

Contribution

to the draft outline for General Comment No. 6 of the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Family (CMW) on the Convergence of the Convention and the Global Compact for Safe, Orderly and Regular Migration

The below compilation presents an overview of materials and research deliverables by the European Union Agency for Fundamental Rights (FRA) that are of relevance to the CMW's draft outline for General Comment No. 6.

This selection of relevant FRA documents speaks directly, from an EU perspective, to a number of the core objectives laying at the intersection of the UN Migrant Workers Convention and the Global Compact for Safe, Orderly and Regular Migration (GCM) that can be of help in the further discussions over the content of the envisaged General Comment No. 6. Objectives and related FRA materials are clustered around the four 'axis' presented in the CMW's [Concept Note](#).

AXIS No. 1 on ensuring that migration is voluntary, orderly and safe [select objectives from the GCM to which FRA outputs relate to]:

OBJECTIVE 5 (Enhance availability and flexibility of pathways for regular migration)

- Ad points d)-g): focus paper titled "[Legal entry channels to the EU for persons in need of international protection: a toolbox](#)" (October 2015). This paper presents a toolbox of possible schemes EU Member States could use to enable more persons in need of international protection to reach the EU without resorting to smugglers. It focuses on refugee-specific schemes as well as regular mobility schemes.
- Consider also the "[Thematic focus section: Family tracing and family reunification](#)" (September 2016).

OBJECTIVE 6 (Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work)

- Ad points e)-f) and j)-k): "[Severe labour exploitation: workers moving within or into the European Union – States' obligations and victims' rights](#)" report (SELEX I report – June 2015). The report identifies risk factors contributing to severe labour exploitation and discusses means of improving the situation. It highlights the challenges faced by EU institutions and Member States in making the right of workers, who have moved within or into the EU from third countries, to decent working conditions a reality. See also the report titled "[Protecting migrants in an irregular situation from labour exploitation – Role of the Employers Sanctions Directive](#)" (June 2021), which describes how the 25 EU Member States bound by the directive have been implementing its protective provisions, focusing on the impact these provisions have on migrant workers in an irregular situation who are victims of exploitation and other labour law violations.
- Ad point k): report titled "[Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States](#)" (August 2012). This report highlights some of the fundamental rights challenges affecting migrants in an irregular situation employed in the domestic work sector. It focuses on the experiences of irregular migrants, based on research conducted with (predominantly female) migrants and civil society organisations in 10 EU Member States.

Added to this, the second phase of the above-mentioned research project on severe labour exploitation (SELEX II) looks at the experiences and views of foreign workers in selected EU Member States, including migrants in an irregular situation as well as EU nationals, who have experienced criminal forms of labour exploitation. One of the published research outcomes concerns [the situation of migrant domestic workers](#) (2018), whereas another one looks into the ways and challenges [to protect migrant workers from exploitation in the EU, from the workers' perspectives](#) (2019).

OBJECTIVE 12 (Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral)

- Referring to children, ad point d): [Handbook on Guardianship for children deprived of parental care](#) (June 2014) and the follow-up report on "[Guardianship systems for unaccompanied children in the European Union – development since 2014](#)" (February 2022); as well as the report on "[Age assessment and fingerprinting of children in asylum procedures. Minimum age requirements concerning children's rights in the EU](#)" (April 2018) and the guide to enhance child protection focusing on the victims of trafficking titled "[Children deprived of parental care found in an EU Member State other than their own](#)" (June 2019).
- Consider also the [Thematic focus section on children](#) (February 2016); and the [Thematic focus section on separated children in the EU](#) (December 2016).

AXIS No. 2 on improving value-driven and evidence-based policymaking and public debate, and enhancing cooperation on migration [select objectives from the GCM to which FRA outputs relate to]:

OBJECTIVE 1 (Collect and utilize accurate and disaggregated data as a basis for evidence-based policies)

- FRA conducts regular **large-scale surveys** on diverse populations in the EU. These surveys allow for the disaggregation of data on different grounds – including ethnic, religious and immigrant background. All results are also disaggregated by respondents' background variables such as sex, age, education and employment status.
- Data from these surveys are published as **reports** (see below) and in the form of [interactive databases](#) on the Agency's website.
- Ad point c): **Second European Union Minorities and Discrimination Survey (EU-MIDIS II)** – see the results at:

Main findings: <http://fra.europa.eu/en/publication/2017/eumidis-ii-main-results>

Results focusing on Muslims: <http://fra.europa.eu/en/publication/2017/eumidis-ii-muslims-selected-findings>

Results focusing on migrant women:

<https://fra.europa.eu/en/publication/2019/second-european-union-minorities-and-discrimination-survey-migrant-women-selected>

The survey's interactive data tool: <http://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-data-explorer-second-eu-minorities-discrimination-survey>

The survey asked about experiences of discrimination, harassment, police stops, and rights awareness of immigrants, descendants of immigrants, and ethnic or national minorities. The survey also addressed integration through questions looking at respondents' sense of belonging and trust in public institutions, as well as openness

towards other groups. It was based on an EU-wide survey of 25,500 people with an immigrant or ethnic minority background, in all 28 EU Member States.

- Ad point d): [**Regular overviews of migration-related fundamental rights concerns**](#). Produced since September 2015 (the last one was issued in March 2022), these reports focus on the fundamental rights situation of people arriving in those EU Member States which are particularly affected by large migration flows.
- Ad point h): report "[**Together in the EU – Promoting the participation of migrants and their descendants**](#)" (March 2017). This report examines EU Member States' integration policies and action plans for promoting the participation of migrants and their descendants in society, focusing on non-discrimination, education, employment, language learning and political engagement.

OBJECTIVE 3 (Provide adequate and timely information at all stages of migration)

- Ad point d): report on "[**The duty to inform applicants about asylum procedures: The asylum-seeker perspective**](#)" (September 2010). Drawing on evidence from interviews with almost 900 asylum seekers, this report examines the information that asylum seekers have on the asylum procedure. In particular, it looks at the main source of information for asylum seekers, which type of information they receive, and when and how they receive it. The findings are also applicable in the context of informing migrants about their rights and situation.
- Consider also the focus paper titled "[**Fundamental rights implications of the obligation to provide fingerprints for Eurodac**](#)" (October 2015). This focus paper looks at measures that authorities can take to enforce the obligation of newly arrived asylum seekers and migrants in an irregular situation to provide fingerprints for inclusion in Eurodac, while putting emphasis on migrants' right to be fully informed about these procedures and their implications.
- See equally, more succinctly, the guidance on the "[**Right to information for authorities taking fingerprints for EURODAC**](#)" (January 2020).

OBJECTIVE 7 (Address and reduce vulnerabilities in migration)

- Comparative report "[**Fundamental rights of migrants in an irregular situation in the European Union**](#)" (November 2011). This report examines the legal and practical challenges facing EU Member States as they strive to guarantee irregular migrants' fundamental rights, many of them being vulnerable, and proposes ways to incorporate those rights into the policies, laws and administrative practices that affect migrants in irregular situations.
- Consider also the report "[**Cost of exclusion from healthcare – The case of migrants in an irregular situation**](#)" (September 2015). This report aims to estimate the economic cost of providing timely access to screening and treatment for migrants in an irregular situation, compared with providing treatment only in emergency cases. It presents an economic model to calculate such costs for two medical conditions: hypertension and prenatal care.
- Ad point c): "[**Thematic focus section: Gender-based violence**](#)" (June 2016); and "[**Thematic focus section: Migrants with disabilities**](#)" (September 2016).
- Ad points e)-f): [**Handbook on Guardianship for children deprived of parental care**](#) (see above). This handbook is designed to help standardise guardianship practice, ensuring also that it is better equipped to deal with also the specific needs of child victims of trafficking. It provides guidance and recommendations to EU Member States on strengthening their guardianship systems. It is accompanied by a comparative study titled "[**Report on guardianship systems for children deprived of parental care in the European Union**](#)", updated in [2022](#) (see above). These

studies explore the key features of guardianship systems put in place to cater for the needs of all children in need of protection, including child victims and those at risk of becoming victims of trafficking in human beings or of other forms of exploitation.

See also the report on "[Age assessment and fingerprinting of children in asylum procedures. Minimum age requirements concerning children's rights in the EU](#)" (mentioned above).

From the periodic migration-related overviews, consider also the [Thematic focus section on children](#) (February 2016); and the [Thematic focus section on separated children in the EU](#) (December 2016).

OBJECTIVE 17 (Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration)

- Ad points a)-c) and f): Focus section of a periodic migration overview titled "[Current situation in the EU: hate crime](#)" (November 2016). FRA data indicate that violence, harassment, threats and xenophobic speech targeting migrants remain pervasive and grave across the European Union, whether committed by state authorities, private companies or individuals, or vigilante groups.
- Ad point d): FRA guide entitled "[Preventing unlawful profiling today and in the future: a guide](#)" (December 2018). This guide explains what profiling is, the legal frameworks that regulate it, and why conducting profiling lawfully is both necessary to comply with fundamental rights and crucial for effective policing and border management. The guide also provides practical guidance on how to avoid unlawful profiling in police and border management operations.
- On fighting discrimination in a specific field, see the report on "[Inequalities and multiple discrimination in access to and quality of healthcare](#)" (March 2013). This study aims to shed light on the experience of multiple discrimination in healthcare. It looks at how 'multiple' discrimination is legally addressed and examines relevant case law with a special focus on healthcare.
- Ad point e): consider [FRA's Clarity tool](#). This interactive tool helps individuals, including migrants, to find the right non-judicial body to help them with their fundamental rights issue. By answering a few questions online, the tool lists bodies that may be able to provide assistance in the given situation.

AXIS No. 3 on protecting migrants through rights-based border governance measures [select objectives from the GCM to which FRA outputs relate to]:

OBJECTIVE 8 (Save lives and establish coordinated international efforts on missing migrants)

- Report titled "[Fundamental rights at Europe's southern sea borders](#)" (March 2013). This report examines the conditions at Europe's southern sea borders with respect to the most fundamental rights of a person - the right to life and the right not to be sent back to torture, persecution or inhuman treatment (*non-refoulement*). It looks at sea border surveillance and disembarkation procedures, as well as training and Frontex-coordinated operations.
- Fundamental rights issues at (sea) borders are also regularly covered in FRA's annual [Fundamental Rights Report](#), see the latest [here](#) (section 6.1).

OBJECTIVE 9 (Strengthen the transnational response to smuggling of migrants)

- Ad point d): focus paper on "[Criminalisation of migrants in an irregular situation and of persons engaging with them](#)" (November 2014). This report looks first at the punishments used for irregular entry or stay, when persons enter or stay in a

territory although they are not authorised to do so. It then examines the risk that those who help such migrants (providing humanitarian assistance) or rent out accommodation to them are punished for smuggling human beings, or facilitating their entry or stay.

- Consider also FRA's biannual updates on search and rescue NGO vessels in the Mediterranean Sea and legal proceedings against them – see the [latest update here](#) (June 2022).

OBJECTIVE 10 (Prevent, combat and eradicate trafficking in persons in the context of international migration)

- Ad points e)-h): "[Severe labour exploitation: workers moving within or into the European Union – States' obligations and victims' rights](#)" report (mentioned above) and the practical guide to enhance child protection focusing on the victims of trafficking titled "[Children deprived of parental care found in an EU Member State other than their own](#)" (see above).

Also consider the [Thematic focus section on trafficking in human beings](#) (May 2016); and some human trafficking-related parts of the report on "[Fundamental rights at airports: border checks at five international airports in the European Union](#)" (November 2014) (sub-section 3.2. and Conclusions).

OBJECTIVE 11 (Manage borders in an integrated, secure and coordinated manner)

- Report entitled "[Scope of the principle of non-refoulement in contemporary border management: evolving areas of law](#)" (December 2016). The report aims at encouraging fundamental-rights compliant approaches to border management, when operating within – or in cooperation with – third countries. It presents ten concrete scenarios, analysing possible risks of violating the principle of *non-refoulement*.

It is complemented with a [practical guidance](#) (available in 12 official EU languages) which contains **ten concrete suggestions** to EU Member States on how to reduce the risk of *refoulement* when cooperating with third countries at an operational level (also published in the *International Journal of Refugee Law*, Volume 29, Issue 4 [December 2017], pp. 711-715).

- Comparative report on "[Fundamental rights at land borders: findings from selected EU border crossing points](#)" (see above). Although FRA research shows that land border checks of third-country nationals are generally conducted routinely and take place without incident, a number of challenges affect travellers' fundamental rights. These range from disrespectful treatment to the failure to identify persons in need of protection and to refer them to relevant authorities or specialised institutions.
- [Report on fundamental rights issues at land borders](#) (December 2020), which looks at fundamental rights compliance at the EU's external land borders, focusing on the correct application of the safeguards in the European asylum acquis and the provisions of the Schengen Borders Code (Regulation (EU) 2016/399). See also the "[Practical guidance on border controls and fundamental rights at external land borders](#)" (July 2020), which offers practical tips (10 'dos' and 'don'ts') that will help border guards respect people's fundamental rights in their daily work.
- Ad point c): report titled "[Under watchful eyes – biometrics, EU IT-systems and fundamental rights](#)" (March 2018). This report outlines the fundamental rights implications of collecting, storing and using biometric and other data in EU IT systems in the area of border management and asylum. Also, on the impact of modern technology on fundamental rights, consider the report "[Fundamental rights and the interoperability of EU information systems: borders and security](#)" (June 2017).

OBJECTIVE 13 (Use immigration detention only as a measure of last resort and work towards alternatives)

- Paper on "[Alternatives to detention for asylum seekers and people in return procedures](#)" (October 2015). This paper maps less intrusive measures, usually referred to as 'alternatives to detention', which reduce the risk that deprivation of liberty is resorted to excessively.
- Thematic report titled "[Detention of third country nationals in return procedures](#)" (see above). This report tries to deconstruct the various elements of the right to liberty and the prohibition of arbitrary detention. It examined law and practice in all EU Member States on the deprivation of liberty of irregular migrants pending their removal against the applicable international and European human rights law framework.
- Ad point d): comparative report on "[Legal aid for returnees deprived of liberty](#)" (November 2021). This comparative report outlines to what extent legal aid is available to those held in pre-removal detention in the 27 EU Member States, and in North Macedonia and Serbia, during procedures related to their return. The report also examines when people are entitled to free legal aid and how this aid is funded, as well as who provides representation and various factors that limit the scope of legal aid.
- Ad point h): comparative report titled "[European legal and policy framework on immigration detention of children](#)" (June 2017). This report aims to support practitioners in implementing relevant policies in line with applicable law by outlining available European and international human rights law safeguards against unlawful and arbitrary detention. It also highlights promising practices towards the eradication of immigration detention of children.

OBJECTIVE 21 (Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration)

- Note on the "[Fundamental rights of migrants in an irregular situation who are not removed](#)" (April 2017). This note draws on past FRA materials on the fundamental rights of migrants in an irregular situation who cannot be removed. It draws attention to the obligation of EU Member States to provide these people with a certification of postponement of removal and to grant them access to core fundamental rights.
- Practical guidance on the "[Apprehension of migrants in an irregular situation – fundamental rights considerations](#)" (2012). This document gives operational guidance about the fundamental rights considerations of apprehending migrants in an irregular situation, which includes 'dos' and 'don'ts' for law enforcement officials. The guidance aims at avoiding certain practices to detect irregular migrants which may disproportionately discourage them from accessing essential services, such as health, education and legal services.
- Ad point b): FRA focus paper on "[Returning unaccompanied children: fundamental rights considerations](#)" (September 2019). Given that returning such children, or finding another durable solution, is a delicate matter, and doing so in full compliance with fundamental rights protections can be difficult, this focus paper aims to help national authorities involved in return-related tasks, including child-protection services, to ensure full rights compliance.
- Ad point f): FRA prepared an **overview table** on the [forced return monitoring systems in the EU Member States](#). An operational and effective forced return monitoring system means that there is a monitoring entity, independent from the return enforcing authority, which has been appointed and has carried out some monitoring activities during the period under review.

AXIS No. 4 on supporting the integration of migrants and their contribution to development [select objectives from the GCM to which FRA outputs relate to]:

OBJECTIVE 15 (Provide access to basic services for migrants)

- Ad points a-b) and d)-f): Comparative report "[*Fundamental rights of migrants in an irregular situation in the European Union*](#)" (mentioned above).

Consider also the report titled "[*Migrants in an irregular situation: access to healthcare in 10 European Union Member States*](#)" (October 2011). This report explores the access to healthcare granted to irregular migrants in 10 EU Member States and documents the legal, economic and practical obstacles that migrants in an irregular situation face in accessing healthcare in the selected EU Member States. It also proposes a number of ways to improve this access.

OBJECTIVE 16 (Empower migrants and societies to realize full inclusion and social cohesion)

- Reports titled "[*Together in the EU - Promoting the participation of migrants and their descendants*](#)" (mentioned above) and "[*Integration of young refugees in the EU: good practices and challenges*](#)" (November 2019).

Additionally, a general and comprehensive overview of EU and Council of Europe law on migration can be found in the FRA and ECtHR (2020), [*Handbook on European law relating to asylum, borders and immigration. Edition 2020*](#) (December 2020).

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