constitutional requirement that justice be administered in public.¹⁰³

However, challenges persist concerning the effective functioning of the judiciary when using digital tools. For example, at the beginning of the pandemic, the Polish courts were unable to easily switch to electronic proceedings, and although amended, Polish law currently establishes only limited options for electronic communication with the court.¹⁰⁴ Similarly in Germany, although the possibility to hold civil proceedings via videoconference has been in place since 2013, courts often do not have the necessary digital infrastructure, media reports suggest.¹⁰⁵

In addition to using digital tools, litigation is being handled in writing where possible in many EU Member States. For example, certain administrative or criminal cases are examined in written procedure through electronic means in Belgium, Estonia, Latvia and Luxembourg.¹⁰⁶

Detailed information on temporary measures taken in EU Member States in the justice area related to the Coronavirus pandemic is available on the European Commission's **e-Justice Portal**. The Council of Europe also created a **webpage** on national judiciaries' COVID-19 emergency measures.

PROMISING PRACTICE - GUIDANCE FOR PRACTITIONERS ON DISTANCE CONTACTS AND ONLINE TOOLS IN COURT PROCEEDINGS

On 15 April 2020, Finland's National Courts Administration published a guide on distance contacts in court proceedings for legal practitioners to follow during the emergency. The guide includes practical information on various communication tools as well as general recommendations on how to organise court proceedings online.

*For more information, see: Finland, National Courts Administration, **Opas tuomioistuimille etäyhteyksien käyttöön oikeudenkäynnissä, Tuomioistuinvirasto**, 15 April 2020.*

The COVID-19 crisis is already severely affecting the right of societies to an operative and independent judicial system. In this context, the lack of access to an independent justice opens doors to abusive behaviour and a risk of impunity.

Diego García-Sayán, United Nations Special Rapporteur on independence of judges and lawyers, **UN expert outlines urgent steps to ensure justice systems are not paralysed by COVID-19**, 22 April 2020.

2.5 TRAVEL RESTRICTIONS AT THE EU EXTERNAL BORDERS AND WITHIN THE EU

Most Member States continued to follow the European Commission guidelines – issued on 16 March, initially for 30 days – concerning the temporary restriction of non-essential travel to the EU and discouraging EU citizens and other persons residing in the Schengen area from traveling outside the EU to prevent the spread of COVID-19. On 8 April, the Commission **invited Member States** and non-EU Schengen countries to extend the restrictions on non-essential travel from third countries to the EU until 15 May 2020.

Most Member States permit entry in the situations outlined in the Commission's guidelines, namely for EU nationals and their family members, third-country nationals living in the EU on a long-term basis, persons with an essential function – such as healthcare workers – and persons in need of international protection. Most Member States maintained bans or severe restrictions for third-country nationals entering the EU throughout April. However, third-country nationals could still apply for work permits in some Member States. Third-country nationals subject to the general restrictions on entry and wishing to travel to Greece for professional or personal reasons may apply for an exceptional permit, for example,¹⁰⁷ while third-country nationals who have obtained permission for seasonal work are entitled to enter Finland.¹⁰⁸

However, in several Member States, those entering, including nationals and residents, had to meet certain requirements, including undergoing health checks, committing to self-quarantine or presenting a medical statement showing a negative COVID-19 test result. Controversy arose in Cyprus over the repatriation of Cypriot students. At first, students abroad had to present a medical certificate showing a negative COVID-19 result to board a flight home; often next to impossible to secure in their host country. The measure was criticised for putting students at risk of contracting COVID-19 in countries such as the United Kingdom with high infection rates.¹⁰⁹ Finally, at the beginning of April 2020, students started to be repatriated, with priority given to students with health issues, and placed in quarantine for 14 days.¹¹⁰ Cypriot students



studying abroad who chose not to be repatriated were reportedly granted a lump sum of €750 to cover their living expenses.¹¹¹

Hungary prohibits non-Hungarian citizens entering the country even if coming from other Schengen States.¹¹² Exceptions are only allowed with a permit from the National Police Headquarters, and if the person undergoes a medical examination and is listed in the registry of the epidemiological authority.

2.5.1 Resident permits for third-country nationals

Several countries allow certain third-country nationals whose residence permit expired during the COVID-19 measures to remain legally in the country until the end of the pandemic. For example, on 30 March, the Croatian Ministry of the Interior announced that no measures will be taken towards foreigners unable to leave Croatia for objective reasons within the period prescribed by the Schengen Borders Code. They are requested to contact the relevant police department by mail or telephone.¹¹³ Similarly, third-country nationals whose period of legal residence in Lithuania has expired during the declared quarantine and who were unable to leave the country in due time through no fault of their own, will not be subject to the return decisions, as well as administrative liability for irregular stay.¹¹⁴ To safeguard the security of supplies and the functioning of the labour market, Finland amended its legislation so that foreigners already in the country can take on work deemed 'essential' if they are laid off.¹¹⁵ The amendment will remain in force until 31 October and applies to work in the agriculture, energy, technology, chemical, food, maritime, logistics, social and health, communication, construction and infrastructure sectors. Further examples of countries that extended resident permits are available in FRA's [quarterly migration bulletin](#).

Legislation introduced on 20 April in Estonia aims to ensure that third-country nationals who lose their jobs during the emergency situation leave the country as soon as possible, including those holding a long-stay employment visa. The Police and Border Guard Board can annul the visa or the visa-free period of a third-country national.¹¹⁶ The Chancellor of Justice criticised these amendments, noting their lack of connection to resolving the emergency situation.¹¹⁷

PROMISING PRACTICE – PROTECTING THE FUNDAMENTAL RIGHTS OF MIGRANTS IN PORTUGAL

On 27 March, Portugal regularised the situation of all foreigners with requests pending with the Immigration and Borders Service under the Immigration Law and the Asylum Law on the date the state of emergency was declared (18 March 2020). The Minister of Internal Affairs stated that "at these times it becomes even more important to guarantee the rights of the most vulnerable, as is the case of migrants," and that "ensuring the access of migrants to health, social security and stability in employment and housing is a duty of a solidary society in times of crisis."

COURT CASE CYPRUS

A student challenged the legality of the regulation requiring Cypriot students to present a health certificate to enter the country. She argued that the requirement was a covert and unlawful denial of entry of a citizen in Cyprus, which put her life at risk. On 16 April, the Administrative Court ruled that the act complained of was merely regulatory as it affected a large category of persons and not merely the applicant, and thus the Court rejected the claim. The Court would have examined the claim if the applicant had sought to challenge an individual administrative act that refused the applicant the right to enter Cyprus instead of challenging the regulatory act affecting all Cypriot students abroad. It deemed the order to have no manifest illegality as it aimed to prevent the spread of COVID-19, protect public health and prevent the collapse of the health system, and ultimately to protect life itself. Legal scholars expressed concern that the decision could have serious repercussions for the right to challenge future Ministerial acts which infringe fundamental rights.

Cyprus Administrative Court, Πατσαλίδη v. Κυπριακή Δημοκρατία μέσω Υπουργού Υγείας, Case No. 301/2020, 16 Απριλίου 2020.

Christophi, C., Paraskeva, C. (2020) Το Σύνταγμα και τα Ανθρώπινα Δικαιώματα, Δικαιοσύνη, 29 April 2020.

2.5.2 Lifting restrictions for cross border commuters and seasonal workers

In addition to allowing entry for certain professionals such as healthcare workers or those transporting goods, many EU Member States made special provisions for cross-border commuters or certain categories of workers. Such rules reflect a high reliance on workers from EU and non-EU countries who work in certain economic sectors or are engaged in seasonal work. For example in Germany, up to 40,000 seasonal workers will be allowed to enter the country in April and May under certain conditions, including strict hygiene regulations and compliance with infection control.¹¹⁸

Where permitted, cross-border commuting is subject to rules - such as having documentation that proves that the individual lives and works within a certain radius of the border (for instance 30km on the Croatian-Hungarian border and 50km on the Hungarian-Serbian border),¹¹⁹ a certificate from the employer (for example, Belgian frontier workers who have to cross the Luxembourg border to work need such a certificate)¹²⁰ or a special vignette (as is the case for cross border workers between Belgium and the Netherlands in vital sectors and crucial professions).¹²¹

2.5.3 Limits on free movement within individual EU Member States

Measures to combat COVID-19 also affected free movement rights within certain Member States. For example in Italy, a decree valid until 3 May 2020 prohibited people from leaving their current municipality or returning to their municipality of residence.¹²² On 23 March, Croatia prohibited leaving the place of residence and permanent residence to reduce the spread of COVID-19. The decision was amended to allow transit for valid reasons from 6 April, and a further amendment on 18 April permitted people to travel through two or more counties within Croatia.¹²³ Finland introduced restrictions on movement to and from the Region of Uusimaa,¹²⁴ while Ireland restricted internal travel to 2km from people's homes.¹²⁵

Specific parts of some Member States, including Bulgaria,¹²⁶ Estonia and Portugal,¹²⁷ were fully quarantined, or had stricter measures imposed. This sometimes resulted in protests. People in Saaremaa, an island in Estonia where one of the largest outbreaks of COVID-19 occurred, organised a protest on 26 April against the strict isolation measures imposed there on 28 March; the order imposing restrictions was repealed on 28 April. The police dispersed protests elsewhere in the country, for example in Tartu. The Chancellor of Justice stated that restrictions on freedom of assembly are justified in the emergency situation, as political opinion can be expressed in other ways than physical gatherings.¹²⁸

2.5.4 Temporary suspension of asylum procedures

Several Member States temporarily suspended or restricted asylum procedures for public health reasons due to the pandemic which, as FRA reported in Bulletin#1, can raise issues under Articles 18 (right to asylum) and 19 (protection from refoulement) of the Charter.

For example, Belgium closed **the arrival centre for asylum seekers in Brussels** to contain the spread of COVID-19, hence new protection seekers could not submit an application for international protection and thus be assigned reception places; a measure criticised by Belgian's **French- and German-speaking bars**. The asylum authority (Fedasil) re-opened the arrival centre on 3 April only for priority cases received via an **online registration and appointment system**. Further examples of countries that temporarily suspended asylum procedures for public health reasons between January and March 2020 is available in FRA's **quarterly migration bulletin**.

Finland and Ireland reported delays in processing asylum requests. While Ireland's International Protection Office accepts new applications for asylum, the registration service is limited due to current restrictions and all substantive interviews have been cancelled until 15 May.¹²⁹ Similarly, the Finnish Immigration Service reports that asylum interviews were interrupted on 16 March but have continued on a limited basis as of 14 April.¹³⁰

A European Asylum Support Office (EASO) **Special Report** finds that travel bans and other emergency measures have led to an extreme reduction in the number of asylum applications being lodged in the EU+ (with a **43% decline in asylum applications** in the EU+ in March). But it highlights that the risk of COVID-19 taking hold in lower income countries could result in increases in asylum applications in the medium term.

Some Member States tightened provisions concerning return proceedings. For example, the Estonian parliament approved amendments which simplify the procedure for detaining asylum-seekers and persons in return procedures.¹³¹ The Estonian Human Rights Centre and the Estonian Refugee Council criticised this approach, emphasising that as detainees are particularly vulnerable to contracting COVID-19, simplifying detention procedures is neither sensible nor justified.¹³² Similarly, Slovakia adopted an amendment to the Act on Residence of Foreigners which includes stricter rules relating to detention for the purpose of administrative return.¹³³ The Slovak Human Rights League proposed the use of alternatives to detention instead (see also **Section 3.3**).¹³⁴

“Around the world today, we are witnessing the severe impacts of the use of migration-related detention on migrants, asylum-seekers and refugees during the COVID-19 pandemic – indefinite detention in overcrowded facilities for some, prolonged situations of irregularity and fear of detention for others, heightened risk of infection for all: migrants, staff, their families, and their communities.”

United Nations Network on Migration, COVID-19 & Immigration Detention: What Can Governments and Other Stakeholders Do?, 29 April 2020



3

IMPACT ON PARTICULAR GROUPS IN SOCIETY

Government measures in response to COVID-19 must protect the rights of all people and cannot discriminate. The impacts of measures on the human rights of particular groups, including women, older people, people with disabilities, children, migrants, people seeking asylum and people living in poverty or homelessness, must be assessed beforehand. Should people belonging to such groups be disproportionately affected, mitigation measures need to be put in place. This is required by the prohibition of discrimination.

*European Network of National Human Rights Institutions, **Now is the time for solidarity on human rights. The need for human rights in COVID-19 responses in Europe**, 23 April 2020.*

As reported in the Bulletin#1, the measures initiated in response to the COVID-19 pandemic affect people in different ways. This section looks at selected groups in society who are particularly vulnerable to COVID-19 or measures to contain it, namely:

- older persons and persons with disabilities living in institutional settings;
- Roma and Travellers;
- detainees;
- homeless people.

Gender-based violence is not covered in this bulletin; information on efforts to mitigate the impact of COVID-19 on women's rights is available on the European Institute for Gender Equality's website **COVID-19 and gender equality** and on the Council of Europe's website **Promoting and protecting women's rights at national level**. While this bulletin does not focus on the impact on the LGBTI community, anecdotal evidence suggests an outbreak of COVID-19 related homophobic hate speech. For example, a gay couple in France received a **message on the windshield of their car to leave their residence** and accusing them of being the first to be infected with COVID-19 as gay men. **The conspiracy theory that gay people caused the Coronavirus outbreak** by holding a large event spread on social media in Italy, using an old video from a Brazilian carnival. FRA's **quarterly migration bulletin** will look at the impact of COVID-19 measures on migrants and asylum seekers.

3.1 OLDER PERSONS AND PERSONS WITH DISABILITIES



FRA Bulletin#1 underscored that COVID-19 and measures to contain it particularly affect older persons and persons with disabilities. While distinct groups with specific needs face some similar challenges during the Coronavirus pandemic, this is particularly the case for those living in nursing and care homes. Confinement measures and bans on visits to institutional settings are crucial for ensuring the right to life and reducing the risk of infection, which continues to be particularly

acute in these settings. However, by exacerbating social isolation, such measures pose serious risks to the mental health and well-being of residents. Persons with disabilities and older people living in the community are also especially affected by measures to contain COVID-19 that impact on the provision of in-home services.

3.1.1 Conditions in institutional settings

National data underline the tragic number of COVID-19 related deaths in nursing and care homes. Nursing homes for older people are currently associated with 40 % of all COVID-19 related deaths in Portugal,¹³⁵ half of virus-related deaths in Ireland¹³⁶ and Sweden,¹³⁷ and with up to two thirds of related deaths in Finland.¹³⁸ Data from about 1,700 death certificates in Sweden show that 90 % of those dying with COVID-19 were 70 or older and almost 50 % of deaths related to COVID-19 are of persons over 70 living in nursing homes.¹³⁹ Data from Statistics Netherlands show that the mortality rate doubled among residents of institutional households in week 14 (30 March - 5 April) compared with the average rate for the first weeks of 2020.¹⁴⁰ **In Romania over 300 residents and staff were infected** in a Neuro-psycho Recovery and Rehabilitation Centre in Suceava. Increasing numbers of infections in care homes were also reported in Estonia, Hungary, Luxembourg, and Poland.¹⁴¹

The situation is compounded by severe staff shortages, lack of protective gear and systematic testing (see also **Section 2.3.3**). Some countries, for example Ireland and Poland,¹⁴² addressed this situation by redeploying other nurses to nursing homes or by limiting the employment of medical staff normally working in more than one institution to one facility.

3.1.2 Restrictions on visits and freedom of movement

Temporary restrictions on visits to care homes remain in place in many Member States, including Croatia, Denmark, Estonia, Italy, Latvia, Lithuania and Portugal.¹⁴³ As the ban on visits is often combined with wider restrictions on leaving places of residence, these measures have been criticised – for instance in Estonia¹⁴⁴ – for constituting an unjustified deprivation of liberty. The French government sought the opinion of the National Consultative Ethics Committee, which highlighted that any binding measure restricting freedoms must be limited in time, proportionate, and necessary.¹⁴⁵

Amid falling infection rates and criticism from the care sector and organisations representing older people and persons with disabilities, some Member States started relaxing bans on visits to institutional settings. Strict sanitary requirements and restrictions on the number of visitors remain, however. For example, only one visitor is permitted at a time in Austria, Belgium, France, Germany, Luxembourg, and the Netherlands;¹⁴⁶ in Belgium¹⁴⁷ it must always be the same person visiting.

These moves prompted different reactions. The Belgian care sector strongly criticised the decision to relax the ban on visits to care homes on 15 April, arguing that it is too early to organise visits safely.¹⁴⁸ The Austrian Ombuds Board, however, called for care homes to refrain from forbidding patients from leaving for walks as this impacts on their freedom of movement and right to healthcare.¹⁴⁹



PROMISING PRACTICE – COMPREHENSIVE TESTING OF RESIDENTS AND STAFF IN INSTITUTIONS

Reflecting the seriousness of the situation in institutional settings, several Member States set up specific COVID-19 testing programmes in these locations. The Irish National Public Health Emergency Team announced tests for all residents and staff of long-term residential care. **By the end of April, around 80 % of residents had been tested.**

Similarly, the National Health Laboratory in Luxembourg announced **it will systematically test for COVID-19 in care homes across the country.**

The Portuguese government reported that, as of 24 April, it had carried out **more than 17,000 diagnostic tests in nearly 200 nursing homes.**

Many Member States particularly emphasised the importance of self isolation and physical distancing measures for older people and persons with disabilities in and outside institutions, given their heightened vulnerability to COVID-19. The imposition of restrictions also affects many healthy older people and people with disabilities. Authorities in the Netherlands loosened their recommendation against visiting older people living at home and in care institutions on 28 April.¹⁵⁰ In Cyprus, complaints by organisations of persons with autism led to a revision of measures, so that this group can leave home with a medical certificate confirming their condition.¹⁵¹



3.1.3 Decreasing provision of in-home and community-based services

Physical distancing requirements and pressures on health and social care services also pose challenges for the delivery of support to people in their homes. Data from the Netherlands indicate that a third of people with home care or support from a district nurse received less or no care due to the COVID-19 crisis.¹⁵² A **separate survey by leder(in)**, an organisation that represents persons with disabilities, shows that 60 % of people with disabilities indicate that the care they need has stopped or diminished because of the pandemic, with almost half saying their physical wellbeing had deteriorated as a result.

These difficulties extend to wider community-based services. A survey of members of the Finnish Disability Forum points to challenges caused by COVID-19 in the daily lives of persons with disabilities, including access to essential maintenance services such as wheelchair repairs, access to personal assistants and home care.¹⁵³ The Romanian Ombuds body expressed concern

that few mental health specialists are able to offer support online to persons with psychosocial disabilities, who are deeply affected by the emergency measures.¹⁵⁴

In contrast, persons with disabilities who returned home at the beginning of the COVID-19 outbreak in Belgium have not been able to return to care centres. Media reports indicate that many families are struggling to adequately support their family members with disabilities – including children – at home.¹⁵⁵ In Czechia, too, the closure of many community social services due to the state of emergency leaves families to care for persons with disabilities.¹⁵⁶ The same applies for schools for children with disabilities.



3.2 ROMA AND TRAVELLERS

Roma communities in many EU countries are especially vulnerable to the risk of contracting COVID-19. In addition, measures to contain the spread of the virus may particularly affect them, as FRA Bulletin #1 indicates. Assessing the impact on Roma, including COVID-19 infection rates, is hampered by a persistent lack of data disaggregated by ethnicity.

Data from **FRA's second EU minorities and discrimination survey** show that, across the EU, many Roma live in segregated, inadequate and overcrowded housing, with limited or no access to drinking water or electricity. Reflecting this, equality bodies and civil society organisations in Czechia, Ireland, Slovakia, Slovenia and Portugal called on their governments to take measures to enable Roma to comply with quarantine measures and to lower the chance of uncontrolled spread of the virus.¹⁵⁷

In Greece, mayors of six municipalities reported on **measures adopted to protect local Roma populations**. These include: cleaning the facilities in and around Roma camps; decontamination of residential areas; provision of free

PROMISING PRACTICE – CREATIVE SOLUTIONS TO REDUCE SOCIAL ISOLATION OF OLDER PEOPLE AND PERSONS WITH DISABILITIES

Innovative ways to reduce the social isolation of older persons and persons with disabilities emerged in several Member States. In Germany, the “Digital Compass” project provides step-by-step instructions on many Internet-related topics and digital communication tools, while the “Digital Angel” project teaches older people how daily routines and habits can be enriched and facilitated by digital applications in a practical and personal way.

*Germany, Federal Ministry for Family Affairs, **Senior Citizens, Women and Youth (2020), Angebote für ältere Menschen, 29 April 2020; Germany, digital angel (2020).***

.....

Bulgarian authorities allocated BGN 45 million (€22.5 million) to support municipalities to expand home delivery of food, medicine and other essential goods to older people and persons with disabilities affected by the measures to contain COVID-19.

*Bulgaria, Ministry of Labour and Social Policy (2020), **С 45 млн. лв. по ОПРЧР ще бъде разширена патронажната грижа за възрастни и хора с увреждания, press release, 30 March 2020.***

.....

Staff of the Irish postal service volunteered to check in on older and vulnerable customers along their route, relaying any requests for provisions and medicines back to COVID-19 support services.

*Ireland, An Post (2020), **An Post Delivery Staff to check-in with vulnerable customers, 25 March 2020.***

gloves, sanitisers, soaps and bottled water; and provision of information on COVID-19. The government distributed funds to municipalities to support such initiatives.¹⁵⁸ Municipal authorities in Croatia and Portugal also took similar measures to protect Roma communities in some settlements.¹⁵⁹

Economic impact

Some Member States continued to restrict access to and from Roma neighbourhoods as a measure to prevent the spread of infection. In Bulgaria, Hungary, Portugal, Slovakia and Spain, Roma organisations and others have noted that such measures disproportionately affect occupations in which Roma are overrepresented – for example working in public spaces as street vendors or at markets – and result in many losing their income.¹⁶⁰ This increases the likelihood of indebtedness, tensions within communities and food deprivation. An Open Society Foundations report covering Bulgaria, Hungary, Italy, Romania, Slovakia, and Spain noted that Roma working in the informal economy will not qualify for government economic and social support programmes.¹⁶¹ In Hungary, the Office of the Commissioner for Fundamental Rights warned that measures to counter COVID-19 (such the stay-at-home order in effect) may deepen the segregation and isolation of Roma in the long run.¹⁶²

Discrimination and harassment related to COVID-19

As reported in the previous FRA Bulletin, Roma experience discrimination and harassment in connection to COVID-19. Prejudices were surfacing blaming Roma for the spread of the virus and portraying Roma as a public health threat, for example in Romania and Spain.¹⁶⁷ In Romania, NGOs documented numerous examples of local authorities and media blaming Roma for the pandemic.¹⁶⁸ Slovak authorities were investigating an incident of a police officer allegedly beating up Roma children in a quarantined community for not respecting quarantine measures.¹⁶⁹ The governmental plenipotentiary for Roma Communities and the Ombudsperson condemned the incident.¹⁷⁰



ROMA CHILDREN AT RISK

Evidence collected by FRA from across the EU points to the particular vulnerability of Roma children in access to food and to education via distance learning. According to the Slovak Institute of Education Policy, 60 % of Roma children have no access to the internet. Many are affected by the absence of free school

meals, which are currently not provided.¹⁶³

In Croatia, a survey among 65 elementary schools conducted by the Roma Support Network in cooperation with the Ministry of Science and Education found that in 30 % of schools around a third of Roma children did not regularly participate in distance education under the current COVID-19

situation. The authors argue that this will lead to a deepening gap in educational outcomes between Roma and non-Roma.¹⁶⁴ Limited access to distance learning for Roma children was also reported in Portugal¹⁶⁵ and Slovenia, where a project led by the Centre for School and Outdoor Education employs 26 Roma assistants to support Roma families and primary school staff to organise distance learning.¹⁶⁶

3.3 DETAINEES

Detention conditions and measures to contain the COVID-19 pandemic continued to severely impact detainees' rights across the EU. The structure and internal organisation of prison facilities, in particular when overcrowded, made it impossible to observe hygiene and social distancing rules in line with WHO recommendations. This exposed both detainees and staff to severe health risks.

In Belgium, the **Central Council of Penitentiary Surveillance** noted that it is impossible to adequately implement prevention and care measures in the overcrowded prisons. In Greece, the **Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment** and **Amnesty International** reported poor conditions in prisons: access to healthcare for detainees is problematic and most facilities are overpopulated.

Detainees and prison staff have tested positive for COVID-19 in several Member States. In Belgium, as of 24 April, there were 14 infected prisoners and 50 further detainees quarantined in their cells.¹⁷¹ In Italy, as of 30 April, 159 prisoners and 215 staff members had the virus,¹⁷² while 33 detainees and 130 staff members had tested positive in Germany. The true figure of infected detainees in Germany may be significantly higher, given the lack of widespread testing.¹⁷³

Restrictions on visits – as reported in FRA's Bulletin #1 – continued in the majority of EU Member States. In addition, authorities have cancelled many group and external activities such as sports, work programmes, therapy sessions, and temporary (day) release. This has put a severe psychological strain on inmates and increased tensions in prisons, on some occasions leading to disturbances – for example in Belgium and Luxembourg.¹⁷⁴

In view of these challenges, many international organisations, national human rights institutions and civil society organisations have called on authorities to drastically reduce prison populations through measures such as temporary or early releases and minimising pre-trial detentions. The **High Commissioner for Human Rights** encouraged authorities to “examine ways to release those particularly vulnerable to COVID-19 as well as low-risk offenders”. The **Council of Europe Commissioner for Human Rights**, the **Council of Europe's anti-torture Committee**, the **OSCE Parliamentary Assembly's human rights leaders**, the **UN Committee on the Rights of the Child** and the **European Network of Prison Litigation** made similar statements, stressing that societies should not leave behind those in prison.

Against this backdrop, a significant number of EU Member States adopted measures to reduce the prison population. In Belgium, early release and penitentiary leave measures reduced detainee numbers from 10,800 to 9,635.¹⁷⁵ In Cyprus, out of a total of 800 prisoners, 114 were granted early release.¹⁷⁶ France reduced its prison population by 11,500 between early March and late April, bringing the occupancy rate from 113 % to close to 100 %.¹⁷⁷ In Germany, several *Länder* released prisoners in the last stage of their prison sentence for minor criminal offences.¹⁷⁸ A new law adopted in Portugal on 9 April foresees an amnesty for prison sentences and remaining prison terms of up to two years.¹⁷⁹ The Minister of Justice announced that around **2,000 prisoners, of a total prison population of 12,934 in December 2019, would benefit** from these pardons. In Slovenia, the early release of prisoners six months before completion of their sentence is possible under certain conditions.¹⁸⁰

Some Member states turned to alternatives to detention such as electronically monitored house arrest to ease the risk of infection in prisons. In Italy, for example, as of 29 April, **2,810 detainees have been transferred to home-**

custody, 704 with electronic bracelets to monitor their movements. The government introduced the possibility of home-custody for all detainees with remaining sentences of less than 18 months, with the exception of those imprisoned for severe or violent criminal offences.¹⁸¹ Critics highlighted the exclusion from home custody of people in pre-trial custody, and that a lack of electronic bracelets prevented all eligible detainees from benefitting from this possibility.¹⁸² On 14 April, the government announced that **4,700 additional bracelets should be available by May 2020**. Another aspect prompting concern in Italy was the reported release to house arrest of influential mafia bosses suffering from serious cardio-vascular diseases. The Italian justice minister clarified that the decision to release Mafiosi was not taken by the government and that he would look into the reports.¹⁸³

Evidence suggests, however, that at least half of EU Member States have not explored the use of alternatives to detention to address the risk of the spread of COVID-19 in prisons.

3.4 HOMELESS PEOPLE

Homeless people are among the hardest hit by the COVID-19 pandemic and the measures adopted to contain it. They often cannot isolate or quarantine themselves, are more likely to have health issues and face particular barriers in accessing health care and public health information. The **European Federation of National Organisations Working with the Homeless** estimated that, in 2019, 700,000 people were sleeping rough or in temporary accommodation on any one night in the EU. Media in many Member States, including Croatia, Hungary, Ireland, the Netherlands, Slovenia and Spain,¹⁸⁴ reported that the crisis has prompted an increase in demand for shelters that are already overcrowded or reducing their capacities to apply distance rules.



In March, the **UN Special Rapporteur on the right to adequate housing and civil society organisations working with the homeless** urged authorities to: provide safe accommodation to affected people; ensure access to healthcare, food and personal protective equipment; provide COVID-19 testing in shelters and to caregivers; stop forced evictions and avoid punitive measures. Many municipalities across the EU stepped up efforts along these lines during the reporting period. Winter accommodation schemes were prolonged in Croatia, Denmark, France, Luxembourg and Italy.¹⁸⁵ Some shelters in Italy extended their opening hours to 24 hours a day.¹⁸⁶ The French government renewed distribution of vouchers enabling homeless people to buy food and hygiene products.¹⁸⁷ In Czechia, several towns set up tents and other temporary arrangements for homeless people required to self-quarantine,¹⁸⁸ while the Hungarian capital Budapest loaned 71 empty apartments to homeless shelters free of charge.¹⁸⁹ In Slovakia, Bratislava and other towns opened ‘quarantine towns’ for homeless people.¹⁹⁰ The Dutch government announced that tenants cannot be evicted during the crisis.¹⁹¹

More action is needed, however. The Italian NGO Intersos deemed public authorities’ responses insufficient based on an assessment of the situation of 1,800 homeless people.¹⁹² In Luxembourg, Caritas stressed the need for more financial and housing support, and highlighted the challenges people working with homeless persons are facing.¹⁹³ In Slovenia, the equality body noted that specific measures to support homeless people were not in place in several larger municipalities.¹⁹⁴ In Spain, the **Ombuds body reported numerous complaints** about insufficient safe spaces and scarcity of means of protection for homeless people.



4

FOCUS: USERS' DATA, THEIR PRIVACY AND DATA PROTECTION

“You can’t fight a virus if you don’t know where it is. Find, isolate, test and treat every case, to break the chains of transmission. Every case we find and treat limits the expansion of the disease.”

Dr Tedros Adhanom
Ghebreyesus, **WHO Director-General’s opening remarks at the Media Briefing on COVID-19**,
13 March 2020

“[Smartphone and other contact-tracing apps are potentially] amongst the most privacy-intrusive developments in technology in the last twenty years (...) Unless they are deployed very carefully and within the tightest of constraints, they could be abused in order to introduce a level of surveillance which would make Orwell’s Big Brother look like a forgetful kindergarten assistant (...) It’s the control-freak’s dream scenario and potentially a human rights nightmare.”

Prof. Joseph A. Cannataci, UN
Special Rapporteur on the Right to Privacy, **Contact-tracing apps could be our Orwellian nightmare, says expert**,
Maltatoday, 25 April 2020

In March 2020, the **WHO urged countries to track and test any individuals showing symptoms of COVID-19**. This is reflected in the **Joint European Roadmap** towards lifting COVID-19 containment measures adopted by the European Council and the European Commission on 15 April 2020. The Roadmap highlights contact-tracing and warning through the use of mobile apps as among the accompanying measures that will support the lifting of confinement measures. The European Centre for Disease Prevention and Control (ECDC) also **underlines the importance of contact-tracing by mobile phone apps**.

Such apps store signals exchanged between users’ devices or location data to create a history of persons coming into proximity with each other. If a user tests positive for COVID-19, the app then warns those who have been in proximity to the infected person. These indications can then be used to identify contacts of known cases – a process known as contact-tracing. In this way, the term ‘contact-tracing’ which is widely used to describe apps that rely on digital proximity tracing does not describe the method used, but the apps’ purpose. The European Data Protection Supervisor (EDPS) described the different techniques available for **contact-tracing with mobile applications**. In line with the **eHealth network**, the **European Commission** and the **European Data Protection Board**, the term ‘contact-tracing apps’ is used in this report to refer to apps that rely on proximity data.

Yet, contact-tracing apps are just one of the technologies used by governments and companies to contain the pandemic. The **Joint European Roadmap** also acknowledges the processing of aggregate and anonymised data from social media and mobile network operators as part of the solution to curb the pandemic. This processing can reveal patterns and trends in social mobility and can prove useful for mathematical predictions of the spread of the virus. Other tools that process users’ data include: apps to self-report health and websites providing advice and communication with health authorities, which may include communicating biometric data; access to location and traffic data of individuals for tracking people in quarantine; drone surveillance for monitoring physical distancing measures; and thermal cameras, particularly to monitor employees’ temperature at work. Such functionalities are sometimes bundled with contact-tracing apps.

Despite the potential of processing users’ data to help end the pandemic, such measures interfere with the rights to private life and the protection of personal data. There are also concerns that such apps could affect other rights such as freedom of movement, association and religion. Identifying a person’s associations with other individuals or whereabouts could reveal her or his

political or religious beliefs, for example. Inaccurate data and technological flaws might reinforce bias, discrimination, and inequalities. There is also a serious risk of deepening the digital and social exclusion of people who are not digitally savvy or do not have access to smartphone technologies.¹⁹⁵

Politicians, data protection authorities, NGOs and experts across the EU have highlighted the need for safeguards, such as prohibiting further use of collected data for other purposes. Various actors have also questioned the efficiency of mobile apps. Some refer to this technological approach to COVID-19 as 'digital public health experimentation'.¹⁹⁶ A study by the University of Oxford, for example, highlights that approximately 60 % of the population should be using a contact-tracing app for it to have any real impact.¹⁹⁷ A month after the release of an app in Singapore, however, only a fifth of the population was using it.¹⁹⁸ Others caution that contact-tracing apps provide a false sense of security, as mobile phones and their sensors are tracing coronavirus exposure.¹⁹⁹ Most experts agree that apps should complement other measures, such as established epidemiological methods for contact-tracing, to contain the transmission of the virus.²⁰⁰

This section describes the technologies that Member States are using or proposing to use, examining them in the context of applicable EU fundamental rights standards. While focusing on contact-tracing apps, it also looks at other methods of data processing, such as processing of telecommunications data and drone surveillance. The section does not cover issues linked to the processing of large amounts of data, which are addressed by other **FRA work on artificial intelligence and big data**.

FRA's Fundamental Rights Survey

Results from FRA's Fundamental Rights Survey reflect some of the potential fundamental rights challenges of employing contact-tracing apps to control COVID-19. They illustrate the extent to which people are and, importantly, are not aware of certain rights in relation to their smartphone use.

The Fundamental Rights Survey included 35,000 people aged 16 years and above in all EU Member States, North Macedonia and the United Kingdom in 2019. It provides, for the first time, a comprehensive set of comparable data on people's experiences and opinions concerning their fundamental rights, focusing on everyday situations in areas including data protection, equal treatment, access to justice and other relevant areas. Selected results on data protection and technology are presented here; other results will be published online and in later reports.

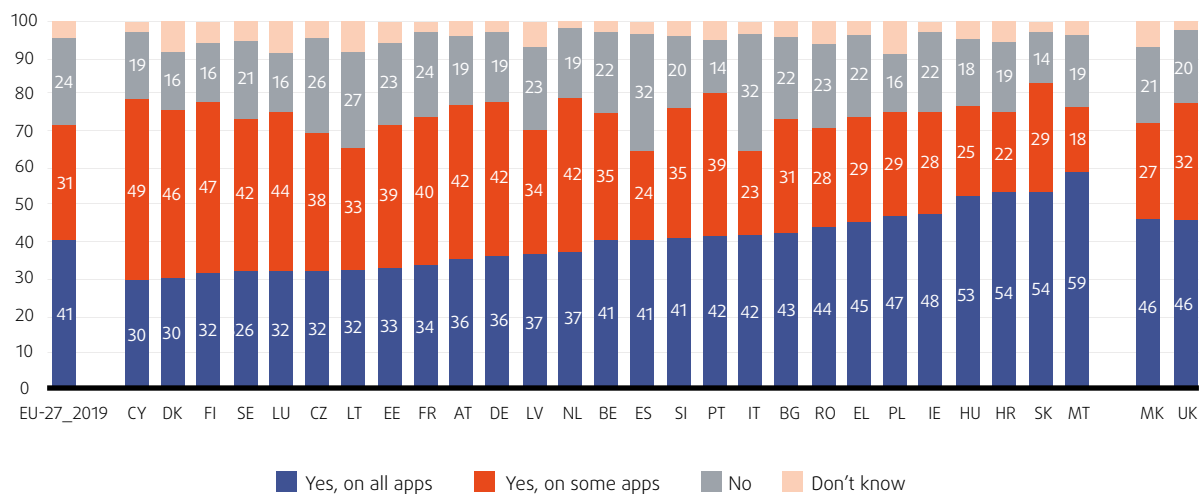
The survey design involves a combination of face-to-face and online data collection, as appropriate in each country, to reach

a representative sample of the total population. Fieldwork took place from January to October 2019. Ipsos MORI conducted the data collection on behalf of FRA, with the Agency closely supervising all aspects of the fieldwork. Data collection was carried out in cooperation with Statistics Netherlands (CBS) in the Netherlands, the Centre des technologies de l'information de l'Etat (CTIE) in Luxembourg and Statistics Austria in Austria.

Users' awareness and practices of privacy

The results show that the majority of people in the EU-27 (72 %) know about the privacy settings on at least some of the apps on their smart phones. However, less than half of the respondents (41 %) know the privacy settings on all apps they use and 31 % only for some apps. Most people know how to turn off the location settings (77 %). See Figure 1 and Figure 2.

Figure 1: Smart phone users knowing how to check the privacy settings by country (%)

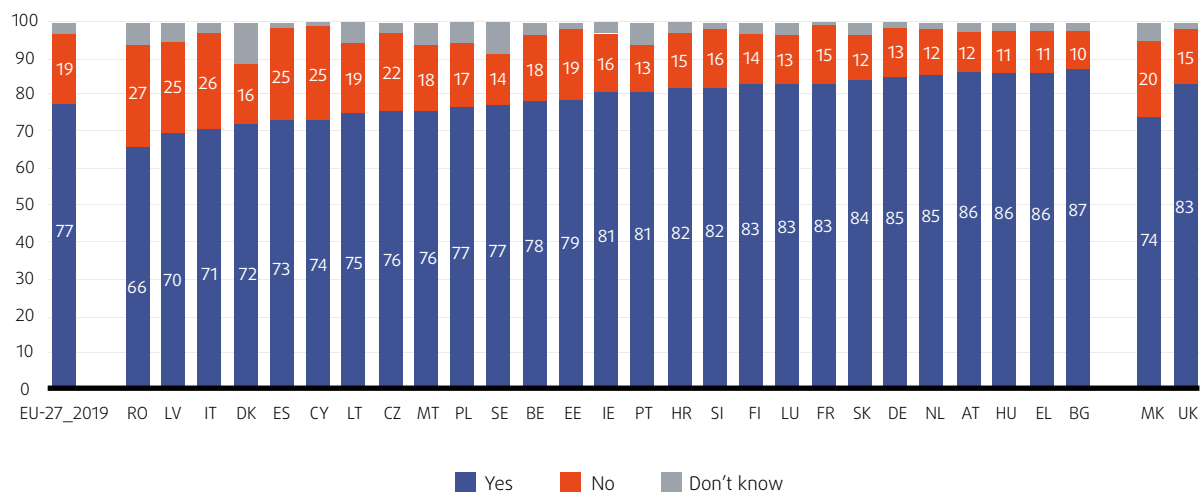


Notes: Includes only those respondents who have a smart phone that allows them to access the internet or social media, N = 18,515.

Question: Do you know how to turn off the location settings on your smartphone?
 (1) Yes, (2) No, (3) I don't know what location settings are.

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

Figure 2: Smart phone users knowing how to turn off the location settings, by country (%)



Notes: Includes only those respondents who have a smart phone that allows them to access the internet or social media, N = 18,515.

Question: Do you know how to check the privacy settings when using different apps on your smartphone?
 (1) Yes, on all apps, (2) Yes, on some apps, (3) No, (4) I don't know what privacy settings are.

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

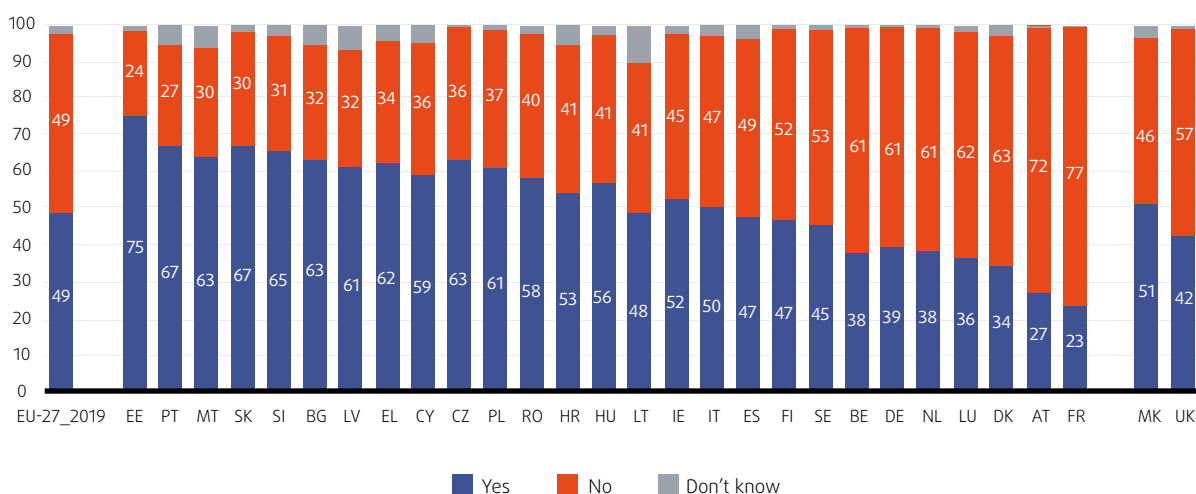
Apart from the limited awareness about privacy and location settings on smart phones, the Fundamental Rights Survey finds that only one in five people in the EU says they always read the terms and conditions when using online services (22 %); 44 % read them sometimes and 33 % do not read the terms and conditions (1 % don't know). Among those who read the terms and conditions, at least sometimes, 27 % do not understand them. When asked generally, whether or not people find it easy to consent to personal data usage through online services, half of the people indicate not finding it easy to consent to personal data usage through online services (49 %). The percentages range from 24 % in Estonia not finding it easy to consent to 77 % in France (See Figure 3).

People in the EU-27 generally trust private companies less than governments when it comes to the use of their personal data. The Fundamental Rights Survey asked people about their willingness to share personal data, including their home address, date of birth, citizenship and other types of data. The results show that, while

more than one in five respondents (23 %) do not want to share any of these data with public administrations, a much higher share (41 %) do not want to share such data with private companies. More than half of respondents would be willing to share basic personal data with public administrations, including their home address (63 %), date of birth (62 %) and citizenship (58 %). These figures are considerably lower for private companies, where only slightly more than one third would be willing to share these data (home address 36 %, date of birth 38 %, citizenship 37 %).

Question: "Which of the following types of personal information would you be willing to provide to use a service offered by a (1) private company or (2) public administration?" Multiple responses allowed: 1 Your home address, 2 Your citizenship, 3 Your date of birth, 4 Whether you're straight, gay, lesbian or bisexual, 5 Your religion or belief, 6 Your political views, 7 A scan of your fingerprints for identity purposes, 8 Your facial image for identity purposes, 9 I would not be willing to provide any of the above."

Figure 3: Finding it easy to consent to personal data usage through online services by country (%)



Notes: Includes only those respondents who use the internet, N = 20,279.

Question: Do you feel you can easily choose not to approve or consent to your data being used when using online services, websites or apps? (1) Yes, (2) No.

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

“The functionalities included in the apps can have different impact on a wide range of rights enshrined in the Charter of Fundamental Rights of the EU, such as human dignity, respect for private and family life, protection of personal data, the freedom of movement, non-discrimination, freedom to conduct a business, and freedom of assembly and of association”.

European Commission,
Communication from the Commission, Guidance on Apps supporting the fight against COVID 19 pandemic in relation to data protection,
C(2020) 2523 final, Brussels,
16 April 2020, p. 4.

“All the solutions connected with the diagnostic and observance of health issues through mobile devices, apps and all electronic means will need to be watched, especially as they will be more and more popular when we come out the other side of the current crisis.”

Wojciech Wiewiórowski, EDPS,
Europe must use data together to fight covid-19, Global Data Review, 22 April 2020

4.1 FUNDAMENTAL RIGHTS STANDARDS FOR PROCESSING USERS' DATA TO COMBAT COVID-19

Continuous access to data and systemic monitoring of individuals' by contact-tracing and similar apps constitutes a serious interference with fundamental rights.²¹¹ As the **European Commission highlights**, digital monitoring can adversely hinder not only the right to private life and personal data protection but also a great range of other rights covering the whole spectrum of human social activity and daily life. These concerns were reiterated by civil society organisations.²¹² In Ireland, for instance, NGOs including the *Irish Council for Civil Liberties and Digital Rights Ireland* **highlight fundamental rights issues and propose specific recommendations to ensure the safe and trustworthy use of contact-tracing apps**. In France, a **group of NGOs and unions called on the French parliament to reject the adoption of an app**.

National Human Rights Institutions and experts underline that governments should examine the usefulness, necessity and effectiveness of apps developed to fight the pandemic before they are made available to the public.²¹³ Such assessments should address not only apps' interference with the rights to data protection (Article 8) and respect for private life (Article 7), but the much wider range of fundamental rights affected. Evidence collected by FRA did not, however, capture any instances of in-depth analysis of the potential impact of using new technologies to curb the spread of the virus on fundamental rights other than privacy or protection of personal data.

4.1.1 Data protection requirements for trustworthy and efficient apps

Reflecting concerns about the impact of contact-tracing apps on the rights to data protection and privacy, numerous actors published guidance to support governments and companies. The European Commission published two important documents on 16 April 2020: an **EU toolbox for the use of mobile applications for contact-tracing and warning** and **Guidance on Apps supporting the fight against COVID 19 pandemic in relation to data protection**. The European Data Protection Board (EDPB) was consulted before the adoption of the Guidance. The EDPB also adopted **guidelines on the use of location data and contact-tracing tools in the context of the COVID-19 outbreak**. At the Council of Europe level, a **joint statement** suggests how to implement digital contact-tracing in line with the Convention for the protection of individuals with regard to the processing of personal data (Convention 108, and its modernised version Convention 108+). Finally, the Organisation for Economic Co-operation and Development published a **contribution aimed at preserving privacy when using apps and biometric data in the fight against COVID-19**.

Table 1 – Common minimum standards highlighted by international stakeholders

	EUROPEAN COMMISSION - eHealth NETWORK TOOLBOX	EUROPEAN COMMISSION GUIDANCE	EDPB GUIDELINES	COUNCIL OF EUROPE JOINT STATEMENT	OECD TRACKING AND TRACING COVID
Proven effectiveness prior to development	✓	✓		✓	
Voluntary	✓	✓	✓	✓	
Prior assessment	✓	✓	✓	✓	
Privacy-by-design	✓	✓	✓	✓	✓
Specified purpose and legal basis	✓	✓	✓	✓	✓
Open source code (transparency)	✓	✓	✓	✓	✓
Data minimisation and accuracy	✓	✓	✓	✓	✓
Technological accuracy of contact detections	✓	✓	✓		
Anonymised, or pseudonymised, data	✓	✓	✓	✓	
Security against cyber attacks	✓	✓	✓	✓	✓
No location data	✓	✓	✓	✓	
Regular independent oversight	✓	✓	✓	✓	
Interoperability	✓	✓	✓	✓	
Deactivation and deletion after the pandemic	✓	✓	✓	✓	✓
Accountability and responsibility of actors	✓	✓	✓		✓

Source: FRA, 2020

A set of common recommendations emerges from these documents, as Table 1 indicates. In particular, they emphasise the need to ensure that only minimal, accurate, and secure data are collected and processed, and that any data collection and processing to address the COVID-19 pandemic is limited to the crisis period.

4.1.2 Data protection authorities extensively engaged in assessing contact-tracing apps

Data protection authorities (DPAs) provided extensive guidance on how to employ contact-tracing apps in line with data protection standards. Most referred to the **EDPB guidelines**, helping to ensure a harmonised approach to the use of contact-tracing apps across the EU. They underlined issues such as the need for a legal basis and adequate safeguards, the importance of the pseudonymisation of data, the necessity of conducting prior impact assessments in line with Article 35 of the **General Data Protection Regulation (GDPR)**, the deletion of data once they are no longer required and the ban of using the data for other purposes, as well as requirements for data protection by design and by default, and transparency.²¹⁴

Governments in many Member States actively consulted DPAs as part of discussion on the use of contact-tracing apps. Prior and ongoing involvement of DPAs in the development and assessment of contact-tracing apps is important to ensure data protection compliance. The Belgian government consulted the national DPA on two draft royal decrees aimed at regulating tracing activities. The Authority suggested revising the drafts to include further information on the means of collecting tracing data, the individuals who may access the data, and on the purposes justifying data processing. The Authority underlined that data collected for the purpose of contact-tracing cannot be processed for other purposes.²¹⁵ Similarly, the French DPA was consulted on the *StopCovid* application and issued recommendations that apply *mutatis mutandis* to all apps to ensure their safe and legal use. It emphasised that the app should be voluntary, safe, grounded in law, process accurate data, and preceded by a data protection impact assessment.²¹⁶ In the Netherlands, the government requested the Dutch DPA to assess the apps selected following a call for tender.²¹⁷

The **Italian DPA initially presented its position on contact-tracing technologies at a parliamentary hearing**. It stressed that consent to use such apps must be voluntary and raised concerns about the storage of personal data in telecom operators' databases, stressing that preference should be given to measures enabling the least possible collection and storage of identifying information. In addition, the Authority suggested introducing specific statutory offences to punish the use of such data for other purposes than those initially prescribed by law. Subsequently, the Italian DPA was also consulted by the government on the proposed bill; its formal **opinion** highlighted some additional requirements in line with EDPB guidelines.

Other DPAs published guidance on their own initiative. In Finland, the Data Protection Ombuds institution assessed the government's plans to develop tracing contact apps, insisting on the requirements of legality, voluntariness, and data anonymisation.²¹⁸ The Croatian DPA issued a **statement** on contact-tracing apps based on the EDPB's guidance, while the **Spanish DPA published an assessment of the costs and benefits** of using new technologies in the fight against the pandemic. In addition, information provided to FRA show that DPAs in Bulgaria, Denmark, Italy, Latvia and the Netherlands are actively involved in the development and/or assessment of contact-tracing apps.



4.2 NATIONAL STATE OF PLAY OF TECHNOLOGY DEVELOPMENTS

Evidence collected by FRA indicates that EU Member States employ three main technological solutions in their efforts to contain the pandemic:

1. the use of mobile phone applications for contact-tracing purposes
2. health self-reporting apps and websites, and
3. access to communication data for tracking individual and other purposes, whether anonymised aggregate data or data of identified persons.

Table 2 provides an overview of solutions adopted at EU Member State level.

Table 2: Overview of technological solutions against COVID-19 in EU Member States (by 30 April 2020)

EU MEMBER STATES – C.TR.APPS	CONTACT-TRACING APPS						
	APP AVAILABILITY ¹	TYPE OF DATA ²	HEALTH FUNCTIONS	TECHNICAL APPROACH ³	EXPLICIT LEGAL BASIS ⁴	DEVELOPMENT AND AUTHORISATION ⁵	DPA INVOLVEMENT AND PRIOR IMPACT ASSESSMENT ⁶
AUSTRIA STOPPCORONA	Yes* V	B	Yes	D	Yes (for health funct. <u>only</u>)	3	N/A
BELGIUM	Yes** V	N/A	No	N/A	Yes	1	Yes
BULGARIA VIRUSAFE	Yes* V	L	Yes	C	No	1	Yes*
CYPRUS COVTRACER	Yes* V	L	No	D	No	3	N/A
CZECHIA eROUŠKA	Yes* V	B	Yes	C (limited time access by auth/ies)	No	3	N/A
GERMANY	Yes** V	B	N/A	D	No	2	N/A
DENMARK SMITTESTOP	Yes** V	B	Yes	C	No	2	Yes*
GREECE	No	-	-	-	-	-	-
ESTONIA	Yes** V	B	No	D (user can consent to share data with auth.)	No	2	N/A
SPAIN COVI-19.EUS (BASQUE ONLY)	Yes* V	N/A	Yes	N/A	No	2	N/A
FRANCE A) STOPCOVID B) STOPC19	a) Yes** V b) Yes* V	a) B b) B	a) No b) N/A	a) C b) N/A	Yes	a) 2 b) 3	Yes*
FINLAND	Yes** V	B	No	D (user can consent to share data with auth)	Yes*	2	Yes* and **

	AGGREGATE MOBILITY DATA			TRAFFIC AND LOCATION DATA OF INDIVIDUALS		
SOURCE CODE TRANSPARENCY ⁷	PROCESSING FOR COVID19	LEGAL BASIS ⁸	DPA INVOLVEMENT	PROCESSING FOR COVID19 ⁹	PURPOSES ¹⁰	JUDICIAL AUTH/TION
Yes*	Yes	Yes	Yes	C	N/A	No
N/A	Yes	-	-	No	-	-
Yes*	Yes (for persons returning to Bulgaria)	No	-	M	T	Yes (ex post)
Yes* (based on open source)	N/A	-	-	No	-	-
Yes*	N/A	-	-	C	T	No
N/A	Yes	No	Yes	No	-	-
No	Yes	No	Yes	M	T, O	No
-	N/A	-	-	No	-	-
N/A	Yes	Yes	Yes	M	C	Yes
No	N/A	-	-	No	-	-
a) Yes b) No	Yes	No	No	No	-	-
N/A	Yes	No	No	No	-	-

EU MEMBER STATES – C.TR.APPS	CONTACT-TRACING APPS						
	APP AVAILABILITY ¹	TYPE OF DATA ²	HEALTH FUNCTIONS	TECHNICAL APPROACH ³	EXPLICIT LEGAL BASIS ⁴	DEVELOPMENT AND AUTHORISATION ⁵	DPA INVOLVEMENT AND PRIOR IMPACT ASSESSMENT ⁶
CROATIA	Yes*** V	B	N/A	N/A	N/A	2	Yes*
HUNGARY	No	-	-	-	-	-	-
IRELAND	Yes** V	B	N/A	D	No	2	N/A
ITALY IMMUNI	Yes** V	B	No	C (user's consent to share the data stored)	Yes* (proposed by DPA)	1	Yes* and **
LITHUANIA	Yes* V	L	Yes	C	No	2	N/A
LUXEMBOURG	No	-	-	-	Yes (foreseen)	-	-
LATVIA	Yes**V	B	Yes	D (user can consent to share data with auth/ies)	No	2	Yes*
MALTA	No	-	-	-	-	-	-
THE NETHERLANDS	Yes** V	N/A	No	N/A	No	1	Yes*
POLAND PROTEGO	Yes* V	B	Yes	D (user can consent to share data with auth/ies)	No	2	Yes
PORTUGAL MONITORCOVID19.PT	Yes** V	B	No	D (authorize health professional to share the data anonym.)	No	3	N/A
ROMANIA	No	-	-	-	-	-	-
SWEDEN	No	-	-	-	-	-	No
SLOVENIA	No	-	-	-	-	-	Yes*
Slovakia Covid-19 Zostaň zdravý	Yes* V	BL	Yes	C	No	3	N/A

Source: FRA, 2020

1 | * = available
 ** = under development
 *** = discussed
 V = Voluntary use
 M = Mandatory use

2 | B = Bluetooth
 L = Location (GPS, network)

3 | C = Centralised
 D = Decentralised

4 | * = Prohibiting further use

5 | 1 = Subject to official authorisation
 2 = Developed by public authorities (in collaboration or not with private sector)
 3 = developed by private sector/independent institutions

	AGGREGATE MOBILITY DATA			TRAFFIC AND LOCATION DATA OF INDIVIDUALS		
SOURCE CODE TRANSPARENCY ⁷	PROCESSING FOR COVID19	LEGAL BASIS ⁸	DPA INVOLVEMENT	PROCESSING FOR COVID19 ⁹	PURPOSES ¹⁰	JUDICIAL AUTH/TION
N/A	Yes	Yes	No	No	-	-
-	Yes	No	No	M	T, O	No
No (yet)	N/A	-	-	No	-	-
Yes**	N/A	-	-	No	-	-
No	N/A	-	-	M (not yet adopted)	T	No
-	N/A	-	-	No	-	-
N/A	N/A	-	-	M	T	No
-	N/A	-	-	No	-	-
N/A	N/A	-	-	No	-	-
Yes*	N/A	-	-	M	T	No
N/A	N/A	-	-	No	-	-
-	N/A	-	-	M	T	No
-	Yes	No	No	No	-	-
-	N/A	-	-	No	-	-
No	Yes	Yes	No	M	T	No

6 | * DPA involvement (e.g. opinions, guidelines)

** Prior impact assessment

7 | * = optional

** = mandatory

8 | Y = yes, specific basis

N = no, without specific basis

9 | M = Mandatory by law

C = based on consent

10 | T = Tracking of people in quarantine

C = As evidence for the crime of breach of quarantine

O = other unspecified purposes

(N/A = no available evidence)

4.2.1 Processing users' data to monitor the spread of COVID-19

Contact-tracing applications

By 30 April 2020, contact-tracing apps were either already available (Austria, Bulgaria, Cyprus, Czechia, Lithuania, Spain (Basque region), Slovakia, Poland) or being developed or deployed (Belgium, Germany, Denmark, Estonia, France, Finland, Ireland, Italy, Latvia, Portugal) in most EU Member States. Croatia and Luxembourg are in preliminary discussions about developing apps. Evidence confirms that use of the contact-tracing apps available or under development in the EU is voluntary.

In addition to country-specific apps, a wide variety of privately developed contact-tracing apps are available for users to install, which are not authorised or endorsed by public authorities.²¹⁹ Lack of prior assessment by DPAs or other public bodies of these apps raises transparency, accountability, data protection and privacy concerns. For example, they may include processing of data for commercial or other purposes unrelated to COVID-19.²²⁰ **EU legislation** regulates software used to diagnose, prevent, monitor, treat or alleviate disease.

This section considers some key features of the country-specific apps highlighted by FRA's research network, Franet, in light of the guidance provided by the European Commission and the EDPB, namely:

- Legislation regulating contact-tracing apps
- Involvement of authorities, including DPAs, in developing and authorising apps
- Data that apps process for contact-tracing
- Centralised and decentralised data storage and access
- Apps' additional health-related functionalities
- Transparency of apps' functioning

Most Member States do not have in place and are not preparing specific legislation to regulate and set safeguards for contact-tracing apps, evidence collected by FRA suggests. Both the European Commission and the EDPB recommend that specific legislation determines the purposes of data processing by contact-tracing apps and prohibits the processing of data collected for further purposes. Only Belgium, France and Finland are preparing legislation to regulate contact-tracing apps; Italy enacted such legislation. In Luxembourg parliamentarians called on the government to propose legislation before an app becomes available.

Specific legislation is necessary to enforce data protection safeguards, for example prohibiting use of data collected for other purposes. The Italian government incorporated into legislation a set of safeguards proposed by a task force of experts.²²¹ These include: that the app should be voluntary and based on Bluetooth data; that personal data the authorities receive from the app should not be used for other purposes, unless anonymised and used only for statistical purposes once the purpose of their transmission is achieved; that storing of data is subject to sunset clauses; and that the app must not have access to or ask for users' phone contacts. The Finnish law will provide a specific legal basis and appropriate GDPR safeguards for the contact-tracing app, including explicitly disallowing further use for other purposes of data users choose to share with the health authorities and requiring a mandatory impact assessment prior to its release.²²² The proposed law in Belgium will require that apps should not trace the user all the time.²²³

Alongside legislation, procedures to examine contact-tracing apps before their release and the involvement of authorities in their development can ensure their conformity with data protection principles and GDPR requirements (see **Section 4.1.2** above on involvement of DPAs). In Italy, for example, the competent Ministry set up a task force of experts - including from the WHO and the national DPA (as observer) - to assess proposals for the development and authorisation of a contact-tracing app.²²⁴ The **Finnish parliamentary working group on information policy** is involved in a process to underline data protection and privacy requirements in advance. In other Member States, other authorities are also consulted or

involved in assessing the legality and/or efficiency of apps, such as the Attorney General in Ireland or the Ombuds institution in Croatia.²²⁵ However, media in Bulgaria, where the app is officially approved, noted that neither the authorities nor the developers of the app, submitted it for independent assessment of its data protection compliance.²²⁶

In the majority of Member States, contact-tracing apps are based solely on the processing of Bluetooth proximity data, as the European Commission and the EDPB recommend (Austria, Czechia, Germany, Denmark, Estonia, Croatia, France, Finland, Ireland, Italy, Latvia, Poland and Portugal). In Estonia, although the use of location data was discussed, the app will ultimately only process Bluetooth data.²²⁷ However, apps in Bulgaria, Cyprus and Lithuania are based on network and/or GPS location data; in Slovakia the available app uses both Bluetooth and location data.

Evidence confirms that contact-tracing apps mostly take a decentralised approach, with users' data (such as keys, identifiers, etc) produced and stored locally on their devices (Austria, Cyprus, Germany, Estonia, Finland, Ireland, Latvia, Poland and Portugal). In some Member States, authorities can have limited access to users' data: in Estonia, Poland and Finland, users can voluntarily share their Bluetooth proximity data with health authorities.²²⁸ In Portugal, a user diagnosed with COVID-19 would have to authorise a health professional to share this data anonymously to warn others.²²⁹ However, in Belgium, Bulgaria, Denmark, Czechia, France, Spain, Lithuania, Italy and Slovakia, contact-tracing apps use centralised, so-called 'backend', models where users' data are stored and processed on a central server.

The European Commission and EDPB do not specifically advocate either approach. The European Parliament, however, proposes the use of decentralised models by Member States.²³⁰ The choice between systems prompted much discussion amongst academia, NGOs and public authorities. These exchanges highlighted issues around the risk of function creep, identification of data subjects or vulnerability to cyberattacks, with centralised systems attracting particular concern.²³¹

Contact-tracing apps in Austria, Bulgaria, Denmark, Spain (Basque region), Latvia, Lithuania, Poland and Slovakia also include further health functionalities, such as symptom reporting, medical screening and communication with health authorities. For example in Denmark, the app informs users if their COVID-19 test is positive.²³² **The app available in Lithuania** enables daily coronavirus symptom tracking, and the receiving of health advice and information. In Austria, a draft law would allow voluntary screening functionalities to be added to the existing contact-tracing app to enable users to transmit personal and health data to the health authority.²³³ Combining such functionalities in one app could lead to 'function creep'. The European Commission stresses that users should be able to provide their consent separately for each of an app's functionalities. In Bulgaria, Denmark, Germany, Italy, Spain and the Netherlands, different apps are available for processing and communicating health data.

Evidence gathered by FRA shows that the source-code of tracing apps is or will be made public in most EU Member States, enhancing transparency (see Table 2). For example in Austria, a review of the app's source code by independent research organisations led the developer to make privacy improvements.²³⁴ In Czechia, the app is also **assessed by independent research institutions**; health authorities in Ireland promise that the source code will be made public when the app is released.²³⁵ In Denmark, Spain (Basque region) and Lithuania, however, the source code of the app is not publicly available.

Health reporting applications and websites

Evidence collected by FRA indicates that health reporting apps and websites exist in Bulgaria, Croatia, Denmark, Germany, Greece, Italy, Slovenia and Spain. These are different from tracing apps. They allow users to voluntarily upload their data and symptoms to map the spread of COVID-19 and to provide this information anonymously or publicly to health authorities. In Spain, for example, one available app enables daily coronavirus symptom reporting, the

receipt of health advice and information, but also geo-tracking for localised warnings.²³⁶ In Germany, the app claims to detect early symptoms of COVID-19 and to map the geographical spread of the virus.²³⁷

These tools also raise privacy and data protection issues. In Spain, for example, the self-assessment apps raise concerns about the possibility to geolocate the user and collect personal data such as mobile phone numbers.²³⁸ The **Spanish Data Protection Authority set out the principles such apps must respect**, underlining that the COVID-19 crisis should not lead to the suspension of data protection rights. In Croatia, experts highlighted issues linked to the obligatory sharing of users' mobile numbers, and the lack of transparency as to access rights, storage periods, the processing of the data shared and the purposes of processing.²³⁹ The German Federal Commissioner for Data Protection stressed the need to determine the purposes of data processing and other data protection safeguards, such as storage periods.²⁴⁰ Tech experts also expressed concerns about the app.²⁴¹ The Swedish health authorities paused the launch of a tool to map people with COVID-19 symptoms after authorities and experts expressed concerns.²⁴²

In Slovenia, the Information Commissioner received numerous complaints on the website processing self-reported health data. The Commissioner identified weaknesses in the website, such as lack of proper encryption and the collection of personal data identifying the subjects. Accordingly, the Commission asked the website operators to conduct a data protection impact assessment, ensure the legality of the data processing and inform the data subjects. The website shut down but is now again online, reportedly after complying with the Commissioner's requirements.²⁴³

4.2.2 Processing of users' telecommunication data

Both the **GDPR** and the **ePrivacy Directive** allow flexibility for the adoption of proportionate legislation in emergency situations. According to Article 23(1) of the **GDPR**, personal data rights may be restricted for reasons of public health. Article 15 of the **ePrivacy Directive** exceptionally allows authorities to access and process traffic and location data from telecommunication providers in cases of threats against public or national security or for preventing, prosecuting, investigating and punishing serious crimes.²⁴⁴ Such processing is also allowed for the protection of the rights and interests of others.²⁴⁵ Any derogations or restrictions must comply with the Charter respect the essence of the rights and freedoms at stake and be necessary and proportionate.

Access and processing of traffic and location data

Evidence provided to FRA shows that, by late April 2020, Bulgaria, Czechia, Hungary, Latvia, Poland and Slovakia passed legislation allowing their health and police authorities to access and process traffic and location data from telecommunication providers to track individuals in the context of COVID-19. Lithuania is also preparing similar legislation.²⁴⁶

In Estonia, location data can be used as evidence against people prosecuted for breaching quarantine and isolation measures.²⁴⁷ In Hungary, new laws give health, police and immigration authorities and the Minister of Innovation and Technology powers to access various personal data, including telecommunication data.²⁴⁸ Access to users' data does not depend on consent by the data subject in Estonia, or judicial authorisation in Hungary, Lithuania, Latvia, Poland and Slovakia. In Czechia, the data subject's consent is required, authorities cannot

Tracing allows cases to be located anonymously. The personal data - address, telephone number, etc. - available to the call centers-15 [emergency in France] cannot be used, at least at the present moment. So, major companies are offering completely anonymous digital solutions. These are transforming cases into points on a map, but I don't know how to make a dot wear a mask, nor how to help him protect his relatives. [FRA translation]

Prof. Renaud Piarroux, Head of the Parasitology Department at the Pitié-Salpêtrière Hospital-Paris, interview: Coronavirus : « Il faut cartographier les cas de porteurs du virus et renforcer la surveillance là où existent des clusters », **Le Monde, 9 April 2020**

use such data as evidence in criminal proceedings, and must delete them no later than six hours after processing,²⁴⁹ in Bulgaria, the courts are notified and must approve such access.²⁵⁰ Individuals in mandatory quarantine in Poland are obliged to use an app to self-report symptoms, which also informs the police of their geolocation to monitor their compliance with quarantine rules.²⁵¹

Various actors expressed significant concerns about processing of such data. A group of parliamentarians in Bulgaria challenged the relevant rules before the Constitutional Court, claiming violation of the right to privacy and to the confidentiality of correspondence.²⁵² A constitutional complaint against the law allowing access to telecommunication data for COVID-19 purposes was also filed in Slovakia.²⁵³ Human rights and tech associations raised concerns about the powers to use location data for tracking individuals in Denmark,²⁵⁴ the lack of information on how and for what purposes traffic and location data are processed in Hungary,²⁵⁵ and the lack of transparency and potential for abuse of geo-tracking people in quarantine in Romania.²⁵⁶ In Lithuania, a draft bill allowing access to location and traffic data of users also attracted criticism.²⁵⁷

These concerns prompted several governments to change track. In Germany, the Health Minister, after criticisms from politicians and the Federal Commissioner for Data Protection, withdrew a draft legislative amendment to allow health authorities to obtain the location data of users.²⁵⁸ A similar amendment was withdrawn before its second reading in the Croatian parliament after criticism from NGOs, academia and the Ombuds body Office.²⁵⁹

Access and processing of aggregate mobility data

Evidence collected by FRA shows that authorities in Austria, Bulgaria, Croatia, Bulgaria, France, Germany, Denmark, Estonia, Finland and Slovakia are using aggregate data from telecommunication providers for statistical and other purposes relating to COVID-19. According to Recital 26 of the **General Data Protection Regulation**, anonymised data are not considered personal data, provided that individuals cannot be identified. In Bulgaria, such data are processed only with regard to persons leaving and entering the country from abroad, provided they consent.²⁶⁰ Eleven French universities will have access to aggregated data from Facebook for research purposes, including geolocation and traffic data and 'social' maps of users' interaction.²⁶¹ Austria, Estonia, Croatia and Slovakia have particular legislation allowing such processing of data.²⁶² In Austria, Denmark, Estonia and Germany, the national DPAs are involved in determining the lawfulness and conditions of this type of processing.²⁶³

However, concerns remain. In Germany and Denmark, for example, there are fears that anonymisation can be reversed and third parties can access the data.²⁶⁴ In Austria, the law allowing processing of identification and movement data by telecommunication providers so they can send SMS warnings to end users without their consent raises data protection issues.²⁶⁵

4.2.3 Other processing of users' data

While mobile applications are the focus of much political and public attention, they are far from the only examples of technology applied during the Covid-19 pandemic. A few examples from the evidence collected by FRA illustrate the wide range of purposes technology is being used for, each of which raises concerns about data protection and privacy. The examples illustrate the active engagement of DPAs in this area.

- Countries including Italy, Greece and Hungary use drones to monitor compliance with physical distancing measures in public spaces.²⁶⁶ In Croatia drones also record people's temperature.²⁶⁷ Processing of any images or other personal data captured by drones requires the application of data protection safeguards.²⁶⁸ A NGO in Greece highlighted

that **legislation** on drone surveillance does not include any specific data protection guarantees and does not explicitly refer to data protection legislation,²⁶⁹ issues raised by the Greek DPA in past reports.²⁷⁰

- DPAs highlighted that public and private actors are using thermal cameras to measure people's temperature, especially in the workplace. The **Portuguese DPA underlined the illegality of such practices** by employers. The Dutch and Cypriot DPAs received complaints or inquiries about such practices; the Dutch DPA warned it could issue fines if breaches are found,²⁷¹ and the Cypriot DPA cautioned that their use should conform to the GDPR.²⁷² The Spanish DPA also raises concerns about the legality of such tools, emphasising the lack of prior authorisation by health authorities.²⁷³
- Technology is a crucial component of the distance learning implemented across the EU during the pandemic (see Section 2.2). The Italian Ministry of Education indicated that an appropriate legal basis is not consent, but that such processing is necessary for the performance of a task carried out in the public interest. However, in countries such as the Netherlands, Sweden and Italy, authorities raised privacy and data protection concerns, particularly regarding cybersecurity.²⁷⁴ DPAs in Greece, the Netherlands, Portugal, Sweden, Italy and Lithuania issued guidelines to ensure that technological solutions for distance teaching conform to data protection rules. In Italy, the **DPA stressed that data processing for teaching purposes cannot be processed for other purposes**. The **joint statement from the Council of Europe** offers clear guidance on how to achieve privacy by design in this context.
- The confinement measures implemented by some Member States require citizens either to send an SMS, present a written declaration, or both. The media in France expressed concern about the new online version of the permission form, although the Minister says it does not involve processing of personal data.²⁷⁵ Despite the comprehensive legal framework, civil society in Greece expressed concern that the data processor and data protection officer, storage periods and further processing of users' data are not clearly identified.²⁷⁶ The Bulgarian government established special rules for the collection, storage and processing of the declaration following the recommendation of the national DPA.²⁷⁷

Finally, evidence collected by FRA indicates that some Member States have instigated mechanisms to collect extensive personal data as part of their efforts to contain the spread of COVID-19.

- Member States such as Austria, Cyprus, Greece, Hungary, Bulgaria and Slovenia are compiling lists of COVID-19 patients.²⁷⁸ Health authorities in Slovenia, Greece and Hungary share such lists with the police and other enforcement authorities,²⁷⁹ while Austrian health authorities share lists of persons in mandatory quarantine with mayors for the provision of goods and services to people in quarantine. Concerns raised in Slovakia, Portugal and Romania relate to the publication of data allowing the identification of patients, especially in small towns.²⁸⁰ Hungary publishes lists of persons who died with COVID-19 including their age, gender and any chronic diseases, a practice strongly criticised by civil society.²⁸¹
- Laws adopted following the outbreak of COVID-19 in Hungary empower the Minister for Innovation and Technology and the 'Operative Corps', a body consisting by the Minister of Interior, the police, health and other authorities,²⁸² to acquire and process any kind of personal data from private or public entities.²⁸³ This includes traffic and location data from telecommunication providers, as general and indiscriminate data retention laws remain in force in Hungary, despite **relevant CJEU rulings**. Furthermore, under the newly enacted legislation, public bodies do not need to indicate the purpose of the data they request. According to news reports, the DPA was not consulted on these laws, and has no information on how the information requests are performed and for what purposes the requested data is processed.²⁸⁴
- In Denmark a broad executive order was adopted on 30 March to prevent spread of the coronavirus. This order allows broad access by the police or the Danish Patient Safety Authority to personal data including bank transfers and communication data.²⁸⁵ The aspects of the law concerning access to bank accounts and transactions were later repealed following criticism.²⁸⁶

Endnotes

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PROMOTING AND PROTECTING YOUR FUNDAMENTAL RIGHTS ACROSS THE EU —

The Coronavirus pandemic continues to interrupt everyday life in the EU in unprecedented ways. But the way it affects our societies is shifting. As governments gradually lift some of the measures put in place to contain the spread of COVID-19, new fundamental rights concerns arise: how to ensure that the rights to life and health are upheld as daily life transitions to a 'new normal'. This Bulletin looks at declarations of states of emergency, or equivalent, and how they came under scrutiny. It considers the impact on fundamental rights in important areas of daily life, and includes a thematic focus on the processing of users' data to help contain COVID-19, particularly by contact-tracing apps.

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