



Study to support the preparation of an EU initiative to address possible gaps in the legal protection against discrimination on grounds of racial or ethnic origin

Final Report

Contract No JUST/2021/PR/CNDI/EQUA/0050

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List of abbreviations

AGG	Allgemeines Gleichbehandlungsgesetzes (German General Act on Equal Treatment)
AI	Artificial Intelligence
AMA	Administrative Modernisation Agency
APP	Authorised Professional Practice
AT	Austria
BE	Belgium
BG	Bulgaria
BRÅ	Brottsförebyggande rådet (Swedish Crime Prevention Council)
CCC	Common Core Curriculum and Coast Guard Basic Training in the EU
CEPOL	The European Union Agency for Law Enforcement Training
CEPS	Centre for European Policy Studies
CERD	Committee on the Elimination of Racial Discrimination
Charter	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
CNCDH	Commission nationale consultative des droits de l'homme (French National Consultative Commission for Human Rights)
CNIL	Commission nationale de l'informatique et des libertés (French Commission on IT and Liberty)
CoE	Council of Europe
Comité P	Comité permanent de contrôle des services de police (Belgian Standing Police Monitoring Committee)
CPS	UK Crown Prosecution Service
CSO	Irish Central Statistics Office
CY	Cyprus
CZ	Czechia
DE	Germany
DFB	Deutscher Fußball-Bund e.V. (German Football Association)
DFL	Deutsche Fußball Liga e.V. (German Football League)
DG JUST	Directorate-General for Justice and Consumers
DG SANTE	Directorate-General for Health and Food Safety
DK	Denmark
ECCAR	European Coalition of Cities against Racism
ECHR	European Convention on Human Rights
ECRI	European Commission against Racism and Intolerance
ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights

EE	Estonia
EED	Employment Equality Directive
EJTN	European Judicial Training Network
EL	Greece
ELI	European Law Institute
ENAR	European Network Against Racism
ERA	Academy of European Law
ES	Spain
ESA	Irish Equal Status Acts
ETA	Hungarian Equal Treatment Act
EU	European Union
EU-MIDIS II	FRA Second EU Minorities and Discrimination Survey
FEANTSA	European Federation of National Organisations working with People Experiencing Homelessness
FI	Finland
FIFA	International Federation of Association Football
FR	France
FRA	Fundamental Rights Agency
FRONTEX	European Border and Coast Guard Agency
GDP	Gross Domestic Product
GDPR	General Data Protection Regulation
HR	Croatia
HRW	Human Rights Watch
HU	Hungary
ID	Identity Card
IE	Ireland
IGAI	Portuguese Inspectorate General of Home Affairs
IGGN	Inspection Générale de la Gendarmerie Nationale (French General Inspectorate of the National Gendarmerie)
IGPN	Inspection Générale de la Police Nationale (French General Inspectorate of the National Police)
INM	Institutul National al Magistraturii (Romanian National Institute for Magistracy)
IOPC	UK Independent Office for Police Conduct
IPCAN	Independent Police Complaints Authorities Network
ISD	Initiative Schwarze Menschen in Deutschland
IT	Italy
IUC	International Urban Cooperation

JHA	Justice and Home Affairs
KMK	Kultusministerkonferenz (German Standing Conference of the Ministers of Education and Cultural Affairs)
LADG	Berliner Landesantidiskriminierungsgesetz (Berlin State Anti-Discrimination Act)
LGBTIQ	Lesbian, gay, bisexual, transgender/transsexual, intersex and queer/questioning
LT	Lithuania
LU	Luxembourg
LV	Latvia
MET	Metropolitan Police in London
MS	Member State
MT	Malta
NAP	National Action Plan
NGO	Non-governmental organisation
NL	The Netherlands
OBERAXE	Observatorio Español del Racismo y la Xenofobia (Spanish Observatory on Racism and Xenophobia)
ODIHR	Office for Democratic Institutions and Human Rights
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPC	Open Public Consultation
OSCAD	Osservatorio per la sicurezza contro gli atti discriminatori (Italian Observatory for Security against Acts of Discrimination)
OSCE	Organization for Security and Co-operation in Europe
PACE	Police and Criminal Evidence Act
PADA	Bulgarian Protection Against Discrimination Act
PIPE	Programa para la Identificación Policial Eficaz (Spanish project - Programme for Effective Police Identification)
PL	Poland
PNR	Passenger Name Record
PSED	UK Public Sector Equality Duty
PT	Portugal
RED	Racial Equality Directive
REFA	Belgian Racial Equality Federal Act
RO	Romania
SE	Sweden
SI	Slovenia
SK	Slovakia

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STEPSS	Strategies for Effective Policing and Search
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UEFA	Union of European Football Associations
UK	United Kingdom
ULB	Université Libre de Bruxelles
UN	United Nations
UNAR	Ufficio Nazionale Antidiscriminazioni Razziali (Italian National Office against Racial Discrimination)
UNHCR	United Nations High Commissioner for Refugees
UNIA	Centre interfédéral pour l'égalité des chances (Belgian Centre for Equal Opportunities and Opposition to Racism)
VDAB	Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding (Belgian public employment service)
WRC	Irish Workplace Relations Commission
YOTS	UK Youth Offending Teams

Abstract

The Study, carried out based on desk research and stakeholder consultations, suggests that possible discrimination in the exercise of public authority by law enforcement, constitutes the main area outside the **material scope** of the RED, where racial or ethnic discrimination seems to occur. Non-legislative measures (e.g., enhanced training; the use of tools to increase the transparency of police actions; more diversity in recruitment) seem to be the most suitable to address the existing challenges. The Study also revealed potential gaps in the **protection mechanisms/measures** provided by the RED. To address these potential gaps, the Study recommends as the most suitable ways forward, a larger role for equality bodies (e.g., in connection with equality data collection and use); and several non-legislative measures (e.g., reinforced channels for exchanging good practices; more guidance on what could be considered as an effective, proportionate and dissuasive sanction). To a certain extent, and only within the limits of the EU's competences to act, the Study also identified a few possible EU-level legislative options (e.g., possible introduction of a horizontal EU legislation covering all grounds of discrimination) as well as some potential legislative actions that the Member States may consider (e.g., requirement to introduce equality duties). According to the Study, systematic/comprehensive responses might be necessary to address some of the issues, which are often structural in nature.

Executive summary

This Final Report is prepared under the European Commission (DG JUST) 'Study to support the preparation of an EU initiative to address possible gaps in the legal protection against discrimination on grounds of racial or ethnic origin' (Study).

The Study, covering **all 27** EU Member States, **aimed** to map possible (legal and non-legal) gaps in protection against racial or ethnic discrimination, as offered by the Racial Equality Directive (RED) in particular, and aimed to provide directions for possible EU actions to tackle the potential gaps.

The Study entailed the completion of extensive **desk research** at both EU- and national-levels; and **stakeholder consultations** (i.e., survey, semi-structured interviews, survey, open public consultation, workshop). Whilst official quantitative equality data is scarcely available, there is undeniable evidence suggesting that racial or ethnic discrimination remains a persistent problem in the EU.

Potential material areas beyond those already covered by the RED

Main area of potential discrimination beyond those already covered by the RED

The Study concludes that despite the broad material scope of the RED and a range of other EU- and national-level instruments aiming to address the issue, possible racial or ethnic discrimination linked to public sector actions entailing the **exercise of public authority by law enforcement** (police) does not seem to be (sufficiently) covered. There are indications of the existence / perceived existence of discriminatory racial or ethnic profiling by the police in relation to stop and search activities and identity checks, in particular. Potential discrimination also seems to manifest in the increased use of force by the police towards certain racial or ethnic groups. Police actions taken in the context of the COVID-19 pandemic (e.g., increased use of fines for non-compliance with COVID-19 restrictions) also seem to suggest possible arbitrary attitudes towards certain racial or ethnic groups. Discriminatory policing (e.g., in the context of preventive policing or profiling) may also be caused or amplified by the use of artificial intelligence technologies (e.g., automatic decision-making, algorithmic decision-making).

The issues above **fall outside the material scope of the RED**. However, **some of the gaps** in protection appear to be **addressed** by other **EU law** (e.g., by Directive (EU) 2016/680) or **national law** instruments. The extent of protection in relation to **stop and search activities** and **identity checks** by the police and discriminatory profiling, however, remains somewhat curtailed by the specific scope and purposes of the instruments identified. Moreover, the implementation of legal protection at the national level could be improved to ensure better protection.

The Study mainly suggests **non-legislative interventions** to address the issues above. It takes into account the fact that some national-level and EU-level initiatives are already on-going to tackle potentially discriminatory police practices. Hence, most recommendations aim to scale-up on-going efforts. Moreover, due consideration is given to the necessity of having additional data to better understand the extent and nature of the problem. The related recommendations are referred to in the Box below.

Box 1: Recommendations to tackle potentially discriminatory police practices

It is recommended to reinforce:

- **Police training** efforts at both national- and EU-levels (e.g., by the European Union Agency for Law Enforcement Training - CEPOL) for police officers and leaders within the police on e.g., the consequences of potential discriminatory attitudes, applicable laws, the non-discriminatory use of artificial intelligence technologies;

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- The **use of tools that could enhance the transparency of police actions** which could, in turn increase public trust in police actions. Potential tools to consider by Member States could be stop and search forms and the use of body cameras;
- **Diversity in recruitment**, thereby ensuring more racial or ethnic diversity within the police. Such scaling up efforts, to be considered by the Member States, could ultimately diminish the risk of discrimination and bias attitudes towards certain groups and could contribute to rebuilding trust in the police;
- **Data collection efforts** by encouraging Member States and EU-level organisations (e.g., European Union Agency for Fundamental Rights - FRA) to step-up their data collection efforts;
- National-level efforts linked to closer **dialogue, cooperation and collaboration with local communities** by integration days for example, to eliminate bias stereotypes and reinforce trust in the police;
- **Accountability/control/oversight over the police.** There is a clear need to reinforce complaint mechanisms at national-level, thereby facilitating the reporting of potentially discriminatory incidents. It was also recommended for Member States to consider the introduction/reinforcement of independent control over police actions. At the EU-level, further collaboration with the Independent Police Complaints' Authority Network (IPCAN), an informal forum of several European non-police oversight bodies, could be considered as well as the development of an EU Code of Police Ethics;
- **Positive actions / equality duties.** At the national-level, action plans or similar setting out positive duties, including the duty to carry out fundamental rights' impact assessments before certain police actions (e.g., the use of AI) could reduce possible discrimination.

Whilst comprehensive **legislation** against racial or ethnic discrimination is indispensable, the Treaties confer limited power on the EU to legislate in connection with public actions by law enforcement authorities. Hence, all legislative recommendations identified are for the Member States to consider. These include the possible extension of legal protection against racial or ethnic discrimination to the exercise of public authority by law enforcement. Member States could also consider the possible extension of the national equality body's mandate to all areas where discrimination occurs. The review of the existing regulatory framework that governs the operation of law enforcement authorities, with a view to strengthen non-discrimination standards and practices, could also be considered.

Other areas of potential discrimination beyond those already covered by the RED

Based on less extensive/conclusive evidence, the Study also points to the **potential** occurrence of **racial or ethnic discrimination** in relation to the exercise of authority by the judiciary (manifesting in e.g., the imposition of harsher penalties; more frequent use of coercive measures) and authorities in charge of immigration (manifesting in e.g., racial or ethnic profiling while carrying out border checks); when racial or ethnic origin is seen as a threat or raising suspicion in public spaces; and public sector interventions involving the exercise of public authority by bodies of public administration beyond law enforcement and judiciary (manifesting in e.g., verbal or physical harassment against racial or ethnic minority groups; potentially discriminatory housing evictions, forced expulsions, residential segregation).

Moreover, the Study identified some '**other/grey areas**' where: (i) problems exist; however in the absence of guidance (e.g., from the Court of Justice of the European Union - CJEU) on concepts used in the RED it is unclear if the area falls under the RED (potential area of relevance is access to goods and services that are not advertised to the public, as well as access to and supply of free services); (ii) evidence suggests that a problem exists (in an area beyond the RED), but data are insufficient to conclude that discrimination is the root cause of the problem; (iii) data are insufficiently clear or robust to point at a clear and significant issue of discrimination. Areas potentially falling under the latter two categories include the underrepresentation of racial or ethnic minorities in culture, sports or research and innovation; the limited democratic participation and representation of people with a racial or ethnic background; higher risk of homelessness for certain racial or ethnic groups; or certain racial or ethnic groups benefitting less from health promotion and disease prevention.

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As the EU's legislative competence to act in relation to the specific issues identified remains limited (i.e., issues falling under national, shared or supportive competences), it is recommended to mainly consider **non-legislative measures**. In areas where the EU's competence to legislate is limited, the Member States could still consider the adoption of legislative changes.

The **non-legislative measures** identified by the Study as potential options to better tackle racial or ethnic discrimination in these fields are to a large extent similar to those identified for law enforcement. Scaling up training efforts; diversity in recruitment; equality data collection; dialogue, cooperation and collaboration with local communities and positive/equality duties are among the measures that were also identified in connection with these other potential gaps. The Box below provides examples of some additional measures identified by the Study. Most recommendations, stemming from the EU's limited competences to act or the lack thereof, are for the Member States to consider.

Box 2: Recommendations to tackle potentially discriminatory practices in other areas

- **Recommendations to tackle potential discriminatory practices by the judiciary:** development of potential indicators to better gauge the existence and extent of racial or ethnic discrimination in the functioning of the criminal justice system.
- **Recommendations to tackle potential discriminatory practices by bodies other than law enforcement and judicial authorities:** appointment of specialised officers within public authorities to ensure a better monitoring of potential discriminatory practices. In connection with housing evictions, it is recommended for the Member States to consider the development of housing rights' standards to protect against discriminatory evictions. The development of guidelines to ensure that eviction orders of local authorities meet the necessary requirements of proportionality and legality was also recommended. Better promotion and dissemination of information on eviction-related rights is also recommended, in particular to address the presumed insufficient awareness of lawyers, NGOs and courts, etc. on the matter. It was recalled that the case-law of the European Court of Human Rights and the Court of Justice of the European Union is not widely known amongst practitioners. Hence, it was also recommended to prepare a catalogue of relevant case-law. Regarding desegregation, it is recommended to further consider the measures identified in Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation.
- **Recommendations to tackle potential discrimination practices in 'other/grey' areas:** it is recommended to develop further guidance on the notion of 'services'.

Potential gaps in the protection mechanisms/measures

The RED already covers some protection mechanisms/measures. The Study identified some **potential gaps** in relation to these **already existing mechanisms** (e.g., sanctions, defence rights); as well **mechanisms/measures** that could enable the use of more **proactive/preventive approaches** while tackling discrimination (e.g., national level plans, such as National Action Plans, or the Roma national strategic frameworks, setting out longer-term priorities for tackling racial or ethnic discrimination; equality duties; equality data collection).

The Study also points to potentially insufficient protection against structural/systemic discrimination, intersectional discrimination and discrimination on multiple grounds.

While developing the recommendations, due consideration was given to the fact that initiatives to address some of the potential gaps already exist at both national- and EU-levels. The related recommendations hence mainly suggest actions that could **reinforce existing initiatives**.

The Study found that **equality bodies** given their role/competences (especially if reinforced at the EU-level) could enhance the effectiveness of some of the protection mechanisms/measures. Hence, the Study recommends a larger role for equality bodies in relation to the protection mechanisms/measures outlined in the Box below.

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Box 3: Recommendations linked to the role of equality bodies

- **Information, awareness raising, guidance and training:** Article 13 of the RED requires equality bodies to provide independent assistance to victims. Equality bodies should be provided with the mandate and resources necessary to fulfil this role. Moreover, it is recommended to extend the mandate of equality bodies by requiring them, potentially by EU legislation, to hold more responsibilities in connection with awareness raising (e.g., campaigns about equality law and victims' rights, information about the role of the equality body, provision of training);
- **Collection and the use of equality data:** equality bodies should be at the centre of promoting and mainstreaming equality. To fulfil this mandate, it is essential to ensure that equality bodies have access to all relevant equality data. One possible way of supplying sufficient equality data is to further encourage equality bodies to collect more data on their activities and to gather more equality data via surveys, where there is a gap. Another way to supply sufficient equality data is to ensure that all national-level authorities involved in equality data collection cooperate with each other and give equality bodies access to equality statistics collected by others. The equality bodies could be involved in / facilitate this inter-institutional cooperation. Moreover, equality bodies could support other national-level bodies in their data collection efforts by providing them with guidance and information on data collection via roundtable gatherings or similar;
- **Dialogue, cooperation and collaboration:** Member States could be recommended to further encourage equality bodies in engaging in dialogues and cooperation with other relevant national authorities and bodies, as well as with the private sector and civil society organisations. Member States could also be recommended to ensure that equality bodies are consulted on policy and legislative developments that are linked to their mandates. Likewise, the possibility of allowing equality bodies to issue opinions on related policy and legal initiatives, could be considered.
- **Protection against multiple/intersectional discrimination:** it could be recommended for Member States to entrust all equality bodies with the promotion of discrimination on all grounds;
- **Defence rights:** the number of discrimination related complaints remains low in the EU. Underreporting is a complex phenomenon that could potentially result from e.g., the lack of knowledge of available complaint mechanisms; the lack of trust in the success of complaints; practical obstacles. It is recommended for equality bodies to take a larger role in related awareness raising and to better assist victims in the process of filing complaints. Equality bodies could best assist victims of discrimination in complaint cases when provided with legal standing as well as the resources necessary to exercise litigation powers. Member States could also envisage, as forms of assistance to victims, the possibility of engaging equality bodies in activities of mediation and conciliation and allowing equality bodies to submit oral/written statements to national courts in discrimination cases. It could also be recommended for Member States to ensure that victims could file discrimination related complaints directly with the equality bodies. To ease access to complaint mechanisms and thereby to better address underreporting, Member States could be recommended to ensure/reinforce the local/regional presence of equality bodies;
- **Sanctions:** equality bodies, when entrusted at the national-level with decision-making powers, could potentially play a role in applying effective, proportionate and dissuasive sanctions. Member States could also be requested to ensure that equality bodies receive mandatory feedback on the implementation of their decisions from their recipients, which could be published in an anonymised format. Moreover, Member States could be requested to consider the introduction of sanctions in case of non-compliance with the equality bodies' decisions.

The Study also identified that **non-legislative measures** could offer solutions to some of the gaps in protection identified. These non-legislative measures, as outlined in the Box below could further reinforce/operationalise existing national- and EU-level initiatives.

Box 4: Non-legislative recommendations

- **Information, awareness raising, guidance and training:** Member States could also consider the introduction of more discrimination related topics in school curricula;
- **Collection and the use of equality data:** measures to reinforce the collection of both quantitative and qualitative equality data (e.g., by additional surveys, the increased use of situational testing) should be considered;
- **Diversity in the public sector:** national-level measures to further engage public sector organisations (e.g., by encouraging them to join the European Diversity Charters) in ensuring more diversity at the work-place could be considered;

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- **Dialogue, cooperation and collaboration:** it is recommended for Member States to establish partnerships / reinforce cooperation with the media as well as with persons affected by everyday racism;
- **Equality duties / positive action:** Member States should be further encouraged by the EU to promote the introduction of equality duties (e.g., by means of prescribing these as legal duties) in the day-to-day operation of public authorities and private actors;
- **Defence rights:** it is recommended to develop further guidance on the application of burden of proof rules, as currently the application of the principle is hindered by implementation related challenges. To facilitate reporting, the establishment of local mechanisms for reporting and means to ensure the anonymisation of victims could be considered. Whilst legal standing for certain organisations is envisaged by the RED, the exercise of litigation powers is often hindered by capacity constraints. Hence, means to support these organisations could be considered by the Member States, for example by establishing dedicated funds for strategic litigations. The introduction of fast-paced procedures could also be considered, as discrimination cases tend to be lengthy. Adequate resources should also be provided to victims to facilitate them during the complaint proceedings. These could extend to translation and interpretation services, as well as to means to alleviate the financial burden of proceedings (e.g., access to legal aid). Moreover, the removal of the rule that the losing party should pay legal and judicial costs could be encouraged;
- **Sanctions:** more guidance (e.g., good practices examples) could be developed at EU level on what could be considered as effective, proportionate and dissuasive sanctions. Moreover, Member States could consider the imposition of punitive, higher sanctions, serving as deterrents towards perpetrations. Finally, consideration could be given to alternative/preventive sanctions (as opposed to reparatory sanctions), e.g., imposing, as a sanction on defendants, the obligation of setting up some positive actions;
- **Good practices:** the Study identified several good practices that already exist at national- and EU-levels. It is recommended to reinforce the EU's efforts of disseminating these good practices.

To a more limited extent, national **legislative solutions**, as outlined in the Box below, could also be considered to address potential gaps linked to certain protection mechanisms/measures

Box 5: National legislative recommendations

- **Collection and the use of equality data:** national-level legislation could potentially envisage the mandatory collection of equality data. Soft law measures setting out detailed requirements could accompany the legislative intervention;
- **Equality duties:** national legislation in addition to a provision on positive actions could include guidance on the introduction of equality duties;
- **Intersectionality:** Member States could amend their national anti-discrimination legislation to cover intersectionality and multiple discrimination.

The adoption of the pending Equal Treatment Directive, a horizontal piece of legislation at EU-level covering four different grounds (religion or belief, disability, age and sexual orientation), could also contribute to address discrimination on multiple grounds.

As a final point, the Study acknowledges that racial or ethnic discrimination is to a large extent intertwined with structural/systemic discrimination, as racism often results from old (at times unconscious) stereotypes and prejudices which are deeply embedded in our society. To tackle racial or ethnic discrimination means tackling **structural/systemic shortcomings** should also be considered. This could necessitate the development of systemic responses at national level, *'involving a comprehensive set of measures that address the different factors that lead to their persistence'*.

1 Introduction

This Final Report is prepared under the 'Study to support the preparation of an EU initiative to address possible gaps in the legal protection against discrimination on grounds of racial or ethnic origin' (Specific Contract No. JUST/2021/PR/CNDI/EQUA/0050 under Framework Contract No. JUST/2020/PR/03/0001).

Section 1 – Introduction is structured as follows:

- *Section 1.1* – Section outlining the context, objectives and scope of the Study;
- *Section 1.2* – Section detailing some methodological considerations;
- *Section 1.3* – Section providing a visual overview of the structure of the Final Report.

1.1 Study context, objectives and scope

1.1.1 Study context

The EU is founded on **equality** and respect for **human rights**. One of its principal common values is non-discrimination (Article 2 **TEU**¹). In addition to the aim of combating discrimination in the development and implementation of policies and activities (Article 10 **TFEU**²), Article 20 of the Charter of Fundamental Rights of the European Union³ (**Charter**) asserts that everyone is equal before the law and Article 21 prohibits discrimination on a range of grounds - including race and ethnicity.

The EU has enacted specific legislation on equal treatment based on racial or ethnic origin, i.e., the Racial Equality Directive or **RED**⁴. The relatively broad material scope of the RED, as set out in its Article 3(1), provides protection against racial or ethnic discrimination within the economic and social fields listed in the Box below.

Box 6: Material scope of the Racial Equality Directive (RED)

Article 3(1) of the RED

- (a) Conditions for access to employment and self-employment and to occupation including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- (b) Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- (c) Employment and working conditions, including dismissals and pay;
- (d) Membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;
- (e) Social protection, including social security and healthcare;
- (f) Social advantages;
- (g) Education;
- (h) Access to and supply of goods and services available to the public, including housing.

¹ Treaty on the European Union, OJ C 202, 7.6.2016.

² Treaty on the Functioning of the European Union, OJ C 202, 7.6.2016.

³ Charter of Fundamental Rights of the European Union, OJ C 202, 7.6.2016, p. 391–407.

⁴ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

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The RED also envisages mechanisms/measures to protect persons from racial or ethnic discrimination in the areas within the RED's material scope. The Box below provides an overview of the **protection mechanisms** covered by the RED.

Table 1: Protection mechanisms offered by the RED

Article of the RED	Protection mechanism
Article 5 on positive action	<ul style="list-style-type: none"> To ensure full equality in practice, Member States may maintain or adopt specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin to ensuring full equality in practice.
Article 7 on defence of rights	<ul style="list-style-type: none"> National judicial and/or administrative procedures and conciliation procedures for the enforcement of the Racial Equality Directive's obligations available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them. Associations or other interested legal persons may undertake proceedings either on behalf of, or in support of the complainant.
Article 8 on burden of proof	<ul style="list-style-type: none"> The victim of discrimination only needs to establish a presumption of discrimination after which it is for the respondent to prove that there has been no discrimination.
Article 9 on victimisation	<ul style="list-style-type: none"> National measures to protect individuals from any adverse treatment or consequence as a reaction to a complaint or proceedings aimed at enforcing the principle of equal treatment.
Article 10 on dissemination of information	<ul style="list-style-type: none"> The Racial Equality Directive's provisions must be brought to the attention of the individuals concerned.
Article 11 on social dialogue	<ul style="list-style-type: none"> National measures to promote social dialogue between social partners to foster equal treatment, specifically by monitoring practices in the workplace, producing codes of conducts and concluding collective agreements. Member States must encourage the conclusion of agreements establishing non-discrimination rules in the fields which fall within the scope of collective bargaining.
Article 12 on dialogue with NGOs	<ul style="list-style-type: none"> Civil dialogue with the civil society organisations concerned is encouraged.
Article 13 on bodies for the promotion of equal treatment	<ul style="list-style-type: none"> Each Member State must establish at least one body dedicated to the promotion of equal treatment of all persons without racial or ethnic discrimination. These bodies must provide independent assistance to victims of discrimination in pursuing their complaints, conduct independent surveys, and publish independent reports and making recommendations on any issue relating to such discrimination.
Article 15 on sanctions	<ul style="list-style-type: none"> Each Member State must provide effective, proportionate and dissuasive sanctions

Despite the broad protection offered by the RED and the range of other instruments at EU- and national-levels relevant for addressing this issue, there is evidence that **racial and ethnic discrimination** is still a **persistent problem** in the EU.

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According to the 2019 Eurobarometer on discrimination in the EU, 59 % of Europeans believe that discrimination based on ethnic origin is widespread in their country⁵. Furthermore, *'those who consider themselves part of a minority group are more likely to report that they have been discriminated against or harassed in the last 12 months'*⁶.

According to the EU Agency for Fundamental Rights' (FRA) 2017 Minorities and Discrimination Survey, 24 % of respondents *'felt discriminated against because of their ethnic or immigrant background'* in the 12 months preceding the survey⁷. Respondents added that their names, skin colour, and religion were the main reasons why they faced discrimination⁸. The FRA survey also shows that the highest rates of discrimination are observed in the areas of employment and access to public and private services⁹. Only 12 % of the respondents who felt discriminated against reported or filled out a complaint about the incident¹⁰. The same survey showed that African and Roma respondents experienced high rates of harassment¹¹. In a later report - *'Being Black in the EU'* - FRA noted that *'significant proportions of people of African descent experience racist harassment'*¹². One-third of those polled said they had experienced racist harassment in the five years preceding the survey¹³. Similarly, Roma people have a long history of discrimination in Europe and are among the most affected by discrimination¹⁴. According to the 2019 FRA Roma and Travellers Survey in Belgium, France, Ireland, the Netherlands, Sweden, and the United Kingdom, 45 % of the respondents felt discriminated against in the 12 months prior to the survey¹⁵. Furthermore, the COVID-19 pandemic has brought to light racism and xenophobia towards certain national or ethnic communities¹⁶. For example, in the Netherlands, 49 % of 300 respondents to a survey who were people of Asian origin, or assumed to be of Asian origin, experienced discrimination¹⁷.

A 2018 Cost of Non-Europe Report illustrates the impact of racial and ethnic discrimination on individuals, societies and economies. Lost earnings, due to under/unemployment as a result of discrimination are estimated to be between €1.8 billion and €8 billion annually; whereas the loss to societies is between €2.4 billion and €10.7 billion annually¹⁸.

⁵ Special Eurobarometer 493, Discrimination in the European Union, October 2019, p.13. This survey was carried out by Kantar in the 28 Member States of the European Union between 9 and 25 May 2019. 27,438 respondents from different social and demographic groups were interviewed face-to-face at home in their mother tongue on behalf of DG JUST.

⁶ Special Eurobarometer 493, Discrimination in the European Union, October 2019.

⁷ FRA (2017), 'Second European Union Minorities and Discrimination Survey' (EU-MIDIS II), [Main results](#), p.13. EU-MIDIS II collected information from 25,515 respondents with different ethnic minority and immigrant backgrounds across all 28 EU Member States.

⁸ *Ibid* p. 13

⁹ *Ibid*, p. 21.

¹⁰ *Ibid*. p. 15.

¹¹ *Ibid*. p. 28.

¹² FRA (2018), Second European Union Minorities and Discrimination Survey (EU-MIDIS II), ['Being Black in the EU'](#), p.9,. EU-MIDIS II surveyed 25,515 persons with different ethnic minority and immigrant backgrounds in all 28 EU Member States. This report analyses the responses of 5 803 immigrants and descendants of immigrants of African descent surveyed in 12 Member States: Austria, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Malta, Portugal, Sweden and the United Kingdom.

¹³ *Ibid*. p. 9.

¹⁴ Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive'), COM(2021) 139 final (hereinafter: **Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final**).

¹⁵ FRA (2020), ['Roma and Travellers in six countries'](#), p.14.

¹⁶ FRA (2020), ['Coronavirus pandemic in the EU – Fundamental Rights implications'](#), March 2020, p.33.

¹⁷ *Ibid*. p. 33.

¹⁸ European Parliament Research Service (2018), ['Equality and Fight against Racism and Xenophobia. Cost of non-Europe Report'](#).

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Against this context, which shows that racial or ethnic discrimination persists to be an issue, **the 2020 EU Anti-Racism Action Plan 2020-2025**¹⁹ and the 2021 European Commission Report on the application of the RED and the Employment Equality Directive (EED)²⁰ highlight the need to **look into possible gaps** in EU legislation prohibiting racial and ethnic discrimination, including in the field of law enforcement.

1.1.2 Objectives

The Study **aims** to provide the European Commission with an **overview** of **possible gaps**²¹ in the protection against racial or ethnic discrimination offered by existing EU legislation and to provide support and give direction to a possible future EU action aiming to address those potential gaps.

The Study has **four specific objectives**:

- To map possible **gaps in the material scope** of the EU rules prohibiting discrimination on the ground of racial or ethnic origin;
- To map possible **gaps in the protection mechanisms** provided for by the RED;
- In the light of the possible gaps identified, show **good practices** that could potentially address existing gaps;
- To develop **conclusions** and **recommendations** for possible follow-up (EU- and/or national-level) actions addressing the gaps identified.

1.1.3 Scope

The Study covers **all 27 EU Member States**. To some extent the Study also looked into relevant practices in third countries. In particular, information was obtained on some practices that exist in the United Kingdom and Canada.

It focuses on discrimination on the ground of **racial or ethnic origin** and not on discrimination based on other grounds. The Study does not, however, overlook the fact that racial or ethnic discrimination may **intersect** with or could be **triggered** by other aspects, including one's religion, skin colour, age, country of birth, etc. Sometimes – especially when no specific data focusing on ethnic or racial grounds are available – data may not directly/explicitly focus on racial or ethnic grounds but on other aspects/grounds (such as migration status, being a foreigner, etc.) that may be intertwined with or point to racial or ethnic discrimination. These aspects, where relevant, are specifically mentioned in the report.

The Study acknowledges that some forms of racial or ethnic discrimination might follow from or relate to systemic, institutionalised behaviours and/or disadvantages. Hence, to some extent the Study touches upon **structural forms** of racial or ethnic discrimination.

One of the main objectives of the Study is to map **material areas** which are **not covered** already by the **RED**. The Study acknowledges that some areas where possible racial or ethnic discrimination occurs could be classified as 'grey' areas. This refers to areas, where discrimination seems to occur; but where in the absence of full clarity over some concepts used in the RED it remains unclear if the specific area would be covered by the RED. Other grey areas are those where evidence suggests that a problem exists, but data are insufficient to conclude that discrimination is the root cause of the problem; or where data remain insufficiently robust/clear to

¹⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A Union of equality: EU anti-racism action plan 2020-2025', 18 September 2020 (hereinafter: **EU Anti-Racism Action Plan**).

²⁰ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

²¹ Gaps under the study are to be understood broadly, covering potential legal (e.g., legal gaps, interpretation related challenges) and non-legal gaps (e.g., practical implementation related challenges) alike.

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point at a clear sign of discrimination. These grey areas are also mapped and mentioned in the study.

The Study focuses on **possible gaps** in protection against discrimination. Within this remit, the Study **does not cover** other, potentially related issues faced by racial or ethnic groups, such as racism, xenophobia, hate crime or hate speech. The Study recognises though that these issues might be a root cause of and/or trigger racial or ethnic discrimination, including harassment.

The Study **does not cover** in details possible shortcomings/gaps linked to the **role and work of equality bodies**. The European Commission, separately from this Study, is exploring the possibility of strengthening the equality bodies. It does, however, touch upon their role under the description on existing protection mechanisms. Stakeholder views gathered as part of this Study also touch upon the role of equality bodies, in particular in the context of the potential EU actions ahead. Hence, some of the recommendations developed for the purpose of this Study touch upon the role and work of equality bodies, thereby also building a bridge between the current Study and the aforementioned work of the European Commission on strengthening the role and work of equality bodies.

Finally, the Study does not look into the **definitions** (i.e. the definitions included or, on the opposite, the lack of definition) contained in the RED. These issues including the relevant case law are presented in the Commission implementation report on the RED²².

1.2 Methodological note

The Study was completed as a series of tasks, each corresponding to a specific objective of the Study. The tasks were as follows:

- **Task 1:** Mapping and analysis of possible areas of discrimination beyond the areas already covered by the RED;
- **Task 2:** Mapping and analysis of possible gaps in the protection mechanisms offered by the RED;
- **Task 3:** Presentation of good practices and/or pitfalls;
- **Task 4:** Development of conclusions and recommendations.

Under each of these tasks, several sub-tasks were completed building on the following **data collection methods**:

- **Desk research**
- **Stakeholder consultations**, including scoping interviews; an online targeted survey; national- and EU-level semi-structured interviews; an Open Public Consultation (OPC); and a Consultation Workshop.

Desk research entailed the completion of national- and EU-level desk research. **National-level desk research** was completed by a team of National Experts, each covering a specific Member State. The desk research aimed at identifying relevant country-level information and data both about the scope of discriminatory incidents in the material areas not covered by the RED and their socio-economic impacts, as well as about national initiatives aiming to enhance the protection of victims of racial or ethnic discrimination, beyond what is currently provided for in the RED.

Milieu's in-house Study Team was in charge of completing **EU-level desk research**, both at project start-up (preliminary desk research) and during the entire duration of the project (desk-research). The preliminary desk research aimed to identify information sources of relevance for the development of the different research tools used under the project and identify stakeholders

²² European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

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for the stakeholder consultations. Additional desk research was carried out to support the analysis, as presented in this Final Report. A *Bibliography* indicating the sources used for completing the Study is annexed to this Final Report (See *Annex I*).

Upon contract award, **scoping interviews** were held by the Study Team with the representatives of two stakeholders, the FRA and the European Commission against Racism and Intolerance (ECRI). The findings of the scoping interviews mainly fed into the development of the research tools and the stakeholder mapping.

A **targeted online survey** was launched on 3 February 2022 and closed on 8 March 2022. A link to the survey was sent out to 40 European-level organisations/networks and around 360 national-level organisations; all perceived as having the knowledge/experience necessary to provide information on the possible gaps in the protection against racial or ethnic discrimination offered by existing EU legislation, the socio-economic impacts of discrimination, related good practices and possible measures necessary to address existing gaps. EU-level stakeholders as well as respondents from 26 Member States contributed to the survey with a total of 68 responses (See *Annex II – Online survey analysis*).

The **in-depth semi-structured interviews** targeted European- and national-level stakeholders with the aim of gaining a better understanding of potential gaps in the legal protection against racial or ethnic discrimination and of the corresponding possible solutions to address the challenges identified. The Study Team was in charge of the European-level interviews, leading to the completion of 10 interviews. At the national-level, 72 interviews were carried out by the National Experts.

The Commission launched an **OPC** on 17 January 2022, which was closed on 11 April 2022. The OPC, targeting the general public, sought to gather input from persons at risk of discrimination based on racial or ethnic origin. The number of total valid responses to the OPC was 231. A potential, predominantly French campaign expressing rhetoric on anti-white racism was identified, representing a total of 69 responses (30 % of the total). This Study, while referring to responses to the OPC, mainly focuses on results excluding the possible campaign. For information purposes the responses received via the possible campaign are also provided in the form of italicised square brackets. The full analysis of the OPC results is annexed to this Final Report (see *Annex III – OPC analysis*).

On 17 May 2022 a **Consultation Workshop** was organised engaging 23 participants.

A more detailed overview of all stakeholder consultation activities, including some methodological limitations, is provided under *Annex IV – Stakeholder consultation summary report*.

As part of the Study, the following **formal deliverables** have been completed: Inception Report, Draft and Final Interim Reports, Draft Final Report and the current Final Report.

1.3 Report structure

This Final Report is structured in specific sections, each corresponding to a specific objective/task under the Study. A roadmap outlining the structure is provided in the Table below.

Table 2: Roadmap to the structure of the Final Report

Task	Report section
Task 1: Mapping and analysis of possible areas of discrimination beyond the areas already covered by the RED	Section 2
Task 2: Mapping and analysis of possible gaps in the protection mechanisms offered by the RED	Section 3

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Task	Report section
Task 3: Presentation of good practices and/or pitfalls	Section 4
Task 4: Development of conclusions and recommendations	Section 5

2 Mapping possible gaps in the material scope of the EU rules prohibiting discrimination on the grounds of racial or ethnic origin

This Section analyses the findings from **Task 1** of the project – mapping and analysis of possible areas of discrimination beyond the areas already covered by the RED. It is based on existing data and research findings from EU- and national-level sources relating to racial or ethnic discrimination beyond the material areas covered by the scope of the RED. In addition, in order to ensure a broad evidence base and the collection of different perspectives, various other data collection tools were used to gather information across the different sub-tasks of Task 1. The Table below outlines the different sub-tasks and indicates the tools used as well as the corresponding Sections and Annexes within this Report.

Table 3: Outline of Task 1

Task 1. mapping and analysis of possible areas of discrimination beyond the areas already covered by the RED		
Sub-task	Tools	Report Sections and Related Annexes
<p>Task 1.1</p> <p>Bringing together (and gathering) data on the areas in which racial or ethnic discrimination happens on the ground, beyond the area already covered in the RED. This also offers indications about the scale of the issues, as well as of underlying reasons and specificities of the incidents of discrimination, including root causes or triggers.</p>	<p>EU- and national-level desk research.</p> <p>Scoping interviews.</p> <p>EU- and national-level stakeholder consultation through in-depth interviews and targeted stakeholder survey.</p> <p>Analysis of open public consultation replies.</p>	<p>Section 2.1 – Mapping and Analysis of Specific Areas of Discrimination Beyond the Areas Already Covered by the RED</p> <p>Section 2.2 – Other/Grey Areas</p>
<p>Task 1.2</p> <p>Examine the socio-economic impact of discrimination in the areas identified under Task 1.1</p>	<p>EU- and national-level desk research.</p> <p>EU- and national-level stakeholder consultation through in-depth interviews and targeted stakeholder survey.</p> <p>Analysis of open public consultation replies.</p>	<p>Section 2.3 – Socio-economic Impact of discrimination in areas beyond the RED</p> <p>Annex V – Data on police stops</p>
<p>Task 1.3</p> <p>Identify existing (or proposed) EU legislative instruments covering the areas listed under Task 1.1</p>	<p>EU-level desk research – identification of EU legislation or proposed legislation.</p> <p>Checking listed instruments against two selection criteria: (i) relevance to racial or ethnic discrimination; (ii) relevance to Task 1.1 area/non-RED area.</p> <p>Mapping relevant provisions identified in the shortlisted instruments.</p> <p>Matching up relevant legal provisions to non-RED areas in Section 2 of this Report.</p>	<p>Section 2.1 – Mapping and Analysis of Specific Areas of Discrimination Beyond the Areas Already Covered by the RED</p> <p>Section 2.2 – Other/Grey Areas</p> <p>Section 2.4 – Overview of material gaps in protection</p> <p>Annex VI – EU instruments containing non-discrimination provisions</p> <p>Annex VII – EU Law Overview Table</p>

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Task 1. mapping and analysis of possible areas of discrimination beyond the areas already covered by the RED		
Sub-task	Tools	Report Sections and Related Annexes
<p>Task 1.4</p> <p>Identify applicable national anti-discrimination laws showing which area(s) not covered by EU instruments are covered by the national legislation of the Member States.</p> <p>Analyse briefly the (effective) implementation of applicable national rules</p>	<p>Information provided by the European network of legal experts in gender equality and non-discrimination to the Commission's ad-hoc information request.</p> <p>National-level desk research.</p> <p>National-level stakeholder consultation through in-depth interviews.</p>	<p>Section 2.1 – Mapping and Analysis of Specific Areas of Discrimination Beyond the Areas Already Covered by the RED</p> <p>Section 2.2 – Other/Grey Areas</p> <p>Section 2.4 – Overview of material gaps in protection</p>
<p>Task 1.5</p> <p>Overview of the possible material gaps in the legal protection against racial and ethnic discrimination</p>	<p>Findings under Tasks 1.1 to 1.4.</p> <p>Matching up relevant EU or national legal provisions to non-RED areas under Section 2.1 of this Report.</p> <p>Identification of non-RED areas that are not covered or not sufficiently covered by current EU or national legislation under Section 2.4 of this Report.</p>	<p>Section 2.1 – Mapping and Analysis of Specific Areas of Discrimination Beyond the Areas Already Covered by the RED</p> <p>Section 2.4 – Overview of Possible Material Gaps in Protection</p> <p>Annex VI – EU instruments containing non-discrimination provisions</p>

2.1 Mapping and analysis of possible areas of discrimination beyond the areas already covered by the red

2.1.1 Exercise of public authority by law enforcement and judicial authorities

The material scope of the RED does not cover public sector actions that entail the 'exercise of public authority'. Although the European Parliament had suggested a wider scope to include 'the exercise by any public body, including police, immigration, criminal and civil justice authorities, of its functions'²³, this was not taken up in the final text of the RED.

This Section assesses possible (structural²⁴) discrimination in law enforcement²⁵ and in the judiciary²⁶, including when it comes to police reporting; detection, prevention, investigation and prosecution of crime; identity checks; 'stop and search' practices; arrests; detention and sentencing. The application of EU or national legislation to specific instances of discrimination in the relation with law enforcement and judicial authorities is also analysed in this Section.

Targeted consultation concerning **occurrences/experiences of discrimination** during the exercise of public authority by law enforcement and judicial authorities was undertaken within this

²³ CJEU, Case C-391/09 *Runevič-Vardyn and Wardyn*, 12 May 2011, ECLI:EU:C:2011:291. The Court stated that, in the preparatory work on the Directive, the Council did not accept an amendment proposed by the European Parliament which would extend its scope to 'the exercise by any public body, including police, immigration, criminal and civil justice authorities, of its functions'.

²⁴ The EU Anti-racism Action Plan 2020-2025 describes structural discrimination as encompassing discriminatory behaviours, including those based on unconscious bias, that are embedded in social, financial and political institutions, impacting on the levers of power and on policy-making and that puts barriers solely due to persons' racial or ethnic origin.

²⁵ Under this study by 'law enforcement' we understand the police, the military, border management and control authorities (e.g. border guards), security and intelligence services, and financial and fraud investigation units.

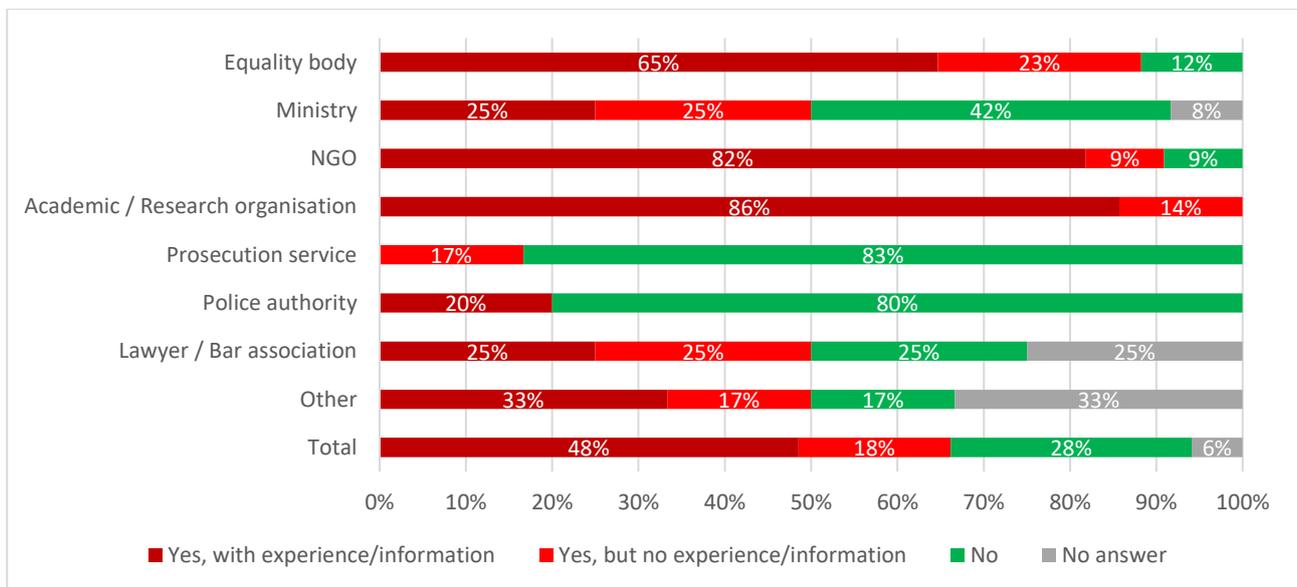
²⁶ The 'judiciary' covers judges and prosecutors.

Study via an **online survey, semi-structured interviews and the OPC**. Relevant results of these are presented below.

The majority of **respondents to the targeted online survey** (45 in total, 66 %) believed that racial or ethnic discrimination **by law enforcement or judicial authorities** occurs, out of which 33 (48 %) had actual experience/information in relation to the issue (N.B. the question did not differentiate between law enforcement and judicial authorities). This view was mostly prevalent among **equality bodies** (15 out of the 17 equality bodies that responded to the survey, 88 %), **NGOs** (10 out of 11 responding to the survey, 91 %), and **academic/research organisations** (seven, meaning all academic/research organisations that responded to the survey). Opinions were mixed among ministries, lawyers/bar associations, and other stakeholders. More specifically, six **ministries** out of 12 responding to the survey (50 %) considered that racial or ethnic discrimination by law enforcement or judicial authorities occurs, while five (42 %) believed it does not happen and one did not answer the question. Two **lawyers/ bar associations** out of the four responding to the survey (50 %) indicated that in their view or experience such discrimination takes place, one did not think it happens (25 %) and one did not answer to the question. In the '**Other**' category (including respondents that could not be categorised under the other stakeholder types), an independent police control authority, and two EU-level networks (one representing public institutions, the other trade unions) believed that such discrimination occurs, while a national state agency for refugees indicated the contrary.

In turn, 19 respondents to the **online survey** (28 %) thought that **no discrimination occurs** by law enforcement or by judicial authorities, which was the main opinion among **prosecution services** (five out of six responding to the survey – 83 %, while the sixth prosecution service considered that such discrimination occurs) and **police authorities** (four out of the five responding to the survey – 80 %, the fifth police authority confirming the occurrence of such discrimination) (see Figure 1 below).

Figure 1: Are you/your organisation of the opinion that racial or ethnic discrimination by law enforcement or judicial authorities occurs? If yes, do you/your organisation have experience/information concerning racial or ethnic discrimination by law enforcement or judicial authorities? (N=68)



In terms of the main **situations** in which racial or ethnic discrimination by law enforcement or judicial authorities occurs, the 33 **survey respondents** that answered that discrimination in this

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area occurs, mostly observed it in **racial or ethnic profiling**²⁷ (30 in total, 91 %), followed by **verbal harassment** (25 in total, 76 %) and **excessive violence** (21 in total, 64 %). The examples provided to support the answers were mostly related to cases concerning the Roma community. Other situations were also noted: two national NGOs mentioned the **refusal of assistance and support for a victim**. Another NGO at EU-level highlighted the **increased risk of coercion**, a **higher chance of being incarcerated pre-trial**, and a **higher chance to get sentenced and get longer sentences**. One lawyer/bar association pointed out that discrimination can be found in a number of **hidden situations**, such as nationalist symbols in the room of an investigator and openly hostile questioning.

When asked in which **areas of law enforcement and judicial authority** (e.g., authority exercised by the police, the military, border management, criminal judges, prosecutors, civil judges, financial investigation units, customs authorities, etc.) **racial or ethnic profiling exists and is the most prominent**, 13 out of 19 **survey respondents** (68 % at EU and national level) addressing the question explicitly referred to the **police**. At **national-level**, racial profiling by police was mentioned by stakeholders from Austria, Croatia, Hungary, Ireland, Italy, Germany, Slovenia, Slovakia, Romania, and Portugal. This includes **checks, stop and searches**, as well as **border control**. A Croatian stakeholder mentioned that **traffic police** target Roma drivers, and that **police checks of migrants at borders** are stricter. In addition to various police forces, several stakeholders mentioned **other areas** of law enforcement and judicial authority as well. For instance, a Slovakian organisation indicated **civil court judges** when deciding on anti-discrimination disputes; Swedish stakeholders pointed to **financial investigations**; and a stakeholder from Italy included **tax evasion units, customs authorities and border management**. At **EU-level**, a network organisation indicated that, according to the data collected by them, racial profiling is mainly used for **stop and search activities by police**, by **border management authorities** (e.g., at Ukraine's borders), by **intelligence services** (being fuelled by AI), and by **counter-terrorism/counter-radicalisation units** (using religious/racial indicators to monitor racialised people). Another EU-level stakeholder argued that the system operates in a loop and is structurally biased, meaning that racial profiling exists **at every level**. Finally, another EU-level organisation added that it is a major issue in **law enforcement** and **tax/fraud investigations**, exacerbated by using AI.

Looking more closely into the potential **areas** in which **racial or ethnic discrimination** (thus not only profiling) could take place regarding **the exercise of public authority by law enforcement and judicial authorities** (see Figure 2 below), more than half of the **survey respondents** (41 in total, 65 %) indicated that, in their view, there is racial/ethnic discrimination taking place during the **exercise of public authority by the police** when executing **identity checks**, compared to six survey respondents (10 %) who considered that discrimination in police identity checks does not happen at all. Moreover, around half of the survey respondents believe this also occurs **at the police station** (32 in total, 50 %), **during arrests** (32 in total, 50 %), and **in traffic controls** (31 in total, 49 %). In comparison, nine survey respondents (14 %) thought that discrimination at police stations and in arrests does not occur at all, while eight survey respondents (13 %) considered there is no discrimination in traffic controls either. Of those that indicated other areas in which discrimination occurs by the police, two survey respondents mentioned the **treatment of witnesses**, two others mentioned **fines imposed for administrative offences**, and one stakeholder emphasised the **interaction with citizens during protests/demonstrations**. In addition, 29 survey responses (47 %) indicated that discrimination during the exercise of public authority by immigration or border authorities **when enforcing immigration law and/or border management** takes place, whereas five survey respondents (8 %) noted the opposite.

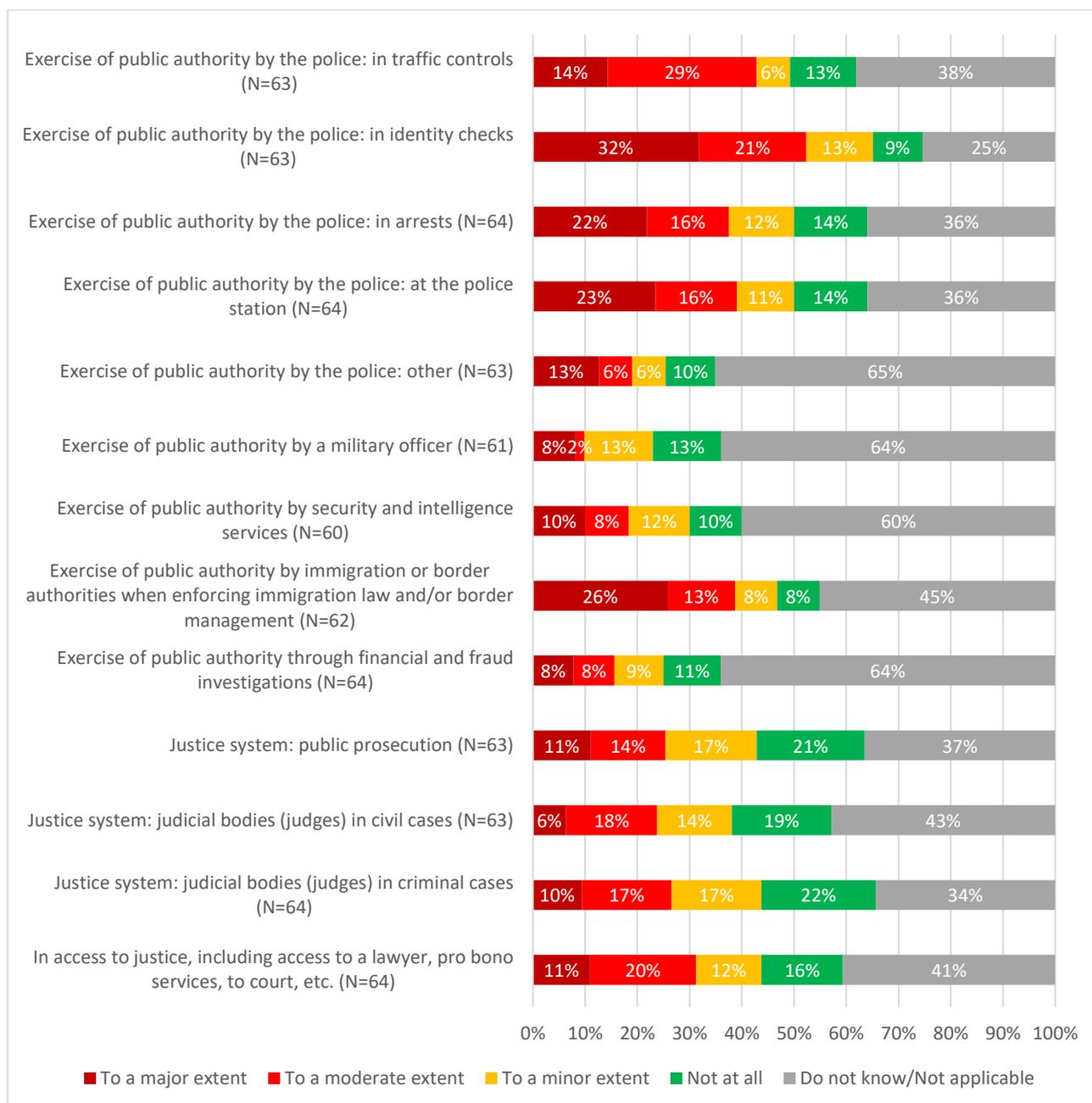
In terms of the **justice system**, there appears to be relatively few survey respondents who think that discrimination occurs in this area. However, still a significant number mentioned there

²⁷ The EU Anti-Racism Action Plan 2020-2025 stresses that 'Profiling is commonly, and legitimately, used by law enforcement officers to prevent, investigate and prosecute criminal offences. However, profiling that results in discrimination on the basis of special categories of personal data, such as data revealing racial or ethnic origin, is illegal'.

is discrimination taking place by **judicial bodies (judges) in criminal cases** (28 in total, 44 %) or **in civil cases** (24 in total, 38 %), in **the access to justice** (28 in total, 44 %), and **during public prosecution** (27 in total, 43 %). When it comes to survey respondents who thought that discrimination in the justice system does not occur, their number was larger than in case of discrimination in the exercise of the public authority by the police. More specifically, around 20 % of the survey respondents addressing this question considered that there is no discrimination at all by judges in criminal cases (14 in total, 22 %), by judges in civil cases (12 in total, 19 %), and by public prosecution (13 in total, 21 %), or in access to justice, e.g., in access to a lawyer, pro bono services, to courts, etc. (10 in total, 16 %).

When **survey respondents** were asked to provide examples and data to support their opinion in relation to the occurrence of racial or ethnic discrimination in any areas outside the scope of the RED, 26 stakeholders provided **further information**. A commonly occurring theme was that of racial policing, with 14 stakeholders mentioning that the **police tend to target minorities**. This was particularly prominent amongst equality bodies, with seven of them mentioning this (out of eight equality bodies that answered the question). Eight survey respondents pointed towards the **difficulty of addressing racial profiling**, with some also referring to the overall **difficulty of proving discriminatory decisions and police checks**. The **lack of sufficient data** on this issue or **inability to prove misconduct of the police** was also mentioned by stakeholders in Austria, Finland, France, Hungary, Ireland, Luxembourg, Malta, Sweden, as well as at EU-level. The most targeted minority appears to be the **Roma people**, who were mentioned by stakeholders from Croatia, Czech Republic, France, Hungary, Romania, Slovakia, Slovenia, and at EU-level. **Travellers** were also mentioned in France and Ireland. **Muslims** were mentioned by respondents from Austria, Cyprus, Sweden, and by an EU stakeholder. Seven stakeholders also stated that the RED does not adequately cover racial profiling by the police.

Figure 2: In your/your organisation’s opinion, to what extent does racial or ethnic discrimination take place in the exercise of public authority by law enforcement and judicial authorities, potentially not covered by the material scope of the RED?



In conclusion, information from the targeted online **survey** undertaken for this Study seems to suggest that racial or ethnic discrimination occurs to a larger extent in the exercise of public authority by **law enforcement**, in particular by the **police**, as compared to exercise of public authority by the judiciary. This was confirmed by **interviews** conducted for this study (see below). This can be explained by the fact that **more people are in contact with the police than with the judiciary**. A different survey carried out for the 2021 publication *L'épreuve de la discrimination*²⁸ looked at the areas where discrimination/stigmatisation of racialised people took place. In France, for instance, school came first (42 %), police second (30 %) and justice last (3 %).

²⁸ Talpin, J. *et al.* (2021), *L'épreuve de la discrimination*. Enquête dans les quartiers populaires, Presses Universitaires de France.

Racial or ethnic discrimination in the **exercise of public authority by law enforcement** (e.g., in stop and search activities; increased use of force; arbitrary attitudes in the context of COVID-19) was also identified as a particularly important material gap by 84 % of participants during the **stakeholder workshop**. A participant indicated that security laws and anti-radicalisation measures are also often applied in a discriminatory way against racialised people.

About half of the interviewees consulted for this Study (41 out of the 81) referred to racial or ethnic discrimination by law enforcement authorities, out of which 39 specifically pointed to the **police**, six mentioned the **immigration authorities**, three the **security and intelligence services**, two the **military authorities**, and one indicated the police as well as other law enforcement authorities. The majority of **NGOs**, **lawyers** and **research organisations** interviewed believed that ethnic profiling by the police occurs. Opinions were mixed among **local authorities** and **ministries**. The majority of **police officers** interviewed (67 %) also acknowledged the issue of ethnic profiling and racial bias within some parts of the police, and noted that these behaviours could be linked to affiliations with extreme right groups. Nevertheless, they also highlighted the extensive coverage by the media and the perception of racial discrimination by ethnic minorities as a consequence of a lack of trust between the police and the population. In Denmark, a representative of a control organ of the police indicated that they received 49 complaints in 2020 related to police conduct and discrimination; however, only one case of discrimination was admitted²⁹. In Spain, a police officer confirmed the existence of ethnic profiling notably against the Roma population³⁰.

Contrary to survey respondents, **interviewees** did not specifically point to direct discrimination by the judiciary (judges or prosecutors). One interviewee noted though that indirect discrimination by judges might happen, e.g., when a discriminatory practice undertaken only against an ethnic group is brought before the court, and the judge does not consider this as an illegal act³¹. On the other hand, several **interviewees** (23 %, 18 in total) indicated issues in access to justice by minorities, especially the Roma population as they are often lacking resources and the quality of their defence is insufficient. Among them, the majority of stakeholders interviewed also indicated that the main difficulties are the access to legal aid and the lack of qualified interpreters. This would point to a potential gap in protection mechanisms rather than a gap in material scope.

In the **OPC**, respondents were asked in what kind of situation(s) and how often have they been discriminated against based on their racial or ethnic origin by the police or other control authorities in the past three years. The potential campaign expressing rhetoric on anti-white racism seems to significantly distort the overall percentage of responses, meaning that experiences of discrimination are higher when excluding the campaign (figures linked to the potential campaign are presented in *italicised brackets below*). At least one occurrence of discrimination was reported by the following percentage of respondents in the different situations below:

- 66 % [44 %] during controls at the border (e.g., customs, immigration body searches at the airport);
- 37 % [25 %] in traffic controls;
- 34 % [23 %] in police identity checks not accompanied by a body search;
- 27 % [20 %] at the police station;
- 25 % [19 %] in controls by a fraud detection authority;
- 22 % [16 %] in police identity checks accompanied by a body search;
- 15 % [12 %] in arrests by the police;
- 10 % [9 %] in detention or prison;

²⁹ Information obtained from a representative of a control organ of the police in Denmark via an interview held on 22.03.2022.

³⁰ Information obtained from a representative of the police in Spain via an interview held on 28.03.2022.

³¹ Information obtained from an NGO representative in Romania via interview.

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- 25-45 % [45-56 %] reported to have never experienced discrimination in the above situations.

Regarding potentially discriminatory practices in relation to the justice system, 23 % [20 %] of the **OPC respondents** have experienced it at least once **when accessing justice services**, such as a lawyer or pro bono services; 16 % [13 %] experienced it at least once **by a judge other than a criminal judge**; 13 % [14 %] did so during the **imposition of fines**, including related to the infringement of COVID-19 restrictions; and 7 % [8 %] **by a criminal judge**.

In the **targeted online survey**, the reported occurrences/experiences of racial/ethnic discrimination rise to 44 % when accessing the justice system and by a judge in criminal cases, respectively; and to 38 % by a judge in civil cases (see Figure 2 above). Discrimination during the imposition of unjustified and harsher fines to people belonging to racial/ethnic minorities was not mapped in the targeted survey, but a **workshop participant** drew attention to the existence of such discrimination.

Consequently, while the percentage of respondents reporting occurrences/experiences of **racial/ethnic discrimination by police and other control authorities** in the situations indicated **in the targeted survey and the OPC** differ, the main situations are the same. These appear to be instances of discrimination during **controls when enforcing immigration law and/or border management, in police identity checks, in traffic controls, at the police stations and during arrests**.

When it comes to the **judiciary**, the **majority of OPC respondents** had either **never experienced racial or ethnic discrimination or had no prior experience with the justice system** at all. The **percentage of OPC respondents** who reported experiences of racial/ethnic discrimination in the justice system **is lower** though **than the percentage of respondents to the targeted survey** who indicated occurrences/experiences of racial/ethnic discrimination by the judiciary, when **accessing the justice system, or by judges in criminal or civil cases**. This can be explained by the fact that the online survey and the OPC had different types of respondents (the majority of the respondents to the **OPC** were EU citizens reporting on their experiences of discrimination, while the respondents to the **online survey** were mainly authorities, NGOs and individual experts reporting on their opinions concerning occurrences of racial/ethnic discrimination, and fewer respondents had direct experiences of discrimination). It must also be noted that some issues in the field of the judiciary are rather linked to protection mechanisms than to a material gap (e.g., accessing justice services, such as lawyers, interpreters or pro bono services).

Online survey respondents were also asked about the **main causes** of possible discrimination by law enforcement and judicial authorities. Most of them believed that the main causes are structural or systemic racism (28 in total, 85 %) and (un)conscious individual bias (25 in total, 76 %), followed by individual racism and low level of racial sensitivity and cultural awareness training (22 in total, 67 %). As a further explanation, several survey respondents emphasised the structural/institutional racism engrained within societies, which stands at the root of all the other causes of racial or ethnic discrimination.

Specific areas **of discrimination by law enforcement authorities** (police stop and search activities and identity checks, increased use of force or arbitrary policing, immigration enforcement) **and in the justice system** are explored in more detail in the sub-sections below. In particular, indications about the scale of the issues, as well as about underlying reasons and specificities of the incidents of discrimination, including potential root causes or triggers are provided. The application of EU or national legal instruments to specific instances of discrimination in the relation with law enforcement and judicial authorities is also analysed in the sub-sections below.

2.1.1.1 Stop and search activities and identity checks by the police

One of the main areas in which sources of information seem to indicate racial and ethnic profiling, or at least a perception thereof, relates to **stop and search** activities and **identity checks** by the police.

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The EU Anti-racism Action Plan 2020-2025³² states that '*reports of discrimination by law enforcement are long standing: the FRA has included unlawful profiling and police action in its research*³³. More specifically, the FRA Second EU Minorities and Discrimination Survey (EU-MIDIS II)³⁴ showed that '*racial profiling is a common occurrence for immigrants and descendants of immigrants as well as for ethnic and national minorities such as the Roma*³⁵. As '*simply "being Black" means often facing entrenched prejudice and exclusion*³⁶, FRA further analysed the responses of immigrants and descendants of immigrants of African descent surveyed in 12 Member States under EU-MIDIS II³⁷. The results show that 24 % of all persons of African descent³⁸ surveyed had been stopped by the police in the previous five years³⁹. Among those stopped, 41 % felt that the most recent stop constituted racial profiling, which may undermine trust in policing and community relations⁴⁰. The percentages of **perceived discriminatory profiling** by the police vary across the EU Member States⁴¹ (e.g. from 60 % in Italy to 27 % in Finland)⁴².

People's experiences in the Member States may differ depending on the contexts in which they are stopped (e.g., while driving a car, on a bike, or using another vehicle, as opposed to police stopping them while on foot or in another situation). Perceptions of profiling may be less common when people are stopped while driving, as this is more likely to involve random checks unrelated to the personal characteristics. Other factors can be the proportion of people belonging to ethnic minority groups who use a private car as compared to the general population. When this is lower in certain countries, members of ethnic minority groups may experience fewer vehicle stops and more stops while walking or using public transport⁴³. The circumstances in which a survey is carried out may also influence the results. For instance, the EU MIDIS II survey was conducted over a period that included major terrorist attacks in France and Belgium, which led to an increase in police surveillance and identity checks. Similarly, migration movements through Greece and Italy also stimulated increased police and border checks⁴⁴. Furthermore, as reported by an EU-level NGO, a lot of policing practices focusing on specific areas are justified by the police by the alleged 'dangerousness' of these areas⁴⁵. Therefore, more stops and identity checks are

³² EU Anti-Racism Action Plan 2020-2025.

³³ EU Anti-Racism Action Plan 2020-2025, Section 2.2.

³⁴ EU Fundamental Rights Agency (FRA) (2018), [Second European Union Minorities and Discrimination Survey](#) (EU-MIDIS II). It surveyed 25,515 persons with different ethnic minority and immigrant backgrounds in all 28 EU Member States.

³⁵ FRA (2018), [Second European Union Minorities and Discrimination Survey, 'Being Black in the EU'](#), p.31, citing FRA (2017), [Second European Union Minorities and Discrimination Survey - Main results](#), p.69.

³⁶ FRA (2018), [Second European Union Minorities and Discrimination Survey, 'Being Black in the EU'](#), p.7.

³⁷ FRA (2018), [Second European Union Minorities and Discrimination Survey, 'Being Black in the EU'](#). This report analysed the responses of 5,803 immigrants and descendants of immigrants of African descent surveyed as part of EU-MIDIS II in 12 Member States: Austria, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Malta, Portugal, Sweden and the United Kingdom. The number of respondents in the Member States ranged from 369 in Italy to 794 in France, with an average number of 484 per country.

³⁸ Respondents of African descent born in Sub-Saharan Africa (first-generation respondents), as well as persons with at least one parent born in Sub-Saharan Africa (second-generation respondents). In France and the United Kingdom, the sample included, in addition, first- and second-generation respondents from overseas departments and overseas territories, as well as the Caribbean.

³⁹ FRA (2018), [Second European Union Minorities and Discrimination Survey, 'Being Black in the EU'](#), p.10 and 33.

⁴⁰ FRA (2018), [Second European Union Minorities and Discrimination Survey, 'Being Black in the EU'](#), p.10.

⁴¹ The number of respondents in the Member States ranged from 369 in Italy to 794 in France, with an average number of 484 per country. The sample sizes were determined based on an optimal allocation with respect to the estimated total size of the covered target population, in addition to practical considerations. For statistics produced in the report, the samples were weighted by their estimated size, which means that **country and group comparisons take the estimated total size of the target groups per country into account and do not (directly) reflect the sample sizes**. See FRA (2018), [Second European Union Minorities and Discrimination Survey, 'Being Black in the EU'](#), p.65.

⁴² FRA (2018), [Second European Union Minorities and Discrimination Survey, 'Being Black in the EU'](#), p. 30.

⁴³ FRA (2021), [Your Rights Matter: Police Stops](#), p.7.

⁴⁴ FRA (2017), [Second European Union Minorities and Discrimination Survey - Main results](#), p.74.

⁴⁵ Information obtained from a representative of an EU-level NGO via interview held on 02.03.2022.

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carried out in these territories. According to the NGO, the real issue is related to the insufficiently addressed systemic discrimination and harassment by the law enforcement authorities.

Comprehensive data on stop and search activities carried out by the police per Member State and groups of various ethnic origin, distinguishing between stops with perceived ethnic profiling and stops with no perceived ethnic profiling was compiled for the purposes of the present study on the basis of two FRA surveys: the Roma and Travellers survey (data for 2019)⁴⁶ and the EU-MIDIS II (data for 2016)⁴⁷. Country averages for the general population have been gathered on the basis of the FRA Fundamental Rights Survey (data for 2019)⁴⁸. Data show that in most Member States, people with ethnic origin are subjected to stop-and-search activities by the police much more often than the average population (results by country are presented in Annex V). For example:

- In France, 31 % of the surveyed population of North-African origin reported being stopped by the police at least once during the last five years, including 10 % with perceived ethnic profiling. For the group of people with Sub-Saharan origin, these shares were equal to 29 % and 12 %, respectively. These can be compared with the general population in which only 17 % reported being stopped by the police during the last five years.
- In Germany, 34 % of the surveyed population of Sub-Saharan African origin reported being stopped by the police in comparison with 17 % in the whole population.
- In the Netherlands, 44 % of the surveyed Roma population reported being stopped by the police during the last five years (all 44 % reporting perceived ethnic profiling) versus 10 % in the general population.
- In Spain, where the share of the general population submitted to stop-and-search activities by the police was reported at the level of 4 %, for people of North-African origin it amounted to 23 % (with 11 % experiencing ethnic profiling) and for Roma people – to 46 % (with 21 % reporting perceived ethnic profiling).

Surveys carried out at national levels reached similar conclusions. For example, a survey of young adults between 18 and 25 years of age conducted in the Netherlands (Amsterdam), reported that people from Dutch-Antillean, Dutch Surinamese, and Dutch Moroccan backgrounds are more frequently stopped by the police than white people⁴⁹. In 2013, the University of Valencia published the results of a national survey showing that 6 % of white people reported being stopped in Spain compared to 39 % of black people, 45 % of north African people and 60 % Roma⁵⁰. Moreover, a project designed to improve police-minority relations showed that in Girona (Spain) for example, the municipal police stopped Moroccans six to seven times and Romanians, 10 times more often than Spanish people⁵¹.

The FRA and national data also show that police stops more often concern men, young people, as well as people who self-identify as belonging to an ethnic minority, who are Muslim, or who are not heterosexual, pointing to possible multiple discrimination on grounds of ethnicity, race, gender and/or age⁵². One stakeholder also mentioned that Muslims and people perceived as

⁴⁶ FRA (2021), [Roma and Travellers in six countries](#).

⁴⁷ FRA (2018), [Second European Union Minorities and Discrimination Survey](#), 'Being Black in the EU'.

⁴⁸ FRA (2021), [Your Rights Matter: Police Stops](#). The FRA [Fundamental Rights Survey](#) collected data in 29 countries – 27 EU Member States, the United Kingdom (an EU Member State at the time of data collection), and North Macedonia (the only non-EU country with an observer status to FRA at the time the survey was designed). In total, the survey collected data from 34,948 respondents.

⁴⁹ Justice Initiative (2013), [Equality under pressure: the impact of ethnic profiling](#).

⁵⁰ Universitat of Valencia (2013), [Identificación policial por perfil étnico en España Informe sobre experiencias y actitudes en relación con las actuaciones policiales](#) (*Political identification based on ethnicity in Spain. Report on experiences and behaviors relating to police actions*).

⁵¹ Justice Initiative (2009), [Addressing Ethnic Profiling by Police – A Report on the Strategies for Effective Stop and Search \(STEPSS\) Project](#).

⁵² FRA (2021), [Your Rights Matter: Police Stops](#). See also reports for Belgium : La Ligue des Droits de l'homme (2017), [Contrôler et Punir ? – Etude Exploratoire sur le Profilage Ethnique dans les Contrôles de Police : Paroles de Cibles](#) (*Controlling and Punishing?*).

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Muslims are often subjected to police checks and police stops based on biases relating, for instance, to clothes and appearance⁵³. This is relevant when considering **multiple or intersectional discrimination** as although discrimination on the grounds of religion is not covered by the RED, there is racialisation of Muslims in Europe and beyond.

In general, though, rather **limited data** are **available about the potential reasons for the overrepresentation** of certain groups in stop and searches by law enforcement authorities. Several stakeholders consulted via interviews or the survey and a participant to the stakeholder workshop highlighted the **difficulty in obtaining a solid overview of the situation in the Member States** due to the lack of data. Most information relies on anecdotes from civil society, unlike in the UK where data on police stop and search activities are registered⁵⁴. A survey respondent from Ireland confirmed that there are anecdotal examples of racial profiling, but providing substantive sources is difficult as the Garda Síochána (National Police service) do not collect ethnic data⁵⁵. Similarly, in Belgium, a report from Amnesty International points out that ethnic profiling in Belgium is an under-reported problem, due to a **lack of in-depth research and data**⁵⁶. An Austrian research organisation interviewed also noted that in general there are **no official statistics** on racial or ethnic discrimination; therefore, it is difficult to assess the areas in which discrimination occurs and one has to rely on reports of civil society organisations that offer counselling for victims and witnesses of racial discrimination⁵⁷. **Where ethnic data exist**, studies show that **overrepresentation** in stop and searches **seems to follow from ethnic profiling** (and thus discrimination) rather than from the aim of detecting a higher rate of offences⁵⁸, or other reasons. For example, police stops in Spain are more likely to detect offences among White Spaniards than among other ethnic groups. In the town of Fuenlabrada, it was found that people of Moroccan origin were 6.7 times more likely to be stopped than a White Spaniard, while the rate of detecting offences for Moroccans was 9 % as compared to 17 % for White Spaniards⁵⁹. According to a stakeholder interviewed, it was also shown in the UK that people with ethnic background are being stopped more by the police, but the number of cases in which they are found guilty is low⁶⁰.

Along the **lack of equality data collection** by the authorities, **underreporting** also seems to be a major problem when it comes to demonstrating the existence of racial profiling, its scale and its potential causes. For instance, only 9 % of respondents to the FRA survey on 'Being Black in the EU'⁶¹ who said they were treated disrespectfully when being stopped by the police reported or made a complaint about this. Underreporting was also considered as one of the main issues by a participant to the stakeholder workshop organised as part of this study as the victims often belong to vulnerable groups.

The problematic nature of some possible practices or mechanisms of ethnic profiling by the police may result from **institutional or organisational structure or approaches** within the police, even when there is no intention by the individual police officer or the organisation to target or profile certain populations based on ethnic characteristics⁶². A two-year-long action-research

⁵³ Information obtained from a representative of the European Commission via interview held on 01.03.2022.

⁵⁴ Information obtained from representatives of an EU-level research network via interview held on 15.03.2022.

⁵⁵ Information obtained from an IE stakeholder via the survey.

⁵⁶ Amnesty International (2017), [Police et profilage ethnique – Analyse du cadre juridique en Belgique](#) (*Police and ethnic profiling – Analysis of the legal framework in Belgium*).

⁵⁷ Information obtained from a research organisation in Austria via interview held on 11.03.2022.

⁵⁸ According to a 2019 Open Society Foundation [study](#), some police officers argue that ethnic profiling can be justified as being more efficient because it focuses on more frequent offenders. Empirical evidence from Member States where ethnic data exists, contradicts this argument.

⁵⁹ Open Society Foundation (2019), [Under suspicion: The impact of discriminatory policing in Spain](#).

⁶⁰ Information obtained from representatives of an EU-level research network via interview held on 15.03.2022.

⁶¹ FRA (2018), [Second European Union Minorities and Discrimination Survey, 'Being Black in the EU'](#), p. 30.

⁶² Sarah Van Praet (2020), [Identifying and tackling problematic or abusive forms of police selectivity](#); Justice Initiative (2013), [Equality under pressure: the impact of ethnic profiling](#).

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project in Belgium, in collaboration with the National Institute for Criminology, the Belgian Equality Body (UNIA) and a Brussels local police zone, showed, for instance, that the responsive nature of police interventions based on complaints by citizens resulted in the instrumentalisation of police by citizens against persons of a certain origin or population groups, and ultimately in increased stop and searches and identity checks of persons from an ethnic minority⁶³. This can be considered as an organisational issue within the police, as the system is based on reacting to citizens' calls, without any filtering, leading to checks based on appearance rather than on suspicious behaviour. In addition, the research identified problems with the training and career development of police officers, for instance, the lack of opportunities to learn soft skills or a promotion based exclusively on the number of interventions⁶⁴.

Another issue related to the organisational structure of the police identified by several stakeholders concerns the **investigations into complaints by citizens** against local police officers, where reported. In some Member States, it might appear that the investigation into complaints of racial or ethnic discrimination against a specific police district is **not necessarily carried out in an independent manner**. For example, in Belgium, the investigation of the complaint, while lodged with the internal control organ of the police, is carried out by the police district where the complaint had its origin, after which it is returned to the control organ for the determination of further steps⁶⁵. In Denmark, the Independent Police Complaints Authority, which handles complaints about police conduct, falls under the jurisdiction of the Ministry of Justice, as does the police force, and this can be a barrier to the independence of the Complaints Authority⁶⁶. Moreover, the **complaint procedures** with control organs of the police are often said **not to be transparent**⁶⁷. In 2010, the UN Human Rights Committee criticised Belgium for lack of independent supervision of the police⁶⁸. An ENAR report mentions that in Bulgaria, Croatia and France, the independent bodies investigating police and law enforcement abuses are not always fully transparent⁶⁹. In Romania, **impunity** is raised as a significant issue in the security forces as they are often exonerated in cases of alleged cruel, inhuman, or degrading treatment⁷⁰. This seems in part due to the rules applying in Romania to potential abusive behaviours, which only exceptionally result in accountability⁷¹. In Spain, SOS Racismo (movement of NGOs in Spain) reported that, since 1999, their reporting service system has collected 571 cases of police racism; however, none of them took into consideration the racist motivation as an aggravating factor. In addition, SOS Racismo purports that police officers tend to bring **false charges as a defence** for their abusive behaviour, making it difficult for the victims to provide evidence⁷². According to a representative of a research organisation in Lithuania, in some cases, the police tend to **intimidate or convince victims** of racial discrimination not to submit a complaint⁷³.

The data indicated above and in Box 7 below **suggest the existence of, at least perceived, occurrences of racial or ethnic profiling in policing relating to stop and search activities and identity checks.**

⁶³ Sarah Van Praet (2020), [Identifying and tackling problematic or abusive forms of police selectivity](#).

⁶⁴ Sarah Van Praet (2020), [Identifying and tackling problematic or abusive forms of police selectivity](#).

⁶⁵ Information obtained via interviews with Belgian stakeholders.

⁶⁶ The Danish Institute for Human Rights (2021), [Parallel Report Denmark – UN Committee on the Elimination of Racial Discrimination \(CERD\)](#), p.12.

⁶⁷ Information obtained via interviews with Belgian stakeholders.

⁶⁸ ENAR (2021), [The sharp edge of violence: police brutality and community resistance of racialised groups](#).

⁶⁹ ENAR (2021), [The sharp edge of violence: police brutality and community resistance of racialised groups](#).

⁷⁰ US State Department (2021), [Romania 2020 Human Rights Report](#).

⁷¹ APADOR-CH (2020), [Unconscious bias and discrimination of Roma people in the criminal justice system](#).

⁷² Sos Racismo (2012), [Informe Anual sobre el Racismo en el Estado Español](#) (Yearly report on racism in Spain).

⁷³ Information obtained from a representative of a research organisation in Lithuania via an interview held on 04.03.2022

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Additional data would facilitate a better understanding of the specificities of racial or ethnic discrimination by police, possible structural causes or other potential reasons for overrepresentation of certain groups in stop and searches by law enforcement. Such data collection, though, is challenging, because of European countries not systematically collecting or releasing ethnically disaggregated data, and because of law enforcement bodies not generally documenting stops, checks, and inspections or not making such data accessible⁷⁴. The 2021 Council of Europe resolution and report on ethnic profiling in Europe also states that '*data protection is often invoked as a pretext for refusal to collect relevant data, however it can be collected and processed without breaching the personal data protection rules*'⁷⁵. This makes it particularly **difficult to measure the exact extent of the problem**⁷⁶.

Box 7: Signs of discriminatory profiling occurrences in policing

Signs of discriminatory profiling in policing: examples from selected Member States and beyond

- **Belgium:** in 2021, the CERD⁷⁷ expressed its concern that racial profiling by the police remains a persistent problem in Belgium. It also noted the absence of data on people targeted by police checks. A 2018 report by Amnesty International interviewed 48 police officers, of which 24 acknowledged that there are problems with ethnic profiling by the police⁷⁸. The problems have been acknowledged by the police in a response to the CERD Review for Belgium, though Amnesty International noted that no action or insufficient action has been taken to address the problem⁷⁹.
- **Denmark:** in 2020 the Danish Government presented a draft Act amending the Danish Penal Code to introduce a 'security-creating assembly ban'. The Act would allow the police to issue a ban on assembling in a specific public space (park, square, etc.). NGOs expressed concerns that this would lead to indirect racial or ethnic discrimination as the explanatory memorandum refers to the 'appearance' of the group that may create insecurity⁸⁰. In 2021, the proposal was voted down in parliament.
- **Finland:** a study on ethnic profiling in Finland demonstrates that people belonging to ethnic minorities are under surveillance in many urban spaces. Data shows that 36.2 % of ethnic minority respondents have been stopped by the police⁸¹.
- **France:** statistical research from the French Defender of Rights reveals a concentration of identity checks in France on young people perceived to be black or Arab⁸². Eighty percent of men under the age of 25 who identify as Arab/Maghrebi or black report being stopped at least once in the last five years (compared to 16 % for the rest of the population). In 2021, the Paris Court of Appeal ruled that the targeted control of male students of a minority background in a Paris train station amounted to discrimination on the grounds of origin, age and sex and constituted a fault triggering the liability of the French State⁸³.

⁷⁴ See, inter alia, Amnesty International (2018), [On ne sait jamais, avec des gens comme vous – Politiques policières de prévention du profilage ethnique en Belgique](#) (*We never know with people like you – Police policies to prevent ethnic profiling in Belgium*).

⁷⁵ Council of Europe (2020), [Ethnic profiling in Europe: a matter of high concern](#).

⁷⁶ See, inter alia, Open Society Foundations, [Ethnic profiling in Europe](#), saying: "European countries do not systematically collect or release ethnically disaggregated data, and law enforcement does not document stops, checks, and inspections. This prevents individuals challenging unsatisfactory stops, communities from demonstrating bias in stops and holding the police to account, and law enforcement from introducing effective measure to challenge ethnic profiling".

⁷⁷ CERD (2021), [International Convention on the Elimination of All Forms of Racial Discrimination 103 Session](#); The Brussels Times (2021), [UN concerned about Belgium's police violence and racial profiling](#).

⁷⁸ Amnesty International (2018), [On ne sait jamais, avec des gens comme vous – Politiques policières de prévention du profilage ethnique en Belgique](#) (*We never know with people like you – Police policies to prevent ethnic profiling in Belgium*).

⁷⁹ Amnesty International (2021), [Oral Statement – Committee on the Elimination of Racial Discrimination Review of Belgium](#).

⁸⁰ [Communication from the UN Special Rapporteurs to Denmark](#) (2021), OL DNK (3.2021).

⁸¹ Keskinen S, Alemanji Aminkeng A, Himanen M, Kivijärvi A, Osazee U, Pöyhölä N & Rousku V (2018), [The stopped – Ethnic profiling in Finland](#), SSKH Notat 2/2018, Helsinki: Helsingin yliopisto.

⁸² Défenseurs des droits (2017), [Enquête sur l'accès aux droits, Volume 1, Relations police / population: le cas des contrôles d'identité](#) (*Investigation on access to right, Volume 1, Relationships between the Police and the population : identity checks*).

⁸³ Cour d'appel de Paris, arrêt du 8 juin 2021, *Monsieur X*, n°19/00865.

Signs of discriminatory profiling in policing: examples from selected Member States and beyond

- **Germany:** a recent survey indicates that 56 % of black respondents reported being stopped by the police without a concrete reason - examples include the police stopping at the respondents' house asking what they are doing there or if they are selling drugs⁸⁴.
- **Netherlands:** in interviews with approximately 500 police officers in the province of East Brabant, 64 % of the officers admitted considering perceived ethnicity as one of the factors in deciding whether or not to check people⁸⁵.
- **Romania:** according to ECRI, police stops and the use of force against Roma remain prevalent⁸⁶, 52 % of Roma who were stopped by police perceived this practice as ethnic profiling in Romania⁸⁷. During several interviews police officers admitted that when performing a stop or search, physical appearance is important in their decision and that administrative measures leading a person to the police station can be based on the person's colour or ethnicity⁸⁸.
- **Spain:** police were reported to regularly stop persons from ethnic minorities for the purpose of immigration checks as they suspected them to be undocumented migrants⁸⁹. A 2021 study highlighted that some respondents reported the persistence of racial prejudices in statements of police officers engaging in racial profiling, presuming them to be guilty or suspicious, and seeing them as criminal⁹⁰.
- **UK:** in 2020, the Independent Office for Police Conduct (IOPC) announced a review into whether officers racially discriminate against ethnic minorities. It was reported that stop-and-search powers are nine times more likely to be used against black people than against white people in England and Wales. The IOPC investigated a number of cases in which the police allegedly used excessive force against black men, claims of racial profiling as well as cases where victims from BAME (Black, Asian, minority and ethnic) communities felt unfairly treated by police⁹¹.

Analysis of EU and national legal instruments concerning stop and search activities and identity checks by the police

While the issues described above fall outside the material scope of the RED, **other EU legislation** provides protection against possible discrimination to some extent. For example, with specific reference to the processing of personal data for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, **Directive (EU) 2016/680** (Law Enforcement Data Protection Directive)⁹² applies. In particular, Article 11(3) of Directive (EU) 2016/680 on automated individual decision-making prohibits profiling that results in discrimination on the basis of special categories of personal data, including data revealing racial or ethnic origin as highlighted in Box 8 below.

⁸⁴ Afrozensus (2020), [Perspektiven, Anti-Schwarze Rassismuserfahrungen und Engagement Schwarzer, afrikanischer und afrodiaporischer Menschen in Deutschland](#) (*Perspectives, Anti-Black Racism Experiences and Commitment of Black, African and Afrodiasporic People in Germany*).

⁸⁵ NOS Nieuws (2016), [Agenten Oost-Brabant letten op etniciteit bij controles](#) (*Agents East Brabant watch for ethnicity during checks*),

⁸⁶ UN Special Rapporteur (2016): para. 24-29.

⁸⁷ FRA (2018), [Second European Union Minorities and Discrimination Survey](#), 'Being Black in the EU', p.72.

⁸⁸ APADOR-CH (2020), [Unconscious bias and discrimination of Roma people in the criminal justice system](#).

⁸⁹ Amnesty International (2016), [Police and Minority Groups](#), Short paper series No. 3, p. 35.

⁹⁰ Ministerio de Igualdad, Subdirección General de Relaciones institucionales e internacionales y Publicaciones. Centro de Publicaciones (2021), [Aproximación a la Población Africana y Afrodescendiente en España. Identidad y Acceso a Derechos](#) (*Approximation to the African and Afro-descendant Population in Spain. Identity and Access to Rights*).

⁹¹ BBC (2020), [Review launched into police 'race discrimination'](#).

⁹² [Directive \(EU\) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA](#).

Box 8: Directive (EU) 2016/680

Directive (EU) 2016/680

Article 3(4) defines 'profiling' as 'any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements'.

As regards special categories of personal data, Article 10 states that '[p]rocessing of **personal data revealing racial or ethnic origin** [...] shall be allowed only where strictly necessary, subject to appropriate safeguards for the rights and freedoms of the data subject, and only:

- (a) where authorised by Union or Member State law;
- (b) to protect the vital interests of the data subject or of another natural person; or
- (c) where such processing relates to data which are manifestly made public by the data subject.'

Article 11(1) requires Member States to provide for a **decision based solely on automated processing, including profiling**, which produces an adverse legal effect concerning the data subject or significantly affects him or her, to be **prohibited unless authorised by Union or Member State law** to which the controller is subject and which provides appropriate safeguards for the rights and freedoms of the data subject, at least the right to obtain human intervention on the part of the controller. **Article 11(2)** prohibits decisions based solely on automated processing from being based on special categories of personal data unless suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.

Article 11(3) states that '**[profiling that results in discrimination against natural persons on the basis of special categories of personal data referred to in Article 10 shall be prohibited, in accordance with Union law.**'

In addition, reference may be made to the **Directive (EU) 2016/681** on the use of passenger name record (PNR) data⁹³ insofar as the prevention, detection, investigation and prosecution activities of law enforcement authorities relate to terrorist offences and serious crime. As further analysed in Section 2.4 below, the provisions summarised in Box 9 below are relevant.

Box 9: Directive (EU) 2016/681

Directive (EU) 2016/681

Article 6(4) specifies that any assessment of passengers prior to their scheduled arrival in or departure from a Member State against pre-determined criteria must be carried out in a non-discriminatory manner. The pre-determined criteria must be 'targeted, proportionate and specific' and **must in 'no circumstances be based on a person's race or ethnic origin**, political opinions, religion or philosophical beliefs, trade union membership, health, sexual life or sexual orientation.'

Article 7(6) prohibits the competent authorities from taking 'any decision that produces an adverse legal effect on a person or significantly affects a person only by reason of the automated processing of PNR data. Such **decisions shall not be taken on the basis of a person's race or ethnic origin**, political opinions, religion or philosophical beliefs, trade union membership, health, sexual life or sexual orientation.'

Article 13(4) requires **Member States to prohibit the processing of PNR data revealing a person's race or ethnic origin**, political opinions, religion or philosophical beliefs, trade union membership, health, sexual life or sexual orientation.

⁹³ [Directive \(EU\) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record \(PNR\) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.](#)

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Additional protection against racial or ethnic discrimination in the processing of personal data for law enforcement purposes is provided by **Regulation (EU) 2019/817**⁹⁴ and **Regulation (EU) 2019/818**⁹⁵. These Regulations prohibit discrimination in the processing of personal data for the purposes of the Regulations including border checks at external borders; the implementation of visa policy; the prevention, detection and investigation of terrorist offences and of other serious criminal offences and the safeguarding of public security as indicated in Box 10 below.

Box 10: Regulations (EU) 2019/817 and 2019/818 on interoperability between EU information systems

Regulation (EU) 2019/817 on establishing a framework for interoperability between EU information systems in the field of borders and visa and Regulation (EU) 2019/818 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration

Article 5 of both Regulations states that the '[p]rocessing of personal data for the purposes of this Regulation shall not result in discrimination against persons on any grounds such as gender, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. It shall fully respect human dignity and integrity and fundamental rights, including the right to respect for one's private life and to the protection of personal data. Particular attention shall be paid to children, the elderly, persons with a disability and persons in need of international protection. The best interests of the child shall be a primary consideration.'

The EU instruments described above may be considered to provide important protection from racial or ethnic discrimination that may be caused by profiling by law enforcement authorities as further discussed in *Section 2.4* below.

Beyond the scope of the Law Enforcement Data Protection Directive, protection against discriminatory profiling in the context of the processing of personal data and the consequences of automated decision-making is ensured through Regulation (EU) 2016/679 - the General Data Protection Regulation (**GDPR**)⁹⁶ - and Regulation (EU) 2018/1725⁹⁷ on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies. These Regulations qualify personal data revealing racial or ethnic origin as **sensitive data**. Article 9 of the GDPR prohibits the processing of personal data revealing racial or ethnic origin unless specific derogations apply e.g., where the processing relates to personal data which are manifestly made public by the data subject. Regulation (EU) 2018/1725 contains similar provisions with respect to the processing of personal data by the EU institutions and bodies and here too, there is a specific prohibition on processing of personal data revealing racial or ethnic origin unless specific derogations apply (Article 10). Both Regulations establish a right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects or similarly significantly affects the data subject (Article 22 of Regulation (EU) 2016/679 and Article 24 of Regulation (EU) 2018/1725).

⁹⁴ [Regulation \(EU\) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations \(EC\) No 767/2008, \(EU\) 2016/399, \(EU\) 2017/2226, \(EU\) 2018/1240, \(EU\) 2018/1726 and \(EU\) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA.](#)

⁹⁵ [Regulation \(EU\) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration.](#)

⁹⁶ [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\).](#)

⁹⁷ [Regulation \(EU\) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data.](#)

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In **national legislation**, there are only a few Member States whose anti-discrimination law applies to the material area of the police exercising its functions. It must be noted that the national research for this study focused only on general anti-discrimination laws going beyond the material scope of the RED. Therefore, **the study does not provide an exhaustive overview of sectoral laws or other binding measures that could apply where potential discriminatory conduct by the police occurs**. However, where National Experts or other sources provided information concerning other types of legislation, it was also processed and presented as examples. Box 11 below lists the relevant legal instruments and provisions in the Member States concerned, and highlights in *Italics* some implementation challenges. Furthermore, where they exist, recent complaints' data (including from equality bodies) concerning discrimination by the police have been included in the Box below. The information and data presented in Box 11 is summarised in *Section 2.4.2*.

Box 11: National law protecting against discrimination by police forces in the Member States

National law protecting against discrimination by police forces in the Member States

- **Austria:** the material scope of the Austrian anti-discrimination legislation does not go beyond the RED⁹⁸. Nevertheless, according to the **Decree of the Minister of the Interior BGBl. 266/1993** issuing binding guidelines for the police bodies, 'the organs of the public security service must, while fulfilling their duty, refrain from doing anything that is suited to evoke the impression of partiality or could be perceived as discrimination on the grounds of sex, race or skin colour, national or ethnic origin, religion, political affiliation or sexual orientation'⁹⁹. Thus, the legal protection against racial discrimination goes beyond the RED, as it protects not only against a discriminatory act, but also against the impression or **perception of bias** on the ground of race¹⁰⁰. However, *according to a legal expert¹⁰¹, the actual application of this legal concept in practice does not effectively reflect this approach, but the legal concept is broad, and victim centred.*
- **Belgium:** at the federal level, Article 5, 6° of the **Racial Equality Federal Act, REFA**¹⁰² prohibits discrimination in the content of any official document or in a *process-verbal*¹⁰³. Article 23 sanctions, by a prison term between two months and two years, discrimination by any civil servant, public officials or law enforcement authority when acting as part of their functions. The action of the police is also regulated through an [ethics code](#).¹⁰⁴ Article 24 of the code prohibits police from acting in a discriminatory manner whenever they are within the exercise of their functions. Despite these provisions, *Amnesty International considers it necessary to have specific and binding guidelines to apply the discretionary competences of the police law during identity checks¹⁰⁵. In particular, regarding discrimination, it is necessary, according to Amnesty International, to mention explicitly the principle of non-discrimination and anti-racism in the police law¹⁰⁶.* The **equality body's (UNIA) website** provides for summaries and links to **case-law related to**

⁹⁸ European network of legal experts in gender equality and non-discrimination (2021), [Austria - Country report non-discrimination 2021](#).

⁹⁹ [Verordnung des Bundesministers für Inneres, mit der Richtlinien für das Einschreiten der Organe des öffentlichen Sicherheitsdienstes erlassen werden](#) (*Decree of the Minister of the Interior, issuing guidelines for interventions by organs of the public security service*), BGBl. 266/1993.

¹⁰⁰ Information obtained from an Austrian legal expert in response to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

¹⁰¹ Information obtained from an Austrian legal expert in response to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

¹⁰² [Loi tendant à réprimer certains actes inspirés par le racisme ou la xénophobie](#) (*Federal Act of 10 May 2007 amending the Act of 30 July 1981 criminalising certain acts inspired by racism or xenophobia*), OJ (Moniteur belge), 30 May 2007; last modified on 17 August 2013, Moniteur belge, 5 March 2014.

¹⁰³ Information obtained from a Belgian legal expert in response to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

¹⁰⁴ Code de déontologie des services de police, 10 mai 2006.

¹⁰⁵ Amnesty International, [Police et profilage ethnique Analyse du cadre juridique en Belgique](#) (*Police and ethnic profiling Analysis of the judicial framework in Belgium*), p.17.

¹⁰⁶ Loi tendant à réprimer certains actes inspirés par le racisme ou la xénophobie, 30 juillet 1981, C-1981/073035.

¹⁰⁶ Amnesty International, [Police et profilage ethnique Analyse du cadre juridique en Belgique](#) (*Police and ethnic profiling Analysis of the judicial framework in Belgium*), p.17.

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racism by the police and the justice system. However, the cases listed relate mostly to police violence towards ethnic minorities, racist statements by the police or by citizens towards police officers

- **Bulgaria:** the **Bulgarian Protection Against Discrimination Act**¹⁰⁷ has a universal material scope¹⁰⁸. The act is a codification; thus, it applies to all possible incidents of discrimination in any areas covered by the RED and beyond. This universal ban on discrimination applies to all public authorities, including the police and other law enforcement authorities¹⁰⁹. **No publicly available data on complaints** regarding racial/ethnic discrimination or racial profiling allegedly committed by law enforcement authorities and on the outcome of such complaints exist. As **implementation challenges**, three Bulgarian interviewees¹¹⁰ highlighted the *misunderstanding or lack of understanding of the anti-discrimination legislation, and letting prejudices to influence professional decisions, leading to non-observance of the legal provisions. The political dependency of the equality body was also noted*¹¹¹.
- **Croatia:** the **Croatian Anti-Discrimination Act**¹¹² also has a very wide scope of application, it applies to both the public and private sectors and to all areas without any limitation¹¹³. Article 8 provides that the Act is applicable to the conduct of all state bodies¹¹⁴. *Both Croatian stakeholders interviewed under this study*¹¹⁵ reported **general implementation challenges** of the Act: *lack of trust in institutions and underreporting, as asylum seekers and members of national minorities often choose not to report violations of their rights and discrimination due to fear that this would negatively affect their status. Furthermore, some ethnic groups, e.g., the Roma population lacks knowledge on where to report discrimination, which makes it impossible to capture the level of discrimination occurring in society and thus to efficiently tackle it.* The **Ombudswoman's Office in Croatia** acts as an independent police complaints authority. Over the years, it has **reported on numerous cases** of violation of human rights by the police against members of the national minorities and irregular immigrants, including the **possible discriminatory ethnic profiling of migrants**, i.e., the decision of police officers to halt a person, exclusively or mainly because of race, ethnicity or skin colour and national origin. According to the Office, such illegal practices can have particularly detrimental effects on the groups exposed to them, and their effectiveness is questionable because they are not accompanied by evidence of crime or decreased security¹¹⁶.
- **Estonia:** national law prohibiting racial or ethnic discrimination does not apply beyond the material scope of the RED. However, relevant **constitutional anti-discrimination provisions** (Article 12)¹¹⁷ are directly applicable in all spheres of life regulated by law¹¹⁸, thus including police actions. While the courts and the Chancellor of Justice can receive complaints in areas outside the scope of the RED, the equality body (Commissioner for Gender Equality and Equal Treatment) has a purely advisory function which is limited to the material areas covered by the RED¹¹⁹. There is **no data regarding complaints concerning discrimination by the police**; however, in general, there are very few cases on the grounds of race or skin colour (i.e., two out of 300 in 2021)¹²⁰. Nevertheless, it was noted that this does not represent the number of real

¹⁰⁷ [Закон за защита от дискриминация](#) (*Bulgarian Protection Against Discrimination Act (PADA)*).

¹⁰⁸ Information obtained from a Bulgarian legal expert in response to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

¹⁰⁹ Information obtained from a Bulgarian national expert (academic) via email.

¹¹⁰ An academic; a lawyer / former member of the equality body; and a lawyer / representative of an NGO.

¹¹¹ Information obtained from an academic in Bulgaria via interview held on 11.02.2022.

¹¹² *Zakon o suzbijanju diskriminacije (Croatian Anti-Discrimination Act)*, Official Gazette 85/08, 112/12.

¹¹³ Information obtained from a Croatian legal expert in response to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

¹¹⁴ European network of legal experts in gender equality and non-discrimination (2021), [Croatia - Country report non-discrimination 2021, p.38.](#)

¹¹⁵ Representatives of an NGO and a research organisation.

¹¹⁶ Croatian Ombudswoman's Office, [2017 Annual Report](#), March 2018.

¹¹⁷ Article 12 Estonian Constitution: 'Everyone is equal before the law. No one may be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other views, property or social status, or on other grounds'.

¹¹⁸ Information obtained from an Austrian legal expert in response to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

¹¹⁹ Information obtained from the Estonian equality body via interview.

¹²⁰ Information obtained from the Estonian Ministry of Social Affairs via interview.

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cases, as people belonging to ethnic groups might not be aware of their rights or the complaints mechanisms, or those who are aware, might not be inclined to take steps due to legal costs¹²¹. A human rights NGO also confirmed that there are only a very few victims of racial or ethnic discrimination who ask for their support and there is **very limited judicial practice** in this area¹²².

- **Finland:** the **Non-Discrimination Act**¹²³ prohibiting racial or ethnic discrimination is applicable to all public and private activities, including in the exercise of public authority by the police¹²⁴. A **specific challenge** indicated by an interviewee in relation to the police is that they seem to have their own interpretation of the Non-Discrimination Act, in light of unclarities in other laws¹²⁵ (e.g., there is a ban on ethnic profiling in the Law on Foreigners, but at the same time, it gives the police and the border guards more powers to conduct identity checks on foreign citizens¹²⁶). A police officer interviewed also acknowledged that there is a risk of ethnic profiling when enforcing the Law on Foreigners, because the checks are unstructured, they take place in different places in the country (there are no checks at the border) to make sure that no illegal migrants are on Finland's territory. *The way these checks are undertaken is not overseen*¹²⁷. In addition, three Finnish stakeholders interviewed¹²⁸ reported on **general implementation challenges** of the Non-Discrimination Act, such as: underreporting, lack of data, lack of trust in the institutions, lack of resources for monitoring the requirement to promote non-discrimination, inadequate sanctions, inability of the equality body to provide victims with compensation and complex institution system of equality and non-discrimination. In 2020 an **evaluation report** on the present Non-Discrimination Act was published. *The report points out as challenge the underreporting, as people are afraid to complain about the discrimination they have experienced. Another problem highlighted is the difficulty to verify discrimination.* The report considers that this is particularly true for ethnic profiling by the police¹²⁹.
- **France:** the national **police Code of conduct**¹³⁰ requires police officers to carry out their activities in an impartial way. To that extent, the Code prohibits police officers from establishing distinctions in their acts and their words based on (among others) origin or ethnicity. Furthermore, identity checks shall not be carried out on the basis of citizens' physical appearance. Breach by the Police of their obligations under this Code can result in disciplinary sanctions. This Code also applies to the gendarmerie which belongs to the military. The Institution of the **Defender of Rights** is both the external ethical oversight body of the police and the national equality body. Since 2014, referrals to the Defender of Rights in the area of law enforcement ethics have increased by 179 %. Its activity remains focused on **law enforcement, identity checks, and professional practices**. It received **2 162 claims in 2020, a significant increase of 10.5 % from 2019**. The referrals revealed a significant increase in cases involving the municipal police. In the absence of a traceability system for identity checks and a recourse mechanism to ensure effective access to the law and to justice in order to denounce discriminatory checks, the Defender of Rights' office **recommended** the establishment of such systems and mechanisms. It called for a formal evaluation of their effectiveness and an analysis of their impact on police-citizen relations¹³¹. In its 2018 annual report, the Defender of Rights reported that on several occasions it noted a lack of consideration on the part of some members of the security forces with regard to certain categories of individuals (Roma, homeless people, etc.), mostly expressed by use of inappropriate vocabulary during exchanges and investigations, restraining actions, and even use of force outside the legal framework¹³².

¹²¹ Information obtained from the Estonian Ministry of Social Affairs via interview.

¹²² Information obtained from an NGO representative in Estonia via email correspondence.

¹²³ [Finnish Non-Discrimination Act](#) (1325/2014).

¹²⁴ Information obtained from a Finnish legal expert in response to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

¹²⁵ Information obtained from a representative of the equality body in Finland via interview held on 18.02.2022.

¹²⁶ Himanen M. (2022), [An Ambiguous Ban on Ethnic Profiling](#).

¹²⁷ Information obtained from a Finnish police officer via interview.

¹²⁸ Representatives of: a local city administration, an NGO and an independent judicial body.

¹²⁹ Nieminen K & Jauhola L (2020), [Aidosti yhdenvertaiset Yhdenvertaisuuslain arviointi](#).

¹³⁰ Ministry of Interior, [Internal Security Code](#).

¹³¹ Defender of Rights, [Annual report 2020](#).

¹³² Defender of Rights, [2018 Annual report](#).

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- **Germany:** the federal character of Germany leads to different regulations in different Länder in some areas where the Länder have legislative powers. While the federal General Act on Equal Treatment (*Allgemeines Gleichbehandlungsgesetz* - AGG) does not apply beyond the material scope of the RED, the **Berlin State Anti-Discrimination Act**¹³³ adopted in 2020 provides protection against discrimination in relation to public law actions by the administration and public bodies of the Berlin Land¹³⁴. This applies to police actions as well¹³⁵. In general, **Germany's Basic Law** expressly forbids discrimination due to origin, race, language, homeland and heritage, beliefs, religious or political views, etc., and this provision has been used in courts to condemn racial profiling by the police¹³⁶. However, victims of discrimination by the police through racial profiling do not benefit from the same legal instruments as the AGG provides; therefore, ECRI considers that **the scope of the AGG should be extended to the public sector, including the police** as well¹³⁷. This was confirmed by a German interviewee, who stated that *despite racial profiling being forbidden in Germany [via the general non-discrimination constitutional provision], it is structurally poorly recorded, there are no legal duties for the police, no structure for complaints or possibility for an NGO to file a legal action against profiling incidents*¹³⁸. ECRI in its latest monitoring report on Germany also recommended that 'the authorities of the Federation and the Länder should examine and tackle the issue of racial profiling in a systematic way', encouraging them to carry out a 'study that analyses the current control practices and leads to recommendations that sustainably prevent racial profiling and curtail the number of unjustified police controls'¹³⁹.
- **Greece:** the Greek anti-discrimination law¹⁴⁰ has the same material scope as the RED, thus it does not cover exercise of public authority by the police. Nevertheless, as far as racial profiling is concerned, the **2004 Code of Conduct of Police Officers**¹⁴¹ provides for the general principle of unprejudiced and socially sensitive approach of all persons by the police, and the obligation of police officers to treat persons belonging to vulnerable social groups with special care. In particular, this Code of Conduct highlights the lack of prejudice on the grounds of colour, gender, ethnic origin, ideology and religion, sexual orientation, age, disability, family, economic or social status as one of the fundamental parameters for the behaviour of police officers¹⁴². The Code of Conduct is a normative instrument, which was issued by the president of Greece, on the proposal of the ministry in charge. Therefore, the dispositions of this instrument are binding. However, *according to a national expert, the normative text in question is 'so full of grandiloquent statements about what an ideal police officer should do that its direct normative use to bring officers into compliance is rather doubtful'*¹⁴³. There are **no known cases of police officers being explicitly sanctioned for racial profiling or other forms of racial or ethnic discrimination**¹⁴⁴. However, since 2017, the **Greek Ombudsman's Office** (equality body) also acts as the officially designated National Mechanism for the Investigation of Arbitrary Incidents by security

¹³³ [Landesantidiskriminierungsgesetz](#) (LADG) (*Berlin State Anti-Discrimination Act*), 11 June 2020.

¹³⁴ European network of legal experts in gender equality and non-discrimination (2021), [Germany - Country report non-discrimination 2021](#).

¹³⁵ Information obtained from a representative of an EU institution via interview held on 04.04.2022.

¹³⁶ See for example a 2012 decision of the Koblenz higher administrative court (7 A 10532/ 12.OVG) ruling that an identity check carried out by the federal police had violated the prohibition of discrimination of the Basic Law (GG) because the police had used skin colour as the selection criterion.

¹³⁷ ECRI (2014), [Report on Germany](#) (fifth monitoring cycle).

¹³⁸ Information obtained from an NGO representative in Germany via interview held on 01.04.2022.

¹³⁹ ECRI (2014), [Report on Germany](#) (fifth monitoring cycle).

¹⁴⁰ [Equal Treatment Law 4443/2016](#).

¹⁴¹ [Presidential Decree 254/2004 on Code of Conduct of Police Officers](#) (OJ 238 A/03.12.2004).

¹⁴² Information obtained from a Greek legal expert in response to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED, citing the Committee on the Elimination of Racial Discrimination (2015), Consideration of reports submitted by States parties under article 9 of the Convention - Twentieth to twenty-second periodic reports of States parties due in 2015, p. 26-29, <https://daccess-ods.un.org/tmp/7794423.10333252.html>.

¹⁴³ Information obtained from a national expert (senior lawyer, academic, former official of the Greek Ombudsman) via email.

¹⁴⁴ Information obtained from a national expert (senior lawyer, academic, former official of the Greek Ombudsman) via email.

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forces¹⁴⁵, and it draws a related special report yearly¹⁴⁶. These reports mention cases of **re-reported incidents of disciplinary misconduct by police officers** and coast guards (21 cases in 2018, 28 cases in 2019 and 24 cases in 2020¹⁴⁷), which were allegedly committed with racist motivation (discriminatory or humiliating treatment of asylum seekers and Roma during controls, arbitrary rejection of requests, insufficient investigation of reported crimes against foreigners, etc.). The disciplinary investigation of these cases is pending or was renewed after the Ombudsman found that investigations had been poorly conducted (i.e. four cases were returned for complementary investigation in 2020). The 2020 Special Report mentions racial profiling, stating that 'the Ombudsman's experience shows that it has not been widely understood that policing based on the characteristics of a person belonging to a social group or minority (racial profiling) is both prohibited, as discriminatory¹⁴⁸, and ineffective¹⁴⁹ policing¹⁵⁰.

- **Hungary: the Equal Treatment Act**¹⁵¹ does not enumerate the fields falling under its material scope. It approaches the issue of material scope from the perspective of personal scope, listing the public entities that must respect the requirement of equal treatment in all their actions and practices, regardless of which sector they operate in¹⁵². This list includes the police, the army, prison services and border guards. *Two Hungarian interviewees¹⁵³ reported general implementation challenges of the Equal Treatment Act, namely underreporting due to lack of knowledge of Roma victims of the reporting mechanisms and the remedies available. Access to justice of the Roma communities is also hindered due to their precarious financial situation, and since 2018, the legal aid system has practically ceased to exist, while legal representation became mandatory in most non-discrimination lawsuits¹⁵⁴. What is more, there are relatively few lawyers who are familiar with the specificities of non-discrimination law (e.g., the shifted burden of proof). Lawyers also might find easier to challenge formal, procedural errors (e.g., how a fine was imposed by the police) than to argue the discriminatory nature of the action/conduct¹⁵⁵. Institutional discrimination and societal bias also contribute to the ineffective enforcement of the right to non-discrimination¹⁵⁶. A Hungarian NGO also reported that ethnic profiling is very difficult to prove as the police do not register people's ethnic background and there is a high latency in*

¹⁴⁵ Based on Article 188 of Law 4622/2020. The National Mechanism has a mandate to monitor, refer for disciplinary investigation and oversee the disciplinary process for serious unlawful conducts, including unlawful conduct for which there are indications that it was racially motivated or presented an implicit element of any other kind of discrimination.

¹⁴⁶ Greek Ombudsman (2019), [Special report 2017/2018](#); Greek Ombudsman (2020), [Special report 2019](#); Greek Ombudsman (2021), [Special report 2020](#).

¹⁴⁷ Greek Ombudsman (2019), [Special report 2017/2018](#), p. 29, 30, 32-33; Greek Ombudsman (2020), [Special report 2019](#), p. 65-70; Greek Ombudsman (2021), [Special report 2020](#), p. 29-32.

¹⁴⁸ In this regard, the 2020 Special report involves the following instruments: Article 2(1), Article 5(2) and (3) of the Greek Constitution; Article 21 Charter of Fundamental Rights of the European Union; Article 11 (3) of Directive 2016/680/EC, on the protection of natural persons with regard to the investigation of criminal offences; The European Code of Police Ethics, paras. 43 and 49; [Rec \(2001\)10](#) of the Council of Europe, Order no. 7100/4/324.5.2006 of the ELAS Headquarters; [General Policy Recommendation No. 11](#) of the European Commission against Racism and Intolerance (ECRI) of the Council of Europe on combating racism and racial discrimination in policing; and the 2018 FRA Guide to preventing unlawful profiling.

¹⁴⁹ According to the 2020 Special report (p.31), such policing is ineffective given that individuals belonging to a social group or minority are marginalised. In this regard, it cites the 2018 FRA Guide to preventing unlawful profiling, according to which 'this group is over-represented in the percentage of criminal case files that are created by the Police, thus raising the issue of statistical accuracy in criminal data'.

¹⁵⁰ Greek Ombudsman (2021), [Special report 2020](#), p.31.

¹⁵¹ [2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról](#) (Act 2003 of CXXV on equal treatment and on the promotion of equal opportunities).

¹⁵² Information obtained from a Hungarian legal expert in response to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

¹⁵³ Representatives of the Equality body/Ombudsman and of an NGO.

¹⁵⁴ Information obtained from a representative of the Hungarian Equality body/Ombudsman via interview held on 16.02.2022.

¹⁵⁵ Information obtained from an NGO representative in Hungary via interview held on 15.02.2022.

¹⁵⁶ Information obtained from a representative of the Hungarian Equality body/Ombudsman via interview held on 16.02.2022.

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these cases¹⁵⁷. As of 1 January 2021, the **Ombudsman in Hungary** (Commissioner for Fundamental Rights) overtook the responsibilities of the previous equality body (Equal Treatment Authority), and since 27 February 2020, also the responsibilities of the Independent Police Complaints Board. Thus, the Ombudsman in Hungary is currently the competent authority to handle complaints against the conduct of the police, including for violation of the principle of equal treatment and non-discrimination. In **2021**, the Ombudsman received **one complaint concerning identity checks and personal search** by the police, and found that the identity checks were conducted because of the complainant's ethnic background¹⁵⁸. **No data on complaints exist for previous years**¹⁵⁹. *The authorities (police, prosecution services, courts) do not keep statistics based on the type and nature of the complaints*¹⁶⁰.

- **Latvia:** the cornerstone of the prohibition of discrimination is Article 91 of the **Latvian Constitution**, which outlaws all discrimination, but does not expressly state the grounds on which discrimination is prohibited. The Constitution is regarded as having direct effect, i.e., it directly binds all public bodies. This means that discrimination is illegal in the public sector even without any further laws, which are thus only needed to provide for sanctions and the enforcement of the principle of non-discrimination¹⁶¹. The Ombudsman in Latvia (equality body) considers and handles complaints regarding alleged discrimination on grounds of racial or ethnic origin; however, **the number of such complaints is low**: on average, there are two submissions per year, and they concern areas other than the exercise of public authority by the police¹⁶². The Ombudsman undertakes its activities based on the Constitution. Therefore, if the prohibition of discrimination based on racial or ethnic origin is not included in the regulatory acts of a particular public field, or in EU law applicable to Latvia, it is always possible to ensure protection through the constitutional provisions. Thus, the protection against racial or ethnic discrimination at national level is more extensive than in the RED¹⁶³.
- **Slovenia:** the **Protection Against Discrimination Act**¹⁶⁴ states that discrimination is prohibited in various fields of social life, when enforcing human rights and fundamental freedoms, exercising rights and obligations and in other legal relationships in political, economic, social, cultural, civil or other fields. The prohibition of discrimination binds, among others, state authorities, requiring them to ensure protection against discrimination or equal treatment of all persons in all fields of decision making, legal transactions and other operations or conduct¹⁶⁵. *One Slovenian interviewee*¹⁶⁶ noted a **specific challenge** regarding the police, namely that they do not focus on effectively addressing ethnic discrimination, by putting in place effective powers of investigation and imposing sanctions. *This interviewee along with two others*¹⁶⁷ also reported **general implementation challenges** of the Protection Against Discrimination Act. This includes underreporting, as victims believe that reporting only brings more problems with the procedures and that in the end it is not worthwhile; lack of data and evidence, especially if there are no witnesses or documentation; inadequate sanctions system and legal remedies; complex and costly court procedures; uncertain outcomes in the different courts competent to decide on dis-

¹⁵⁷ Civil Liberties Union (2020), [Gyerekként értelmi sérültnek minősítették, most a diszkrimináció ellen küzd a fiatal roma egyetemista](#) (Being classified as mentally disabled when a child, a young Roma university student is now fighting discrimination).

¹⁵⁸ Office of the Commissioner for Fundamental Rights (2021), ['Joint report related to cases no. AJB-729/2021 and AJB-730/2021 regarding the police conduct toward a person with Roma background under the framework of the increased control situation'](#).

¹⁵⁹ Prior to 1 January 2021, there is no information available in the public domain on the number of incidents the Equal Treatment Authority registered.

¹⁶⁰ Information collected in 2022 by a Hungarian legal expert on behalf of Milieu Consulting as part of the FRA's service request on 'Anti-racism in Policing in the EU: challenges and promising practices'.

¹⁶¹ European network of legal experts in gender equality and non-discrimination, [Latvia - Country report non-discrimination 2021](#).

¹⁶² Information obtained from the Latvian Ombudsman's Office via interview.

¹⁶³ Information obtained from the Latvian Ombudsman's Office via interview.

¹⁶⁴ [Zakon o varstvu pred diskriminacijo \(Protection Against Discrimination Act\)](#), 21 April 2016.

¹⁶⁵ Information obtained from a Slovenian legal expert in response to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

¹⁶⁶ An independent legal expert.

¹⁶⁷ An independent legal experts and representatives of a national and a local NGO.

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crimination cases; lack of trust in the authorities due to maltreatment or biased attitudes. Furthermore, there is lack of concrete guidance and tools that would enable quality implementation of this legislation, as well as a lack of interest from the governments to put in place measures and policies to monitor the practical implementation of the legislation.

- **Sweden:** Chapter 2, Section 17 of the **Swedish Discrimination Act**¹⁶⁸ prohibits discrimination by all public employees when assisting the public by providing information, guidance, advice or other such help, or when they have other types of contacts with the public in the course of their employment¹⁶⁹. According to a legal expert¹⁷⁰, while this provision of the Discrimination Act may be of some theoretical interest, its limited definition, particularly the exclusion of discriminatory acts that are asserted to have some connection to some form of official authority, means that its practical importance is limited. For example, a situation where the Discrimination Act does not apply is one in which a police officer is arresting a criminal, even if the officer is carrying out his/her official duties in a discriminatory manner. However, if the same police officer gives advice to an ordinary citizen an hour later and treats this citizen unfavourably for a reason connected to a ground of discrimination, this activity may fall under the Discrimination Act¹⁷¹.

There is also some **national case-law or decisions of equality bodies** addressing the issue of racial/ethnic discrimination or profiling by the police. Examples are presented in Box 12 below. These do not specifically mention structural/systemic discrimination, but the majority of them condemn discriminatory police practices/identity checks resulting in racial profiling.

Box 12: National case-law or equality body decisions addressing discrimination by the police

National case-law or decisions of equality bodies addressing the issue of (structural/systemic) discrimination by the police

- **Cyprus:** the **Ombudsman's Office**, which since 2004 has also been acting as equality body, receives and investigates ethnic discrimination complaints submitted by individuals. The office has received numerous complaints alleging ethnic profiling by the police specifically¹⁷². While racial profiling is not prohibited by law¹⁷³, on numerous occasions the equality body found that policing activities were motivated by a presumption of guilt on the basis of ethnicity, issuing each time a series of recommendations¹⁷⁴. In a 2015 case, the Office remarked that '**ethnic discrimination by the police was a real phenomenon within the Cypriot police force**', and in a 2017 case it noted that '*arbitrary targeting by the police based on ethnicity weakens efforts to cultivate a climate of acceptance and trust in the community*¹⁷⁵. The office recommended, among others, prohibition in national law of police actions initiated based on perceived ethnicity, guidelines on such practice issued to all officers, mechanisms for monitoring police conduct and recording police controls, imposing sanctions where needed, and the training of police officers regarding ethnic profiling¹⁷⁶.
- **Finland:** the **National Non-Discrimination and Equality Tribunal** found that the Helsinki Police had **practices of ethnic profiling**, and it condemned the general use of discriminatory stop and search practices¹⁷⁷.

¹⁶⁸ [Diskrimineringslag](#) (*The Discrimination Act*), (2008:567).

¹⁶⁹ Information obtained from a Swedish legal expert in response to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

¹⁷⁰ Information obtained from a Swedish legal expert in response to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

¹⁷¹ European network of legal experts in gender equality and non-discrimination (2021), [Sweden - Country report non-discrimination 2021](#), p.37.

¹⁷² Equinet (2019), [Compendium of Promising Practices on Ethnic Profiling](#), p.7.

¹⁷³ ERCI, (2016), [Report on Cyprus](#) (fifth monitoring cycle).

¹⁷⁴ Equinet (2019), [Compendium of Promising Practices on Ethnic Profiling](#), p.7.

¹⁷⁵ Equinet (2019), [Compendium of Promising Practices on Ethnic Profiling](#), p.7.

¹⁷⁶ Equinet (2019), [Compendium of Promising Practices on Ethnic Profiling](#), p.7.

¹⁷⁷ Rainer Hiltunen (2019), Police stop and search found to be discriminatory; European network of legal experts in gender equality and non-discrimination, [Finland](#).

National case-law or decisions of equality bodies addressing the issue of (structural/systemic) discrimination by the police

- **France:** 13 claimants who have allegedly been subjected to identity controls and searches by the police based solely on their physical appearance (a real or supposed African or North African origin according to their skin colour, features, clothing), sued the State Judicial Agent for compensation for their moral prejudice on the basis of **Article L. 141-1 of the Code of Judicial Organisation**. This Article lays down that the State must compensate the damage caused by the malfunctioning of the justice system (which is a public service). However, this liability is only triggered in case of serious misconduct or denial of justice. In 2016, the **Court of Cassation** held that an **identity check based on physical characteristics related to real or supposed origin, without any prior objective justification, is discriminatory: it constitutes gross negligence that engages the responsibility of the State** in line with Article L. 141-1 of the Code of Judicial Organisation. The Court also confirmed the method applied by the Court of Appeal for proving discrimination, namely that the shift in the burden of proof provided by Law No. 2008-476 of 27 May 2008¹⁷⁸ is applicable in these cases and that once the claimants had provided evidence of differential treatment, the police had the burden to establish that its control was justified. Thus, the state was convicted in cases where the controlled person provided factual evidence reflecting a difference of treatment, and the police failed to demonstrate that the difference in treatment was justified by objective grounds¹⁷⁹. The Court of Cassation did not explicitly mention 'systemic/structural discrimination', but referred to statistics; however, it held that invocation of statistics on police control targeting the same category of population did not, in itself, constitute sufficient proof, unless it is corroborated with testimonies proving the discriminatory nature of the control¹⁸⁰. **The French courts** have condemned the state for gross negligence in relation to acts of police violence, unjustified identity checks and irregular arrests of minors in other cases as well¹⁸¹. These decisions were based on the provisions of the Code of Judicial Organisation which triggers the civil liability of the state for serious misconduct of public authorities. The applicants and courts also relied on the provisions of the European Convention on Human Rights (ECHR). The French **Defender of Rights** (equality body) has been very active in litigation concerning ethnic profiling by police forces, including through *amicus curiae* interventions before courts. Its arguments were considered by the courts in the above-described cases of the 13 claimants, namely that non-discrimination law applies to stop and search cases as regards the reversal of burden of proof (which had been disputed by the state)¹⁸². Claiming that *'France has failed to take the necessary measures to prevent and punish identity checks based on race, as a form of systemic discrimination'*, in 2021 a **group action** against the state was launched by six French and international human rights organisations asking the na-

¹⁷⁸ [Loi n° 2008-496 du 27 mai 2008 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations](#) (Law No. 2008-496 of 27 May 2008 on various provisions for adaptation to Community law in the field of the fight against discrimination).

¹⁷⁹ Other cases where objective justification was provided by the police (e.g. the person checked corresponded to the report of a wanted suspect or the behavior of the applicant was suspicious and thus justified the control) were dismissed.

¹⁸⁰ Court of cassation, First Civil Chamber, [Decision of 9 November 2016](#); see also European network of legal experts in gender equality and non-discrimination (2021), Ad-hoc information request 064-090-27MS-ND-2021-Structural discrimination.

¹⁸¹ See for example, **Paris Court of Appeal, 8 June 2021, n°19/00872**. In this case (identity controls of three high school students returning from a school trip in a Paris train station in 2017), the Paris Court of First Instance applied the 2016 Court of Cassation ruling; nevertheless, it finds that the students did not provide any evidence that they were subjected to differential treatment on the basis of their ethnic origin. On 8 June 2021, the Paris Court of Appeal overturned the first instance's decision and held the State liable for gross negligence under Article L.141-1 of the Code of Judicial Organisation. See also **Tribunal de Grande Instance de Paris, Decision of 28 October 2020**. This case was based on a civil suit filed by 17 people against the state for discrimination by the police committed between 2014 and 2016 in Paris. The applicants, aged between 11 and 18 at the time of the events, had first filed a collective criminal complaint on 17 December 2015, denouncing - among other things - verbal, physical and sexual assaults during identity checks, as well as discrimination and arbitrary arrests. In April 2018, three police officers were given a five-month suspended prison sentence for violence. However, they were acquitted on appeal on 23 October; thus, the applicants sought a civil judgement against the state and Tribunal de Grande Instance de Paris condemned the state for gross negligence in relation to discriminatory police actions.

¹⁸² See also Equinet (2019), [Compendium of Promising Practices on Ethnic Profiling](#), p.8.

National case-law or decisions of equality bodies addressing the issue of (structural/systemic) discrimination by the police

tional authorities to undertake structural reforms and concrete measures to put an end to discriminatory police practices¹⁸³. Although institutionalised racism among the police is not acknowledged by the **French National Assembly**, its 2021 information report on different forms of racism mentions that certain acts carried out by the police, in particular identity checks, are not sufficiently regulated under national law nor by the hierarchy¹⁸⁴.

- **Hungary**: the **Commissioner for Fundamental Rights** (Ombudsman/equality body) remarked that, while **in the early 2000s** several studies, surveys and research showed that **ethnic profiling was present in the everyday practice of the police**, and European bodies and international organisations (e.g., FRA, ECRI) made recommendations to Hungary on how to combat racial discrimination in policing (e.g., training, clear policies), no measures were taken by the police. The Commissioner stated that there are no recent studies, surveys, empirical research available on racial discrimination in policing, and the lack of implementing measures to fight against it proves that **the phenomenon is still present in Hungary**¹⁸⁵.
- **Ireland**: the **Irish Equality Tribunal** has **dismissed several complaints** of discrimination against An Garda Síochána (police) received under the Equal Status Acts (ESA), **on the basis that the exercise of policing powers does not constitute a service**¹⁸⁶. This means that in the absence of explicit provisions prohibiting discrimination in policing and other public functions, some reported discrimination, including racial profiling effectively remain unchallenged at the national level¹⁸⁷.
- **Netherlands**: in 2021, in an ethnic profiling case brought to court by a coalition of civil society organisations and two non-white Dutch citizens, the **Hague District Court ruled that the practice** of the Dutch border police **of applying general risk profiles that incorporate ethnicity**, determining whether to stop individuals against whom there is no individual suspicion of any wrongdoing, **is not contrary to the prohibition of discrimination** in the ECHR. The plaintiffs considered the courts' ruling disappointing since it affirms that the police can continue the practice of ethnic profiling. The decision is not final, as the plaintiffs appealed against it¹⁸⁸.
- **Sweden**: when the police in southern Sweden established a register containing the names of thousands of Roma persons and their relations, including small children and deceased persons, the **equality body** concluded it was **possible** that **ethnic profiling** was being used by the police in its work and that there was a risk of discriminatory actions that could violate the Anti-Discrimination Act. The equality body recommended the police to investigate the occurrence of ethnic profiling and, if needed, undertake the necessary actions¹⁸⁹.

¹⁸³ LeMonde (2021), « [Contrôles d'identité au faciès](#) » : une action de groupe contre l'Etat lancée par six associations ('Racial profiling' : group action launched by 6 associations against the State); Amnesty France (2021), [France / Contrôles au Faciès. Le Conseil d'Etat Saisi par 6 ONG](#) (France/racial profiling. The Council of State seized upon by 6 NGOs).

¹⁸⁴ Assemblée Nationale, Mission d'information sur l'émergence et l'évolution des différentes formes de racisme et les réponses à y apporter (2021), [Rapport d'information](#) (Information report) p.117-119.

¹⁸⁵ Office of the Commissioner for Fundamental Rights (2021), [Joint report related to cases no. AJB-729/2021 and AJB-730/2021 regarding the police conduct toward a person with Roma background under the framework of the increased control situation](#).

¹⁸⁶ European network of legal experts in gender equality and non-discrimination, Response to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

¹⁸⁷ European network of legal experts in gender equality and non-discrimination, Response to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED. On reported discrimination by the Irish police against members of the Traveller community see: European Union Agency for Fundamental Rights (2020), [Roma and Travellers in Six Countries](#); Free Legal Advice Centres (2021), [FLAC Submission to the Joint Committee on Key Issues affecting the Traveller Community: Access to Housing and Accommodation, Including Traveller-Specific Accommodation](#). Incidents of discrimination and ethnic profiling by members of An Garda Síochána have also been collected and recorded by the Irish Network Against Racism, e.g. Irish Network Against Racism (2020), [Reports of Racism in Ireland](#).

¹⁸⁸ See the Amsterdam Law Hub (2021), [Dutch Court allows racial profiling](#); Euronews.com (2021), [Dutch activists lose ethnic profiling case but vow to appeal](#); Court of The Hague, [Decision ECLI:NL:RBDHA:2021:10283](#).

¹⁸⁹ European network of legal experts in gender equality and non-discrimination (2021), [Sweden - Country report non-discrimination 2021](#), p.88.

Study to support the preparation of an EU initiative to address possible gaps in the legal protection against discrimination on grounds of racial or ethnic origin

2.1.1.2 Increased use of force

Racial or ethnic profiling is also mentioned in connection with an **increased use of force** by law enforcement authorities. A problem of a disproportionate use of force in policing is highlighted in a number of sources of information, e.g., a European Network Against Racism (ENAR) briefing provides examples from several Member States and beyond. It refers, for example, to a study conducted by the Bulgarian Helsinki Committee on police brutality in Bulgaria that concluded that *'Roma people are disproportionately victims of physical violence during their arrest at the police station'*¹⁹⁰. A disproportionate use of force and increased violence has been indicated by nine stakeholders interviewed for this study. Several interviewees, in Bulgaria, Czechia, Hungary, Lithuania, Romania and Slovakia pointed out the harsher treatment and the violence against the Roma population by the law enforcement authorities. Additional examples from specific Member States are provided in Box 13 below.

Box 13: Examples of reported excessive use of force by the law enforcement authorities in connection with racial or ethnic profiling

Examples from selected Member States of reported excessive use of force by the law enforcement authorities

- **Austria:** in November 2020, the Austrian Government carried out 'Operation Luxor', one of the largest police raids, targeting Muslim citizens. 'Operation Luxor' was carried out at 5 am by raiding 70 homes across the country¹⁹¹. The Austrian Minister of Interior held a press conference on the same day, claiming that it was a state response to the terrorist attack of 2 November. This Operation was considered by many NGOs as an example of Islamophobic raids. The police raids led to widespread violations of human rights. In August 2021, an Austrian Court ruled that the raids were unlawful as the police used a disproportionate amount of force¹⁹².
- **Bulgaria:** according to the Bulgarian Helsinki Committee, the share of Roma prisoners (28.3 %) who report excessive use of force by the police during a criminal procedure exceeds twice the share of Bulgarians (14.5 %) reporting the same¹⁹³. Another report of the Bulgarian Helsinki Committee mentions that Roma people were 50 % more likely to be victims of physical police violence than non-Roma Bulgarians¹⁹⁴.
- **Czechia:** in 2021, Amnesty International expressed concerns over a possible unlawful killing of a Roma man by the police. The police used coercive means, they knelt on the back of a man and partly on his neck. The man died in an ambulance. Amnesty International called on the Czech authorities to carry out an impartial and thorough investigation of the police action¹⁹⁵.
- **France:** a report of the French equality body highlighted that the police tend to go to certain places where Roma people live in order to intimidate or threaten the population even when no eviction procedure is ongoing. Such practices often take place without any legal authorisation¹⁹⁶. In another report, the French equality body highlighted that among all the men subject to police checks, 9 % have reported violence, 9.1 % have reported insults and 19.5 % have reported familiarity (use of the informal 'tu'); for men perceived as Arabic, 24.1 % reported violence, 29 % reported insults and 30.7 % reported familiarity¹⁹⁷. Based on a study conducted by ENAR,

¹⁹⁰ ENAR (2020), [Policing Radicalised Groups – Briefing, Disproportionate Police Brutality, Violence & Racial Profiling](https://www.liberties.eu/en/infographics/police-brutality-bulgaria/99). <https://www.liberties.eu/en/infographics/police-brutality-bulgaria/99>.

¹⁹¹ Cage (2021), [Operation Luxor, Unravelling the myths behind Austria's largest ever peacetime police raids](#).

¹⁹² Cage (2021), [Operation Luxor, Unravelling the myths behind Austria's largest ever peacetime police raids](#).

¹⁹³ Anguelova, D., Kukova, Sl. (2020), [Guilty By Default: Discrimination and Prejudices against Roma in the Criminal Justice System in Bulgaria](#).

¹⁹⁴ Bulgarian Helsinki Committee (2016), Human Rights in Bulgaria, p.15-16, cited in Fair Trials (2022), [Uncovering anti-Roma discrimination in criminal justice systems in Europe](#).

¹⁹⁵ [Amnesty International \(2021\), Czech Republic Concerns over possible unlawful killing by the police, iRozhlas \(2021\), Za úmrtí Roma v Teplicích nemůže policejní zákrok, příčinou byl pervitin, vyplývá z pitevní zprávy](#).

¹⁹⁶ Défenseur des droits, (2021), [Rapport pour une protection effective des droits des personnes Roms \(Report : towards an effective protection of Roma people's rights\)](#), p.14.

¹⁹⁷ Défenseur des droits, (2019), [Inégalité d'accès aux droits et discriminations en France](#), (*Inequalities in access to rights and discriminations in France*), p.169-170.

Examples from selected Member States of reported excessive use of force by the law enforcement authorities

between 2015 and 2020, at least 192 people died in custody¹⁹⁸. Out of those, 156 belonged to racialised groups¹⁹⁹.

- **Poland:** the Helsinki Foundation conducted a survey among attorneys and other legal professions that identified cases of ill-treatment by police officers due to the person's belonging to a specific group. Out of 47 attorneys, 31 indicated that their client had suffered from bad treatment due to their belonging to a particular minority group. The results highlighted that race and nationality were among the most common grounds of discrimination experienced by their clients²⁰⁰.
- **Portugal:** a report from the National Assembly mentioned frequent complaints of excessive use of force by law enforcement authorities against Afro-descendants generating a feeling of impunity towards discriminatory behaviours²⁰¹. According to ECRI, in February 2015, a serious case of alleged racist violence resulted in charges being brought in 2017 against police officers. They were accused of torture, abduction, vilification and assault and battery on grounds of hatred and discrimination against six Black victims. According to the charge-sheet, the police officers had initially deliberately and violently arrested a Black resident of the Cova da Moura district in Lisbon. The report mentioned that although he did not resist arrest, the police officers violently beat him, he fell to the ground and bled from his mouth and nose. Following this incident, five members of a local association made a complaint to the Inspectorate General of Home Affairs (IGAI), which is competent for internal and disciplinary investigations within the police. Nevertheless, despite previous accusations of racist violence committed by officers from that police station, the IGAI took no immediate action²⁰².
- **Romania:** the UN Committee against Torture raised concerns over police abuse and pointed out the targeted practice of 'administratively conveying' Roma to police stations, by law enforcement officials, with increased risks of ill-treatment²⁰³. The Romani Centre for Social Intervention and Studies reported that in the 44 cases of police brutality against Roma documented since 2007, there were no convictions at the national level, due to the lack of prosecution²⁰⁴. In 2015, the European Court of Human Rights, in the case of *Ciorcan and others*, found that Romania violated the rights of Roma people who were severely injured by police forces²⁰⁵. According to the Court, the authorities failed to investigate whether discrimination may have played a role in the events²⁰⁶.
- **Slovakia:** the European Roma Rights Centre lodged a complaint in 2018 against the Slovak Ministry of Interior over discriminatory policing and Roma-targeted police raids²⁰⁷. A month before, the UN Committee for the Elimination of Racial Discrimination (UNCERD) called on Slovakia to take effective measures to cease biased policing, based on allegations of use of excessive force against Roma citizens by law enforcement officers²⁰⁸.

It is also worth noting that repeated excessive use of force could potentially point to an issue of structural discrimination whereby specific groups are systematically put at a disadvantage compared to other groups. Since 2015, the European Court of Human Rights (ECtHR) delivered more

¹⁹⁸ ENAR (2021), [The sharp edge of violence: police brutality and community resistance of racialised groups](#).

¹⁹⁹ ENAR (2021), [The sharp edge of violence: police brutality and community resistance of racialised groups](#).

²⁰⁰ Helsinki Fundacja Praw Człowieka (2018), [Złe traktowanie osób podejrzanych i zatrzymanych przez funkcjonariuszy policji \(Ill treatment of suspects and detained persons by police officers. Report from the attorneys survey\)](#), p.8-9.

²⁰¹ Subcomissão para a Igualdade e Não Discriminação, Comissão de Assuntos Constitucionais, Direitos, Liberdades e Garantias, Assembleia da República (2019), [Relatório sobre Racismo, Xenofobia e Discriminação Étnico-racial em Portugal \(Report on Racism, Xenophobia and Ethnic and Racial Discrimination in Portugal\)](#), p. 19-20.

²⁰² ECRI (2018), [Report on Portugal](#) (fifth monitoring cycle); ECRI, [Report on France](#) (fifth monitoring cycle), p. 24.

²⁰³ ECRI (2019), [Report on Romania](#) (fifth monitoring cycle).

²⁰⁴ US State Department (2021), [Romania 2020 Human Rights Report](#).

²⁰⁵ ECHR, Case 29414/09 ,44841/09 *Ciorcan and Others v. Romania*, 27 January 2015.

²⁰⁶ ECHR, Case 29414/09 ,44841/09 *Ciorcan and Others v. Romania*, 27 January 2015; Equal Rights Trust (2015), [Romania's Investigation of Police Violence against Roma Violated Right to Non-Discrimination](#).

²⁰⁷ Fair Trials (2022), [Justice denied: Roma in the criminal justice system](#).

²⁰⁸ Fair Trials (2022), [Justice denied: Roma in the criminal justice system](#).

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than 20 judgments condemning Romania for cases of police violence and the failure of the authorities to effectively investigate inhuman and degrading treatment by police. ECRI considers that these repeated cases underline a **persistent problem** in the country²⁰⁹. Already in 2015, in the case *Ciorcan and Others v. Romania*, the ECtHR acknowledged the possible existence in Romania of a general prejudice and hostility against Roma and continuing case of police abuse²¹⁰. On 16 April 2019, the ECtHR condemned Romania for violating the ECHR through the violent intervention carried out in 2011 by the Covasna County Police Inspectorate in the Roma community of Valcele²¹¹. The *Lingurar and Others v Romania* decision in this case is crucial as it **recognised the existence of institutionalised racism directed against Roma**²¹². **For the first time, the ECtHR used the term 'ethnic profiling'** concerning police action it found to be discriminatory²¹³. Further investigation would be required to provide more clarity on whether and to what extent the excessive use of force by law enforcement authorities could be considered as cases of 'structural' discrimination.

It might be argued that **issues resulting from profiling and excessive use of force might be more serious than the data suggests** since various sources of information also mention the underreporting of such incidents. The quantifications provided may be underestimates of the scale of the issues. For example, according to the FRA survey on Being Black in the EU, 86 % of respondents did not report the most recent incidents to any authorities²¹⁴. Among these people, 36 % of respondents felt that nothing would change by reporting incidents of racist harassment²¹⁵. In relation to police violence, the numbers are even significantly higher: 63 % of victims of racist physical attack by the police did not report the incident as they felt it would not change anything or because they are afraid of the police²¹⁶. However, one in 10 (11 %) of those who experienced racist violence say that a law enforcement officer was the perpetrator²¹⁷. Racial profiling and police violence appear to be determining factors for not reporting the crimes to the police and may increase resistance to public authority.

Analysis of EU legal instruments concerning the increased use of force

In this context, it is worth noting that to the extent that potential racial or ethnic discrimination could be intertwined with hate crime and/or hate speech, **Council Framework Decision 2008/913/JHA** on combating certain forms and expressions of racism and xenophobia by means of criminal law²¹⁸ is relevant. The Framework Decision criminalises **misconduct by public authorities, including the police**, where this amounts to hate crime or hate speech as described in Box 14 below and further analysed in *Section 2.4*.

Box 14: Framework Decision 2008/913/JHA

Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law

Article 1(1) sets out **offences concerning racism and xenophobia** requiring Member States to ensure that certain intentional conduct is punishable. In particular, Article 1(1)(a) lists publicly inciting to violence or hatred directed against a group of persons or a member of such a **group defined by reference to race, colour, religion, descent or national or ethnic origin**.

²⁰⁹ ECRI (2019), [Report on Romania](#) (fifth monitoring cycle), p. 21-22.

²¹⁰ ECHR, Case 29414/09 ,44841/09 *Ciorcan and Others v. Romania*, 27 January 2015.

²¹¹ Marian Mandache, executive director NGO Romani CRISS (2019), [Scrisoare deschisă privind abuzurile Poliției împotriva romilor](#) (*Open letter on police abuses against Roma*).

²¹² Open Society Justice Initiative (2019), [Case Watch: A Groundbreaking Ruling from a Powerful European Court](#).

²¹³ Open Society Justice Initiative (2019), [Case Watch: A Groundbreaking Ruling from a Powerful European Court](#).

²¹⁴ FRA (2018), [Second European Union Minorities and Discrimination Survey, 'Being Black in the EU'](#), p. 16.

²¹⁵ FRA (2018), [Second European Union Minorities and Discrimination Survey, 'Being Black in the EU'](#), p. 18.

²¹⁶ FRA (2018), [Second European Union Minorities and Discrimination Survey, 'Being Black in the EU'](#), p. 14.

²¹⁷ FRA (2018), [Second European Union Minorities and Discrimination Survey, 'Being Black in the EU'](#), p. 13.

²¹⁸ [Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law](#).

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By virtue of **Article 2(2)**, aiding and abetting in such is also punishable. For other offences, Member States must ensure that **racist and xenophobic motivation** is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties (**Article 4**).

More information on the coverage of the issue by EU and national legislation is provided under *Section 2.4*.

2.1.1.3 Arbitrary policing in the COVID-19 pandemic

More recently, possible racial/ethnic profiling by law enforcement authorities was highlighted in the context of the COVID-19 pandemic where concerns about **arbitrary policing** have been raised as shown in the examples in the Box 15 below.

Box 15: Examples of possible arbitrary policing in the COVID-19 pandemic in connection with racial or ethnic profiling

Arbitrary policing in the COVID-19 pandemic: possible examples from the Member States

- **Belgium:** a disproportionate impact of the lockdown measures' enforcement on neighbourhoods with large minority ethnic communities was reported by the media and NGOs. The Human Rights League collected 102 allegations of abusive police practices between March and May 2020, in 36 % of the cases the police allegedly used the force arbitrarily, and in 21 % of the cases used insults²¹⁹. Among the victims, 40 % were racialised people²²⁰. Case studies presented in an Amnesty International report show that the police used disproportionate measures against racialised people when stopped. Amnesty International raised concerns regarding the lack of explicit prohibition of racial profiling in domestic police laws, and about the failure of public authorities to collect disaggregated data on police identity checks in Belgium²²¹.
- **Bulgaria and Slovakia:** reports of militarised quarantines of Roma settlements not necessarily founded on public health concerns that would be different from those relevant to the general population²²². These quarantines were enforced by armed police patrolling Roma neighbourhoods²²³. According to UN experts, the placement of checkpoints at the entrance of segregated Roma areas in Bulgaria during the pandemic specifically targeting Roma violated the principles of non-discrimination and equality²²⁴.
- **Cyprus:** people from an ethnic minority were more likely to experience abusive tactics and degrading treatment by the police to enforce restrictive measures adopted by the government²²⁵. The Independent Police Complaints Authority reported receiving complaints against the police for abuse of power and unjustified fines²²⁶. Amnesty International reported that mandatory quarantines of shared accommodation and camps were imposed on migrants, asylum seekers and refugees²²⁷.
- **France:** the enforcement of measures to combat the COVID-19 pandemic in France had a disproportionate impact on members of racialised groups. For instance, predominantly working class and minority ethnic neighbourhoods in Nice were subjected to longer night-time curfews

²¹⁹ Amnesty International (2020), [Policing the Pandemic: Human Rights Violations in the Enforcement of COVID-19 Measures in Europe](#), p. 19.

²²⁰ Ibid.

²²¹ Ibid.

²²² Council of Europe (2020), [COVID-19: An analysis of the anti-discrimination, diversity and inclusion dimensions in Council of Europe Member States](#).

²²³ Amnesty International (2020), [Policing the Pandemic: Human Rights Violations in the Enforcement of COVID-19 Measures in Europe](#), p. 10.

²²⁴ UN (2020), [Bulgaria / COVID-19 response: "Stop hate speech and racial discrimination against the Roma minority" – UN experts](#).

²²⁵ Information obtained from a representative of KISA via interview held on 22.02.2022.

²²⁶ Country Reports on Human Rights Practices for 2020 United States Department of State Bureau of Democracy, Human Rights and Labor (2020), [Cyprus 202 Human Rights Report](#), p. 2.

²²⁷ Amnesty International (2020), [Policing the Pandemic: Human Rights Violations in the Enforcement of COVID-19 Measures in Europe](#), p. 9.

Arbitrary policing in the COVID-19 pandemic: possible examples from the Member States

than the rest of the city and in Seine-Saint-Denis where most inhabitants are of North and West African origin, the number of fines for breaching lockdown rules was three times higher than in the rest of the country²²⁸. In the cases documented by Amnesty International, law enforcement officials resorted to the unlawful use of force while enforcing the measures.

- **Greece:** ENAR reports that special COVID-19 restrictions were imposed on refugees and that there was an increase of police violence and use of military force at borders and in camps²²⁹.
- **Hungary:** according to an NGO, the pandemic contributed to discriminatory practices becoming more amplified in the field of administrative offences, especially in cases of Roma people living in deprivation and segregation²³⁰.

Thirteen **respondents to the targeted survey** undertaken for this Study out of 33 (39 %) thought that racial or ethnic discrimination increased significantly, moderately and/or hardly by law enforcement or judicial authorities during the COVID-19 pandemic (these respondents were from Romania (two), Slovakia (two), Slovenia (two), Hungary (one), Ireland (one), Portugal (one), Spain (one) or were active at EU-level (three)). Five stakeholders out of these observed increased surveillance controls by law enforcement, particularly towards the Roma people. On the other hand, two survey respondents believed that racial/ethnic discrimination did not increase at all, while 18 respondents said they did not know.

Information on the coverage of the issue by EU and national legislation is provided under *Section 2.4*.

2.1.1.4 Immigration enforcement

Immigration enforcement is an area in which racial profiling is reported on as being common. For example, an Open Society Foundations report mentions that physical appearance, including ethnicity, might be used for determining who may be an undocumented foreigner²³¹. The 2019 European equality law review mentioned the example of ethnic profiling by the Helsinki Police in Finland when performing immigration status checks²³². In a media report, the Lithuanian Ombudsman for Equal Opportunities expressed concerns over possible discrimination by the police authorities giving recommendations to residents to report persons having a 'darker colour' at the Lithuanian-Belarus border in 2021²³³. According to a Polish lawyer consulted for this study, there are cases of racial discrimination against refugees and migrants at the Polish-Belarus border from the border guards and the police²³⁴. In Croatia, police officers reported orders from their superiors to expel refugees and migrants to Bosnia and Herzegovina without further process²³⁵. In Finland, a survey of 185 persons (145 belonging to ethnic minorities), 26 police officers and 14 other experts, showed that 22 % of ethnic minority respondents had been stopped while crossing the borders without an apparent reason²³⁶. A great majority, 61,4 %, of the persons belong to a minority believe that they were stopped at the Finnish border because of their

²²⁸ Ibid., p. 20.

²²⁹ ENAR (2021), [The sharp edge of violence: police brutality and community resistance of racialised groups](#).

²³⁰ Information obtained from a Hungarian NGO via the survey.

²³¹ Open Society Justice Initiative (2012), [Reducing Ethnic Profiling in the European Union: a Handbook of good practices](#), p.20.

²³² European network of legal experts in gender equality and non-discrimination (2019), [European equality law review](#), 2019/1.

²³³ Diena (2021), [Media report](#).

²³⁴ Information obtained from lawyer in Poland via interview held on 01.03.2022

²³⁵ ENAR (2021), [The sharp edge of violence: police brutality and community resistance of racialised groups](#).

²³⁶ Keskinen S, Alemanji Aminkeng A, Himanen M, Kivijärvi A, Osazee U, Pöyhölä N & Rousku V (2018), [The stopped – Ethnic profiling in Finland](#), SSKH Notat 2/2018, Helsinki: Helsingin yliopisto.

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appearance²³⁷. Concerns over potential racial or ethnic discrimination in the context of immigration controls were recently brought to the fore in the context of the war in Ukraine, e.g., UN experts expressed serious concerns over possible discriminatory treatment by border control officials against people of African descent at the Ukrainian border²³⁸. The FRA did not observe such discriminatory treatment directly during its field visits, but noted that it was aware of such allegations, as reported in the media²³⁹. Likewise, the FRA acknowledged with concern that media and civil society organisations have reported on the possible discriminatory treatment of Roma. In particular, reports seem to suggest that Ukrainians of Roma origin are left waiting for transportation at border-crossing points²⁴⁰.

Analysis of EU and national legal instruments concerning immigration enforcement

While potential discrimination in the conduct of border controls is not covered by the RED, the **Schengen Borders Code**²⁴¹ specifically **prohibits racial or ethnic discrimination by border guards when carrying out border checks** as highlighted in Box 16 below and further discussed in *Section 2.4* below.

Box 16: Schengen Borders Code

Schengen Borders Code

Article 7(2) states that while carrying out border checks, **border guards shall not discriminate against persons** on grounds of sex, **racial or ethnic origin**, religion or belief, disability, age or sexual orientation.

Reference may also be made to **Regulation (EU) 2019/817** and **Regulation (EU) 2019/818** on the interoperability between EU information systems as already described in Box 10 above and further discussed in *Section 2.4* below.

At **national level**, as described in Box 11 above concerning *Protection against discrimination by police forces*, there are five Member States (**Bulgaria, Croatia, Finland, Hungary, and Slovenia**) whose anti-discrimination legislation has a horizontal material scope and applies to the conduct of public authorities, including when using public power. The **Hungarian** law specifically lists the border guards among the public entities that must comply with the requirement of equal treatment in all of their actions and legal relationships. The **Swedish** anti-discrimination law applies to public employees (including police and coast guard who are responsible for border control); however, this is limited to the employee's behaviour and language usage when in contact with the public. **No specific implementation challenges** have been pointed out by stakeholders concerning the national rules applicable to border guards, and general implementation challenges that typically arise in applying non-discrimination legislation are described in Box 11.

2.1.1.5 The justice system

There are studies that found that people of colour or from ethnic minorities are **disproportionately represented in prison (including pre-trial detention)** in EU Member States and beyond and are subjected to harsher penalties. Examples are presented in Box 17 below. A 2021 Fair Trials report states that pre-trial detention '*is disproportionately used to detain people of colour and non-nationals*' and refers to concerns raised by the CERD that persons held awaiting

²³⁷ Keskinen S, Alemanji Aminkeng A, Himanen M, Kivijärvi A, Osazee U, Pöyhölä N & Rousku V (2018), [The stopped – Ethnic profiling in Finland](#), SSKH Notat 2/2018, Helsinki: Helsingin yliopisto.

²³⁸ OHCHR (2022), [Ukraine: UN experts concerned by reports of discrimination against people of African descent at border](#); Euronews, [The treatment Africans are facing in Ukraine is despicable, but why are we surprised?](#); ENAR, (2022) '[Europe cannot abandon racialised people stuck at borders of Ukrainian conflict](#)'.

²³⁹ FRA (2022), '[What are the key fundamental rights risks at the EU-Ukraine borders?](#)'.

²⁴⁰ FRA (2022), '[Ensure equal treatment for Roma fleeing Ukraine | European Union Agency for Fundamental Rights \(europa.eu\)](#)'

²⁴¹ [Regulation \(EU\) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders](#) (Schengen Borders Code).

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trial include an excessively high number of non-nationals and 'persons belonging to racial or ethnic groups, in particular non-citizens – including immigrants, refugees, asylum-seekers, and stateless persons – Roma, indigenous peoples, displaced populations, persons discriminated against because of their descent, as well as other vulnerable groups who are particularly exposed to exclusion, marginalisation, and non-integration in society'²⁴². Fair Trials notes that, while the CERD expressed a worldwide concern, its statement applies to Europe as well²⁴³.

Box 17: Disproportionate representation in detention and use of harsher penalties

Disproportionate representation of people belonging to ethnic groups in (pre-trial) detention and use of harsher penalties: possible examples from the Member States and beyond

- **Belgium:** a Fair Trials report mentions that 45.8 % of the people in pre-trial detention in Belgium are not Belgian nationals. Furthermore, it adds that whether they reside in Belgium or not, people who were not born in Belgium are more likely to be detained before trial²⁴⁴. A Belgian study demonstrated that people with a name perceived as Muslim face on average 3 – 5 % greater prospects of conviction than defendants with a Belgian name²⁴⁵. The International Prisons Observatory states that a foreigner in Belgium is much more likely to be sent to prison with a more severe sentence, mainly because they are unfamiliar with the cultural codes of the criminal justice system²⁴⁶.
- **Bulgaria:** according to a survey conducted by the Bulgarian Helsinki Committee, among 1 691 convicted prisoners, the proportion of Roma represents more than 50 %²⁴⁷. Roma people are also the least represented in open-type prison facilities with lower supervision²⁴⁸.
- **Denmark:** the Danish Institute for Human Rights mentioned that Non-Western immigrants and descendants detained in custody are more likely to be charged for a crime for which they will not be convicted than persons with a Danish ethnic background²⁴⁹. For example, among Non-Western immigrants and descendants detained in custody and who are charged, 78 % and 129 % are less likely to be convicted, respectively, than persons of Danish ethnic origin²⁵⁰.
- **Estonia:** according to Open Society Justice Initiative, foreigners are disproportionately represented in pre-trial detention in Estonia²⁵¹.
- **France:** researchers found that 5.2 % of people born outside of France are held in pre-trial detention, compared with 1.8 % of people born in France. It is also possible to observe disparities in receiving non-custodial sentences, for instance, foreigners are twice as likely to have their cases handled by fast-track proceedings with less procedural rights²⁵².
- **Ireland:** the Irish Penal Reform Trust reports that Traveller men are between 5 and 11 times more likely to be held in detention than other men; and Traveller women face a risk of imprisonment as much as 18 to 22 times higher than women belonging to the general population

²⁴² Fair Trials (2021), [Disparities and Discrimination in the European Union's Criminal Legal Systems](#), p. 8.

²⁴³ Fair Trials (2021), [Disparities and Discrimination in the European Union's Criminal Legal Systems](#), p.8.

²⁴⁴ Fair Trials (2021), [Disparities and Discrimination in the European Union's Criminal Legal Systems](#), p.9.

²⁴⁵ Bielen, S., Grajzl, P. and Marneffe, W. (2008), Blame Based on One's Name? Extralegal Disparities in Criminal Conviction and Sentencing, SSRN Electronic Journal, cited in Fair Trials (2021), [Disparities and Discrimination in the European Union's Criminal Legal Systems](#), p.11.

²⁴⁶ Observatoire International des Prisons – Section Belge (2016), [Notice 2016 – Pour le droit à la dignité des personnes détenues](#) (For the right to dignity of detainees).

²⁴⁷ Bulgarian Helsinki Committee (2015), [Use of Force of Law Enforcement Authorities against Detained Persons during Police Detention and Pre-Trial Proceedings](#).

²⁴⁸ Bulgarian Helsinki Committee (2015), [Use of Force of Law Enforcement Authorities against Detained Persons during Police Detention and Pre-Trial Proceedings](#).

²⁴⁹ The Danish Institute for Human Rights (2021), [Parallel Report Denmark – UN Committee on the Elimination of Racial Discrimination \(CERD\)](#), p. 12. For exact figures see: <https://www.dst.dk/ext/formid/saerkoersel-dr--xlsx>.

²⁵⁰ The Danish Institute for Human Rights (2021), [Parallel Report Denmark – UN Committee on the Elimination of Racial Discrimination \(CERD\)](#), p. 12.

²⁵¹ Open Society Justice Initiative (2018), [When It Comes to Race, European Justice Is Not Blind](#).

²⁵² Gautron V., Retière J.N., [La décision judiciaire : jugements pénaux ou jugements sociaux ?](#) (Judicial decision : criminal decisions or social decisions ?), Mouvements, 2016/4 (n° 88), p.11-18.

Disproportionate representation of people belonging to ethnic groups in (pre-trial) detention and use of harsher penalties: possible examples from the Member States and beyond

(thus, comprising nearly 25 % of the female prison population, while Travellers comprise only 0.6 % of Ireland's population)²⁵³.

- **Italy:** Fair Trials reported a significant difference in treatment between migrants from third countries who tend to be placed in pre-trial detention and EU nationals who are more likely to be subjected to less restrictive measures²⁵⁴. Another study highlights that in 2015, while the number of foreigners in detention amounted to 33 %, the percentage of Italians among the people arrested was 70.8 %; however, it corresponded to a lower rate in detention (67 %)²⁵⁵.
- **Hungary:** approximately 45 % of the prison population self-identified as Roma, though Roma people are only around 6 % of the population of Hungary²⁵⁶. Moreover, the Roma population is more likely to be held in pre-trial detention, to receive longer sentences and a harsher treatment than non-Roma people²⁵⁷.
- **Netherlands:** a study shows that the proportion of young people with an ethnic background in juvenile prison is significantly higher than expected considering their proportion among crime suspects generally²⁵⁸.
- **Portugal:** in 2020, the proportion of preventive detention among foreigners was 31.9 %, while in the case of Portuguese nationals the proportion falls to 17.7 %²⁵⁹.
- **Spain:** foreigners are disproportionately represented in crime rate statistics, or prison population statistics²⁶⁰.
- **UK:** everyday policing, particularly of 'Black communities (and especially in the context of the so-called War on Terror, some Asian communities)' is characterised by 'disproportionate rates of stop and search, a greater likelihood of arrest and prosecution as a pre-cursor to longer, more punitive prison sentences'²⁶¹.

The Justicia European Rights Network reported that ethnic profiling existing throughout the whole criminal procedure as institutional bias is one of the factors leading to the phenomenon that foreigners and migrants are more likely to be detained than released on bail²⁶². Fair Trials believes that pre-trial detention is often disproportionately used in case of people of colour and non-nationals, because judges and prosecutors apply pre-trial detention standards in a way that affects people of colour and foreign nationals unequally. This is sometimes because the person is not from the country of accusation and therefore the court assumes that the person will return to their own country. In other cases, judges often assume that people are at risk of absconding if they do not have a permanent address or come from a lower-income place, or are experiencing poverty or other challenges. Similarly, according to the Migration Observatory in Portugal, it is possible to observe that foreigners have been subjected to pre-trial detention more often than nationals because of their allegedly greater risk of escape and for the type of crime for which they are accused²⁶³.

²⁵³ Irish Penal Reform Trust (2014), [Travellers in the Irish Prison System: a qualitative study](#), cited in Fair Trials (2022), [Justice denied: Roma in the criminal justice system](#).

²⁵⁴ Fair Trials (2019), [Where's my lawyer?](#).

²⁵⁵ Justicia, European Rights Network (2019), Disparities in Criminal Justice Systems for Individuals of Different Ethnic, Racial, and National Background in the European Union.

²⁵⁶ Fair Trials (2021), [Disparities and Discrimination in the European Union's Criminal Legal Systems](#).

²⁵⁷ Fair Trials (2022), [Justice denied: Roma in the criminal justice system](#).

²⁵⁸ Leerkes, Bezemer (2018), [Etnische ongelijkheid in de strafrechtketen is een blinde vlek](#) (*Ethnic inequality in the criminal justice system is a blind spot*).

²⁵⁹ Observatório das Migrações (2021), [Indicadores de Integração de Imigrantes: Relatório Estatístico Anual](#) (*Immigrant Integration Indicators: Annual Statistical Report*), p. 378.

²⁶⁰ Open Society Justice Initiative (2018), [When It Comes to Race, European Justice Is Not Blind](#).

²⁶¹ Etienne, M. (2020), [Policing during the pandemic: an insight into racism in the UK](#), Open Democracy.

²⁶² Justicia European Rights Network (2019), Disparities in Criminal Justice Systems for Individuals of Different Ethnic, Racial, and National Background in the European Union.

²⁶³ Observatório das Migrações (2021), [Indicadores de Integração de Imigrantes: Relatório Estatístico Anual](#) (*Immigrant Integration Indicators: Annual Statistical Report*), p. 378.

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While these studies offer some insights into why there is a disproportionate representation (*in casu*, in pre-trial detention) there is generally little known about the root causes of a disproportionate representation of certain racial or ethnic groups in prison. (Unconscious) racial bias and direct or indirect racial/ethnic discrimination of **the judiciary** may be a factor, among others. For instance, a Country Report on Non-Discrimination highlighted that judges in Slovakia were influenced by racial bias in their decision-making²⁶⁴ and a 2021 Fair Trials report mentions that '[a]fter reviewing 7,500 cases spanning ten years and six jurisdictions, researchers in France found that judges were not neutral to the personal characteristics of the person they were sentencing'²⁶⁵. In Romania, a study highlighted that unconscious prejudice could impact crucial decisions taken during criminal proceedings. The study notes that the passivity of judicial bodies occurs because of a prejudice they have based on the perceived criminality of the Roma community²⁶⁶. Similarly in Czechia, a Fair Trials study mentions the importance of the racist presumption that Roma are "inherently criminal" and its potential influence decisions over detention and sentencing²⁶⁷. In a 2013 decision, a judge in Hungary made racially stereotyped remarks as she argued that Roma '*possess a morality that disrespect private property and norms of coexistence*'²⁶⁸. The National Judicial Ethics Council declared the statement "unethical", but the judge was not sanctioned²⁶⁹. In Czechia, lawyers working closely with Roma reported strong anti-Roma bias and deeply rooted prejudices and stereotypes within the criminal justice system²⁷⁰. A 2021 ENAR report states that attacks against Roma individuals are not properly investigated, in particular when there is alleged police violence²⁷¹. The Justicia European Rights Network has noticed that in Bulgaria, Spain and Sweden, institutional bias is deeply rooted in the system and are reflected in the practices of prosecutors and judges²⁷². While these sources discuss potential judicial bias and institutional racism, data is insufficient to allow an assessment of the scale of the issue, in particular because of the lack of statistical data. Still, stakeholders consulted for this study and literature sources show that racial/ethnic discrimination, or at least perception thereof, is less prominent in the justice system. This can be explained by the fact that fewer people are in contact with the judiciary than, for example, the police. For instance, a 2021 survey shows that in France, among the areas where discrimination/stigmatisation of racialised people took place, the fewest cases were in the justice area (3 %), while discrimination by the police was of 30 % and in schools 42 %²⁷³.

Another area where racial or ethnic discrimination seems to occur in the justice system relates to **procedural rights**. For example, people of ethnic minorities reportedly face difficulties in exercising their right of access to a lawyer and to interpreters to obtain information on their procedural rights in their language. In this respect, a Fair Trials report mentions that in Bulgaria, Roma people still have issues in contacting a lawyer when they are taken into police custody²⁷⁴. The Hungarian Helsinki Committee highlighted in one of its reports that for Roma suspects, lawyers were absent in a higher proportion of cases (77 % as opposed to the 69 % of cases of non-Roma suspects), and that 65 % of the defence lawyers were notified less than an hour

²⁶⁴ European network of legal experts in gender equality and non-discrimination (2019), [Country report on non-discrimination, Slovakia](#).

²⁶⁵ Fair Trials (2021), [Disparities and Discrimination in the European Union's Criminal Legal Systems](#), p. 9.

²⁶⁶ APADOR-CH (2020), [Unconscious bias and discrimination of Roma people in the criminal justice system](#).

²⁶⁷ Fair Trials (2022), [Justice denied: Roma in the criminal justice system](#).

²⁶⁸ Fair Trials (2021), [Uncovering anti-Roma discrimination in criminal justice systems in Europe](#).

²⁶⁹ Fair Trials (2021), [Uncovering anti-Roma discrimination in criminal justice systems in Europe](#).

²⁷⁰ Fair Trials (2021), [Uncovering anti-Roma discrimination in criminal justice systems in Europe](#).

²⁷¹ ENAR (2021), [The sharp edge of violence: police brutality and community resistance of racialised groups](#).

²⁷² Open Society Justice Initiative (2018), [When It Comes to Race, European Justice Is Not Blind](#).

²⁷³ Talpin, J. *et al.* (2021), *L'épreuve de la discrimination. Enquête dans les quartiers populaires*, Presses Universitaires de France.

²⁷⁴ Fair Trials (2021), [Disparities and Discrimination in the European Union's Criminal Legal Systems](#), p. 7.

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before the beginning of the interrogation as opposed to 40 % for non-Roma defendants²⁷⁵. According to a Hungarian interviewee, a procedural reform in 2018 created an extra obstacle in access to a lawyer and justice for Roma people, by making legal representation mandatory in most discrimination related lawsuits²⁷⁶. Indigent clients cannot afford to retain a lawyer and the legal aid system has practically ceased to exist²⁷⁷. A further obstacle is that even lawyers who take up such cases, are less familiar with the specificities of non-discrimination law or prefer to challenge a discriminatory measure on procedural grounds instead of its discriminatory nature²⁷⁸. ECRI received reports that in Lithuania, courts were not providing interpretation or translation for Roma participants²⁷⁹. According to a Greek NGO providing support to refugees and migrants, there are failures to provide interpretation during the interrogation phase of the refugees and migrants, even to make the arrested person aware of the charges²⁸⁰. Fair Trials indicated in 2016, that in a review of pre-trial detention cases in Greece, none of them showed evidence of translation, while 43 % of people in pre-trial detention at the time were non-nationals²⁸¹. The inability of victims of racial disputes to file a complaint with the authorities has been pointed out as well²⁸². Furthermore, Fair Trials reports that in Bulgaria, Romania and Hungary, some defence lawyers openly admitted their reluctance to represent Roma people in case it damages their reputation²⁸³. These examples point at a potential gap in protection mechanisms for access to justice rather than a gap in material scope.

Analysis of EU and national legal instruments concerning the justice system

While procedural rights are outside the material scope of the RED, the problems identified are, to some extent, covered by the **six procedural rights EU Directives**²⁸⁴ that set out minimum safeguards that the Member States must apply in a non-discriminatory manner. The key relevant elements of these Directives are outlined in Box 18 below and are further considered in *Section 2.4* below.

Box 18: Procedural rights of suspects and accused persons in criminal proceedings

Procedural rights Directives

These Directives contain **non-regression provisions** specifying that nothing contained therein limits or derogates from any of the rights and procedural safeguards that are ensured under the European

²⁷⁵ Anna Bárdits, András Kristóf Kádár, Nóra Novoszádek, Bori Simonovits, Dóra Szegő, Dániel Vince (2014), [Last Among Equals – The equality before the law of vulnerable groups in the criminal justice system](#), p. 111-118.

²⁷⁶ Information obtained from a representative of the equality body/Ombudsman via interview held on 16.02.2022.

²⁷⁷ Information obtained from a representative of the equality body/Ombudsman via interview held on 16.02.2022.

²⁷⁸ Information obtained from a representative of an NGO and a representative of the equality body/Ombudsman, via interviews held on 15.02.202 and 16.02.2022, respectively.

²⁷⁹ Fair Trials (2021), [Disparities and Discrimination in the European Union's Criminal Legal Systems](#); Council of Europe (2009), ECRI (2009), [Report on Bulgaria](#) (fourth monitoring cycle).

²⁸⁰ Information obtained from an NGO representative in Greece via interview held in March 2022.

²⁸¹ Fair Trials (2016), [A Measure of Last Resort? The practice of pre-trial detention decision making in the EU](#).

²⁸² Information obtained from an NGO representative in Greece via interview held in March 2022.

²⁸³ Fair Trials (2022), [Justice denied: Roma in the criminal justice system](#).

²⁸⁴ [Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings](#); [Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings](#); [Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty](#); [Directive \(EU\) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings](#); [Directive \(EU\) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings](#); [Directive \(EU\) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings](#).

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Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the Charter of Fundamental Rights of the European Union (Charter), other relevant provisions of international law or the law of any Member State which provides a higher level of protection.

In addition, Recital 65 of **Directive (EU) 2016/800** states that Member States should respect and guarantee the Directive's rights **without any discrimination based on any ground including race, colour and ethnic or social origin**. Recital 29 of **Directive (EU) 2016/1919** specifies that the Directive should apply to suspects, accused persons and requested persons regardless of their legal status, citizenship or nationality. Member States should respect and guarantee the Directive's rights, **without any discrimination based on any ground such as race, colour**, sex, sexual orientation, language, religion, political or other opinion, nationality, **ethnic or social origin**, property, disability or birth.

Recitals are not legally binding but have interpretative value.

Despite being regulated, a study from the Justicia European Rights Network mentions a lack of proper translation and interpretation services available to people belonging to ethnic groups, as well as lack of sufficient information on their rights in their language²⁸⁵. In Estonia, a study confirmed the deficiencies in the transposition of the EU Directive on the right to interpretation and translation as there is a lack of interpreters in languages rarely used in the country. For example, for migrants speaking Arabic, experts noted the poor quality of translation services affecting the situation of minorities in the criminal system²⁸⁶.

While this is not legally binding, reference may also be made to the **Commission Recommendation on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings**²⁸⁷. According to point 5 of Section 3 of the Recommendation, vulnerable persons who are suspects or accused persons should not be subject to any discrimination under national law in the exercise of the procedural rights referred to in the Recommendation. This includes enhanced safeguards aimed at ensuring the ability of vulnerable suspects or accused persons to understand and effectively participate in criminal proceedings.

For the sake of completeness, it is also noted that EU law also prohibits racial or ethnic discrimination with respect to **victims of crime**. Article 1(1) of Directive 2012/29/EU²⁸⁸ specifies that victims must be treated in a non-discriminatory manner in all contacts with competent authorities operating in the context of criminal proceedings and that victims' rights apply in a non-discriminatory manner. This is relevant in protecting crime victims from racial or ethnic discrimination when they are involved in criminal proceedings.

When it comes to discrimination by judges or prosecutors in the justice system of the Member States, the **national anti-discrimination laws** of four countries with a horizontal material scope applies to judicial authorities as well (**Bulgaria, Croatia, Finland, and Slovenia**). While the **Hungarian** Equal Treatment Act's scope is also wide and obliges most of the public entities to comply with the requirement of equal treatment in all of their actions (including prison services), it provides for certain exceptions to the personal scope, including prosecutors and judges, whose decisions and measures taken in the exercise of public authority cannot be investigated by the equality body. On the other hand, the **Croatian** anti-discrimination law explicitly lists the 'judiciary and administration' as an area to which special attention should be paid. As mentioned

²⁸⁵ Justicia, European Rights Network (2019), [Disparities in Criminal Justice Systems for Individuals of Different Ethnic, Racial, and National Background in the European Union](#).

²⁸⁶ Justicia, European Rights Network (2019), [Disparities in Criminal Justice Systems for Individuals of Different Ethnic, Racial, and National Background in the European Union](#).

²⁸⁷ [Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings](#). Recital 1 of the Recommendation states that its aim is to 'encourage Member States to strengthen the procedural rights of all suspects or accused persons who are not able to understand and to effectively participate in criminal proceedings due to age, their mental or physical condition or disabilities ('vulnerable persons')'.

²⁸⁸ [Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime](#).

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previously, the scope of the **Swedish** anti-discrimination law covers public employees of authorities reporting to the Government, including prosecutors and judges; however, this is limited to their behaviour and language use with the public. In **Germany**, discrimination in relation to public law actions by the administration and public bodies, including courts and prosecution services, is explicitly prohibited only in the Berlin Land²⁸⁹. General implementation challenges that typically arise in applying non-discrimination legislation in the Member States mentioned above are described in Box 11 above.

2.1.1.6 Horizontal considerations – the use of automation including Artificial Intelligence (AI)

Potential problems with racial or ethnic profiling as identified above may be caused or exacerbated by the use of **automatic data processing and algorithmic decision-making**. For example, in the context of anti-fraud investigations, the Dutch Government exacerbated racial discrimination by using an algorithmic programme to determine whether claims for childcare benefit were potentially fraudulent²⁹⁰. Tax officials wrongly accused thousands of families and ordered them to repay childcare allowances, with people from ethnic minorities disproportionately impacted²⁹¹. In May 2022, the Minister of Finance officially recognised in a letter to the House of Representatives that since 2010 the Dutch tax authorities have followed a discriminatory practice²⁹².

AI technologies may be used to facilitate **'predictive policing'** in relation to individuals, which is a practice where the police profiles people and estimates their likelihood to commit crimes. Such practices in effect may target racial minorities for surveillance by law enforcement authorities. This is controversial, and rights groups have called for more oversight in the way technology is used by authorities in this regard²⁹³. A study published by Amnesty International demonstrated that the Gangs Matrix, a tool meant to identify gang members in the UK produced discriminatory results by targeting people from ethnic minorities²⁹⁴. The system mainly targets black people as 78 % of the individuals in the system are black while only 27 % of those responsible for serious youth violence are black²⁹⁵. According to a representative of an NGO in the Netherlands, the digital crime anticipation system used by the Dutch police reinforces racial discrimination²⁹⁶. In Roermond, the Dutch police run a predictive policing project, the Sensing project to prevent and detect potential crimes. The system is said to be based on a biased understanding of a particular phenomenon, the concept of 'mobile banditry', economic crimes committed by foreign groups. Amnesty International pointed out that the system specifically targets licence plates of persons with Eastern European nationalities²⁹⁷. In 2012, the Amsterdam Municipality started 'Top600', an automated risk modelling to profile young people over the age of 16 who are the most at risk of committing 'high-impact crime'²⁹⁸ in the future²⁹⁹. There is

²⁸⁹ [Landesantidiskriminierungsgesetz](#) (LADG) (*Berlin State Anti-Discrimination Act*), 11 June 2020.

²⁹⁰ Amnesty International (2021), [Dutch childcare benefit scandal an urgent wake-up call to ban racist algorithms](#).

²⁹¹ Amnesty International (2021), [Dutch childcare benefit scandal an urgent wake-up call to ban racist algorithms](#).

²⁹² De Standaard (2022), [Nederland geeft racisme toe bij belastingdienst](#), 30.05.2022; NRC (2022), [Kabinet erkent nu ook 'institutioneel racisme' bij de fiscus. Wat zijn de gevolgen?](#), 30.05.2022.

²⁹³ Nelson, A. (2021), [Pushback against AI policing in Europe heats up over racism fears](#), Thomson Reuters Foundation; Fair Trials (2021), [Automating Injustice: The Use of Artificial Intelligence & Automated Decision-Making Systems in Criminal Justice in Europe](#).

²⁹⁴ Amnesty International (2018), [Trapped in the Matrix: Secrecy, stigma and bias in the Met's Gang Database](#).

²⁹⁵ Williams, P, Kind. Eric, (2019), [Data-driven Policing: The hardwiring of discriminatory policing practices across Europe](#).

²⁹⁶ Information obtained from a representative of an NGO in the Netherlands via an interview held on 22.02.2022.

²⁹⁷ Amnesty International (2020), [Automated discrimination and mass surveillance in predictive policing in the Netherlands](#), p.40.

²⁹⁸ Robbery, burglary, aggravated assault, murder/manslaughter or open violence against people.

²⁹⁹ Fair Trials (2021), [Automating Injustice: The Use of Artificial Intelligence & Automated Decision-Making Systems in Criminal Justice in Europe](#), pp. 10-13.

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significant over-representation of young Moroccan-Dutch, as more than one third of the Top600 young people are of Moroccan descent³⁰⁰.

The use of **AI-based facial recognition technologies** may also cause or exacerbate potential discrimination. As regards border controls, for instance, it is reported that facial recognition technology may result in the enhanced use of border control mechanisms on the basis of race, gender and other demographic characteristics (e.g., it can misrecognise Black women twenty times more than White men) and *'may even entail prohibited discrimination that could lead to refoulement'*³⁰¹. A FRA study reports that AI-based facial recognition technologies have *'higher error rates when used on women and people of colour, producing biased results, which can ultimately result in discrimination'*³⁰². The same study however recognises that *'there is limited information about the way and extent to which the technology is used by law enforcement, and about the impact of its use on fundamental rights'* and that *'not much information is available about the actual use of facial recognition technology in the EU'*³⁰³.

Out of 63 respondents to the targeted survey carried out for this study, nearly half (29 in total, 46 %) were of the opinion that **Artificial Intelligence** technologies exacerbate racial or ethnic discrimination. This view was mainly prevalent among equality bodies (11 65 %) and NGOs (7 64 %). As further examples and supporting information, at least ten survey respondents pointed out that the use of AI systems has resulted in systemic bias (e.g., in selecting candidates for job interviews, or generating risk profiles for insurance/financial services). One respondent highlighted the risk of facial recognition technologies for racial profiling. On the other hand, 11 respondents (17 %) thought AI did not pose problems at all³⁰⁴. Amongst those, one prosecution service emphasised that if there is no human factor involved, it reduces the subjectivity. In addition, one ministry believed that the use of AI could actually assist in detecting hate speech and racist/discriminatory content online.

The majority of stakeholders interviewed for the study stressed that there are risks related to AI technologies. Moreover, nine interviewees highlighted the need to develop a legal framework to avoid issues of racial discrimination caused by the use of new technology.

Analysis of EU and national legal instruments concerning the use of automation including AI

In this respect, reference may be made to the Proposal for a Regulation laying down harmonised rules on Artificial Intelligence³⁰⁵ (**AI Act**). The proposed AI Act includes obligations for testing, risk management, documentation and human oversight throughout the AI systems' lifecycle and proposes to subject high-risk AI systems to strict obligations. The imposed obligations, once adopted, will contribute to minimising the risk of algorithmic discrimination and protecting the right not to be discriminated against in accordance with EU law. Recital 44 underlines the importance of high data quality *'for the performance of many AI systems, especially when techniques involving the training of models are used, with a view to ensure that the high-risk*

³⁰⁰ Fair Trials (2021), [Automating Injustice: The Use of Artificial Intelligence & Automated Decision-Making Systems in Criminal Justice in Europe](#), pp.10-13.

³⁰¹ Human Rights Council (2021), Racial and Xenophobic discrimination and the use of digital technologies in border and immigration enforcement, report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, citing Tamir Israel (2020), Facial Recognition at a Crossroads: Transformation at our Borders & Beyond.

³⁰² FRA (2019), [Facial recognition technology: fundamental rights considerations in the context of law enforcement](#), FRA Focus, p. 4.

³⁰³ FRA (2019), [Facial recognition technology: fundamental rights considerations in the context of law enforcement](#), FRA Focus, p.33.

³⁰⁴ One equality body, four ministries, one NGO, one academic/research organisation, two prosecution services, one police authority, and one control organ of the police.

³⁰⁵ [Proposal for a Regulation laying down harmonised rules on artificial intelligence \(Artificial Intelligence Act\), and amending certain Union legislative acts, COM\(2021\) 206 final](#).

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AI system performs as intended and safely and it does not become the source of discrimination prohibited by Union law’.

The AI Act is relevant to potentially several areas where high-risk AI systems are used. While some of these areas are already covered by the RED, others are not (fully) covered by the RED. These include the **exercise of public authority by law enforcement or judicial authorities; migration, asylum and border control management** as outlined in Box 19 below. Should the proposed AI Act be adopted, as a Regulation its measures would be directly applicable in the EU Member States and would contribute towards limiting the potential negative impacts of AI technologies on racial or ethnic discrimination.

Box 19: Proposed AI Act

AI Act: high-risk AI systems in non-RED areas

Annex III – High-risk AI systems referred to in Article 6(2)

‘High-risk AI systems pursuant to Article 6(2) **are the AI systems listed in any of the following areas:**

[...]

6. Law enforcement:

- (a) AI systems intended to be used by law enforcement authorities for making individual risk assessments of natural persons in order to assess the risk of a natural person for offending or reoffending or the risk for potential victims of criminal offences;
- (b) AI systems intended to be used by law enforcement authorities as polygraphs and similar tools or to detect the emotional state of a natural person;
- (c) AI systems intended to be used by law enforcement authorities to detect deep fakes as referred to in Article 52(3);
- (d) AI systems intended to be used by law enforcement authorities for evaluation of the reliability of evidence in the course of investigation or prosecution of criminal offences;
- (e) AI systems intended to be used by law enforcement authorities for predicting the occurrence or re-occurrence of an actual or potential criminal offence based on profiling of natural persons as referred to in Article 3(4) of Directive (EU) 2016/680 or assessing personality traits and characteristics or past criminal behaviour of natural persons or groups;
- (f) AI systems intended to be used by law enforcement authorities for profiling of natural persons as referred to in Article 3(4) of Directive (EU) 2016/680 in the course of detection, investigation or prosecution of criminal offences;
- (g) AI systems intended to be used for crime analytics regarding natural persons, allowing law enforcement authorities to search complex related and unrelated large data sets available in different data sources or in different data formats in order to identify unknown patterns or discover hidden relationships in the data.

7. Migration, asylum and border control management:

- (a) AI systems intended to be used by competent public authorities as polygraphs and similar tools or to detect the emotional state of a natural person;
- (b) AI systems intended to be used by competent public authorities to assess a risk, including a security risk, a risk of irregular immigration, or a health risk, posed by a natural person who intends to enter or has entered into the territory of a Member State;
- (c) AI systems intended to be used by competent public authorities for the verification of the authenticity of travel documents and supporting documentation of natural persons and detect non-authentic documents by checking their security features;
- (d) AI systems intended to assist competent public authorities for the examination of applications for asylum, visa and residence permits and associated complaints with regard to the eligibility of the natural persons applying for a status.

8. Administration of justice and democratic processes:

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AI Act: high-risk AI systems in non-RED areas

(a) AI systems intended to assist a judicial authority in researching and interpreting facts and the law and in applying the law to a concrete set of facts.’

Relevant initiatives were also noted at **national-level**. For example, in Finland, there is an on-going investigation concerning the non-discrimination of AI systems³⁰⁶. The Finnish Ombudsman highlighted the importance of making a continuous assessment of impacts from the perspective of fundamental rights and equality of the use of AI systems³⁰⁷. In its AI Strategy, Malta makes explicit reference to the importance of ensuring the principle of equality, non-discrimination, and solidarity in AI operations³⁰⁸.

2.1.2 Exercise of public authority by bodies other than law enforcement and judicial authorities

Many of the areas covered by the RED, such as education, supply of goods and services, or social protection are administered by public administration bodies and are included in the scope of the legislation. However, this only covers the provision of public services falling within the material scope of the RED, thus when the public administration provides social advantages, social protection, education and employment/occupation, as well as when it provides goods available to the public or services – within the meaning of Article 57 TFEU³⁰⁹, but not public sector interventions involving ‘the exercise of public authority’³¹⁰ that would fall outside the RED’s material scope.

This subsection addresses possible discrimination in **contacts with bodies of the public administration, in their conduct, service provision or decision-making, including acts of public authority, beyond the scope of the RED and beyond law enforcement and judicial authority** covered under the *Section 2.1.1* above.

2.1.2.1 Contacts with public administration beyond the scope of the RED

The public administration is at the front-line of service delivery³¹¹ and some aspects of life beyond the scope of the RED may require interaction with public administrations, where citizens can face stigma and challenges in complying with formal requirements³¹². **Bureaucratic discrimination** would constitute an essential obstacle to equality before the law³¹³. One study concluded that bureaucrats might discriminate against minorities through the selective provision

³⁰⁶ Information obtained from a representative of the equality body in Finland via an interview held on 18.02.2022.

³⁰⁷ Non-Discrimination Ombudsman (2021), [The Non-Discrimination Ombudsman’s observations on artificial intelligence’s effects on equality | Non-Discrimination Ombudsman](#).

³⁰⁸ Maltese Government (2019), Malta [Towards trustworthy AI](#).

³⁰⁹ Article 3(h) of the RED covers ‘access to and supply of goods and services which are available to the public, including housing’. The notion of ‘services’ under Article 57 TFEU covers services provided for remuneration and includes, in particular, activities of an industrial character, activities of a commercial character, activities of craftsmen, activities of the professions. The CJEU has interpreted the notion of ‘service’ broadly. As such, remunerated services do not lose their commercial nature even if the provider is a non-profit making enterprise or if the service is of recreational or sporting nature. However, the notion of ‘available to the public’ implies that goods or services not advertised to the public fall outside the scope of the RED. Also, a payment is required.

³¹⁰ Information obtained from a Spanish legal expert in response to the Commission’s ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

³¹¹ Giulietti, C., Tonin, M., Vlassopoulos, M. (2015), [Racial Discrimination in Local Public Services: A Field Experiment in the US, IZA DP No. 9290](#).

³¹² Sebastian, J., Van Dooren, W., Rys, S. (2018), [Discrimination and Administrative Burden in Public Service Markets: Does a Public-Private Difference Exist?](#), Journal of Public Administration Research and Theory.

³¹³ Adam, Ch., Fernández-i-Marín, J., James, O, Manatschal, A., Rapp, C. and Thomann, E. (2021), [Differential discrimination against mobile EU citizens: experimental evidence from bureaucratic choice settings](#), Journal of European Public Policy, 28:5, p.742-760.

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of support or a support of substantively lower quality³¹⁴. The reduction in quality might affect minorities' perceptions of the burdens involved in applying for benefits and impact their decision as to whether to apply or not. It could undermine people's trust in public administration and political institutions. Concerns have been raised about substantial challenges faced by the Roma population in accessing public services, including burdensome bureaucratic requirements³¹⁵. Since bureaucratic discrimination is a systemic issue, it can affect all areas handled by public administration bodies. Therefore, studies and reports do not always differentiate between the type of issues that the public administration bodies in question deal with (e.g., issues relating to requesting an identity card or domicile; registration of a birth or marriage; or in general when in contact with local or national public administrations) and may be of a rather general nature, thus also touching upon areas that may already be covered by the RED.

Several interviewees also pointed to discrimination issues in the area of public administration³¹⁶. Specific examples of possible discrimination in contacts with public authorities in areas not necessarily covered by the RED are highlighted in Box 20 below.

Box 20: Possible discrimination in contacts with the public administration in areas not necessarily covered by the RED

Possible discrimination in contacts with the public administration in areas not necessarily covered by the RED or in general: examples from selected Member States

- **Croatia:** according to a stakeholder consulted for this study, asylum seekers are excluded from accessing services, in particular services provided by the Ministry of Interior, when public officials refuse to speak English and have discriminatory behaviours on the grounds of race or religion. In the absence of strictly established procedures, accessing services by asylum seekers depends on the goodwill of the public officials. There is a lack of political will to put in place a system and procedures for integrating asylum seekers, alongside racism and discriminatory practices that are deeply rooted in Croatian society³¹⁷.
- **Cyprus:** the UNHCR has raised concerns in relation to children of Turkish Cypriots and persons of South-East Asian origin that encounter obstacles in obtaining Cypriot citizenship, despite meeting the legal requirements³¹⁸. Furthermore, one stakeholder consulted for this study raised concerns over the total exclusion of third-country migrants and asylum seekers from all public policies in Cyprus³¹⁹.
- **Czechia:** Roma people are often verbally rejected in public offices without any decisions being issued. According to a stakeholder, among the root causes are the lack of acceptance of the Roma at society level in general, historical patterns of prejudice, as well as tendencies to publicly discriminate, segregate and isolate Roma citizens³²⁰.
- **Finland:** the services provided by local administration are designed for 'average' citizens and not adapted to the needs of immigrants or minority groups. Thus, certain issues, e.g., complex and long waiting periods for registration of domicile, disproportionately affects certain groups or minorities. This issue is currently not analysed adequately to improve the services and make them fit better for those groups³²¹.
- **France:** the Defender of Rights is frequently called upon to intervene in cases involving the administration's refusal to proceed with Roma or Travellers domiciliation³²². Furthermore, the

³¹⁴ Mikula, S., Montag, J. (2021), [Roma and Bureaucrats: A Field Experiment in the Czech Republic](#).

³¹⁵ European Parliament (2019), [Scaling up Roma Inclusion Strategies: Truth, reconciliation and justice for addressing anti-gypsyism](#).

³¹⁶ E.g. a research organisation from Croatia, a local city administration from Finland, a ministry from Luxembourg, and NGOs from Croatia, Cyprus, Germany, Italy, Slovenia and Slovakia.

³¹⁷ Information obtained from a representative of an NGO in Croatia via interviews held on 18.02.2022 and 04.03.2022.

³¹⁸ UNHCR (2019), [Compilation Report Universal Periodic Review: 3rd Cycle, 32nd Session](#), Cyprus, p. 26.

³¹⁹ Information obtained from an NGO representative in Cyprus via interview held in February 2022.

³²⁰ Information obtained from an NGO representative in Czechia via interview held on 16.02.2022

³²¹ Information obtained from a local administration's representative in Finland via interview held on 17.02.2022.

³²² Défenseur des Droits (2021), [Rapport: «Gens du Voyage»: Lever les Entraves aux Droits](#) (Report on travellers : lifting barriers to fundamental rights), (on the refusal of domiciliation by the administration).

Possible discrimination in contacts with the public administration in areas not necessarily covered by the RED or in general: examples from selected Member States

Roma population still experiences administrative difficulties in registering to vote³²³ and has reported discriminatory decisions taken by public authorities when it comes to building permits or the acquisition of land parcels³²⁴.

- **Germany:** there are no special provisions in the national anti-discrimination law covering racial or ethnic discrimination (General Act on Equal Treatment – AGG) in the provision of goods and services by public sector institutions³²⁵. This means that the AGG does not apply in the case of discrimination by public offices and authorities (nevertheless, there is a constitutional guarantee of equality that applies). However, this is – at least in part – covered and required by the RED as this Directive covers the supply of goods and services, including when they are delivered by public sector institutions. In this context, 66.5 % of 2973 Afro-Census respondents having been in contact with German ‘offices and authorities’ in the last two years reported that they experienced discrimination³²⁶. A German interviewee also noted that there is a general problem in the provision of public services starting with the way people with a migrant background are addressed by public employees and includes the non-provision of services³²⁷.
- **Greece:** the Ombudsman’s Office has identified discrimination by the Ministry of Interior and municipal civil registries against naturalised non-ethnic-Greek citizens and their descendants. This includes the rejection of all requests for changes of names mentioned in the naturalisation act and long delays in registering children born to naturalised citizens before their naturalisation³²⁸. Roma citizens also experience difficulties in obtaining official documents, as there is an extensive refusal by municipal civil registries to register Roma children, effect civil status changes of Roma individuals’ registration or provide civil status certifications (e.g., birth certificates) that are necessary for the issuance of identity cards, passports, tax registration, etc. According to the Ombudsman’s report, such irregular practices of public administration in conjunction with the Roma housing issue lie at the root of the widespread social exclusion of Roma people in Greece³²⁹. The Ombudsman also reported on persistent reluctance of local municipalities to issue certificates of Real Estate Tax (TAP), the issuance of which is a precondition for the sale of real estate when the buyer is a Roma person³³⁰. Furthermore, employees in Tax Authority Offices were reported to allegedly refuse to asylum seekers the modification of their residence data and to treat them in a degrading way³³¹.
- **Hungary:** the municipality of Miskolc offered financial compensation for indigent families (in practice, almost exclusively Roma tenants) if they moved out of the municipality. Furthermore, it conducted targeted public health and child protection inspections almost exclusively in Roma neighbourhoods. The regional court and the court of appeal qualified these practices as harassment based on ethnicity. Discriminatory harassment was also found in the actions of the mayor of Mezőkeresztes, who published an open letter to local residents suggesting that they should refrain from selling real estate to Roma people³³².
- **Italy:** specific concerns were raised about the bureaucratic difficulties for the Roma population seeking to obtain legal documents. The complexity of bureaucratic procedures added to the condition of marginalisation and segregation are considered obstacles to equal treatment³³³. Furthermore, several resolutions adopted by municipalities have targeted asylum seekers and

³²³ EU- CITIZEN Network (2018), [Political Participation of the Roma in the European Union](#), p. 47.

³²⁴ Défenseur des Droits (2021), [Rapport: «Gens du Voyage»: Lever les Entraves aux Droits](#) (Report on travellers : lifting barriers to fundamental rights), (on the refusal of domiciliation by the administration), p.8.

³²⁵ European network of legal experts in gender equality and non-discrimination (2021), [Germany - Country report non-discrimination 2021](#).

³²⁶ Afrozensus (2020), [Perspektiven, Anti-Schwarze Rassismuserfahrungen und Engagement Schwarzer, afrikanischer und afrodiasporischer Menschen in Deutschland](#) (Perspectives, Anti-Black Racism Experiences and Engagement of Black, African and Afrodiasporic People in Germany), p.115.

³²⁷ Information obtained from an NGO representative in Germany via interview held on 01.03.2022.

³²⁸ The Greek Ombudsman, *Combating Discrimination*, Special Report 2016, p. 112-3.

³²⁹ Greek Ombudsman (2019), [Special report 2017/2018](#), p.42-4; p.35.

³³⁰ The Greek Ombudsman, [Equal Treatment, Special Report 2020](#), p. 54-5.

³³¹ The Greek Ombudsman, [Equal Treatment, Special Report 2020](#), p. 54-5.

³³² Juan Carlos Benito Sánchez (2020), [Securing Housing for all in Diverse European Societies. Applying International and European Antidiscrimination Law for the Housing Context](#).

³³³ European Parliament (2019), [Scaling up Roma Inclusion Strategies : Truth, reconciliation and justice for addressing antiqypsyism](#).

Possible discrimination in contacts with the public administration in areas not necessarily covered by the RED or in general: examples from selected Member States

third country nationals. For instance, in September 2017, a number of mayors belonging to the party 'La Lega' adopted a single model of 'contingent and urgent resolution' through which they imposed a series of procedural burdens on all private individuals who wished to make their properties available for the reception of asylum seekers through agreements with the Prefecture. This led to a decision of the Tribunal of Milan condemning the resolution³³⁴.

- **Luxembourg:** according to a recent report, persons belonging to racial minority groups have faced inappropriate behaviours in the context of contacts with a local or national administration including difference in treatment³³⁵.
- **Romania:** in 2020, 177,816 persons over 14 years of age did not have valid IDs. Romani rights activists reported that most of these persons were Roma who cannot acquire legal identity documents because they live in informal settlements and housing. This for instance excludes Roma from participating in elections and securing property documents³³⁶. The authorities in Romania can issue provisional IDs for people who are unable to provide proof of residence; however, their validity is limited to one year, and does not really solve the issues stemming from lack of identity documents. On the contrary, it can increase discrimination by immediately indicating vulnerability (see impacts described under *Section 2.3.2.2*)³³⁷.
- **Slovenia:** immigrants face discriminatory treatment by public officials when regularising or extending their legal status. Usually, it is very difficult for them to resolve administrative issues with public official due to their intolerance and unwillingness to support a migrant in accessing particular rights. Problems encountered in a specific city's administrative unit - department for foreigners - was documented by a local NGO, namely delays, maltreatment and discrimination of foreigners administered in this unit. Similar practices were also noticed in other units pointing to an intentional systemic malpractice, while the competent ministry has not adopted any measures to prevent such practices³³⁸.
- **Spain:** minorities seem to face greater obstacles in renewing their residency or work permit. The situation is more visible in immigration procedures where 54.3 % of the reported institutional racial discrimination occurred³³⁹. In 2017, 41 % of the discrimination cases were said to be committed by a public agent including, at state, local or regional level³⁴⁰. Furthermore, according to a report published by the Spanish equality body in 2020, out of the 813 persons that had carried out procedures at the city council, 8 % declared that they experienced racial or ethnic discrimination³⁴¹.

In the **targeted online survey** carried out for this study, out of the 68 respondents, the majority (40 in total, 59 %) believed that racial or ethnic discrimination occurs in contacts with the public administration (other than law enforcement and judicial authorities, e.g. immigration, tax or civil administration), out of which 24 had actual experience/information concerning racial or

³³⁴ ASGI12 and W. Chiaromonte, A. Guariso, Discriminazioni e Welfare, in M. Barbera and A. Guariso (2019), [La tutela antidiscriminatoria. Fonti, strumenti, interpreti, Giappichelli](#) (*The anti-discrimination protection. Sources, tools, interpreters, Giappichelli*), p. 329 ff.

³³⁵ Ministère de la Famille, de l'Intégration et à la Grande Région (2022), [Le racisme et les discriminations ethno raciales au Luxembourg Rapport d'étude quantitative et qualitative](#), (*Racism and discriminations based on race and ethnicity in Luxembourg Qualitative and quantitative study report*), p.189/190.

³³⁶ US State Department (2021), [Romania 2020 Human Rights Report](#), p.29.

³³⁷ Asociația Carusel, ARAS Timișoara, SASTIPEN și Centrul de Resurse Juridice (2014), [Facilitarea accesul la documente de identitate pentru persoanele vulnerabile](#) (*Facilitating access to identity documents for vulnerable people*), Policy Paper, p. 7.

³³⁸ Information obtained from a local NGO in Slovenia via interview held in February 2022.

³³⁹ SOS Racismo (2018), Informe Anual 2018, [Sobre el racismo en el estado español](#) (*Yealy report 2018, Racism in Spain*).

³⁴⁰ SOS Racismo (2017), [Informe Anual 2017, Sobre el racismo en el estado español](#) (*Yealy report 2017, Racism in Spain*).

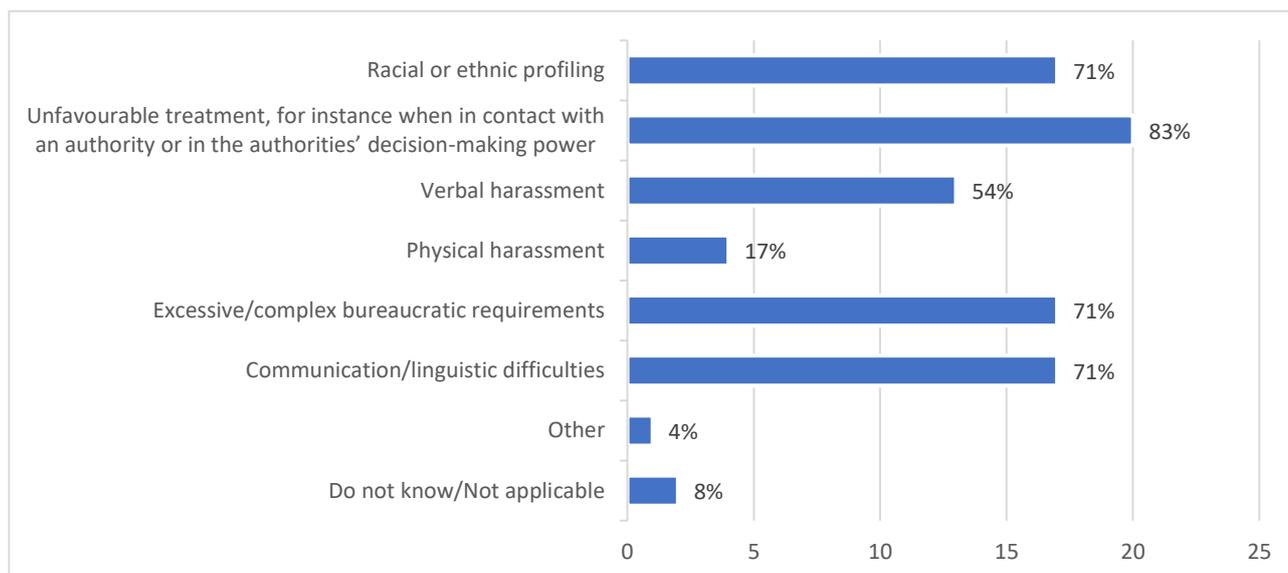
³⁴¹ Consejo para la Eliminación de la Discriminación Racial o Étnica (2020), [Percepción de la discriminación por origen racial o étnico por parte de sus potenciales víctimas en 2020](#) (*Perception of discrimination based on racial or ethnic origin by its potential victims in 2020*).

ethnic discrimination in this area³⁴². This view was mostly prevalent among equality bodies (13 out of 17 that responded to the survey), NGOs (10 out of 11 responding to the survey), and academic/research organisations (6 out of 7 responding to the survey). Opinions were mixed among ministries, lawyers/bar associations, and other stakeholders. Sixteen stakeholders (24 %) thought that no discrimination occurs in this area, which was the main opinion among prosecution services (4 out of 6 responding to the survey), ministries (4 out of 12 responding to the survey), and police authorities (3 out of 5 responding to the survey).

In the **OPC** where the majority of the respondents were EU citizens, 58 % [46 %] indicated at least one experience of racial/ethnic discrimination **in contacts with a civil registry office or municipality. In contacts with the immigration administration**, a quarter of the OPC respondents 30 % [25 %] reported at least one incidence.

Survey respondents were also asked about the main **situations** in which in their opinion racial or ethnic discrimination occurs in contacts with the public administration (other than law enforcement and judicial authorities). Most of the 24 respondents that answered this question observed it in the form of unfavourable treatment, e.g. when in contact with an authority or in the authorities decision-making power (20 in total, 83 %), followed by racial or ethnic profiling, excessive/complex bureaucratic requirements, and communication/linguistic difficulties (each representing 17 responses – 71 %). Verbal harassment (13 respondents – 54 %) and physical harassment (four respondents – 17 %) were also indicated (see Figure 3 below). The provided examples were mostly related to cases concerning the Roma community.

Figure 3: What are, in your/your organisation’s opinion, the main situations in which discrimination occurs in other contacts with the public administration? (N=24 and 91 total replies)



Regarding the main **causes** of such discrimination, most **survey respondents** believed it is caused by structural or systemic racism (22 in total, 92 %) and (un)conscious individual bias (20 in total, 83 %), followed by individual racism and low level of racial sensitivity and cultural awareness training of public officials/civil servants (18 in total, 75 %). As a further explanation, one NGO from Slovakia highlighted the structural problem of racism, stemming from individual

³⁴² The question did not differentiate between administrations. When asked to which areas and administrations did their answer refer to, respondents addressing this question mentioned areas falling outside the scope of the RED (e.g., by tax administrations, immigration authorities, local administration when exercising public authority), but also areas within the material scope of the RED (for instance, education, social support services, access to public services, such as waste collection, drinking water, central heating, housing). Discrimination by police and immigration control authorities were also mentioned under this question, while such situations were dealt with under the previous section of the survey questionnaire.

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opinions and biases of people in public administration and other public institutions, but also a general negative racial perception towards Roma people. According to a **Council of Europe study**, many factors contribute to hindering Roma people's access to public services, including to legal documents and thus to effective citizenship. These can be forced migration, extreme poverty and marginalisation, but also the lack of genuine interest on the part of authorities to tackle and resolve the issues³⁴³.

Analysis of EU and national legal instruments concerning contacts with public administration beyond the scope of the RED

In the context of bureaucratic procedures, including **entry into Member State territory**, reference may be made to the EU **Visa Code**³⁴⁴ that, as outlined in Box 21 below, contains a **specific prohibition of racial or ethnic discrimination by consular or central authorities when performing their duties**. Similarly, the Visa Code prohibits racial or ethnic discrimination by staff of external service providers. Its relevance in addressing a gap in protection against racial or ethnic discrimination is analysed in *Section 2.4* below.

Box 21: Visa Code

Visa Code

Article 39(3) prohibits **consular and central authorities' staff from discriminating against persons on grounds of sex, racial or ethnic origin**, religion or belief, disability, age or sexual orientation.

The same requirement is stipulated in **point (b) of Annex XC** with respect to external service providers that must ensure that their staff '**do not discriminate against persons on grounds of sex, racial or ethnic origin**, religion or belief, disability, age or sexual orientation'.

As regards **access to Member State territory by third-country nationals who are long-term residents**, reference may be made to **Directive 2003/109/EC**³⁴⁵. Recital 5 states that Member States should give effect to the Directive's provisions without discrimination on the basis of several grounds including race, colour, ethnic or social origin and **Article 11(1)(h)** contains a specific requirement for equal treatment of long-term residents with nationals including in relation to free access to the entire territory of the host Member State, '*within the limits provided for by the national legislation for reasons of security*'.

Free movement and residence rights of EU citizens and their non-EU family members are protected under **Directive 2004/38/EC**³⁴⁶, Recital 31 of which states that Member States should implement the Directive without discrimination between the beneficiaries on a number of grounds including race and ethnic or social origin. **Article 24(1)**, highlighted in Box 22 below, deals with equal treatment and is relevant where discrimination on racial or ethnic grounds intersects with discrimination based on nationality.

Box 22: Directive 2004/38/EC

Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

Article 24(1) states that '**all Union citizens residing on the basis of this Directive in the terri-**

³⁴³ Council of Europe (2012), [Human rights of Roma and Travellers in Europe](#), p.24.

³⁴⁴ [Regulation \(EC\) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas \(Visa Code\)](#), consolidated text.

³⁴⁵ [Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents](#).

³⁴⁶ [Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States](#).

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Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

tory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.'

At **national level**, Box 23 below lists **constitutional or anti-discrimination law provisions** in certain Member States prohibiting discrimination in the conduct of public authorities, including bodies of the public administration. This list is **not exhaustive** as it does not include potential sectoral laws or other binding instruments that could apply to discrimination in the exercise of public authority by public administration bodies. Findings based on data described in Box 23 are summarised in *Section 2.4.2*. Specific implementation challenges of national rules in this area are indicated in *Section 2.4.2*, while **general implementation challenges** that typically arise in applying non-discrimination legislation in some of the Member States are described in Box 11 above.

Box 23: Protection against discrimination in contacts with public administration in the Member States

Protection against discrimination in contacts with public administration in the Member States

- **Bulgaria:** The Bulgarian Protection Against Discrimination Act³⁴⁷ has a universal scope. It is applicable to any and all fields beyond the material scope covered by the RED³⁴⁸. This universal ban on discrimination applies to all public authorities, including bodies of the public administration³⁴⁹.
- **Croatia:** the Croatian Anti-Discrimination Act³⁵⁰ also has a wide scope of application in areas within and beyond the RED³⁵¹. Under Article 8, the Act is applicable to the conduct of all state bodies, regional and local self-government units as well as legal persons vested with public authority³⁵².
- **Estonia:** national law prohibiting racial or ethnic discrimination does not apply beyond the material scope of the RED. However, relevant constitutional anti-discrimination provisions³⁵³ are directly applicable in all spheres of life regulated by law³⁵⁴, thus including actions of public administration bodies. Victims of discrimination by public administration bodies can bring their claims to courts and the Chancellor of Justice³⁵⁵.

³⁴⁷ [Закон за защита от дискриминация](#) (Bulgarian Protection Against Discrimination Act (PADA)).

³⁴⁸ Information provided by a Bulgarian legal expert to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

³⁴⁹ European network of legal experts in gender equality and non-discrimination (2021), [Bulgaria - Country report non-discrimination 2021](#).

³⁵⁰ *Zakon o suzbijanju diskriminacije (Croatian Anti-Discrimination Act)*, Official Gazette 85/08, 112/12.

³⁵¹ Information provided by a Croatian legal expert to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

³⁵² European network of legal experts in gender equality and non-discrimination, [Croatia - Country report non-discrimination 2021, p.38](#).

³⁵³ Article 12 Estonian Constitution: '[e]veryone is equal before the law. No one may be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other views, property or social status, or on other grounds'.

³⁵⁴ Information obtained from an Austrian legal expert in response to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

³⁵⁵ Information obtained from the Estonian equality body via interview.

Protection against discrimination in contacts with public administration in the Member States

- **Finland:** the Finnish Non-Discrimination Act³⁵⁶ is applicable to all public activities of the authorities, including when using public power³⁵⁷.
- **Germany:** while the national anti-discrimination law³⁵⁸ does not apply in the case of discrimination by public offices and authorities, the Berlin State Anti-Discrimination Act³⁵⁹ provides protection against discrimination in relation to public law actions by the administration and public bodies of the Berlin Land. Nevertheless, the constitutional guarantee of equality binds all public offices and authorities in Germany.
- **Hungary:** Article 4 of the Equal Treatment Act³⁶⁰ explicitly stipulates that public authorities, local and nationality self-governments, bodies providing public services and other organs funded from the central budget must comply with the requirement of equal treatment in all of their actions and legal relationships³⁶¹.
- **Latvia:** the Constitution outlaws any kind of discrimination and is binding on all public bodies³⁶².
- **Romania:** Article 3 of the Romanian Anti-discrimination Law prohibits, among others, refusal to ensure legal and administrative public services. This is relevant under this study only to the extent that the services in question are not already covered under the RED, which may be the case when they are offered free of charge.
- **Slovenia:** Article 2(1) of the Slovenian Protection Against Discrimination Act³⁶³ states that the Act is binding on state bodies, local communities and holders of public authority, as well as legal and natural persons who are responsible for ensuring protection from discrimination in all fields of exercising public authority, participation in legal transactions and all other areas of their activities³⁶⁴. The fields covered by the Act are widely defined and practically cover all aspects of life except for private relations between people³⁶⁵.
- **Sweden:** Chapter 2, Section 17 of the Swedish Discrimination Act³⁶⁶ prohibits discriminatory behaviour or language of public employees (including of public administration bodies) when assisting the public by providing information, guidance, advice or other such help, or having other types of contacts with the public in the course of their employment. However, this does not cover discriminatory acts when applying a regulation or in taking measures to fulfil their tasks or responsibilities³⁶⁷.

2.1.2.2 Housing matters not necessarily within the scope of the RED (forced evictions, expulsions and residential segregation)

The RED covers 'housing' insofar as there is discrimination in goods or services. Indeed, the RED includes the area of 'access to and supply of goods and services available to the public,

³⁵⁶ [Finnish Non-Discrimination Act](#).

³⁵⁷ Information provided by a Finnish legal expert to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

³⁵⁸ European network of legal experts in gender equality and non-discrimination (2021), [Germany - Country report non-discrimination 2021](#).

³⁵⁹ [Landesantidiskriminierungsgesetz \(LADG\) \(Berlin State Anti-Discrimination Act\)](#), 11 June 2020.

³⁶⁰ [2003. évi CXXV. törvény az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról \(Act 2003 of CXXV on equal treatment and on the promotion of equal opportunities\)](#), 27 January 2004.

³⁶¹ Information provided by a Hungarian legal expert to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

³⁶² Information obtained from the Latvian Ombudsman's Office via interview.

³⁶³ [Zakon o varstvu pred diskriminacijo \(Protection Against Discrimination Act\)](#), 21 April 2016.

³⁶⁴ European network of legal experts in gender equality and non-discrimination (2021), [Slovenia - Country report non-discrimination 2021](#).

³⁶⁵ Information provided by a Slovenian legal expert to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

³⁶⁶ [Diskrimineringslag \(The Discrimination Act\)](#), (2008:567).

³⁶⁷ Preparatory legislative materials Prop. 2007/08:95, p. 286; Information provided by a Swedish legal expert to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

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including housing'. 'Housing' is not defined in the Directive; the boundaries of this term have so far been barely tested in case law.

Possible areas of discrimination related to housing include **evictions, forced expulsion** and **residential segregation**. Several stakeholders³⁶⁸ consulted for this study have pointed to this area as an important gap of the RED. This is in line with a 2020 report of the European Network of legal experts in gender equality and non-discrimination which states that 'these issues do not necessarily fall within the scope of the Directive'³⁶⁹. This report does not take a position on the exact scope of housing covered by the Directive. We acknowledge that it is possible to argue that all those aspects mentioned above are covered by the Directive, inasmuch as there is discrimination based on racial or ethnic origin in access to housing and in the exercise of the right to housing. In line with the Study's objectives, however, it is important to highlight the lack of clarity of the scope of the RED in this regard.

In any event, there is evidence that this is an area in which problems occur that may be linked to discrimination on racial or ethnic grounds in the exercise of public authority **by bodies of public administration**. It must be noted that evictions can relate also to issues of public authority by law enforcement and judicial authorities. For the sake of consistency, though, the issue is included here, among the other issues relating to housing.

Roma and Travellers are disproportionately affected by discrimination concerning housing matters. According to a Roma activist, one of the characteristics of anti-Roma racism is the fact that, whilst certain violations of housing rights (including evictions and residential segregation) '*may affect non-Roma, these tend to occur more on an individual basis, whereas Roma are collectively targeted by local authorities and are subjected, in corpore, to collective discriminatory measures*'³⁷⁰.

Evidence of disproportionality in **evictions** of Roma and Travellers as compared to the general population can be seen in data from the Roma and Travellers Survey³⁷¹. The survey was carried out between December 2018 and July 2019. It collected information from 4 659 respondents aged 16 years or older who self-identified as Roma or Travellers in five EU countries (Belgium, France, Ireland, the Netherlands and Sweden) and the UK. Among the Roma and Travellers surveyed, 4 % said that they had been evicted at least once in the past five years, and 8 % expected the authorities to evict them or force them to move in the next six months. This can be compared with the overall share of the population across the EU experiencing evictions that was estimated at 0.14 %. The Figure below provides more detailed data about the five EU countries covered in the survey.

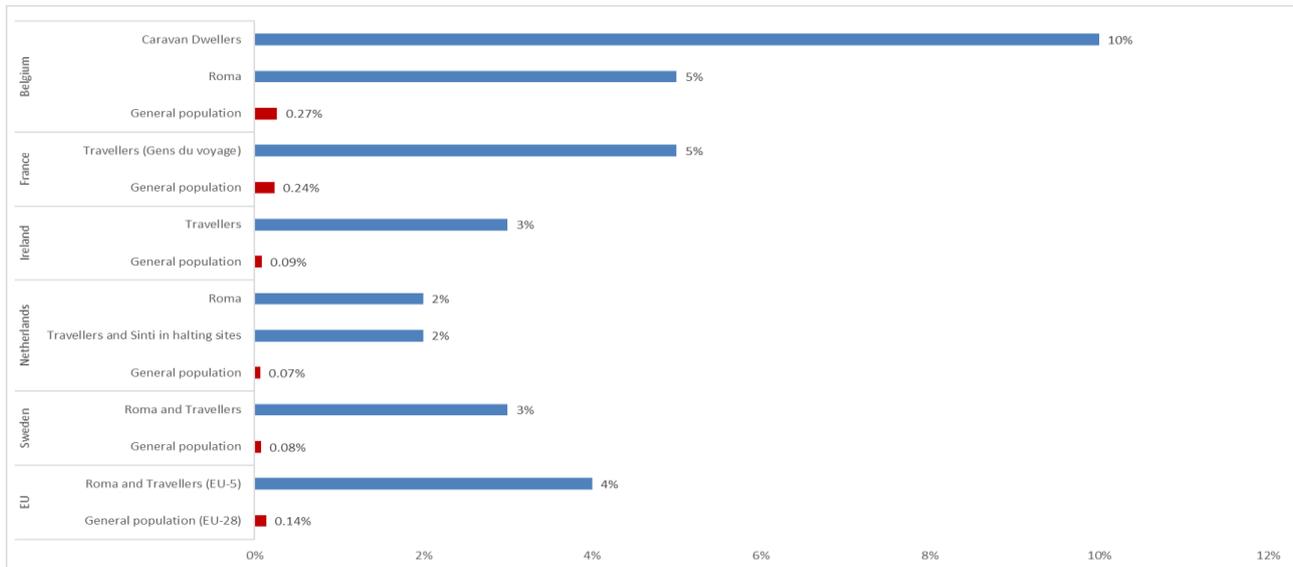
³⁶⁸ E.g. NGOs from FR, IT, RO, SK (2), EL and HU Ombudsman, academic in SE, and an EU level NGO.

³⁶⁹ European Network of legal experts in gender equality and non-discrimination (2020), [A comparative analysis of non-discrimination law in Europe 2019](#), p. 62.

³⁷⁰ Marian Mandache (2020), [A brief insight into the systemic racism Roma face in accessing housing in Romania](#).

³⁷¹ FRA (2020), [Roma and Travellers in Six Countries](#).

Figure 4: Share of the population experiencing evictions from their households during the five years preceding the survey



Source: Roma and Travellers Survey, 2020.

Furthermore, in countries like Cyprus³⁷², Czechia, Estonia³⁷³, Portugal, Romania and Slovakia³⁷⁴ **segregationist policies** against Roma such as setting physical barriers to separate neighbourhoods have been identified³⁷⁵. In its 2017 Concluding Observations on Italy's report, the CERD points out that the *'Roma, Sinti and Camminanti communities continue to live in segregated camps or housing areas with substandard accommodation, many unsuitable for human habitation, and in remote areas distanced from basic services, including health care and schools'*³⁷⁶. In its 2017 Concluding Observations on Slovakia's report, the CERD urges national authorities to *'adopt targeted measures with a view to ending residential segregation affecting Roma, including by explicitly prohibiting construction of walls that separate Roma and non-Roma communities, and by making accountable local authorities that encourage or adopt segregation policies'*³⁷⁷. In Bulgaria, the lack of regulation of the Roma ghettos where houses are not legally recognised, deprives Roma from the right of secure home and leads to residential segregation and evictions which leave Roma communities without homes³⁷⁸. In Romania, the number of people who live in informal settlements in the outskirts of villages and towns is extremely high³⁷⁹. This disproportionately affects members of vulnerable groups, especially Roma, risking forced evictions by

³⁷² In Cyprus, the Council of Europe concluded that the policy of constructing prefabricated housing units for Roma in isolated areas promotes a practice of de facto segregation.

Council of Europe (2016), [European Commission Against Racism and Intolerance Report, 5th report 2016](#), p. 9.

³⁷³ Mägi, Kadi (University of Tartu) (2018), [Ethnic residential segregation and integration of the Russian-speaking population in Estonia](#), PhD thesis.

³⁷⁴ Slovak National Centre for Human Rights (2017), [Report on the observance of human rights including the principle of equal treatment in the Slovak Republic for the year 2016](#), p. 50-54.

³⁷⁵ Council of Europe (2012), [Human rights of Roma and Travellers in Europe](#).

³⁷⁶ Committee on the Elimination of Racial Discrimination (2017), [Concluding Observations on the combined nineteenth and twentieth periodic reports of Italy](#) CERD/C/ITA/CO/19-20, para. 21.

³⁷⁷ Committee on the Elimination of Racial Discrimination (2017), [Concluding observations on the combined eleventh and twelfth periodic reports of Slovakia](#), CERD/C/SVK/CO/11-12, para. 22.

³⁷⁸ Савелина Данова-Русинова, (2018), [Доклад за борба с дискриминацията срещу ромите в България, БХК \(Report on the Right against Discrimination of Roma in Bulgaria\)](#), p.40-41.

³⁷⁹ Marian Mandache (2020), [A brief insight into the systemic racism Roma face in accessing housing in Romania](#), p.36-37.

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the authorities, often to isolated areas³⁸⁰. The process of legalising informal houses is cumbersome, especially for vulnerable people. In 2019, a law was adopted aiming at legalising informal housing³⁸¹; however, it mainly provides for compiling an inventory of informal settlements, but it does not eliminate the existing legislative and financial barriers that make the legalisation of such settlements a burdensome process³⁸².

A 2018 study commissioned by the European Commission also points at several cases of **housing segregation** in Europe and recommends that '*any public investments into the housing of vulnerable groups, particularly Roma, should be driven by desegregation objectives*'³⁸³. The report recommends that '*procurement of new dwellings with public support should not increase the number of inhabitants in segregated areas*'³⁸⁴. Similarly, a recent study compiled several cases of segregation practices in the allocation of public or social housing in EU countries that led to ethnic groups being systematically placed in dwellings situated in specific neighbourhoods³⁸⁵. Other specific examples in EU Member States can be found in Box 24 below. These sources point to potential racial or ethnic discrimination in these areas.

According to a book summarising the results of research in 13 European capital cities, **socioeconomic segregation** in European cities appears to be rising³⁸⁶. Race-based and ethnic backgrounds are often at the root of socioeconomic segregation. However, while socio-economic segregation can result from ethnic discrimination, it is a complex phenomenon which can be seen as a collective social condition³⁸⁷. Immigrants, often with a certain ethnic or racial background, are on average less educated and earn lower than average incomes, which makes them more likely to end up living in segregated neighbourhoods. Socio-economic segregation largely affects Roma people as well. ECRI noted in its latest report on Romania that the socio-economic marginalisation of Roma is claimed by stakeholders to be a result of poverty, which is a widespread phenomenon in the country affecting all citizens, but not an issue of discrimination. Nevertheless, ECRI considers that **overlooking the discrimination dimension of the problems experienced by Roma entails a high risk of denying the real issue and eventually reinforces the deeply rooted anti-Roma sentiments** at different levels of society³⁸⁸.

Residential segregation may coincide with what is referred to as '**environmental racism**'³⁸⁹ where people of colour or ethnic minorities are faced with greater environmental problems, e.g., living near polluted land or landfills, often also because of the more difficult socio-economic circumstances they are facing. A 2020 report of the European Environmental Bureau identified 32 cases in Central and Eastern Europe, involving 150 000 people from Roma communities, and found that '*there are three major ways in which Roma are affected by environmental injustice:*

³⁸⁰ National Agency for the Roma (2020), [Romanian Government Strategy for Citizen Inclusion Romanians Belonging to the Roman Minority for the Period 2021-2027](#), (Draft No. 4, dated 05/11/2020), p.11.

³⁸¹ Romania, Law No 151 of 24 July 2019 for the completion of Law no. 350/2001 on spatial planning and urbanism.

³⁸² Marian Mandache (2020), [A brief insight into the systemic racism Roma face in accessing housing in Romania](#), p.36-37.

³⁸³ European Commission (2018). [Roma civil monitor project: A synthesis of civil society's reports on the implementation of national Roma integration strategies in the European Union](#), p. 48.

³⁸⁴ European Commission (2018). [Roma civil monitor project: A synthesis of civil society's reports on the implementation of national Roma integration strategies in the European Union](#), p. 48.

³⁸⁵ Sanchez, B., [Securing Housing for all in Diverse European Societies. Applying International and European Antidiscrimination Law for the Housing Context](#).

³⁸⁶ Marcińczak, Musterd, van Ham (2015), [Socioeconomic Segregation in European Capital Cities](#).

³⁸⁷ Sliver, H., Danielowski, L. (2019), [Fighting Housing Discrimination in Europe](#).

³⁸⁸ ECRI (2019), [Report on Romania](#) (fifth monitoring cycle), p.25.

³⁸⁹ It was African American civil rights leader Benjamin Chavis who coined the term 'environmental racism' in 1982, describing it as 'racial discrimination in environmental policy-making, the enforcement of regulations and laws, the deliberate targeting of communities of colour for toxic waste facilities, the official sanctioning of the life-threatening presence of poisons and pollutants in our communities, and the history of excluding people of colour from leadership of the ecology movements'. See World Economic Forum (2020), [What is environmental racism and how can we fight it?](#).

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(1) they do not have access to services or have very limited access to clean water, waste collection services, while the surrounding areas benefit from them³⁹⁰; (2) Roma communities are often constrained, in the absence of other alternatives, to live and/or work in degraded and polluted environments, in contaminated industrial areas, or areas exposed to environmental hazards such as floods; and (3) Roma communities are victims of forced evictions from economically valuable locations that could provide them with access to natural resources such as uncontaminated land, water, and other utilities³⁹¹. A 2022 study on **anti-racist environmental and housing justice**³⁹² highlights that discrimination against poor Roma in access to adequate housing in a healthy environment is a manifestation of **multiple institutional discrimination**, and, at the same time, of **systemic discrimination**. This is because, due to lack of financial resources, poor Roma are pushed to live in the cheapest areas in the localities, where corporations or state companies place polluting units (such as landfills, water treatment plants, etc.). Moreover, they have very little or no access to justice, and they are excluded from the local or national decision-making concerning housing and environment³⁹³. The study claims that environmental racism makes forced relocation of people near toxic platforms possible, but also the 'construction of poisonous platforms at a short distance from the homes of those who are inferiorised, stigmatised, and disregarded both by the majority society in general, and by housing, environmental and health policy in particular'³⁹⁴. This is the case for instance in a city in Romania, where around 1 500 Roma live in a ghettoised space next to old and new landfills, where 'residential areas' were formed with the contribution of the public authorities, as hundreds of evicted Roma have been directed to this area over the past three decades by the local authorities, without offering alternative social housing³⁹⁵. The issues described above do not only affect poor ethnic communities in Central and Eastern Europe, but also in Western Europe. For example, in France, many halting sites for travellers are exposing their residents to environmental issues causing health problems. In France, 31 % of travellers are facing environmental issues close to their place of residence, whereas for the rest of the population this number is only 15 %. Halting sites for travellers in France are often located close to Installations Classified for the Protection of the Environment³⁹⁶.

Box 24: Cases/situations that may point at discrimination in access to housing not necessarily falling within the scope of RED

Cases/situations that may point at discrimination in housing matters that go beyond the RED from selected Member States

- **Belgium:** non-European migrants in Belgium are likely to face barriers for spatial integration, including fewer opportunities of socioeconomic mobility and being subject to cumulative disadvantages of negative neighbourhood effects on educational, professional and residential attainment³⁹⁷.

³⁹⁰ N.B. These aspects, i.e. access to basic utilities are covered by the RED.

³⁹¹ European Environmental Bureau (EEB) (2020), [Pushed to the wastelands: Environmental racism against Roma communities in Central and Eastern Europe](#), cited in Enikő Vincze (coord) (2022), [ENHOJUST Policy Brief: for an Anti-Racist Environmental and Housing Justice \(in Romania\)](#), p.22.

³⁹² Enikő Vincze (coord) (2022), [ENHOJUST Policy Brief: for an Anti-Racist Environmental and Housing Justice \(in Romania\)](#).

³⁹³ Enikő Vincze (coord) (2022), [ENHOJUST Policy Brief: for an Anti-Racist Environmental and Housing Justice \(in Romania\)](#), p.19.

³⁹⁴ Enikő Vincze (coord) (2022), [ENHOJUST Policy Brief: for an Anti-Racist Environmental and Housing Justice \(in Romania\)](#), p.8-9.

³⁹⁵ Information obtained from a representative of a local NGO / academic in Romania, via interview held on 07.03.2022. See also Căși sociale ACUM!/ Social housing NOW! (2020), Humanitarian, Ecological and Housing Crisis in the Pata Rât Area of Cluj-Napoca, Romania, [Input for Report on Covid-19 and Right to Housing, Issued by the UN Special Rapporteur on the Right to Adequate Housing](#), p.2-8.

³⁹⁶ Défenseur des Droits (2021), [Rapport: «Gens du Voyage»: Lever les Entraves aux Droits \(Report on travellers : lifting barriers to fundamental rights\)](#), (on the refusal of domiciliation by the administration), p.13-14.

³⁹⁷ R. Costa and H. A. G. de Valk (2018), [Ethnic and Socioeconomic Segregation in Belgium: A Multiscalar Approach Using Individualised Neighbourhoods](#), p. 231.

Cases/situations that may point at discrimination in housing matters that go beyond the RED from selected Member States

- **Bulgaria:** since the beginning of 2019, hundreds of Roma families have been forced out of their homes which have been destroyed as illegal housing³⁹⁸. According to the data collected in 2020 from 61 % of municipalities, 399 out of all 444 orders (89 %) concerning the demolition of residential buildings issued by local administrations relate to the homes of Roma³⁹⁹. Such evictions have occurred in Assenovgrad (June 2017, at least 16 buildings)⁴⁰⁰; Stara Zagora (July, 2016, 9 houses); Varna (August 2015, 400 Roma people were left without homes; and March 2016, 46 houses destroyed); Garmen (June-September 2015, 1 000 persons affected). Forced eviction actions reportedly disproportionately affect Roma families⁴⁰¹.
- **Croatia:** 75 % of Roma households live in segregated settlements with poor living conditions⁴⁰².
- **Czechia:** the number of socially excluded localities increased from 310 with 80 000 inhabitants in 2006 to 606 socially excluded localities with 115 000 inhabitants in 2015⁴⁰³. Approximately 80 % of the population of the localities are Roma⁴⁰⁴.
- **Denmark:** in 2018, the Government introduced a set of legal amendments, which it referred to as the 'ghetto plan', and which targeted social housing areas. Legislation has severe consequences for many of the persons living in a 'ghetto' or 'hard ghetto'. Since both areas are defined as having more than 50 % non-Western residents, these laws arguably target and affect ethnic minorities to a large extent. The plan has been criticised for violating laws against ethnic discrimination⁴⁰⁵.
- **Finland:** residential segregation has so far been rather low, but there is evidence of increasing segregation in major cities (Helsinki/Helsinki Region, Turku, Tampere). One of the reasons is that municipal housing is available on the basis of income criteria, and the share of immigrants among low-income population is higher. Despite a strong mixing in housing policy to combat segregation i.e., allocating municipal housing and private housing to same areas, there are concentrations of municipal housing. Thus, this amounts to residential segregation, which may also be contributed to by e.g., the willingness of some ethnic groups preferring to stay together⁴⁰⁶.
- **France:** a 2021 study published by the equality body highlights that Roma people represent a disproportionately high share of the population threatened by forced eviction. In fact, 34 % of the evictions reported outside of Calais and Grande-Synthe targeted places occupied by Roma people or persons considered as Roma⁴⁰⁷.
- **Greece:** there are patterns of housing segregation and discrimination against Roma⁴⁰⁸. For instance, the municipality of Elefsina issued a decision for the eviction of 16 Roma individuals, including minors, accusing them of engaging in dangerous delinquency without taking steps to

³⁹⁸ Кънев, Красимир, Ангелова, Дияна (2019), [Престъпления, подбудени от предрасъдъци, БХК \(Crime Based on Prejudices\)](#), p. 18.

³⁹⁹ Committee on the Elimination of Racial Discrimination (2020), [Reports on Discrimination, Segregation and the Right to Adequate Housing](#).

⁴⁰⁰ In Български хелзински комитет. Правата на човека в България през (2017), [г. София, с. 54. Докладът е достъпен на](#).

⁴⁰¹ Савелина Данова-Русинова, (2018), [Доклад за за борба с дискриминацията срещу ромите в България, БХК \(A Report on the Right against Discrimination of Roma in Bulgaria\)](#), p. 92.

⁴⁰² European Network of legal experts in gender equality and non-discrimination (2020), [A comparative analysis of non-discrimination law in Europe 2019](#), p. 62.

⁴⁰³ Supreme Audit Office (SAO) (2021), [Výroční zpráva o činnosti NKÚ za rok 2020 \(Annual Report of the SAO 2020\)](#); Supreme Audit Office (2019), [Výroční zpráva \(Annual Report 2018\)](#).

⁴⁰⁴ Gabal Analysis & Consulting (2015), [Analýza sociálně vyloučených lokalit v ČR \(Analysis of socially excluded localities\)](#); FRA (2018), [Second European Union Minorities and Discrimination Survey Roma – Selected findings](#).

⁴⁰⁵ The Danish Institute for Human Rights (2021), [Parallel Report Denmark – UN Committee on the Elimination of Racial Discrimination \(CERD\)](#), p.5-8,

⁴⁰⁶ Vaattovaara M. (2018) Alueellinen eriytyminen ja segregaatoin uhka. Lausunto Eduskunnan tarkastusvaliokunnalle (*Regional diversification and the threat of segregation, a position paper for the Finnish Parliament*), (2018a);

Kauppinen T. (2019), Maahanmuuttajien asuinolot ja segregaatio (*Immigrants' housing and segregation*); Kazi V, Alitolppa-Niitamo A & Kaihovaara A (eds.) Kotoutumisen kokonaiskatsaus 2019 (*Comprehensive report on immigrants' integration 2019*). Tutkimusartikkeleita kotoutumisesta, TEM oppaat ja muut julkaisut 2019: 10, 153 - 165. Helsinki: Ministry of Employment and the Economy (in Finnish).

⁴⁰⁷ Défenseur des droits, (2021), [Rapport pour une protection effective des droits des personnes Roms](#) (Report : towards an effective protection of Roma people's rights), p.11-14.

⁴⁰⁸ European network of legal experts in gender equality and non-discrimination, [Greece - Country report non-discrimination 2021](#), p. 47

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find a proper place to relocate them⁴⁰⁹. A number of relocation schemes for Roma settlements are still in progress. In practice, the purpose of most of them is to remove existing Roma settlements from urban areas to isolated areas⁴¹⁰. In its 2017 report, the Ombudsman recommended that all bodies involved in housing cases (municipalities, police departments, regional authorities, etc.) avoid undertaking any measures of violent expulsion or forced eviction of the Roma from their places of residence, underlining the point that their departure from an area requires prior actions on the part of the competent services, indicating a specific place of relocation, suitable for permanent residence, which would meet the minimum conditions of dignified and secure living⁴¹¹.

- **Hungary:** in 2011, 1 384 segregated neighbourhoods were identified in 709 settlements (cities, towns and villages)⁴¹².
- **Malta:** the police have been accused of racially targeting migrants and forcefully evicting them from their homes⁴¹³. There are also reports on residential segregation, namely, the 'forced ghettoisation' of migrants in refugee camps, where appalling conditions are compounded by racial profiling and institutionalised discrimination⁴¹⁴.
- **Portugal:** Roma communities live in inadequate housing conditions and even those who have been rehoused live in marginalised neighbourhoods⁴¹⁵. This also affects Afro-descendants who live in social and illegal neighbourhoods in the Lisbon Metropolitan Area. In most of these places, especially when they are far from the urban centres, there are no public services available⁴¹⁶.
- **Romania:** more than 60 000 Romanian Roma families live in informal settlements in the outskirts of villages and towns, without having ownership of the land on which the house is built, without having construction permits and documents for their properties (in some cases, without identity cards)⁴¹⁷. Forced evictions of Roma people by local authorities and their relocation to segregated areas had occurred in several cities of Romania, for example, in Piatra Neamt (150 families in 2001, 35 families in 2006); Miercurea Ciuc (100 people in 2004); Cluj Napoca (300 people in 2010); Baia Mare (500 people in 2012), Eforie (100 families in 2013), Alba Iulia (104 families, 2017) and continued even during the Coronavirus pandemic⁴¹⁸. However, there is no solid and centralised data on evictions, as there is no methodology for recording these. A network of organisations fighting for housing rights claim that in this way the phenomenon remains invisible, and evictions can take place without control and without holding the public administration accountable⁴¹⁹.
- **Slovakia:** Roma families often live in dwellings constructed over lands that do not have legally settled ownership or lands of known owners without their consent⁴²⁰. Furthermore, according

⁴⁰⁹ The Greek Ombudsman, [Equal treatment Special Report 2017](#), p. 45-6.

⁴¹⁰ European network of legal experts in gender equality and non-discrimination, [Greece - Country report non-discrimination 2021](#), p. 47

⁴¹¹ European network of legal experts in gender equality and non-discrimination, [Greece - Country report non-discrimination 2021](#), p. 47-48.

⁴¹² Hungarian Government (2021), [Magyar Nemzeti Társadalmi Felzárkózási Stratégia 2030](#), (*Hungarian National Strategy for Social Inclusion 2030*), p. 107-123.

⁴¹³ Malta Independent (2019), [Police pulling migrants out of their homes is racial profiling and criminalisation](#).

⁴¹⁴ Republika (2020), [A Civil Society Movement, Response to Anti-Racism Consultation Document](#), 19 October 2020, p. 5.

⁴¹⁵ Alves, Ana Rita (2018), [Working paper #2 Projeto COMBAT: Realoiar, despejar, quietizar. Arqueologias de uma violência obliterada: habitação e racismo nos relatórios nacionais/internacionais](#) (*Working paper #2 COMBAT Project: Relocate, evict, ghettoise. Archaeologies of an obliterated violence: housing and racism in national/international reports*), p. 8-25.

⁴¹⁶ Subcomissão para a Igualdade e Não Discriminação, Comissão de Assuntos Constitucionais, Direitos, Liberdades e Garantias, Assembleia da República (2019), [Relatório sobre Racismo, Xenofobia e Discriminação Étnico-racial em Portugal](#) (*Report on Racism, Xenophobia and Ethnic and Racial Discrimination in Portugal*), p. 25-29.

⁴¹⁷ PACT Foundation (2018), [Informal housing in Romania, Research report](#), p. 4.

⁴¹⁸ Marian Mandache (2020), [A brief insight into the systemic racism Roma face in accessing housing in Romania](#); Libertatea (2020), [Sute de oameni evacuati din locuinte chiar de primarii. Legislatia interzice asta!](#) (*Hundreds of People Evicted from Their Homes by the Mayoralties. The Law Forbid This!*); Blocul pentru Locuire (2019), [Report on forced evictions in Romania during the period 2008 – 2017](#).

⁴¹⁹ Blocul pentru Locuire (2019), [Report on forced evictions in Romania during the period 2008 – 2017](#).

⁴²⁰ Slovak National Centre for Human Rights (2018), [Report on the observance of human rights including the principle of equal treatment in the Slovak Republic for the year 2017](#), p. 44-47; See also Slovak National Centre for Human

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to civil society organisations, public policies adopted to address the problem of housing for Roma communities in practice increase or preserve residential segregation as the flats of lower standard for marginalised Roma are almost exclusively constructed on the outskirts of municipalities and sometimes even in segregated and/or isolated areas⁴²¹.

- **Spain:** around 60 000 Roma people live in substandard housing, of which it is estimated that nearly 11 300 live in slums. These homes are often located in places where they are particularly vulnerable to violation of their rights, where unlawful evictions take place. In some areas and neighbourhoods, such as Cañada Real (Madrid) recently, evictions of Roma families have taken place with no respect for the statutory procedure or procedural safeguards in place for evictions, leaving the affected families utterly defenceless due to their ignorance of the administrative procedures in which those evictions should take place⁴²².
- **Sweden:** residents who may be described as “non-white”, “people of colour”, “people of non-European descent” or “people with a non-European background” are overrepresented in low-income public housing or former public housing and so-called “vulnerable areas”, with well-documented “white flight”. This has led to racially segregated housing areas, especially around larger Swedish cities⁴²³.

Respondents to the **targeted online survey** undertaken for this study were asked to what extent they think racial or ethnic discrimination takes place in the exercise of public authority beyond law enforcement and judicial authority, in areas potentially not covered by the material scope of the RED. The majority of the respondents (38 in total, 59 %) observed racial or ethnic discrimination in housing matters that may go beyond the RED, such as evictions or residential segregation. The **OPC** asked about experiences of **evictions from the place of living**. Around 16 % [15 %] of the respondents reported such experiences.

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As regards **residential segregation and forced evictions**, reference may be made to the Council Recommendation on Roma equality, inclusion and participation⁴²⁴. Although Recommendations are not legally binding and would not alone address gaps in protection from racial or ethnic discrimination, they have political weight. The Recommendation’s relevance is limited to where potential racial or ethnic discrimination concerns Roma. Its Recital 13, the Recommendation recognises that ‘[d]uring the COVID-19 pandemic, excluded and disadvantaged Roma communities have been exposed to severe negative health and socioeconomic impacts, which risks further aggravating existing inequalities and the risk of poverty and social exclusion’. It ‘advocates reducing structural inequalities faced by Roma’ and ‘by eliminating the high levels of economic precariousness, overcrowded households, **segregated settlements or camps**’. One of the sectoral objectives established by the Recommendation relates to access to adequate de-segregated housing as set out in Box 25 below.

Rights (2019), [Report on the observance of human rights including the principle of equal treatment in the Slovak Republic for the year 2018](#), p. 26-28.

⁴²¹ Európska komisia (2019), [Monitorovacia správa občianskej spoločnosti o implementácii národnej stratégie integrácie Rómov na Slovensku – Zhodnotenie pokroku v kľúčových oblastiach stratégie](#) (Monitoring report of the civil society on implementation of the national strategy of Roma integration in Slovakia – Assessment of achievements in key areas of the strategy), p. 41.

⁴²² Fundación Secretariado Gitano (2019), [Discriminación y Comunidad Gitana, Análisis de la discriminación en el acceso a la vivienda. Presentación de 334 casos de discriminación Avances, buenas prácticas y jurisprudencia Casos de litigio estratégico de la FSG](#) (Discrimination and the Roma Community. In Depth Analysis of discrimination in Access to housing), p. 43-46.

⁴²³ Information obtained from an academic in Sweden via interview held on 22 February 2022.

⁴²⁴ [Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation](#).

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Box 25: Recommendation on Roma equality, inclusion and participation

Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation

Point 10 deals with sectoral objectives regarding **access to adequate desegregated housing** and essential services. It states that Member States should **ensure equal treatment of Roma people in access to adequate desegregated housing** through a number of measures including, for example:

- **'measures to monitor, prevent and combat any spatial segregation and promote desegregation** by drawing up concrete plans to tackle housing issues with the involvement of local communities and affected Roma communities';
- **'measures to prevent forced evictions** by promoting early warning and mediation, to organise support for people at risk of eviction and, when necessary, to provide adequate alternative housing, focusing particularly on families';
- **'measures to improve the living conditions of Roma people**, to prevent and to tackle the negative health impact of exposure to pollution and contamination'.

With specific reference to **beneficiaries of international protection** reference may be made to the requirement for Member States to implement policies aimed at preventing discrimination of beneficiaries of international protection and at ensuring equal opportunities regarding access to accommodation within Directive 2011/95/EU⁴²⁵ (see Box 26 below and *Section 2.4* below).

Box 26: Directive 2011/95/EU

Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted

Article 32(1) requires Member States to ensure that beneficiaries of international protection have **access to accommodation under equivalent conditions as other third-country nationals legally resident** in their territories. In accordance with **Article 32(2)**, while national practices of dispersal of beneficiaries of international protection are allowed, Member States must **'endeavour to implement policies aimed at preventing discrimination of beneficiaries of international protection and at ensuring equal opportunities regarding access to accommodation.'**

Finally, the Proposal for a Regulation on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection⁴²⁶, also contains a specific requirement for beneficiaries of international protection to have access to accommodation under the same conditions as other third-country nationals legally resident in the Member States alongside a specific requirement for national dispersal practices to be carried out without discrimination and to ensure equal opportunities in access to accommodation (see Box 27 below and *Section 2.4* below).

Box 27: Proposal for a Regulation on beneficiaries of international protection

Proposal for a Regulation on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted

⁴²⁵ [Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted](#) (recast).

⁴²⁶ [Proposal for a Regulation on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, COM/2016/0466 final - 2016/0223 \(COD\)](#).

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In accordance with **Article 37(1)** beneficiaries of international protection must have access to accommodation **under conditions equivalent to those applicable to other third-country nationals legally resident** in the territories of the Member States who are in a comparable situation. **Article 37(2)** requires national dispersal practices of beneficiaries of international protection to be carried out 'to the extent possible **without discrimination of beneficiaries of international protection and shall ensure equal opportunities regarding access to accommodation.**'

At **national-level**, as described in Box 23 above, five Member States' anti-discrimination legislation (**Bulgaria, Croatia Finland, Hungary, and Slovenia**) is applicable inclusively to the conduct and decision making of the public administration bodies, thus also in relation to housing matters that would not necessarily fall within the RED's scope. Out of these, the **Croatian** Anti-Discrimination Act explicitly enumerates areas to which special attention is to be paid. Housing is listed as a stand-alone field, thus not being restricted to '*access to and supply of goods and services available to the public*', as in the RED. In addition, the Act regulates **segregation** as a special form of discrimination, defining it as a forced and systematic separation of persons on any of the discrimination grounds⁴²⁷. The **Bulgarian** Protection Against Discrimination Act also defines racial segregation as a form of discrimination. However, it requires the segregation to be 'compelled', which is contrary to the Directives' definition of direct discrimination⁴²⁸. Similarly, Article 10(2) the **Hungarian** Equal Treatment Act claims that '*segregation is a behaviour aimed at separating individuals or a group of persons from other individuals or another group of persons in a comparable situation, based on a protected characteristic, without an express authorisation set out in an Act of Parliament*'⁴²⁹. Though when defining segregation, these laws do not expressly refer to housing, it is implied that it applies to residential segregation as well, considering that the material scope of these laws are applicable to any areas. In other Member States, e.g., in **Latvia and Estonia**, even if discrimination is not separately prohibited in all fields of public administration, the constitutional prohibition is interpreted as covering discrimination in any area by any public body; and in Germany, the constitutional guarantee of equality binds all public bodies.

Furthermore, the **Romanian** anti-discrimination law regulates as a separate material area the 'freedom of movement and right to freely choose a residence', implicitly forbidding forced evictions and residential segregation⁴³⁰. In addition, the Romanian anti-discrimination law forbids discriminatory behaviour violating the 'right to dignity'⁴³¹, and this provision has been invoked in cases where the other legal provisions of the law were not fully sufficient, for example in the

⁴²⁷ Article 5, Zakon o suzbijanju diskriminacije (*Croatian Anti-Discrimination Act*), Official Gazette 85/08, 112/12.

⁴²⁸ Information provided by a Bulgarian legal expert, in response to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

⁴²⁹ [Act 2003 of CXXV on equal treatment and on the promotion of equal opportunities](#), 27 January 2004.

⁴³⁰ Article 12-13 of [Ordonanta nr. 137 din 31 august 2000 privind prevenirea și sancționarea tuturor formelor de discriminare](#) (Government Ordinance 137/2000 on the prevention and sanctioning of all forms of discrimination), namely 'activities or behaviours aimed at displacing or sending away a person or a group of persons from a neighbourhood or a building', or 'actions consisting of threats, coercion, use of force or any other means of assimilation, resettlement or colonisation of persons, in order to change the ethnic, racial or social composition of a zone of the country or of a locality', as well as 'any conduct consisting in causing persons or groups of persons belonging to a particular race, nationality, ethnic group or religion, or to a community, to leave their traditional place of residence, to be deported or to make their living conditions more difficult, with the aim of achieving the abandonment of their traditional place of residence without their consent'.

⁴³¹ Behaviours exhibited in public, having a nationalist and chauvinist nature, inciting to racial or national hatred or that behaviour aimed or intended to offend the dignity or create an intimidating, hostile, degrading, humiliating or offensive environment, which is directed against a person, a group of persons or a community, if the deed does not fall under the incidence of criminal law.

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case of a dividing wall built by the Baia Mare local authorities, segregating the Roma community⁴³².

A stakeholder fighting for housing justice in Romania confirmed that in the anti-discrimination law the area of housing is well covered, and the law provides for measures which one might use in legal procedures to critically address racial discrimination in housing matters, even beyond the RED⁴³³. However, **in practice**, the courts do not have recourse to the anti-discrimination legislation when it comes to e.g., forced eviction, but apply the sectoral laws, e.g., laws protecting private and public property or laying down rules for authorisations in constructions. These laws do not include explicit provisions prohibiting discrimination or social marginalisation; therefore, *'if an eviction initiative in the court starts, usually it ends with the decision of evictions and demolitions'*⁴³⁴. Furthermore, despite Romania being signatory to international treaties providing for the right to housing, in the experience of the stakeholder mentioned, there are a very few judges who are willing to directly apply international law⁴³⁵. Thus, Roma people being evicted or residentially segregated do not have access to social justice and cannot exercise their socio-economic rights⁴³⁶. The Romanian equality body is also competent to investigate and decide on eviction and residential segregation cases *ex officio* or based on complaints. For example, in forced eviction case of Roma people the equality body decided that the **eviction of a large number of persons who belong to a disfavoured category, without taking into consideration measures adapted to their needs, without taking the necessary measures to relocate these persons in dwellings which would ensure the minimum standard of living, constitutes discrimination**⁴³⁷. However, the sanctions that the equality body can issue (e.g., fines, obliging the public authority to publish the decision finding discrimination on their website) are not very effective, since the fines are paid from the public budget and publication of the decision on the local administration's website has limited effect⁴³⁸.

According to a 2016 report on the right to housing and homelessness prevention in the context of evictions⁴³⁹, *'the CJEU and ECtHR have examined the legal basis and procedural adequacy of evictions in a number of Member States. [...] However, it has become clear that the protection arising from EU and international instruments is applied in a fragmentary and often inconsistent manner, thus denying EU citizens equal access to their rights'*⁴⁴⁰. The report looked into the relevant case-law and found that the **ECtHR** has developed a complex jurisprudence on the balance between the rights of property owners and respect for the rights to 'home' of persons being evicted (under Article 8 ECHR)⁴⁴¹. Respect for the home under Article 8 ECHR can also be

⁴³² European network of legal experts in gender equality and non-discrimination (2021), [Country report Romania, Non-discrimination, Transposition and implementation at national level of Council Directives 2000/43 and 2000/78](#), p. 97.

⁴³³ Information obtained from a housing rights activist / representative of a local NGO / academic in Romania via interview held on 07.03.2022.

⁴³⁴ Information obtained from a housing rights activist / representative of a local NGO / academic in Romania via interview held on 07.03.2022.

⁴³⁵ Information obtained from a housing rights activist / representative of a local NGO / academic in Romania via interview held on 07.03.2022.

⁴³⁶ Information obtained from a housing rights activist / representative of a local NGO / academic in Romania via interview held on 07.03.2022.

⁴³⁷ See Decision 454 of 19 November 2018 of the National Council for Combating Discrimination, upheld by the Alba Iulia Court of Appeal, Decision 1293 of 25 November 2020.

⁴³⁸ Information obtained from a housing rights activist / representative of a local NGO / academic in Romania via interview held on 07.03.2022.

⁴³⁹ Human European Consultancy, School of Law, National University of Ireland Galway, FEANTSA (2016), ['Pilot project - Promoting protection of the right to housing - Homelessness prevention in the context of evictions'](#).

⁴⁴⁰ Human European Consultancy, School of Law, National University of Ireland Galway, FEANTSA (2016), ['Pilot project - Promoting protection of the right to housing - Homelessness prevention in the context of evictions'](#), p. 192.

⁴⁴¹ See for example, *Yordanova and Others v Bulgaria*; *Connors v the United Kingdom*; *Ceesay and Others v Spain*; *Čosić v Croatia*; *Stankova v Slovakia*; *Chapman v the United Kingdom*, cited in Human European Consultancy et al. (2016), ['Pilot project - Promoting protection of the right to housing - Homelessness prevention in the context of evictions'](#), pp. 3-4 and 36.

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invoked when public authorities enforce repossessions or evictions, or even when ruling on illegal evictions⁴⁴². A few eviction-related cases have been considered by the **CJEU** as well, in particular in the context of agreements complying with EU consumer law⁴⁴³.

2.1.3 Use of public space

Discrimination also seems to occur when racial or ethnic origin is seen as a threat or raises suspicion in public places. Such a prejudiced vision could lead to racial discrimination, including harassment, by public authorities or security officers, as well as by ordinary citizens⁴⁴⁴. This may occur when minorities are excluded from public places or facilities of general use on the basis of race or ethnicity; or when the freedom of movement of some groups is restricted in some municipalities' public spaces. Beyond the issue of racial profiling by law enforcement officials (see *Section 2.1.1* above), discrimination in use of public space can occur when citizens are specifically targeted by control or harassed in **public transportation** because of their ethnic or racial origin⁴⁴⁵.

Certain groups, such as Muslim women wearing headscarves, burqas or niqabs are particularly affected by discrimination in public places⁴⁴⁶. Those who have said to be discriminated against in public spaces often feel unsafe and avoid specific places or events. Profiling and prejudice may also lead to persons belonging to racial or ethnic minorities being more likely to being targeted by administrative fines for **use of public spaces** (14 out of 20 survey respondents believed that racial or ethnic discrimination by public actors leads to increased administrative checks or fines when using public space, including public transport). It should be noted that insufficient data are available to assess the scale of racial and ethnic discrimination in public spaces by public authorities or ticket inspectors and that further research is needed in this area. Box 28 below shows mainly examples of possible discrimination by security officers/guards or ordinary citizens.

Box 28: Signs of discrimination in the use of public spaces

Signs of discrimination in the use of public spaces: examples from selected Member States

- **Austria:** according to a stakeholder, discrimination and harassment by ordinary citizens on grounds of racial or ethnic origin (e.g., against women wearing headscarves, burqa or niqab) occurs in public places (clubs, restaurants and recreational places) and in public and private transportation. The cause of such harassment is racial prejudice⁴⁴⁷.
- **Bulgaria:** a stakeholder remarked that, within the last decades, a 'radical neo-Nazi nationalist populist wave' has emerged in Bulgaria which gradually started to exclude Roma from society and to deny them access to public spaces. The stakeholder called this phenomenon a 'symptom' of institutional racism which did not exist before⁴⁴⁸.
- **Finland:** a 2018 study found evidence of ethnic profiling carried out, for instance, by security officers and bouncers in urban spaces (e.g., streets and parks, railway and metro stations, etc).

⁴⁴² See for example *Buckley v the United Kingdom*.

⁴⁴³ See for example Case C-415/11 *Aziz v Caixa d'Estalvis de Catalunya*; Case C-169/14 *Sánchez Morcillo*; Case C-34/13 *Monika Kušionová v SMART Capital, a.s.*, cited in Human European Consultancy *et al.* (2016), '[Pilot project - Promoting protection of the right to housing - Homelessness prevention in the context of evictions](#)', p.32.

⁴⁴⁴ Council of Europe (2020), [Rapport Lutter contre le racisme et la discrimination raciale à l'égard des personnes d'ascendance africaine en Europe](#) (*Report on Combating racism and racial discrimination against people of African descent in Europe*), p.4. ; Hoover F.A., Lim T.C (2020), Examining privilege and power in US urban parks and open space during the double crises of antiblack racism and COVID-19, Socio-Ecological Practice Research; Bloomberg, Brentin Mock (2020), [The Toxic Intersection of Racism and Public Space](#).

⁴⁴⁵ Confédération fédérale contre le racisme CFR, [Guide juridique contre la discrimination raciale. Transports publics](#) (*Legal guide against racial discrimination. Public transport*).

⁴⁴⁶ Information obtained from a representative of a of an EU-level NGO via interview held on 02.03.2022. See also Open Society Justice Initiative (2021), [Restrictions on Muslim Women's Dress in the 27 EU Member States and the United Kingdom](#).

⁴⁴⁷ Information obtained from a representative of a ministry in Austria via interview held in March 2022.

⁴⁴⁸ Information obtained from a an academic in Bulgaria via interview held on 11.02.2022.

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Signs of discrimination in the use of public spaces: examples from selected Member States

The study indicates that the security guards are experienced as the biggest problem in relation to ethnic profiling. This is supported both by the interview and the survey data. In the survey, young respondents of Somalian backgrounds reported having been the target of actions by security guards nearly ten times, and young persons with Middle Eastern backgrounds nearly six times as often as the Finnish majority youth, without an apparent reason. Finnish Roma commonly experienced ethnic profiling by bouncers and security guards⁴⁴⁹.

- **Germany:** a large majority of the respondents to the Afrozensus survey reported being discriminated against by security staff in the last two years, on the grounds of skin colour (85.2 %) and racial or ethnic origin (80.2 %) ⁴⁵⁰. Furthermore, a 2021 report shows that people seeking advice from the Federal Anti-Discrimination Agency reported what they perceived to be racist discrimination or discrimination on the basis of ethnic origin in the context of ticket controls. Those seeking advice had the feeling that in buses, trams and local transport they were controlled by employees or security staff only on the basis of their skin colour or an ascribed ethnic origin⁴⁵¹.
- **Greece:** the Greek Ombudsman reported on cases of discrimination based on ethnic origin by air carrier's security personnel during controls⁴⁵², and biased security checks in three airports in Greece against passengers due to their racial background⁴⁵³.
- **Latvia:** a 2015 study on the experiences of third country nationals in Latvia revealed that the most frequent situation in which the respondents had experienced discriminatory attitudes was on the street or in the public transport (21.5% of those surveyed). The study shows that those with pronounced visual differences from local people and citizens of other third countries are more likely to have such experiences, which indicates manifestations of racial discrimination in Latvia⁴⁵⁴.
- **Netherlands:** according to a local stakeholder, in a city of the Netherlands, discrimination in public spaces of coloured people is common, e.g. they are discriminated against when they are in public spaces. This usually affects groups of men with a North African background and/or Muslims. Refugees are also being discriminated against by Dutch people, in particular in public transport in the area where a refugee centre is placed, requiring the presence of additional security guards because of aggression towards some asylum seekers⁴⁵⁵.
- **Romania:** the Mayor's Office of Timisoara city manifested his intention to forbid in an express manner any broadcast and performance of songs with Turkish/Balkan influences ('manele') in public areas of Timisoara. The National Council for Combating Discrimination considered this a discriminatory action and an infringement of the right to dignity and issued an administrative warning⁴⁵⁶.

⁴⁴⁹ Keskinen S, Alemanji Aminkeng A, Himanen M, Kivijärvi A, Osazee U, Pöyhölä N & Rousku V (2018), [The stopped. Ethnic profiling in Finland](#), SSKH Notat 2/2018, Helsinki: Helsingin yliopisto. (The study is available in English and Finnish. The study made use of several kinds of quantitative and qualitative methods and data: individual and focus group interviews, participatory observation, and survey questionnaires. Altogether 185 persons were interviewed. 145 belonged to ethnicised/racialised minorities and were interviewed about their experiences of ethnic profiling. Moreover, 26 police officers and 14 other experts were interviewed. The interviews were conducted in the Helsinki metropolitan area and Turku between 2015 and 2017. The survey data (N=362) included young adult respondents of 15–29 years from the Finnish majority population and four ethnic minority groups (Russian, Kurdish, Arabic and Somali speakers).

⁴⁵⁰ Afrozensus (2020), [Perspektiven, Anti-Schwarze Rassismuserfahrungen und Engagement Schwarzer, afrikanischer und afrodiaporischer Menschen in Deutschland](#) (*Perspectives, Anti-Black Racism Experiences and Engagement of Black, African and Afrodiasporic People in Germany*), p.123.

⁴⁵¹ Federal Anti-Discrimination Agency (2021), [Vierter Gemeinsamer Bericht der Antidiskriminierungsstelle des Bundes und der in ihrem Zuständigkeitsbereich betroffenen Beauftragten der Bundesregierung und des Deutschen Bundestages - Diskriminierung in Deutschland – Erfahrungen, Risiken und Fallkonstellationen](#) (*Fourth Joint Report of the Federal Anti-Discrimination Agency and the Federal Government Commissioners and the German Bundestag concerned in its area of responsibility - Discrimination in Germany - experiences, risks and case constellations*), p.84.

⁴⁵² The Greek Ombudsman's Office (2019), [Equal Treatment, Special Report 2018](#), p. 36.

⁴⁵³ The Greek Ombudsman's Office (2020), [Equal Treatment, Special Report 2019](#), p. 25.

⁴⁵⁴ SIF (2015), [Trešo valstu pilsonu portrets Latvijā](#), (*The portrait of third country nationals in Latvia*), p.56. The study is based on data obtained through 478 survey questionnaires.

⁴⁵⁵ Information obtained from a representative of a municipal anti-discrimination facility in the Netherlands via interview held on 24.02.2022.

⁴⁵⁶ National Council for Combating Discrimination (2021), [Activity report 2020](#), p. 72.

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In the **targeted online survey**, more than half of the respondents (33 in total, 52 %) indicated discrimination in the use of public spaces (e.g., parks, streets, etc.) when in contact with the public administration (beyond law enforcement and judicial authorities). Controls conducted by security officers or ticket inspectors (not by police) was mentioned by 37 respondents (58 % of those addressing this question) as an area where discrimination occurs (12 respondents believed that such discrimination takes place to a major extent, 18 to a moderate extent and 7 to a minor extent).

In the **OPC**, 83 % [85 %] of the respondents reported to have experienced racial/ethnic discrimination **in streets, parks, or other public spaces** and by **staff or passengers in public transport** (72 %, both with and without campaigning). When it comes to discrimination by control authorities in public spaces, 45 % [39 %] of the respondents experienced it during controls conducted **by private security officers or by ticket inspectors** and 50 % [37 %] **by a public authority**, such as a police officer.

Analysis of national legal instruments concerning the use of public spaces

At **national-level**, discrimination in access to public places is explicitly forbidden by the **Romanian** anti-discrimination law⁴⁵⁷. In **Belgium**, the Racial Equality Federal Act covers discrimination in access to, participation in and other exercise of economic, social, cultural or political activity accessible to the public⁴⁵⁸. In addition, discrimination in the use of public spaces is also covered by the anti-discrimination legislation of Member States with a horizontal material scope (**Bulgaria, Croatia, Finland, Hungary, Slovenia**). In **Sweden** it is covered to the extent the controls in public spaces are undertaken by public employees, and only concerning their behaviour and language use with individuals in the public spaces or passengers in public transport. General implementation challenges that typically arise in applying non-discrimination legislation in the Member States mentioned above are described in Box 11.

More information on the analysis of legislation is provided under *Section 2.4*.

2.2 Other/Grey areas

As mentioned in *Section 1*, the RED has a broad material scope, covering goods and services offered to the public (by public and private bodies), employment, education, housing, social protection and social advantages. While the sources identified during the mapping of areas outside of the material scope of the RED where racial and ethnic discrimination occurs mostly point to possible discrimination in the exercise of public authority, a more limited number of sources identify potential racial and ethnic discrimination in some other areas.

For some of these areas, it is unclear whether or not they are covered by the RED as they concern 'grey areas' where the CJEU has not yet provided further guidance on the concepts used in the Directive and different interpretations may be followed in several Member States⁴⁵⁹. For other areas, the evidence gathered at EU-level is largely anecdotal in nature and has been further investigated through stakeholder consultation and national-level research. For many of the issues identified in this subsection, however, it appears that there is insufficient data available to

⁴⁵⁷ Article 14 of [Ordonanta nr. 137 din 31 august 2000 privind prevenirea si sanctionarea tuturor formelor de discriminare](#) (Government Ordinance 137/2000 on the prevention and sanctioning of all forms of discrimination).

⁴⁵⁸ Article 5, 8° of [Loi du 30 juillet 1981 tendant à réprimer certains actes inspirés par le racisme ou la xénophobie](#) (Act of 30 July 1981 criminalising certain acts inspired by racism or xenophobia). Information provided by a Belgian legal expert to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED.

⁴⁵⁹ At the same time, the exercise of public authority by the public administration is somewhat of a grey zone as well, particularly in the area of housing as rather little guidance/no common agreement exists about the boundaries of the interpretation of 'services' and 'housing'.

reach conclusions about (possible) discrimination in these areas. While this does not necessarily mean that there is no potential racial or ethnic discrimination in these areas, it is not possible to determine the scale of any such potential discrimination on the basis of existing data.

Sources also reveal a number of related issues, where (structural) racial or ethnic discrimination may be a cause, for instance, of underrepresentation or a lack of diversity, but where other contributing factors, such as socio-economic disparities⁴⁶⁰, may also play a role⁴⁶¹. For many of these issues, there is currently not enough data available that would allow to identify the extent to which racial or ethnic discrimination are the cause of the difficulties encountered. For some examples, discrimination in areas of life already covered by the RED may be the core problem – leading to issues of exclusion or underrepresentation in other areas.

Therefore, this section describes areas where (i) **problems exist**; however in the absence of guidance (e.g., from the CJEU) on concepts used in the RED, it is **unclear** if the area **falls under the RED**; (ii) clear evidence suggests that a problem exists (in an area beyond the RED), but **data are insufficient** to conclude that **discrimination is the root cause** of the problem; (iii) **data are insufficiently clear or robust** to point at clear signs of discrimination.

2.2.1 Access to and supply of goods and services beyond the RED

Article 3(h) of the RED covers 'access to and supply of goods and services which are available to the public, including housing'. The notion of 'services' under Article 57 TFEU⁴⁶² covers services provided for remuneration and includes, in particular, activities of an industrial character, activities of a commercial character, activities of craftsmen, activities of the professions. The CJEU has interpreted the notion of 'service' broadly. As such, remunerated services do not lose their commercial nature even if the provider is a non-profit making enterprise⁴⁶³ or if the service is of recreational or sporting nature⁴⁶⁴. However, the notion of 'available to the public' implies that goods or services **not advertised to the public** fall outside the scope of the RED⁴⁶⁵. Also, a **payment** is required.

The reference to goods and services 'available to the public' has not been interpreted by the CJEU, but seems to include situations where the offer to provide services has been made in the public domain, but not within the **private or family circle**⁴⁶⁶. Therefore, it seems that transactions that are purely private, for instance because the offer had not been publicly advertised, would fall outside the scope of the RED. This would imply, for example, that discrimination in cases where the house is not advertised to the public⁴⁶⁷, the RED would not apply. This is the

⁴⁶⁰ The different root-causes, though, cannot be seen in isolation but are often intertwined, reinforcing a vicious circle, meaning that (structural) racial or ethnic discrimination contributes to socio-economic disparities and that socio-economic deprivation may also lead to a situation in which people are facing more often discrimination.

⁴⁶¹ To some extent, this also applies to certain material areas presented in Section 2.1.1. For instance, in case of the numbers showing overrepresentation in stop and searches, pre-trial detention or prison, it is also not fully clear whether discrimination is always the issue. However, in this report those situations were treated as 'areas of discrimination beyond the areas already covered by the RED' as opposed to 'grey area', because the data supporting the issues described under Section 2.1.1 are more solid, more diverse, showing real experiences, and sometimes showing that discrimination is clearly the root cause of the issue.

⁴⁶² European Commission (2021), Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final, p.19.

⁴⁶³ CJEU, Case C-70/95 *Sodemare and Others v. Regione Lombardia*, 17 June 1997.

⁴⁶⁴ CJEU, Joined Cases C-51/96 and 191/97 *Deliège v. Ligue Francophone de Judo et Disciplines Associées ASBL and Others*, 11 April 2000.

⁴⁶⁵ Academy of European Law (ERA), [Module 3: The protected grounds of racial or ethnic origin](#).

⁴⁶⁶ European Commission (2021), Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

⁴⁶⁷ European Commission (2021), Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final, p.19.

⁴⁶⁷ Academy of European Law (ERA), [Module 3: The protected grounds of racial or ethnic origin](#).

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case when the interest to rent or buy a house is announced in posts in closed Facebook groups where prospective tenants post messages.

A lack of clarity over the concept of 'available to the public' has led to restrictive interpretations in some Member States. This appears to be the case in Sweden, where private persons selling or renting houses 'on sporadic occasions' are not covered by the Discrimination Act⁴⁶⁸. Landlords in the private sector are free to decide with whom they enter into a rental agreement⁴⁶⁹.

Goods or services provided to **a limited and fixed group within a private club** can also be considered as falling outside the RED if the services are not made available to the public⁴⁷⁰. However, no clear evidence was identified relating to discrimination in this area in the Member States, in EU or national sources of information.

Given the meaning of 'services' in the RED, for which a payment is required, access to and supply of **free services** does not seem to be covered. As regards access to free services, CJEU case-law relating to the freedom to provide services focuses mainly on establishments forming part of a system of public education and financed, entirely or mainly, by public funds⁴⁷¹. However, this category is included within the scope of the RED in its Article 3(1)(g): 'education'. Other issues could arise in relation to access to free social, sports, cultural or political events or organisations open to the public. In these cases as well, it seems that many situations might be covered by the RED, e.g., for an association paying for sports facilities which it would then make available to its users free of charge. In Lithuania, a representative of the Roma community association outlined how private sports clubs denied signing agreements giving access to sports facilities with his organisation⁴⁷². Furthermore, certain online services which are indirectly paid through personal data/cookies are difficult to include into the category of 'access to goods and services' provided for by the RED⁴⁷³.

No further data were identified substantiating racial or ethnic discrimination in areas that would clearly not be covered by the RED in this area.

2.2.2 Democratic participation and representation

Following the 2019 European Parliament elections, there was increasing awareness of hurdles such as administrative challenges, accessibility and institutional difficulties limiting **democratic participation and representation** for people with a minority racial or ethnic background⁴⁷⁴. According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), persons belonging to minorities remain underrepresented in political activities, *'because they are either actively and intentionally restricted from participation, inadvertently disadvantaged by a variety of laws or policies, or because there is a lack of political will in the larger society to*

⁴⁶⁸ European Network of legal experts in gender equality and non-discrimination (2020), [A comparative analysis of non-discrimination law in Europe 2019](#).

⁴⁶⁹ Fang, C., & van Liempt, I. (2020), 'We prefer our Dutch': International students' housing experiences in the Netherlands, *Housing Studies*, p.824; Auspurg, K., Schneck, A., & Hinz, T. (2019), Closed doors everywhere? A meta-analysis of field experiments on ethnic discrimination in rental housing markets, *Journal of Ethnic and Migration Studies*, 45(1), p.95-114.

⁴⁷⁰ Project Towards the uniform and dynamic implementation of EU anti-discrimination legislation: the role of specialised bodies (2004), [Combating discrimination in goods and services](#), Report of the fifth experts' meeting, 29-30 January 2004, p.6.

⁴⁷¹ CJEU, Case C-263/86, *Belgian State v. Humbel and Edel*, 27 September 1988, ECLI:EU:C:1988:451, para.18; Case C-109/92, *Stephan Max Wirth v. Landeshauptstadt Hannover*, 7 December 1993, ECLI:EU:C:1993:916, paras. 15-16; Case C-281/06, *Jundt v Finanzamt Offenburg*, 18 December 2007, ECLI:EU:C:2007:816, para.30.

⁴⁷² Ibid.

⁴⁷³ Information obtained from representatives of the French equality body via interview held on 23.02/2022.

⁴⁷⁴ European Commission (2020), [EU anti-racism action plan 2020-2025](#), COM(2020) 565 final.

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*dismantle structural barriers to the full equal participation of minorities*⁴⁷⁵. For instance, in Romania, the constitutional provision ensuring the representation of recognised ethnic minorities in the Chamber of Deputies (including the Roma) benefits only those organisations that are already in the parliament. More stringent requirements are set by law for minority organisations without a presence in the parliament, and this rule is considered discriminatory by some organisations and individuals, particularly Romani activists⁴⁷⁶. The EU-CITZEN network conducted a study on the political participation of Roma and pointed out overall discrimination, racism and antigypsyism hindering the communities' political participation⁴⁷⁷. Structural discrimination and socio-economic inequalities in certain areas (already covered by the RED), for instance, in education, income, living conditions and occupational status, create obstacles for political inclusion and representation⁴⁷⁸ as for instance highlighted by reports on Roma political participation in Portugal⁴⁷⁹ and Slovakia⁴⁸⁰. In Czechia, Roma persons elected represent 0.02 % of all political representatives, which is a considerably lower than the percentage of Roma living in Czech society (about 2.5 %) ⁴⁸¹. Among many causes, the socio-economic marginalisation of Roma people is one of the most important factors hampering their political participation⁴⁸².

2.2.3 Culture

In relation to **culture**, several reports relate to the underrepresentation of racial or ethnic minorities. The Commission notes that, whereas culture is a positive element that can facilitate social inclusion, stereotypes are reinforced by social divisions that place minorities in a different space from the majority society's culture⁴⁸³. Linguistic barriers can moreover prevent ethnic minorities from participating in mainstream cultural events⁴⁸⁴. As highlighted by FRA, there are funding challenges for organisations working with migrant communities and religious minorities⁴⁸⁵. Racial and ethnic discrimination, including structural discrimination, may be a cause of underrepresentation in these areas. No equality data are, however, currently available about potential racial or ethnic discrimination in the cultural sector. Furthermore, possible underlying problems in this area **may already be covered by RED, such as discrimination in employment or in access to services**. Some examples of underrepresentation in this area in the Member States are presented in Box 29 below:

⁴⁷⁵ OHCHR (2014), [Factors that impede equal political participation and steps to overcome those challenges: Report of the Office of the UN High Commissioner for Human Rights](#).

⁴⁷⁶ US State Department (2021), [Romania 2020 Human Rights Report](#), p. 20.

⁴⁷⁷ EU- CITZEN: Academic Network on European Citizenship Rights (2018), [Pilot study for TYPE A REPORT, Political Participation of the Roma in the European Union](#).

⁴⁷⁸ Bloemraad, I., Schönwälder, K. (2013), [Immigrant and Ethnic Minority Representation in Europe: Conceptual Challenges and Theoretical Approaches](#), *West European Politics*, 36:3, p.564-579.

⁴⁷⁹ Subcomissão para a Igualdade e Não Discriminação, Comissão de Assuntos Constitucionais, Direitos, Liberdades e Garantias, Assembleia da República (2019), [Relatório sobre Racismo, Xenofobia e Discriminação Étnico-racial em Portugal](#) (*Report on Racism, Xenophobia and Ethnic and Racial Discrimination in Portugal*), p.16-18.

⁴⁸⁰ Miriam Kanioková (2020), [O šest rokov menej. Po stopách rozdielu strednej dĺžky života obyvateľov marginalizovaných rómskych komunití](#) (*Six years less. Following the roots of differences in life expectancy of inhabitants of marginalised Roma communities*), p. 12-13.

⁴⁸¹ Government of the Czech Republic (2021), [Strategie rovnosti, začlenění a participace Romů \(Strategie romské integrace\) 2021–2030](#), (*Strategy for Equality, Inclusion and Participation of Roma (Roma Integration Strategy) 2021–2030*), p. 27.

⁴⁸² EU- CITZEN: Academic Network on European Citizenship Rights (2018), [Pilot study for TYPE A REPORT, Political Participation of the Roma in the European Union](#).

⁴⁸³ European Commission (2020), [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Union of equality: EU anti-racism action plan 2020-2025](#), COM(2020) 565 final.

⁴⁸⁴ European Parliamentary Research Service (2017), [Access to culture in the European Union](#).

⁴⁸⁵ FRA (2021), [Protecting civic space in the EU](#).

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Box 29: Underrepresentation in the culture area

Underrepresentation in the culture area: examples from selected Member States

- **Belgium:** artists with an ethnic background are underrepresented in the cultural area. Research shows that only 17 % of artists belong to ethnic minorities in Brussels⁴⁸⁶.
- **France:** in 2021, the director of Paris Opera called for greater diversity in the corps de ballet and productions⁴⁸⁷. Indeed, at the Paris National Opera out of 150 dancers only five are black⁴⁸⁸. Thus, the institution is working to tackle racism in its ranks and repertoire.
- **Lithuania:** in 2020, the Office of the Equal Opportunity Ombudsman issued a decision on a discrimination case in a Lithuanian theatre, concerning a complaint from a Polish-Russian speaking theatre performer. The Ombudswoman concluded there was insufficient evidence to find discrimination on the basis of ethnicity. However, the statements of the witnesses as well as the facts indicated a wide-ranging hostility towards the theatre's Russian-speaking staff. For these reasons, the Ombudswoman recommended the Director to prepare an equality policy in the theatre, while stressing the Director's obligation to prevent discrimination⁴⁸⁹.
- **Poland:** in 2016, the Committee on Economic, Social and Cultural Rights expressed concerns about the protection and preservation of cultural heritage of national and ethnic minorities in Poland⁴⁹⁰.

2.2.4 Sports

Sports is an area where racism is frequently reported. While 64 % of EU citizens consider sports as a means of combating discrimination, incidents of racism, antisemitism and antigypsyism were identified across the EU⁴⁹¹. The national level research identified incidents of racism, xenophobia or intolerance in sporting events in Italy⁴⁹², Malta⁴⁹³, Portugal⁴⁹⁴ and Romania⁴⁹⁵, and in Czechia, an NGO representative mentioned cases where non-Roma sports teams refused to play in competitions with the Roma football team⁴⁹⁶. Many of the discrimination cases in relation to sports **will be covered by the RED as they will relate to employment or the access to and supply of services**. Other cases may be considered **racist hate crimes or hate speech, already covered by EU legislation**. Still, some incidents may fall outside of the scope of existing legislation and point to discrimination on grounds of racial or ethnic origin. There is, however, a **need for more detailed data on incidents** of racial or ethnic discrimination in relation to sports to determine the occurrence and scale of such cases. In 2010, FRA already pointed out that there were no available data for athletics or for sports in the national context and that only a few EU Member States systematically monitor incidents of racism in sports (mainly related to

⁴⁸⁶ Swyngedouw, E. (2021), *Springen ze niet op de stoelen? Vragen bij de ondervertegenwoordiging van artiesten met een migratieachtergrond op de Brusselse culturele arbeidsmarkt (Aren't they jumping on seats? Questions about the underrepresentation of artists with a migrant background on the Brussels cultural labour market)*, in Adam et al. (2021), *Migratie, Gelijkheid & Racisme (Migration, Equality and Racism)*, p.167-172.

⁴⁸⁷ France24 (2021), [Beyond blackface: Paris Opera tackles race clichés in repertoire](#).

⁴⁸⁸ RFI (2021), [Paris Opera vows to address lack of diversity, ban blackface on stage](#).

⁴⁸⁹ Office of the Equal Opportunities Ombudsperson (2020), [Sprendimas dėl galimos diskriminacijos tautybės ir kilmės pagrindu teatre \(duomenys neskelbtini\) tyrimo](#) (Decision on possible discrimination on grounds of nationality and origin in the theatre (data not published)), Decision (19)SN-198)SP-9.

⁴⁹⁰ Economic and Social Council (2016), [Concluding observations on the sixth periodic report of Poland](#).

⁴⁹¹ European Parliament (2021), [Fighting discrimination in sport](#).

⁴⁹² Lunaria (2020), [Cronache di Ordinario Razzismo. Quinto Libro Bianco sul razzismo in Italia](#) (*Chronicles of Ordinary Racism. Fifth White Paper on Racism in Italy*).

⁴⁹³ Aditus Foundation (2019), [Working together to combat racism in Maltese football](#).

⁴⁹⁴ Comissão para a Igualdade e Contra a Discriminação Racial (2020), [Relatório Anual: Igualdade e Não Discriminação em razão da Origem Racial e Étnica, Cor, Nacionalidade, Ascendência e Território de Origem](#) (*Annual Report: Equality and Non-Discrimination on the grounds of Racial and Ethnic Origin, Colour, Nationality, Ascendancy and Territory of Origin*), p.78-82.

⁴⁹⁵ European Commission against Racism and Intolerance (2019), [ECRI REPORT ON ROMANIA, \(fifth monitoring cycle\)](#), p.17-18; US State Department (2021), [Romania 2020 Human Rights Report](#), p.31.

⁴⁹⁶ Information obtained from a representative of an NGO in Czechia via interview held on 16.02.2022.

men's professional football, no data were available for women's sport)⁴⁹⁷. As regards the representation of people belonging to ethnic minorities in sports generally, in some countries, social exclusion and geographical isolation affect Roma and Travellers' access to sport. In Bulgaria and Hungary, for instance, Roma athletes and players are under-represented in sports⁴⁹⁸. In Slovakia, Roma children face barriers in participating and accessing sports, due to difficulties in reaching sports facilities located far from marginalised areas, financial costs, direct or indirect discrimination, and racism, exacerbated in the case of Roma girls who are also victims of stereotyping by Roma communities themselves⁴⁹⁹.

2.2.5 Research and innovation

Further difficulties were reported in relation to **research and innovation**. Most instances of racial or ethnic discrimination in this area can be tackled by combating discrimination in the **areas already covered by** Articles 3(1)(a) and (b) of the **RED on access to employment and self-employment**, and on **vocational training** or by Article 3(1)(g) of the RED on **education**. In 2018, the CJEU moreover emphasised that the Directive cannot be interpreted restrictively and ruled that considering the RED's objectives as well as the nature of the rights it seeks to safeguard, a teleological interpretation of the concept of education requires that *access to education* be considered '*an essential aspect of this concept*'⁵⁰⁰. The Court also held that costs related to the participation in a research project or in an educational programme, thus also financial payments in the form of scholarships, are covered by the concept of 'education'⁵⁰¹. Still, reports show that **racial or ethnic minorities tend to work in lower-skilled areas**⁵⁰², **are often underrepresented in scientific research and business innovation and face significant challenges to obtain funding**. Beyond pointing at a problem of discrimination in the area of education⁵⁰³, the low representation of racial and ethnic minorities in research and innovation may be linked to the fact that racial and ethnic minorities are more likely to work in positions for which they are over-qualified. The FRA's EU-MIDIS II project highlighted that twice as many black persons living in the EU and holding tertiary education are employed in elementary occupations (9 %) – usually manual work involving physical effort – than the general population (5 %)⁵⁰⁴. For instance, a study on the black population of Germany showed that 29.1 % of 2 586 respondents occupied a job below their professional qualifications⁵⁰⁵. This may translate into the low representation of persons belonging to racial and ethnic minorities in research and innovation.

In the **tech industry**, according to the State of European Tech 21, one in two respondents belonging to the group of people of colour felt that the European tech ecosystem is failing to provide equal opportunities for them⁵⁰⁶. 92 % of the founder respondents to the 2021 survey were white/Caucasian whereas only 8 % of them belonged to an ethnic minority⁵⁰⁷. The same study underlined that **discrimination remains a systemic problem in the European tech**

⁴⁹⁷ FRA (2010), [Racism, ethnic discrimination and exclusion of migrants and minorities in sport, A comparative overview of the situation in the European Union](#).

⁴⁹⁸ FRA (2010), [Racism, ethnic discrimination and exclusion of migrants and minorities in sport, A comparative overview of the situation in the European Union](#).

⁴⁹⁹ European Commission (2020), [Civil society monitoring report on implementation of the national Roma integration strategy in Slovakia – Identifying blind spots in Roma inclusion policy](#), p. 19-20.

⁵⁰⁰ CJEU, *Heiko Jonny Maniero v Studienstiftung des deutschen Volkes eV.*, 15 November 2018, para. 37.

⁵⁰¹ CJEU, *Heiko Jonny Maniero v Studienstiftung des deutschen Volkes eV.*, 15 November 2018, para. 38-39.

⁵⁰² FRA (2012), [The Racial Equality Directive: application and challenges](#), p.22.

⁵⁰³ FRA (2012), [The Racial Equality Directive: application and challenges](#), p.22.

⁵⁰⁴ FRA (2018), [Second European Union minorities and discrimination survey, Being black in the EU](#), p.51.

⁵⁰⁵ Afrozensus (2020), [Perspektiven, Anti-Schwarze Rassismuserfahrungen und Engagement Schwarzer, afrikanischer und afrodiaporischer Menschen in Deutschland](#), (*Perspectives, Anti-Black Racism Experiences and Engagement of Black, African and Afrodiasporic People in Germany*), p.97.

⁵⁰⁶ Atomico, [Talent depth, State of the European Tech 21](#).

⁵⁰⁷ Atomico, [Fuelling better, more diverse ideas, State of the European Tech 21](#).

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industry - in 2021 whereas only 11 % of white founders had experienced some form of discrimination while working in the European tech industry, this number reached 56 % for founders belonging to ethnic minorities⁵⁰⁸. The exclusion of ethnic and racial minorities from the European tech industry as well as the possible discrimination that they are facing make it especially **difficult** for founders belonging to racial or ethnic minorities **to obtain funding**. In this respect, 39 % of respondents from ethnic minorities considered that their underrepresented background negatively affected their ability to raise capital for their business⁵⁰⁹. As a result, 72 % of the survey respondents who identified as Black/African/Caribbean considered that their background or identity makes it more challenging for them to be successful in the European tech industry⁵¹⁰.

In the **OPC**, although 29 % [36 %] of the total respondents reported to have never experienced discrimination **when accessing funding, opportunities for publication or seeking collaboration in the field of research**, around 33 % [29 %] still faced it at least once.

Research and innovation, since closely related to matters of employment and education, would largely fall within the scope of the RED. The difficulties reported may, however, point to a **need to gather a further understanding of the issue in order to tackle it more effectively**, including through the aspects covered by the RED. More information is available on the situation in the US⁵¹¹ and in the UK⁵¹².

2.2.6 Health promotion and disease prevention

The Council of Europe has highlighted specific problems in relation to **health promotion and disease prevention**: lack of access to information and instructions in languages other than the national language(s); impossibility of maintaining social distancing in refugee camps and Roma settlements; impossibility of adhering to healthcare advice due to lack of sanitary facilities⁵¹³. The difficulties identified seemed to have been exacerbated during the COVID-19 pandemic. An example on **lack of access to information or instruction in minority languages** comes from Romania, where during the COVID-19 pandemic the Hungarian minority was not provided, or was provided with delay, by the governmental health and public order agencies, with information on COVID-19-related precautionary measures in Hungarian language⁵¹⁴. The issue for racial and ethnic minorities to have access to information from health prevention campaigns during the pandemic was also highlighted by a participant to the workshop organised as part of this study.

A specific difficulty faced by Roma communities is **access to drinking water which adversely affects the communities' health, hygiene and general quality of life**, and this was exacerbated during the pandemic. A 2017 report by the European Roma Rights Centre shows that 81 % of the Roma communities⁵¹⁵ surveyed, face difficulties in accessing drinking water, due to geographical barriers (residential isolation) and the unaffordable cost of connecting public water

⁵⁰⁸ Atomico, [Fuelling better, more diverse ideas, State of the European Tech 21](#).

⁵⁰⁹ Atomico, [Talent depth, State of the European Tech 21](#).

⁵¹⁰ Atomico, The State of European Tech, The most comprehensive data-driven analysis of European technology, 2020, p.211.

⁵¹¹ Pew Research Center (2018), [Blacks in STEM jobs are especially concerned about diversity and discrimination in the workplace](#); Bolaños-Guzmán, C.A. and Zarate Jr C.A. (2016), [Underrepresented Minorities in Science ACNP Increase Minority Representation and Inclusion](#), *Neuropsychopharmacology*, 41; NSF, [Women, Minorities, and Persons with Disabilities in Science and Engineering, Introduction](#).

⁵¹² The Royal Society (2021), [Ethnicity in STEM academic communities - reports commissioned by the Royal Society](#); British Science Association (2021), [Equity in the STEM workforce](#).

⁵¹³ Council of Europe (2020), Directorate of Anti-Discrimination, [The Anti-Discrimination, Diversity and Inclusion Dimensions of the Response to COVID-19, Introductory Note prepared by the Secretariat of the Steering Committee on Anti-discrimination, Diversity and Inclusion \(CDADI\)](#), CDADI(2020)6.

⁵¹⁴ US State Department (2021), [Romania 2020 Human Rights Report](#), p.31.

⁵¹⁵ The study covers EU and non-EU countries, in particular: Albania, France, Hungary, Macedonia, Moldova, Montenegro, and Slovakia.

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services to their homes⁵¹⁶. According to the Slovak National Human Rights Institution, the barriers in accessing drinking water represent one of the components of the structural social exclusion of Roma population⁵¹⁷.

The problems identified may not be directly related to issues of racial or ethnic discrimination, but also to **socio-economic factors** (which may in turn also be negatively influenced by racial and ethnic discrimination including at a structural level). Moreover, 'social protection including social security and healthcare' is an area covered by the RED, as well as social advantages and access to services, including basic utilities. While many issues may thus be covered to a great extent by the RED, continued difficulties in relation to health promotion and disease prevention measures are being reported in a number of sources. Some may find themselves in a **grey area of the RED**, with Member States interpreting the provisions of the Directive on access to healthcare in a more restrictive manner, while others rather point to problems in the application of the RED. For instance, **information and communication barriers** were reported by FRA (before the COVID-19 pandemic) alongside issues resulting from the absence of a proactive approach by national healthcare systems in ensuring that certain groups are adequately covered by health promotion and disease prevention measures⁵¹⁸. More proactive protection mechanisms could be helpful in this regard. In Bulgaria, a report highlighted the need for health institutions and the media to inform the Roma population regarding the dangers of self-medication which is widespread among this community because one third of the young, half of the 30-44 age group and three quarters of the Roma population over 45 consume self-prescribed medicines⁵¹⁹. During the COVID-19 pandemic, difficulties due to access to information and health prevention were identified by FRA, in particular for the Roma population⁵²⁰. While in Slovakia, according to the Slovak National Institution for Human Rights⁵²¹ and the Centre for Civil and Human Rights⁵²², the Slovak authorities' practice of quarantining all Roma settlements in case of local outbreaks of COVID-19 was disproportionate, also leading to further marginalisation of Roma communities.

In this context, it is noted that Recital 13 of the **Council Recommendation on Roma equality, inclusion**⁵²³ and participation recognises that during the COVID-19 pandemic, '*excluded and disadvantaged Roma communities have been exposed to severe negative health and socioeconomic impacts, which risks further aggravating existing inequalities and the risk of poverty and social exclusion*'. The Recommendation advocates reducing structural inequalities faced by Roma and sets out specific objectives in relation to health promotion and disease prevention.

2.2.7 Homelessness

According to the European Federation of National Organisations working with People Experiencing Homelessness (FEANTSA), 'racialised people and ethnic minorities remain at a high risk of

⁵¹⁶ European Roma Rights Centre (2017), [Thirsting for Justice. A Report by the European Roma Rights Centre](#), pp.25-36.

⁵¹⁷ Slovak National Centre for Human Rights (2020), [Správa o dodržiavání ľudských práv vrátane zásady rovnakého zaobchádzania v Slovenskej republike za rok 2019](#) (Report on the observance of human rights including the principle of equal treatment in the Slovak Republic for the year 2019), p. 235-236.

⁵¹⁸ FRA (2013), [Inequalities and Multiple Discrimination in Access to and Quality of Healthcare](#).

⁵¹⁹ Fundación Secretariado Gitano, [Health and the Roma Community, analysis of the situation in Europe](#), p.102.

⁵²⁰ FRA (2020), [Coronavirus pandemic in the EU – impact on Roma and travellers](#), Bulletin #5, p.20.

⁵²¹ Slovak National Centre for Human Rights (2021), [Report on the observance of human rights including the principle of equal treatment in the Slovak Republic for the year 2020](#), p. 22-28.

⁵²² Poradňa pre občianske a ľudské práva (2021), [Submission to the Advisory Committee on the Framework Convention for the Protection of National Minorities concerning shortcomings in the implementation of the Convention in Slovakia](#), p. 6-7.

⁵²³ Council of the European Union, [Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation](#).

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experiencing homelessness, as their chances to access adequate housing are lowered⁵²⁴. Furthermore, the Institute of Global Homelessness has identified a **direct connection between homelessness and racial and ethnic minorities**, stating that 'the relevant local ethnic, social or racial minorities tend to be overrepresented among the homeless population. Across Europe, **Roma populations have been shown to be at greater risk of homelessness** than non-Roma groups⁵²⁵. As presented in Section 2.1.2, but also confirmed by FEANTSA, Roma people are highly exposed to **forced evictions**, often without any alternatives offered, leaving them at risk of homelessness⁵²⁶. Another reason is **profiling and discrimination against Roma** when trying to access housing or in the context of free movement within the EU. For instance, Amnesty International reported on the dangerous living conditions of homeless EU migrants, especially of Roma origin, in Sweden⁵²⁷. Other reasons can be the **lack of identity documents**, which, for example in Romania, affects the Roma minority population in a higher proportion than the majority population. In Romania, the case of Roma, the issue is also linked to **structural discrimination**, due to which they face a greater situation of poverty, combined with a lack of ownership or precariousness of ownership of properties⁵²⁸. In Hungary, racial discrimination against homeless Roma people was reported in the context of **exercise of public authority by the police**, e.g., it is possible that a homeless person who is of Roma origin will get a harsher fine from the police, but the issue is not primarily framed as a racial or ethnic problem, but as one related to poverty, i.e., being fined for living on the street⁵²⁹. Homelessness may also affect **asylum seekers**. For example, in Cyprus, asylum seekers are put at risk of destitution and homelessness due to reduction of social assistance for such people below the national poverty threshold (less than 50 % of the assistance provided to nationals)⁵³⁰. There seems to be a **need to gather more substantive data** on the topic of 'homelessness' in the EU and, in particular, to examine the risk of homelessness for certain ethnic groups and whether and how this is linked to issues of (structural) discrimination⁵³¹. However, as pointed out by the Institute of Global Homelessness, a major challenge in addressing homelessness of any disadvantaged groups is the lack of consistent definitions and analogous data in the different countries⁵³².

2.2.8 General considerations

Respondents to the **targeted online survey** undertaken for this study were also asked about 'Other areas' not covered by the RED where racial or ethnic discrimination occurs (thus beyond the scope of the RED but also beyond the exercise of public authority). Some of the areas described above were included in the question as examples where such discrimination might occur (such as access to and participation in free political, cultural, social or sports events or organi-

⁵²⁴ Information obtained from FEANTSA in response to the OPC.

⁵²⁵ Institute of Global Homelessness (2019), [State of Homelessness in Countries with Developed Economies](#).

⁵²⁶ Information obtained from FEANTSA in response to the OPC.

⁵²⁷ Amnesty International (2018), [Sweden: homeless Roma and other EU migrants face widespread discrimination and dangerous conditions](#).

⁵²⁸ Asociația Carusel, ARAS Timișoara, SASTIPEN și Centrul de Resurse Juridice (2014), [Facilitarea accesului la documente de identitate pentru persoanele vulnerabile](#) (*Facilitating access to identity documents for vulnerable people*), Policy Paper.

⁵²⁹ Information obtained from an NGO in Hungary via interview held on 15.02.2022. In Hungary, the legislation forces homeless individuals who refuse to go to shelters to pay a fine or participate in public work programs; otherwise, they face prison time.

⁵³⁰ UNHCR (2019), [Compilation Report Universal Periodic Review: 3rd Cycle, 32nd Session, Cyprus](#).

⁵³¹ Research in the US shows that among all people facing homelessness in the US, young people of colour are particularly at risk (Covenant House, [Racial Discrimination](#); National Alliance to end homelessness, [Homelessness and Racial Disparities](#); S. Department of Housing and Urban Development (2019), [Annual Homelessness Assessment Report 2019](#).

The University of Chicago estimates that for Black and African American youth, the risk of homelessness is 83% higher and for non-white Hispanic or Latino youth, it is 33% higher than it is for their white peers (Berger Gonzalez S., Morton M., Patel, S. and Samuels B. (2021), [Youth of color disproportionately impacted by housing instability](#), Chapin Hall at the University of Chicago.

⁵³² Institute of Global Homelessness (2019), [State of Homelessness in Countries with Developed Economies](#), p.8.

sations; access to free goods and services; research and innovation, health promotion and disease prevention). Out of the 68 respondents, a slight majority (36 in total, 53 %) believed that racial or ethnic discrimination occurs in other areas not yet mentioned nor covered by the RED, of which 16 have actual experience/information. This view was mostly prevalent among equality bodies (13), NGOs (nine), and academic/research organisations (five). However, a significant amount (19 in total, 28 %) also thought that there is no discrimination in other relevant areas, which was the main opinion among prosecution services (five). The respondents were also asked about the various other areas not mentioned by the RED in which they were aware of the occurrence of racial or ethnic discrimination, beyond the exercise of public authority. The vast majority of the stakeholders that addressed this question have observed racial or ethnic discrimination in the **access to and participation in free cultural, social or sports events, or organisations** (13 out of 14, 93 %). This was followed by discrimination in the **access to services not advertised to the public, health promotion and disease prevention** (9 out of 13, 69 %), and **access to free services** (8 out of 12, 67 %). As additional information and examples, one equality body in Portugal referred to situations of alleged discrimination on the Internet/social media. Also, another equality body in Germany provided examples in terms of access to free cultural, social or sports events (i.e., regular complaints concerning the membership and participation in sports). During the **workshop** organised as part of this study, two **participants** highlighted the existence of discrimination relating to the **exercise of freedom of association** through the adoption of discriminatory administrative measures targeted at some NGOs as well as a discrimination in the financing of minority NGOs.

When it comes to access to goods and services, many national anti-discrimination acts (e.g., **Bulgaria, Cyprus, Croatia, France, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Romania, Spain**) have a broader material scope than the RED and do not restrict the protection against racial discrimination to publicly available goods and services⁵³³. Furthermore, as mentioned in the sections above, the anti-discrimination legislation of five Member States (**Bulgaria, Croatia, Finland, Hungary, Slovenia**) applies to a broad range of areas, thus in all the areas indicated above. In Box 30 below, examples of those national laws are provided which explicitly mention some of the areas discussed in this section:

Box 30: Examples from Member States for protection against discrimination in 'other/grey areas'

Protection against discrimination in 'other/grey areas': examples from Member States

- **Belgium:** the Racial Equality Federal Act (REFA)⁵³⁴ explicitly prohibits discrimination in the access to and participation in, or any exercise of, an economic, social, cultural or political activity open to the public (Article 5, 8°)⁵³⁵.
- **Croatia:** besides general provision on prohibition of discrimination in all areas of life, the Croatian Anti-Discrimination Act lists specific areas to which special attention should be paid. This includes membership and activities in civil society organisations, political parties or any other organisations; access to participation in the cultural and artistic creation; and science and sports⁵³⁶.
- **Ireland:** the material scope of the Equal Status Acts 2000-2018 (ESA) is slightly broader than that of the RED in that it applies to goods and services that are not provided for remuneration. Under Section 5(1) ESA: '*A person shall not discriminate in disposing of goods to the public generally or a section of the public or in providing a service, whether the disposal or provision is*

⁵³³ European Network of legal experts in gender equality and non-discrimination (2020), [A comparative analysis of non-discrimination law in Europe 2019](#), p.64.

⁵³⁴ [Loi du 30 Juillet 1981 tendant à réprimer certains actes inspirés par le racisme ou la xénophobie](#) (Act of 30 July 1981 criminalising certain acts inspired by racism or xenophobia).

⁵³⁵ Information provided by a Belgian legal expert to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED

⁵³⁶ Information provided by a Croatian legal expert to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED

Protection against discrimination in 'other/grey areas': examples from Member States

*for consideration or otherwise and whether the service provided can be availed of only by a section of the public*⁵³⁷.

- **Portugal:** Law 93/2017, establishing the legal framework to prevent, prohibit and combat any form of discrimination based on racial and ethnic origin, colour, nationality, ancestry and territory of origin, goes beyond the scope of the RED since in addition to the areas listed in the RED it includes culture in all its forms⁵³⁸.

2.3 Socio-economic impact of discrimination in areas beyond the RED

2.3.1 Introduction

This section provides a summary of the findings from **Task 1.2** relating to the socio-economic impacts of racial or ethnic discrimination in areas outside the scope of the RED as identified in *Section 2.1* of this Report. In order to collect the relevant data and information, extensive desk research based on EU- and national-level sources was carried out. This information was supplemented with additional opinions and evidence that was gathered during the interviews, the targeted stakeholder survey and the OPC.

Overall, it can be stated that the available literature sources do not provide comprehensive structural information and data relating specifically to the socio-economic impacts concerning the focus areas of this Study. The main occurrences of racial or ethnic discrimination in the non-RED areas identified in *Section 2* for which both quantitative data and additional qualitative information are readily available relate to the exercise of public authority by the police (in particular, as regards stop and search practices), and exercise of public authority by bodies other than law enforcement and judicial authorities (namely in contact with public administration and in housing matters, such as evictions and residential segregation). For other non-RED areas identified, only fragmentary information was found.

This Section focuses on the following non-RED areas identified in *Section 2.1*, namely:

- Exercise of public authority by law enforcement and judicial authorities.
- Exercise of public authority by bodies other than law enforcement and judicial authorities.
- Use of public space

It also looked into the 'other/grey areas' covered under *Section 2.2*; however, in relation to these, only limited information could be identified (e.g., in relation to health promotion and disease prevention).

The possible impacts of racial or ethnic discrimination in these areas are described in separate sections below. For each of these areas, impacts on individual and aggregate levels have been defined as presented in the Table below⁵³⁹:

Table 4: Possible socio-economic impacts at individual and society level

Individual level	Society level
<ul style="list-style-type: none"> • Negative impacts on physical and/or mental health • Negative impacts on job/career 	<ul style="list-style-type: none"> • GDP (Gross Domestic Product) loss • Loss of tax revenue

⁵³⁷ Information provided by an Irish legal expert to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED

⁵³⁸ Information provided by a Portuguese legal expert to the Commission's ad-hoc information request 097-150-27MS-ND-2021-Beyond the RED

⁵³⁹ The division of impacts is primarily based on: European Parliament Research Service (2018), [Equality and Fight against Racism and Xenophobia - Cost for Non-Europe Report](#).

Individual level	Society level
<ul style="list-style-type: none"> • Negative impacts on housing situation • Negative impacts on financial situation (e.g. loss of income) • Negative impacts on relations with friends and/or family • Negative impacts on education and/or training • Negative impacts on safety or feelings of being safe • Negative impacts on trust in public institutions/authorities • Avoidance of specific places/situations, including social events 	<ul style="list-style-type: none"> • Increased national healthcare expenditures • Increased social assistance expenditures • Reduced social cohesion • Loss of trust in public institutions/authorities • Increased poverty, homelessness and/or unemployment rate • Increased crime rates (e.g. hate crimes). •

The remaining part of this summary is organised as follows: *Section 2.3.2* summarises data and information on socio-economic impacts identified in the specific non-RED areas listed above. *Section 2.3.3* provides a summary of the impacts and refers to the existing estimates which include the areas currently covered by the RED.

2.3.2 Impacts by area

The following sub-sections provide a summary of information and data gathered in relation to the following non-RED areas: 1) exercise of public authority by law enforcement and judicial authorities, 2) exercise of public authority by bodies other than law enforcement and judicial authorities, 3) use of public space.

2.3.2.1 Exercise of public authority by law enforcement and judicial authorities

Respondents to the targeted survey in the category 'exercise of public authority by law enforcement and judicial authorities' most often pointed to the following three categories of individual impacts: 'negative impacts on physical and/or mental health', 'negative impacts on safety or feelings of being safe', and 'negative impacts on trust in public institutions/authorities'. On the societal level, the most often indicated types of impacts were: 'loss of trust in public institutions/authorities', 'reduced social cohesion' and 'increased crime rates'. Detailed results with respect to all the categories of impacts can be found in *Section 2.3.3*.

Information on the socio-economic impacts of racial or ethnic discrimination in the exercise of public authority on individual and/or society level have been found in literature primarily with respect to the exercise of public authority by the police, and more specifically in stop-and-search activities and identity checks. Data sources showed a much more limited number of cases of possible discrimination in the field of judiciary and only fragmentary information was found concerning the socio-economic impacts of discrimination in the exercise of public authority by judicial authorities.

Stop-and-search and identity checks by the police

According to several studies and surveys, people with an ethnic minority background are more likely to be subject to stop-and-search activities and to identity checks by the police, and they are also more often than the general population subject to disrespectful treatment and brutality/violence of the police (see *Section 2.1.1* above).

Ethnic profiling can have a range of negative impacts on individuals. Identity checks, stop and searches without an apparent reason can be frightening and humiliating. People who experience racial profiling feel singled out, stereotyped and alienated, not only from police, but from society as a whole. Ethnic profiling can cause the feeling of being treated as second-class citizens, with

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sometimes major psychological consequences (loss of self-confidence, depression). Racial profiling leads to broader societal impacts, since psychological damages affect not only individuals subjected to such checks but also their families and the communities where they live⁵⁴⁰. One of the interviewed stakeholders said that the impacts of stop-and-search by the police can be far-reaching, including being deported or being treated as a criminal⁵⁴¹.

According to some studies, ethnic profiling undermines trust in the police. Data from France indicate that more than half of those who said they had been stopped more than five times in the five years preceding the research (56.3 %) do not trust the police, compared to 18 % of the general population. This notion is transferred to peers and members of families, and can spread to whole communities. It also extends to the justice system: only 46 % of those reporting frequent checks declared that they have confidence in the justice system as compared to 69 % of the whole population⁵⁴². Undermined trust in the police translates into lower willingness to cooperate with police either as a victim or witness of crime. Since most crimes are solved through information the public provides to police, weaker cooperation of some groups of citizens may have a negative impact on public safety. A study from Finland formulated similar conclusions about ethnic profiling being detrimental to the connection between police and racialised minorities, weakening equality and social cohesion in society⁵⁴³. This conclusion is also shared by an interviewed stakeholder⁵⁴⁴.

FRA also confirms that *'experiencing discrimination, harassment or violence strongly undermines trust in the police and the legal system'*⁵⁴⁵. A lack of trust in the police may result in lower or no reporting of incidents or increase the risk of conflict with the police. A FRA study analysing survey responses of people of African descent shows that 'the lowest average level of trust in the police is found among respondents who consider the most recent police stop they experienced as racial profiling'⁵⁴⁶. Respondents in Finland trusted the police the most, contrary to respondents in Austria who reported the lowest level of trust in the police. In 2017, a poll conducted at the request of the Czech police indicated that 45 % of the Roma residents of socially excluded localities stated that they did not trust the police⁵⁴⁷. Most of the stakeholders interviewed for the present study also confirmed that the issue of underreporting is caused by the lack of trust in the authorities. In addition to underreporting, instances of unwarranted behaviour by certain police officers may increase the risk of conflict with the police. For example, in France, young people reported being called 'dirty Arab' or 'dirty black' by the police, using the informal 'tu', deliberately to provoke a response that might lead to potential charges⁵⁴⁸.

According to a Swedish stakeholder interviewed, some surveys try to explain the low levels of trust in institutions that is often found among people with ethnic origin as potentially relating to their experiences with the legal system in their home countries. This does not apply, however, to the children of immigrants (second generation Swedes) who are born, raised and educated in Sweden⁵⁴⁹. Furthermore, some police officers argue that ethnic profiling can be justified as being more efficient because it results in singling out frequent offenders⁵⁵⁰. Empirical evidence from

⁵⁴⁰ Open Society Justice Initiative, [Equality Under Pressure: the Impact of Ethnic Profiling in the Netherlands](#).

⁵⁴¹ Information obtained from an EU-level research network via interview held on 15.03.2022.

⁵⁴² Défenseurs des droits (2017), [Relations police / population: le cas des contrôles d'identité, Enquête sur l'accès aux droits](#), (Police/public relations: the case of identity checks, Survey on access to rights), Volume 1.

⁵⁴³ Keskinen S, Alemanji Aminkeng A, Himanen M, Kivijärvi A, Osazee U, Pöyhölä N & Rousku V (2018), [The stopped – Ethnic profiling in Finland](#), SSKH Notat 2/2018, Helsinki: Helsingin yliopisto.

⁵⁴⁴ Information obtained from an EU-level research network via interview held on 15.03.2022.

⁵⁴⁵ FRA (2018), Second European Union Minorities and Discrimination Survey, 'Being Black in the EU', p. 34.

⁵⁴⁶ FRA (2018), [Second European Union Minorities and Discrimination Survey](#), 'Being Black in the EU'.

⁵⁴⁷ Fair Trials (2022), [Justice denied: Roma in the criminal justice system](#).

⁵⁴⁸ Justice Initiative (2013), [Equality Betrayed: The Impact of Ethnic Profiling in France](#).

⁵⁴⁹ Information obtained from a lawyer in Sweden via interview held on 21.02.2022.

⁵⁵⁰ Open Society Foundation (2019), [Under suspicion: The impact of discriminatory policing in Spain](#).

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Spain and Denmark contradicts this argument (see *Section 2.1.1* for more information). According to a 2021 Council of Europe report, *'ethnic profiling can also lower the effectiveness of police actions by increasing their predictability and leading police to focus on criteria irrelevant to identifying crimes, while taking their attention away from more relevant factors, such as suspicious behaviour. It may leave in the margin potential unnoticed criminals because they do not fit certain stereotypes'*⁵⁵¹.

According to Equinet, ethnic profiling has negative impacts on the affected individuals, who report feeling persecuted and harassed by the police. Profiling stigmatises minority communities, reinforces negative stereotypes, legitimises racism and erodes trust in law enforcement. Ethnic profiling alienates individuals and communities whose cooperation would be valuable in effective crime detection and prevention. In this way, it undermines the efficacy of law enforcement⁵⁵².

During a seminar devoted to the relations with the police, FRA's Director explained that: *'Unlawful profiling has a negative impact on routinely targeted individuals. It may have the effect of stigmatising entire groups and discouraging them from going to the police should they become the victims of crimes. It creates a hostile environment. Hostility may lead to aggression and aggression to violence. This is a vicious circle that needs to be broken'*⁵⁵³.

Members of the PoliCite Collective in France expressed an opinion that discriminatory practices have a negative impact not only on young people being subject of discrimination, but also on police officers' working conditions. They argue that these practices cause emotional distress for the police officers at work and adversely affect conditions under which they act in working-class neighbourhoods⁵⁵⁴.

Ethnic profiling may be related to increased police brutality towards people with certain ethnic backgrounds. Since 2009, an NGO in Slovakia has been monitoring cases of police ill-treatment against Roma minority living in marginalised communities, and has provided legal representation in over 10 separate legal cases of Roma individuals claiming that they were subject to police ill treatment. The NGO claims that the Roma are often reluctant to file criminal complaints as they fear victimisation and do not trust law enforcement authorities⁵⁵⁵. Police brutality claims may result in (high) damage payments for the victims.

In 2021, the Paris Court of Appeal ruled that the targeted control of male students of a minority background in the Paris Nord train station was due to racial discrimination and triggered the liability of the French State for the amount of EUR 2 000 of damage costs paid to the victim⁵⁵⁶. According to the court report, the victim of this racial profiling suffered psychological damages, namely the feeling of humiliation while being submitted to racially targeted stop-and-search by the police.

Based on the above statistics on police stops and the amount of damages compensation granted to the victims of ethnic profiling in the Paris Court ruling as a proxy for the value of damages suffered by victims of racial profiling in stop-and-search activities, we have estimated an approximate, hypothetical value of damages due to (perceived) ethnic profiling during stop-and-

⁵⁵¹ Council of Europe (2021), [Resolution and report Ethnic profiling in Europe: a matter of high concern](#).

⁵⁵² Equinet (2019), [Equality Bodies Countering Ethnic Profiling: Focus on Law Enforcement Authorities in Europe](#).

⁵⁵³ Independent Police Complaints Authorities Network (2020), [Police/population relations: Challenges and practices: 5th IPCAN Network Seminar](#).

⁵⁵⁴ Independent Police Complaints Authorities Network (2020), [Police/population relations: Challenges and practices: 5th IPCAN Network Seminar](#).

⁵⁵⁵ Poradňa pre občianske a ľudské práva (2017), [Alternative report concerning eleventh and twelfth periodic report of Slovakia: For consideration by the Committee on the Elimination of Racial Discrimination at the 94nd Session on \(20 November 2017 – 8 December 2017\)](#).

⁵⁵⁶ Cour d'appel de Paris, arrêt du 8 juin 2021, *Monsieur X*, n°19/00865.

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search activities in the EU with respect to people with Sub-Saharan origin⁵⁵⁷. This estimate amounts to approximately EUR 292 million annually – however, it must be noted that this is only a very rough calculation made under several assumptions and should be treated with caution. In the estimates, the data on the police stops from the EU MIDIS II survey have been used based on the question about being stopped by the police during the past five years, with the perceived ethnic profiling⁵⁵⁸. In the calculations, it was assumed that each person who reported on being stopped by the police due to racial profiling during the past five years was stopped just once, which provides a conservative estimate (since some respondents could have been stopped during the reported period more than once). The Table below provides the estimates together with the sources of data (please note that the estimates of the number of people with Sub-Saharan origin are indicative).

⁵⁵⁷ Immigrants and descendants of immigrants from Sub-Saharan Africa include the following countries: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Congo, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mayotte, Mozambique, Namibia, Niger, Nigeria, Réunion, Rwanda, Saint Helena, São Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, Somalia, South Sudan, Swaziland, Tanzania, The Gambia, Togo, Uganda, Zambia, and Zimbabwe.

⁵⁵⁸ FRA (2020), [Second European Union Minorities and Discrimination Survey](#).

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Table 5: Estimated damages due to (perceived) ethnic profiling during stop-and-search activities in the EU for people with Sub-Saharan African origin

Country	Total Population of sub-Saharan African origin (estimated)	Stopped by police, with perceived racial profiling (%)	Stopped by police, with perceived racial profiling (estimated total)	Estimated yearly damages (EUR)	Source
France	3 800 000 (2019)	12 %	456 000	182 400 000	Estimated based on figures provided by the Ministry for Europe and Foreign Affairs
Germany	1 000 000 (2020)	14 %	140 000	56 000 000	Estimated based on figures provided by the ISD (Initiative Schwarze Menschen in Deutschland)
Italy	460 274 (2020)	17 %	78 247	31 298 632	Istituto Nazionale di Statistica – Foreign Citizens. Resident Population by sex and citizenship on 31st December 2020
Sweden	197 158 (2021)	7 %	13 801	5 520 424	Statistics Sweden – Population by year, country of birth, age and sex
Austria	28 109 (2021)	37 %	10 400	4 160 132	Statistik Austria – Population at the beginning of the year since 2002 (regional status of 2020), Country of birth by Time section
Portugal	130 000 (2020)	7 %	9 100	3 640 000	Estimated based on figures from 2007 and 2020 provided by Pordata – Foreign population with legal resident status: total and by certain nationalities.
Denmark	52 114 (2022)	10 %	5 211	2 084 560	Statistics Denmark – Population 1. January by country of origin, sex, time, ancestry and age
Finland	49 020 (2021)	10 %	4 902	1 960 800	Statistics Finland - Population 31.12. by Origin, Language, Background country, Year, Age, Sex and Information
Ireland	57 850 (2016)	5 %	2 893	1 157 000	2016 census - Black Irish or Black African
Luxembourg	8 574 (2021)	12 %	1 029	411 552	STATEC - Population by nationalities in detail on 1st January
EU-27	7 300 000 (2021)	10 %	730 000	292 000 000	Author's estimate

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Immigration enforcement

Border control authorities may discriminate against certain groups or types of immigrants by preventing them from entering their countries, denying them humanitarian help or preventing asylum seekers from being able to file asylum applications. Ill treatment resulting in suffering and, in extreme cases, death of immigrants, are negative socio-economic impacts of discrimination by border control authorities. These impacts are accompanied with a growing polarisation of EU societies regarding immigrants⁵⁵⁹.

2.3.2.2 Exercise of public authority by bodies other than law enforcement and judicial authorities

Contacts with public administration beyond the scope of the RED

Respondents to the targeted survey in the category 'contacts with the public administration outside the scope of the RED' most often indicated two categories of individual impacts: 'negative impacts on trust in public institutions/authorities' and 'negative impacts on physical and/or mental health'. 'Negative impacts on job/career' ranked on a third place. On the societal level, the most often indicated types of impacts were: 'loss of trust in public institutions/authorities', 'reduced social cohesion' and 'increased poverty, homelessness and/or unemployment'. Detailed results with respect to all the categories of impacts can be found in *Section 2.3.3*.

Similar and further impacts were also indicated by stakeholders consulted via interviews. According to a Cypriot interviewee, migrants and refugees are marginalised and excluded from all support and protection from discrimination by the institutions and mechanisms that are supposed to protect them. Thus, they are left to fend for themselves and rely on the scant support that NGOs can provide from their very limited resources. As a result, these people fear and mistrust the authorities, which is the main reason for the very low reporting rate of racial and ethnic discrimination, physical and psychological violence, and threats for deportation by government services, employers and others. Institutional discrimination, in combination with the hostile environment in the society against migrants and refugees, and the absence of a comprehensive and effective integration policy, have a very negative impact on their everyday lives and experiences⁵⁶⁰. Discrimination of migrants and asylum seekers, for instance in contacts with the public administration, can lead to various negative effects also for the immigration countries, such as loss of cultural diversity as asylum seekers do not feel welcome and they are hesitant to share their cultural practices⁵⁶¹. Furthermore, it has negative impacts on the financial income of the discriminated individuals, but also at society level on the GDP and tax revenue, as immigrants and asylum seekers' skills and competences are under-utilised and they occupy low-paid jobs⁵⁶². Moreover, any sort of irregularity in administrative status of migrants can lead to unwanted consequences, such as fines, imprisonment or expulsion⁵⁶³.

Another issue that has a far-reaching socio-economic impact is the difficulties that the Roma population face when seeking to obtain legal documents. Tens of thousands of Roma in Europe live without having formal administrative existence, lacking birth certificates, identity cards, passports and other documents⁵⁶⁴. Without these, they are often denied basic rights such as education, health care, social assistance and the right to vote, and they are also less able to secure property documents, and to participate in the labour market⁵⁶⁵. This has a devastating

⁵⁵⁹ Triantafyllos Karatrantos (2018), [Polarisation and Radicalisation in European societies as the outcome of the migration-refugee crisis](#).

⁵⁶⁰ Information obtained from an NGO representative in Cyprus via interview held in February 2022.

⁵⁶¹ Information obtained from an NGO representative in Croatia via interview held on 18 February 2022.

⁵⁶² Information obtained from a research organisation and an NGO from Croatia via interviews.

⁵⁶³ Fair Trials (2021), [Addressing possible gaps in the Racial Equality Directive](#).

⁵⁶⁴ Council of Europe (2012), [Human rights of Roma and Travellers in Europe](#), p.24.

⁵⁶⁵ Council of Europe (2012), [Human rights of Roma and Travellers in Europe](#), p.24; US State Department (2021), [Romania 2020 Human Rights Report](#), p. 29; The Greek Ombudsman's Office (2018), [Equal Treatment, Special Report 2017](#), p. 42-44.

impact on their ability to enjoy their human rights and fundamental freedoms⁵⁶⁶. According to the Greek Ombudsman, irregular practices of public administration in conjunction with the Roma housing issue lies at the root of the widespread social exclusion of Roma people in Greece⁵⁶⁷. In Italy, the lack of documents of Roma people was reported to be partly the consequence of the complex bureaucratic procedures to acquire Italian documents, which contributes to the marginalisation and segregation of Roma, many of them ending up living in nomad camps⁵⁶⁸. In Romania, the problem of missing identity documents arises in the case of homeless people, and in a higher proportion than among the majority population, among the Roma minority. Both groups are vulnerable and often overlap. Most of the time a person without an ID card, due to the lack of educational, professional and financial development opportunities, ends up living on the streets, and it is difficult for them to get out of the disadvantaged situation without an ID card, since the presentation of an ID is almost a permanent necessity in access to employment, hospital, school, etc.⁵⁶⁹ The authorities in Romania can issue provisional IDs for people who are unable to provide proof of residence; however, provisional IDs have *'the potential to increase discrimination by immediately indicating vulnerability, and therefore to increase the strength of the vicious circle of poverty by adding to the vicious circle of discrimination. To exemplify this, a person with a provisional ID card will have much less credibility with potential employers, public institutions, banks or people offering spaces for rent'*⁵⁷⁰. In Sweden, impoverished EU migrants, including Roma people, are *'exceptions to the European regime of human rights and the provisions of Swedish law and welfare'*, as such people typically do not have access to a Swedish social security number, and thus they cannot benefit from most aspects of the health care and social housing systems⁵⁷¹. At the same time, non-European refugees whose asylum applications have not yet been approved and thus do not have a social security number, can have access to such services⁵⁷². According to a Slovenian NGO, issues related to unresolved legal status and permits in case of Roma people result in their anxiety, limited access to health care, employment, and education. These can lead to chronic diseases, poverty, incomplete basic education. Many of these people live in constant fear and suffer from low self-esteem⁵⁷³. A Slovakian interviewee remarked that the lack of empowerment and self-sufficiency of Roma is often caused by discrimination in access to public administration⁵⁷⁴.

According to the respondents to the targeted survey, the main consequences of discrimination occurring very or fairly often in contacts with public administration outside the scope of the RED (beyond law enforcement and judicial authority) are: obstacles in accessing public services (19 respondents in total, 90 %), obstacles in accessing public goods (16 in total, 76 %), difficulties in obtaining administrative documents, such as identity cards or birth certificates (13 in total, 65 %), but also inability to exercise rights, such as voting rights (9 in total, 42 %). Residential segregation (e.g. policies setting barriers to separate neighbourhoods; policies prohibiting certain groups from residing in certain areas) were also indicated by around half of the respondents to this question as very or fairly often happening as a consequence of discrimination by public administration.

⁵⁶⁶ Council of Europe (2012), [Human rights of Roma and Travellers in Europe](#), p.24.

⁵⁶⁷ The Greek Ombudsman's Office (2019), [Equal Treatment, Special Report 2017](#), p. 42-44; The Greek Ombudsman's Office, [Equal Treatment, Special Report 2018](#), p. 35.

⁵⁶⁸ European Parliament (2019), [Scaling up Roma Inclusion Strategies: Truth, reconciliation and justice for addressing antigypsyism](#), p.76.

⁵⁶⁹ Asociația Carusel, ARAS Timișoara, SASTIPEN și Centrul de Resurse Juridice (2014), [Facilitarea accesul la documente de identitate pentru persoanele vulnerabile](#) (*Facilitating access to identity documents for vulnerable people*), Policy Paper, p.9-10.

⁵⁷⁰ Asociația Carusel, ARAS Timișoara, SASTIPEN și Centrul de Resurse Juridice (2014), [Facilitarea accesul la documente de identitate pentru persoanele vulnerabile](#) (*Facilitating access to identity documents for vulnerable people*), Policy Paper, p.7.

⁵⁷¹ Hansson, E., Mitchell, D. (2018), [The Exceptional State of "Roma Beggars" in Sweden](#), p.17.

⁵⁷² Hansson, E., Mitchell, D. (2018), [The Exceptional State of "Roma Beggars" in Sweden](#), p.17.

⁵⁷³ Information obtained from an NGO representative in Slovenia via interview held in February 2022.

⁵⁷⁴ Information obtained from an NGO representative in Slovakia via interview held on 25 February 2022.

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Forced evictions and residential segregation

The issue of evictions and residential segregation, particularly affecting Roma people, and the scale of the problem is presented in *Section 2.1.2* above. This part focuses only on the socio-economic impacts of such discriminatory practices.

Evictions and demolitions not only **deprive local Roma population of their dwellings and cause distress and health risks, but also increase inter-ethnic tensions**⁵⁷⁵. Evictions can also lead to homelessness, and increased chances of coming in contact with the criminal justice system (e.g., where homelessness is criminalised, or other poverty-related offences such as begging are punished). Similarly, the lack of stable address can lead to higher chances of being detained pre-trial⁵⁷⁶.

Residential segregation can have a range of negative societal impacts, including lower educational achievements and health risks⁵⁷⁷. Studies reached conclusions about negative impacts of segregation on educational results, however the link with ethnic factors does not seem to be direct. Poorer educational results are strongly related to income levels; since ethnic segregation often goes hand-in-hand with socio-economic deprivation, it appears to influence educational achievements⁵⁷⁸. These findings are aligned with an opinion of a Swedish interviewee, who said that persons living in segregated areas have lower and unequal access to quality education (despite the right to free school choice)⁵⁷⁹. Consequences of discrimination in the form of residential segregation are that people more often follow education which is below their level, stop with searching for work or traineeships, search for other work or entirely stop working. Discrimination also leads to less involvement in society and loss of trust in institutions⁵⁸⁰.

According to an ECRI report on Bulgaria, most Roma continue to live in segregated housing, e.g., in certain areas of Sofia and Plovdiv, where running water, electricity and heating are either non-existent or insufficient to meet the needs of the inhabitants. Roma houses were in most cases built without adequate permissions, and they are often not readily accessible to such public services as ambulances, the fire brigade and rubbish collectors. This creates health and safety risks for the Roma population. Their houses are typically overcrowded, which only aggravates health problems and contributes to a lower well-being⁵⁸¹. Residential segregation and poor living conditions of Roma is an issue in Croatia as well⁵⁸². According to a 2018 study, 11.2 % of Roma households have no electricity, 43.3 % have no water supply access, and 73.3 % of Roma households have no sewer connection⁵⁸³. A Croatian interviewee pointed out that due to discrimination, the Roma minority lives in socio-economically underdeveloped areas, with poor infrastructure and services, and therefore enters a kind of "vicious circle" of underdevelopment and poverty⁵⁸⁴. Similarly, in Hungary, there are many segregated Roma settlements and in 2016 almost half of the Roma lived in overcrowded conditions, as opposed to 13 % of the non-Roma

⁵⁷⁵ Committee on the Elimination of Racial Discrimination (2020), [Reports On Discrimination, Segregation And The Right To Adequate Housing](#).

⁵⁷⁶ Fair Trials (2021), [Addressing possible gaps in the Racial Equality Directive](#).

⁵⁷⁷ Felouzis, G. (2005), Ethnic Segregation and its Effects in Middle School in France, *Revue française de sociologie*, 2005/5 (Vol. 46), p 3-35.

⁵⁷⁸ Erlend Paasche and Katrine Fangen (2011), [Ethnic School Segregation: Effects and Policies](#), Policy Brief No 4, EU-MARGINS Deliverable No 4, 7th Framework Programme.

⁵⁷⁹ Information obtained from an academic in Sweden via interview held on 22 February 2022.

⁵⁸⁰ Information obtained from a municipal antidiscrimination bureau in the Netherlands via interview held in February 2022.

⁵⁸¹ European Commission Against Racism and Intolerance (2009), [ECRI Report on Bulgaria \(fourth monitoring cycle\)](#).

⁵⁸² European Network of legal experts in gender equality and non-discrimination (2020), [A comparative analysis of non-discrimination law in Europe 2019](#), p. 62.

⁵⁸³ Kunac, Suzana; Klasnić, Ksenija; Lalić, Sara (2018), [Roma Inclusion in Croatian Society: A Baseline Data Study](#), [Centre for Peace Studies](#).

⁵⁸⁴ Information obtained from a research organisation's representative in Croatia via interview held on 015 February 2022.

population. 46 % of the Roma lived in dwellings where the basic hygienic conditions were not met, as opposed to 2.8 % of the non-Roma population⁵⁸⁵. In Portugal, Roma and Afro-descendants live in marginalised neighbourhoods, and in most of these places, especially when they are far from the urban centres, there are no public services available, they are hard to reach by public transport and sometimes there is no school transport⁵⁸⁶. In Romania, many Roma families live in segregated, informal settlements, without having limited or no access to basic utilities and road infrastructure, in many cases the houses' layout endangering residents' safety and health⁵⁸⁷. In Slovakia, Roma families often live in the outskirts of municipalities and sometimes even in segregated and/or isolated areas, in dwellings that do not fulfil technical and hygiene standards e.g., lack access to roads or lack of pavements with public street lighting⁵⁸⁸.

The Roma population suffers numerous health problems due to poverty, poor housing conditions and low standard of education. According to information provided by Bulgarian authorities, 68 % of Roma households have a chronically sick member and 55 % had difficulty in obtaining access to a doctor because of their remoteness⁵⁸⁹. In view of a Slovakian stakeholder, individuals growing up in a segregated environment do not receive quality education and consequently cannot succeed in society. From birth, individuals face the danger of not being able to leave the 'poverty circle'. At an individual level, ethnic discrimination may lead to an inability to create working social networks/circles and interact with the outside environment. Excluded individuals do not receive information and skills and have problems to succeed at the labour market or face prejudice at work⁵⁹⁰. Roma fear the world outside of their communities: they fear verbal or physical attacks, mocking, underestimation and prejudice⁵⁹¹. In addition, a representative of a Czech NGO said that the socio-economic impacts of ill treatment of Roma are huge both at individual and at society levels. The Roma population suffers due to impacts on their physical and mental condition. The results at society level include increased health costs and shorter life expectancy⁵⁹².

Roma people segregated to hazardous waste sites face increased **health risks**. A case study carried out in Romania, concerning a ghettoised space (Pata Rât) where around 1 500 Roma live next to old and new landfills, showed that there is a very low number of people over 65 (only 15 people) living in the communities surveyed, which indicates *'that life expectancy in these communities is much lower than the average in Romania, which in 2019 was 78 years (at its turn being lower with 6 years than the EU average). The vulnerable population living in Pata Rât is exposed to environmental pollution for decades, while their access to health services is suboptimal. Diagnoses of chronic diseases abound, but medication for them is often abandoned, usually due to a lack of financial means. People also have frequent symptoms associated with both pollution and frequent and debilitating respiratory diseases, but in the absence of screening programmes in this population, many of them remain undiagnosed. [...] Left undiagnosed, they lead to poor quality of life, reduced work capacity, and premature death'*⁵⁹³. The authors of the case study note that the conclusions of their investigations allow for a generalisation from this

⁵⁸⁵ Hungarian Government (2021), [Magyar Nemzeti Társadalmi Felzárkózási Stratégia 2030](#) (Hungarian National Strategy for Social Inclusion 2030), pp.107-123.

⁵⁸⁶ Subcomissão para a Igualdade e Não Discriminação, Comissão de Assuntos Constitucionais, Direitos, Liberdades e Garantias, Assembleia da República (2019), [Relatório sobre Racismo, Xenofobia e Discriminação Étnico-racial em Portugal](#) (Report on Racism, Xenophobia and Ethnic and Racial Discrimination in Portugal), p. 25-29.

⁵⁸⁷ PACT Foundation (2018), [Informal housing in Romania, Research report](#), p. 4.

⁵⁸⁸ Slovak National Centre for Human Rights (2018), [Report on the observance of human rights including the principle of equal treatment in the Slovak Republic for the year 2017](#), p. 44-47. See also Slovak National Centre for Human Rights (2019), [Report on the observance of human rights including the principle of equal treatment in the Slovak Republic for the year 2018](#), p.26-28.

⁵⁸⁹ European Commission Against Racism and Intolerance (2009), [ECRI Report on Bulgaria](#) (fourth monitoring cycle).

⁵⁹⁰ Information obtained from an NGO representative in Slovakia via interview held on 28 February 2022.

⁵⁹¹ Information obtained from an NGO representative in Slovakia via interview held on 28 February 2022.

⁵⁹² Information obtained from an NGO representative in Czechia via interview held on 16 February 2022.

⁵⁹³ Enikő Vincze (coord) (2022), [ENHOJUST Policy Brief: for an Anti-Racist Environmental and Housing Justice \(in Romania\)](#), p.14.

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singular case to other similar cases in Romania, namely in cases in which the right to housing in a healthy environment is violated, there is an unequal distribution of the effects of pollution (depending on the distance at which people live from toxic areas), and where inequalities are racialised as part of a broader injustice⁵⁹⁴.

A Swedish interviewee noted that the overrepresentation of people with ethnic background in low-income public housing or former public housing has led to racially segregated housing areas, especially around larger Swedish cities, with growing social problems (such as chronic unemployment, high elementary school dropout rates and rising crime rates). According to this interviewee, the more pervasive racial segregation and discrimination is in the society, the greater its negative socio-economic impacts are, such as less economic productivity and greater economic costs which manifest in e.g., unemployment benefits, poor health, increased criminality, etc. It will also help fuel populist ideas and myths that the mere presence of racial and ethnic others in society results in an economic loss rather than in an economic benefit and that government expenditures are a loss rather than an aid to economic productivity, consumption and growth. Most importantly, racial and ethnic segregation and discrimination undermines the basic principles of equality of human dignity, social cohesion and inclusion, solidarity, notions and practices of a joint democratic policy, and fuels ethnocentrism, ethnic and racial nationalism, narrow self-interests and more⁵⁹⁵.

Furthermore, ethnic segregation in housing can fuel discrimination in other sectors. For instance, mortgage providers or potential employers can screen out applicants with certain minority backgrounds using their addresses in their business procedures⁵⁹⁶.

2.3.2.3 Use of public space

Racial discrimination can lead to a limited use of some areas of public space by the members of ethnic minorities. Those who have been discriminated against in public spaces often feel unsafe and avoid specific places or events. A study conducted in Finland found that one in four Roma persons avoid certain places due to the perceived safety risks. This is linked with discrimination experiences: those who had experienced unjust treatment in public places avoid certain places twice as frequently as others⁵⁹⁷. Working-aged foreign-born persons living permanently in Finland had similar experiences: on average, one of five foreign born respondents found that public events or space (parks, public transport, etc.) are not safe. A similar share of Africans (excluding North Africans) had experienced harassment in public spaces⁵⁹⁸. A Dutch study also found that almost 40 % of the people who experienced discrimination avoid the potential perpetrators or keep distance from people who resemble the perpetrators, they also tend to avoid the place where they experienced discrimination⁵⁹⁹. In France, 39 % of black people, 43 % of Arabic people and 48 % of Asians who have been previously discriminated against are avoiding some places in comparison with 34 % of white people⁶⁰⁰. These studies refer to discrimination in public spaces, not distinguishing the perpetrators of discrimination, and therefore, it is not possible to draw conclusions specifically with respect to discrimination by public authorities or other actors

⁵⁹⁴ Enikő Vincze (coord) (2022), [ENHOJUST Policy Brief: for an Anti-Racist Environmental and Housing Justice \(in Romania\)](#), p.11.

⁵⁹⁵ Information obtained from an academic in Sweden via interview held on 22 February 2022.

⁵⁹⁶ Blank, R.M. (2005), [Tracing the Economic Impact of Cumulative Discrimination](#).

⁵⁹⁷ Mannila S, Castaneda A E, Laalo M & Kuusio H (2021), [Participation in paid employment among the Finnish Roma](#), International Journal of Roma Studies Vol. 3, No. 1, pp. 1-23. The study is based on data gathered through 234 face-to-face interviews.

⁵⁹⁸ Kuusio H, Seppänen A, Jokela S, Somersalo, L & Lilja E (eds.) (2019), [Ul-komaalaistaustaisten terveys ja hyvinvointi Suomessa – FinMonik Research 2018–2019](#) (*Foreign-born persons' health and well-being in Finland – FinMonik Research 2018-2019*)

Institute for Health and Welfare (THL), Report 1/2020, 256 p. ISBN 978-952-302-931-6 (print); ISBN 978-952-343-034-1 (e-book) (in Finnish).

⁵⁹⁹ Sociaal and Cultureel Planbureau (2020), [Ervaren discriminatie in Nederland II](#) (*Experienced discrimination in the Netherlands II*).

⁶⁰⁰ Défenseur des droits, (2019), [Inégalité d'accès aux droits et discriminations en France](#) (*Inequalities in access to rights and discriminations in France*), p.127.

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(e.g., security officers or ordinary citizens). Nevertheless, the impacts suffered by the victims of discrimination, regardless of its origin, remain the same.

When asked about the main consequences of discrimination in contact with the public administration (other than law enforcement and judicial authorities), nine survey respondents out of 19 addressing this aspect of the question (47 %) indicated that restrictions on freedom of movement such as exclusion from places or facilities of general use occurs very or fairly often.

2.3.2.4 Other/grey areas

Health promotion and disease prevention, in the particular context of the COVID-19 pandemic

Racial profiling in the context of the pandemic has been noted in particular towards Roma in enforcing quarantine and lockdown measures. Problems were also related to the impossibility of maintaining social distancing in refugee camps and Roma settlements. Such situations prevent individuals and communities from effective implementation of emergency measures. They are not only detrimental to those directly concerned, leading to increased anxiety, feeling of exclusion and discrimination; they are also harmful to the whole society, impacting its cohesion and inclusiveness⁶⁰¹.

In Bulgaria, during the COVID-19 pandemic, it was reported that some municipalities had locked down Roma neighbourhoods, as a purported measure to prevent the spread of the virus. In the most extreme cases, the authorities failed to protect Roma communities from acts of violence such as burning and destruction of their homes⁶⁰². In April 2020, the Ħal Far open centre for asylum seekers in Malta was placed under mandatory quarantine after eight residents tested positive for COVID-19. This was followed with an increase in racist comments targeting migrants on social media. A human rights NGO claimed that the increased level of online hate speech was due to institutional racism and condemned the 'warehousing policy' in Ħal Far for contributing to an outbreak of COVID-19 that is detrimental to the health of the inhabitants of the Centre and people around⁶⁰³.

2.3.3 Summary of impacts across all areas

Respondents to the **targeted survey** expressed their opinion about the impacts of ethnic and racial discrimination in the areas covered by the study on the individual level and on the society level. Their replies have partly been included in the sections above, in relation to the specific areas of research. Overall responses to the questions about the individual and society-level impacts are summarised below.

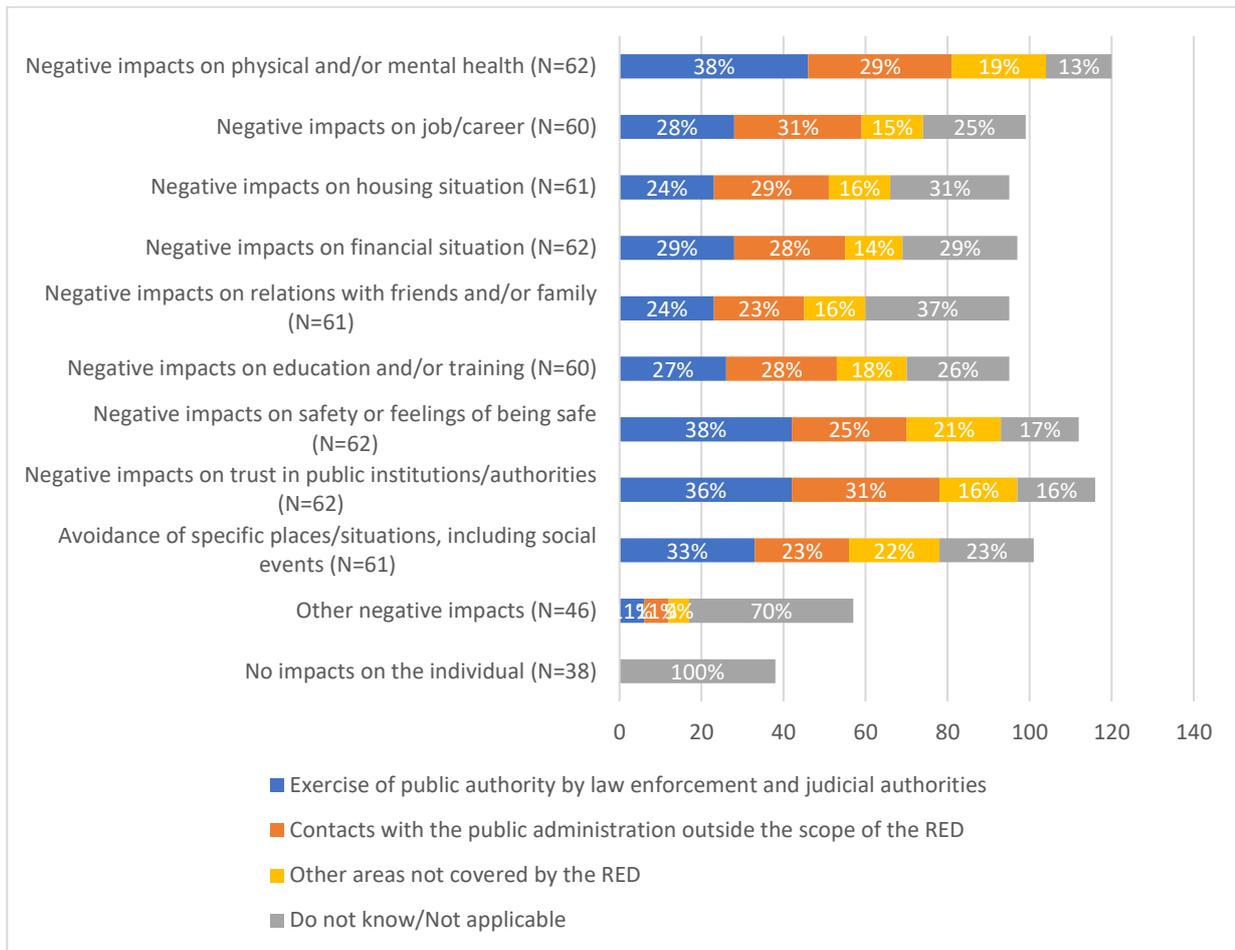
On the individual level, the majority of the **survey respondents** found negative impacts on **physical and/or mental health** (120 replies), **trust in public institutions/authorities** (116 replies), and **safety or feelings of being safe** (112 replies). The negative impacts were indicated most often in the area of the exercise of public authority by law enforcement and judicial authorities. Figure 5 below shows the impacts according to the discrimination areas. For example, 'Negative impacts on physical and/or mental health' were selected by 38 % of the respondents who indicated 'Exercise of public authority by law enforcement and judicial authorities' as an area of racial discrimination and by 28 % of the respondents who indicated 'Contacts with the public administration outside the scope of the RED' as an area of racial discrimination. The number of the respondents in the figure (N) is lower than the number of replies to each option since each respondent had an opportunity to indicate several options.

⁶⁰¹ Council of Europe (2020), [The Anti-Discrimination, Diversity and Inclusion Dimensions of the Response to COVID-19](#).

⁶⁰² Juan Carlos Benito Sánchez (2020), [Securing Housing for all in Diverse European Societies - Applying International and European Antidiscrimination Law for the Housing Context](#).

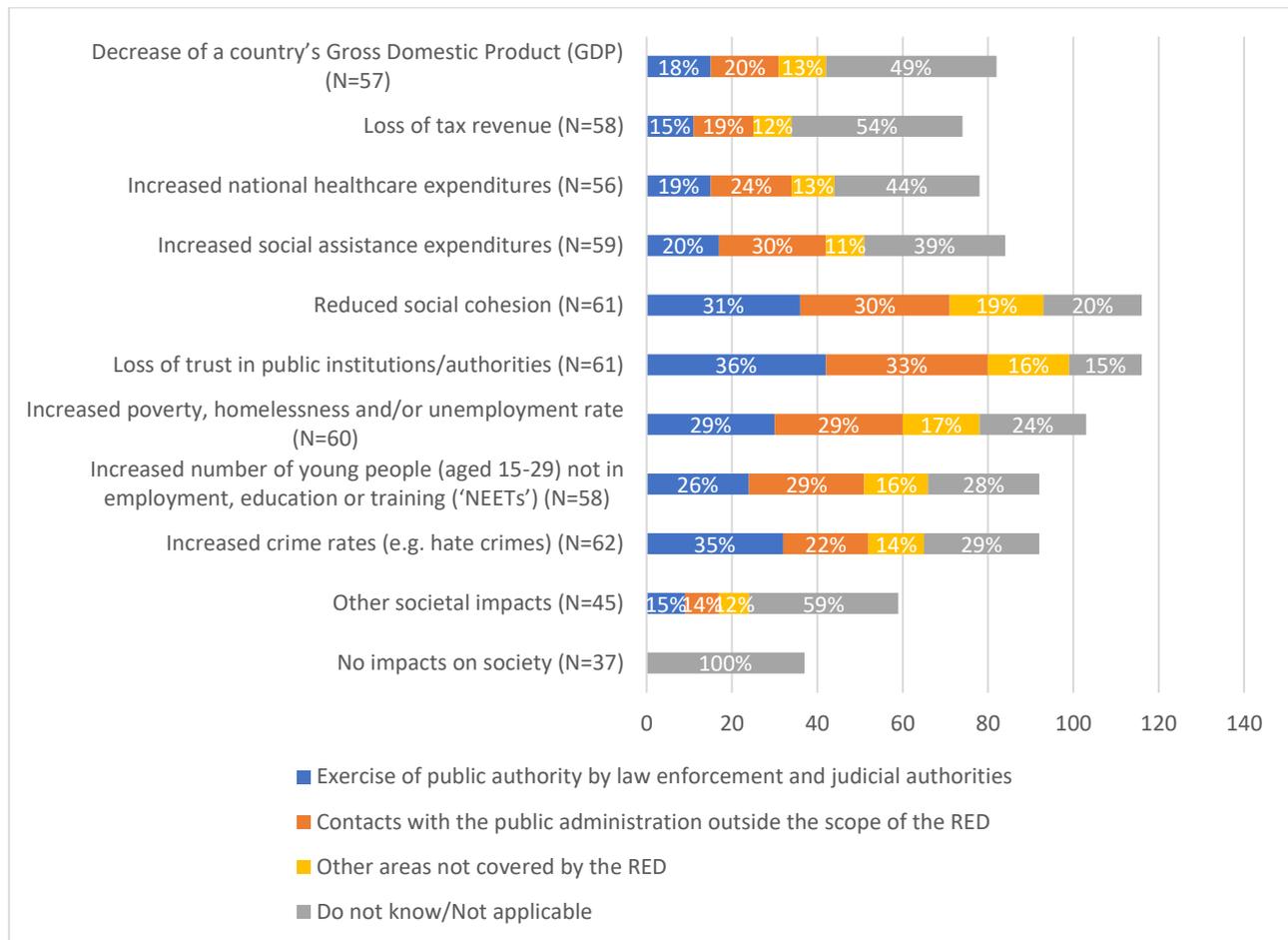
⁶⁰³ The People for Change Foundation (2020), [FRANET National Contribution to the Fundamental Rights Report](#).

Figure 5: In your opinion, what impact does experiencing racial or ethnic discrimination have on the individual person concerned? Please indicate the impact per area.



On the societal level, the most often indicated negative impacts **by the survey respondents** were a loss of trust in public institutions/authorities (116 replies) and reduced social cohesion (also 116 replies). The negative impacts were indicated most often in the area of the exercise of public authority by law enforcement and judicial authorities and in the area of contacts with the public administration authorities outside the scope of the RED. Figure 6 below shows the impacts according to the discrimination areas. For example, the option 'Loss of trust in public institutions/authorities' was selected by 36 % of the respondents who indicated 'Exercise of public authority by law enforcement and judicial authorities' as an area of racial discrimination and by 33 % of the respondents who indicated 'Contacts with the public administration outside the scope of the RED' as an area of racial discrimination. The number of the respondents in the figure (N) is lower than the number of replies received to each option since each respondent had an opportunity to indicate several options.

Figure 6: In your opinion, what impact does the occurrence of racial or ethnic discrimination have on society as a whole? Please indicate the impact per area.



Both findings emerging from the targeted survey (i.e., regarding the individual impacts and the society-level impacts) are well aligned with the findings from literature research and interviews. Indeed, impacts such as physical and mental damages, undermined trust in police and other public institutions, reduced social cohesion and increased poverty, as well as undermined feeling of safety, are indicated as primary impacts of discrimination in various literature sources and have also been raised by the interviewed stakeholders, as described in the sections above.

OPC respondents were also asked about negative impacts at individual level; however, the question focused on experiences in different areas, both within and outside the scope of the RED (such as education and work; health and childcare; housing; public administrations; public transport and leisure; police and other control authorities; justice system; and structural discrimination). While the order differs, the most reported *negative impacts* from experiencing racial or ethnic discrimination were the same as in the targeted survey. These are **trust in public institutions/authorities** (81 % - [70 %]), the **safety or feelings of being safe** (79 % - [77 %]), and **physical and/or mental health** (69 % - [67 %]).

Monetary estimates

Monetary valuation of impacts of discriminatory treatment poses a number of methodological challenges: such impacts often concern physical and mental health damages or feelings (e.g., the feeling of social exclusion), which are not easily quantifiable and for which no ready price tags exist. An additional challenge related to our study is that the valuation of the impacts would need to be limited to the specific areas that are not currently covered within the scope of the RED. Monetary estimates in relation to these specific areas are scarcely available.

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Monetary estimates of racial and ethnic discrimination on the society level have been provided in the 2018 Cost of Non-Europe Report⁶⁰⁴. According to this report, an annual GDP loss can be estimated at 2.4 to 10.7 billion in the EU while tax revenue loss at EUR 854 million to 3.9 billion. These effects were estimated using the pathway of poorer health status and lower employment rates in ethnic minorities who experience discrimination. Other costs on the society level estimated in the study include medical costs due to treatment of depression and other mental diseases (these have been estimated to be in the order of EUR 15-23 million annually in the EU of direct medical costs and EUR 21-34 million of indirect costs - productivity loss). The methodology adopted for these estimates does not allow distinguishing the shares of the population experiencing discrimination in the areas of focus of the current study and therefore, it is not possible to estimate the amount or share of these costs that could be attributed specifically to these areas. While on the basis of this report, it is impossible to provide monetary estimates specifically for the areas not currently covered by the RED, the numbers show that racial discrimination has overall very substantial costs for the society and thus the impact attributable to the areas being outside the scope of the RED could also be quite high.

Within the scope of our study, we have made a fragmentary estimate related to the issue of ethnic profiling in the EU during stop-and-search activities by the police with respect to people with Sub-Saharan origin (see *Section 2.3.2*). The hypothetical value of damages suffered by this ethnical group due to the stop-and-search activities by the police was estimated at approximately EUR 292 million annually. This estimate should be treated merely as an indicative value calculated under several assumptions; nevertheless, it shows that the scale of the problem, when estimated in monetary terms, is far from negligible.

Some of the interviewed stakeholders noted that generally, there is not enough research carried out in the area of impacts of discrimination. For example, a Slovenian interviewee expressed an opinion that in the absence of systematically gathered data, some useful information can be obtained from real life cases – assessment of the impacts could be made through an analysis of court and equality body's decisions⁶⁰⁵. Representatives of an EU-level research network also pointed out that in their research field (police stop-and-search), experiences of victims concerning the impacts of police stops is less documented in the Member States and evidence is only based on NGO and/or media reports⁶⁰⁶.

2.4 Overview of material gaps in protection

2.4.1 Introductory note

Task 1.3 identified current or proposed EU legislation that is relevant to protection from racial or ethnic discrimination in areas not covered by the material scope of the RED in which such discrimination occurs. To this end, a broad range of **EU legislative instruments** was identified as listed in **Annex VI** to this Report. With a view to being as comprehensive as possible, the list is not limited to instruments that contain specific provisions on racial or ethnic discrimination. It also covers instruments that refer to discrimination generally or that, while not directly prohibiting discrimination in a specific area, could bear relevance for example, when examining the root causes and consequences of racial or ethnic discrimination or when considering intersectional and multiple discrimination.

The EU instruments listed in **Annex VI** were screened for **shortlisting based on two selection criteria**:

⁶⁰⁴ European Parliamentary Research Service (2018), [Equality and Fight against Racism and Xenophobia. Cost of non-Europe Report](#).

⁶⁰⁵ Information obtained from an independent legal expert in Slovenia via interview held in February 2022.

⁶⁰⁶ Information obtained from representatives of an EU-level research network via interview held on 15.03.2022.

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- (i) their direct or indirect relevance to racial or ethnic discrimination; and
- (ii) their relevance to areas falling outside the material scope of the RED as described in *Section 2.1* above.

Those instruments satisfying both selection criteria were shortlisted and the relevant provisions are mapped out in the **EU Overview Table** found in **Annex VII** to this Report.

In order to determine whether gaps in protection against racial or discrimination in areas outside the scope of the RED might be covered by other EU instruments, the Study focuses on legally binding measures that are in force. Nevertheless, proposed Regulations and Directives are also taken into account. Similarly, it is noted that sometimes references to non-discrimination were only identified in the Recitals of a Regulation or Directive – while these are not legally binding, they have an important interpretative value. Finally, the EU Overview Table also includes Recommendations – while these are not legally binding, they have political weight.

Task 1.4 analysed the extent to which the list of areas not covered or insufficiently covered by existing or proposed EU legislative instruments as identified under Task 1.3, are covered by the **national anti-discrimination laws** of each of the 27 EU Member States. The information is mapped out in a **National Anti-Discrimination Law Overview Table** (see Table 6 below).

Table 6: National Anti-Discrimination Law overview table

Area not covered or insufficiently covered by existing or proposed EU instruments	Coverage by national anti-discrimination law
Exercise of public authority by the police	BG, FI, HU, HR, SI, and to some extent BE (in the content of any official document or in a <i>process-verbal</i>) and SE (only concerning discriminatory behaviour and language use when in contact with the public)
Exercise of public authority by judges and prosecutors	BG, FI, HR, SI and to some extent SE (only concerning discriminatory behaviour and language use when in contact with the public)
Contacts with the public administration (authorities other than law enforcement or judicial authorities)	BG, FI, HU, HR, SI, and to some extent in SE (only concerning discriminatory behaviour and language use when in contact with the public) and RO (to the extent that the services offered by public administration are not already covered under the RED, which may be the case when they are offered free of charge)
Housing matters not necessarily within the scope of the RED (forced evictions, expulsions and residential segregation)	BG, FI, HU, HR, RO and SI
Use of public spaces	BG, FI, HU, HR, RO, SI, and to some extent BE (in access to, participation in and other exercise of economic, social, cultural or political activity accessible to the public) and in SE (only concerning discriminatory behaviour and language use when in contact with the public)

The Table above shows that most of the areas are covered by the anti-discrimination legislation of the same Member States (Bulgaria, Croatia, Finland, Hungary, and Slovenia). This is due to the fact that these Member States' anti-discrimination laws have a wide material scope, covering areas within and beyond the material scope of the RED.

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As explained in *Section 2.1.1* above, **the national research for this study focused only on general anti-discrimination laws going beyond the material scope of the RED**. Therefore, **the study does not provide an exhaustive overview of sectoral laws or other binding instruments**. However, where the national research or other sources provided information concerning other types of legislation, it was also processed and presented as examples. In some Member States (e.g., Cyprus, Greece, Estonia, Germany, Italy, Latvia, Netherlands) constitutional anti-discrimination provisions were also highlighted as relevant, since they go beyond the material scope of the RED. However, for the purposes of this analysis, only those Member States where there was information that the constitutional provisions were used in discrimination cases in practice were considered (e.g. Estonia, Germany, Latvia).

Since the suitability of national level measures in addressing gaps in protection from discrimination is inextricably linked to their effective implementation, the mapping of national anti-discrimination laws above is supplemented with information on the **effective or ineffective implementation of national rules** which are applicable to specific areas listed in **Error! Reference source not found.** above. Most of the interviewees from Member States whose national anti-discrimination laws offer protection against racial or ethnic discrimination in more areas than the RED noted **implementation challenges that typically arise in applying non-discrimination legislation**, such as *underreporting, lack of knowledge of victims about the reporting mechanisms and available remedies, difficulties in accessing reporting mechanisms, lack of data and evidence, inadequate sanctions, complex and costly court procedures, and lack of trust in the authorities*. In addition, some interviewees reported **particular challenges** in the Member State concerned, for example:

- lack of resources for monitoring the requirement to promote non-discrimination, inability of the equality body to provide victims with compensation and complex institutional system of equality and non-discrimination (e.g., in Finland),
- lack of understanding of the discrimination legislation by the authorities that are supposed to implement it (e.g., in Bulgaria),
- lack of measures and policies to monitor the practical implementation of the legislation and the absence of interest from the authorities to put in place such measures and policies (e.g., in Slovenia).

Specific implementation challenges in the application of the legal protection against racial or ethnic discrimination in the areas listed in Table 6 are included in Section 2.4.2 below. On the basis of the input from interviewees and the national desk research it would seem that there is a disparity in the level and scope of protection against racial or ethnic discrimination beyond the material areas of the RED in the different Member States and that in practice problems may arise regarding its effective implementation.

2.4.2 Identification and analysis of gaps in legal protection

In addition to describing the areas beyond the material scope of the RED in which racial or ethnic discrimination occurs, insights as to the application of other EU or national law instruments to (at least parts of) those areas are provided in Section 2.1 above.

The main focus of this Section is **gaps in protection from racial or ethnic discrimination under the RED that are not covered, or that are not sufficiently covered**, by any existing or proposed EU legislation or national anti-discrimination laws. Where possible, the significance of the gaps in protection is distinguished on the basis of the extent of the gap, that is, whether although not fully addressing an issue, other EU law would limit the importance of the gap; the existence of national anti-discrimination law provisions that would address the gap and the breadth of such measures in terms of number of Member States having relevant non-discrimination law provisions; the extent of the socio-economic impact of the gap in protection.

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Exercise of public authority by law enforcement and judicial authorities

As explained in Section 2.1.1 above, the RED is not applicable to public sector actions that entail the 'exercise of public authority'. The available data indicate the occurrence of racial or ethnic discrimination in the exercise of public authority by law enforcement and judicial authorities.

Some of the gaps in protection in this area appear to be **largely addressed by other EU law or national anti-discrimination law**. More specifically:

- The difficulties racial or ethnic minorities appear to face in exercising their **procedural rights**, in particular, the right of access to a lawyer and to interpretation and translation would already be addressed through the proper implementation at national level of the **six procedural rights' Directives**. These Directives set out safeguards that the Member States must apply in a non-discriminatory manner thus ensuring a minimum level of harmonisation of national rules including with respect to the right of access to a lawyer and the right to interpretation and translation. These rights must be guaranteed at all stages of the criminal proceedings for all suspects or accused persons. It is nevertheless worth noting that Denmark opted-out of all of the procedural rights Directives and that Ireland is not bound by: Directive 2013/48/EU on the right of access to a lawyer; Directive (EU) 2016/343 on the presumption of innocence; Directive (EU) 2016/800 on procedural safeguards for child suspects or accused persons; and Directive (EU) 2016/1919 on the right to legal aid. Therefore, with respect to these Member States there may still be a gap. However, the gap is of limited importance when considering the absence of evidence regarding socio-economic impacts in this area.
- Insofar as racial or ethnic discrimination occurs in the conduct of **border controls by border guards**, the gap in protection under the RED appears to be addressed through Article 7(2) of the **Schengen Borders Code** that expressly prohibits border guards from discriminating against persons on several grounds, including racial or ethnic origin. Article 2(2) of the Code defines 'border guards' as 'any public official assigned, in accordance with national law, to a border crossing point or along the border or the immediate vicinity of that border' to carry out border control tasks. While Bulgaria, Cyprus, Croatia and Romania are not yet full members of the Schengen area they must follow the rules concerning controls at the external borders⁶⁰⁷. Ireland, however, is not bound by the Schengen Borders Code. Regulations (EU) 2019/817 and 2019/818 on the interoperability between EU information systems also prohibit discrimination in the **processing of personal data in several areas including border checks** at external borders and the implementation of visa policy. Ireland is not bound by these Regulations. In addition, **at national level**, a few Member States' anti-discrimination laws (**Bulgaria, Croatia, Finland, Hungary, Slovenia**, and to some extent **Sweden**) applies to the conduct of border guards as well.

Other occurrences of racial or ethnic discrimination by law enforcement or judicial authorities are only **partially addressed by other EU or national instruments**. As regards protection from racial or ethnic discrimination in **stop and search activities and identity checks by the police**, to the extent that these may be the consequence of **discriminatory profiling**, the gap is partially addressed in EU law as follows:

- With specific reference to the processing of personal data for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, Article 11(3) of Directive (EU) 2016/680 on automated individual decision-making prohibits profiling that results in discrimination on the basis of special categories of personal data, including data revealing racial or ethnic origin;
- Insofar as the prevention, detection, investigation and prosecution activities of law enforcement authorities relate to terrorist offences and serious crime:

⁶⁰⁷ European Parliament and the Council of the European Union (2016), [Rules on crossing EU borders](#).

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- Article 6(4) of **Directive (EU) 2016/681** on PNR data, stipulates that the assessment of passengers prior to their arrival in or departure from a Member State against pre-determined criteria must be carried out in a non-discriminatory manner that must not be based on a person's race or ethnic origin. The Directive also contains specific prohibitions in relation to decision-making and data processing that is based on a person's race or ethnic origin (Articles 7(6) and 13(4)). The Directive applies to all Member States, except for Denmark that opted out of its application;
- **Regulations (EU) 2019/817 and 2019/818** on the interoperability between EU information systems prohibit discrimination on any grounds including race, colour, ethnic or social origin. Ireland, however, is not bound by these Regulations.

The aforementioned instruments therefore provide an important degree of **protection from racial or ethnic discrimination that may be caused by profiling by law enforcement authorities**. However, beyond the specific scope and purposes of those instruments and beyond the field of data protection, the **issue of profiling** does not appear to be covered by current **EU legislation**.

Moreover, the analysis of applicable **national legislation** (see Box 11) shows that there are only a few Member States whose anti-discrimination law applies to the material area of the **police exercising its functions** (e.g., **Bulgaria, Croatia, Finland, Hungary, Slovenia**, and to some extent in **Belgium** and **Sweden**). Furthermore, while in **Germany** the federal anti-discrimination law does not go beyond the RED; discrimination by the police is prohibited in the regional anti-discrimination law of the Berlin Land, for example. Discrimination by the police can also be prohibited through the constitutional prohibition of discrimination (e.g. in **Estonia, Germany, Latvia**). Other Member States might rely on binding instruments, such as instructions or codes with normative force for regulating the conduct of police forces, explicitly prohibiting discriminatory actions or behaviour (e.g., **Austria, France, Greece**).

Specific implementation challenges in the application of the above national rules were indicated by some stakeholders interviewed or reports written by legal experts on anti-discrimination, such as:

- The applicable national provisions having mainly declarative nature without effective implementation (e.g. in Austria, Greece);
- Poorly recorded data on racial profiling by police, lack of legal duties of police officers to prevent racial profiling, lack of complaints mechanisms against discrimination by the police or possibility for NGOs to take legal action (e.g., in Germany, when applying the general constitutional provision);
- Prohibition of discrimination limited only to the behaviour and language use of police officers, thus not applicable to discrimination in their decision making or performance of their work (Sweden);
- Lack of alignment of the law prohibiting racial profiling of foreigners and of the general anti-discrimination law, and the existence of procedures allowing for discriminatory identity checks of foreigners (e.g., in Finland);
- Difficulties in challenging the discriminatory nature of police discretionary measures, e.g., imposing a fine or using coercive measures (e.g., in Hungary).

Complaints' data (including from equality bodies) concerning racial/ethnic discrimination/profiling by the police are either not publicly available or are very limited in the Member States whose anti-discrimination laws have a wide scope and include the exercise of police functions related to stop and search activities and identity checks as well. As mentioned by stakeholders consulted or by evaluation/annual reports of national authorities, potential reasons for this are **underreporting** by victims and the **difficulty to prove discrimination**, especially ethnic profiling by the police.

Several of the Equality bodies or Ombudspersons acting as independent police complaints authorities in the Member States reported on possible discriminatory ethnic profiling practices by

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the police or on incidents of disciplinary misconduct by police officers, and made recommendations for overcoming them (see Box 11 and Box 12).

Despite the existence of EU legislative provisions that are relevant to addressing racial or ethnic discrimination in **stop and search activities and identity checks by the police** and **discriminatory profiling**, the extent of protection is curtailed by the specific scope and purposes of the instruments identified. National provisions of anti-discrimination laws that would provide protection from racial or ethnic discrimination in this area are also very limited. Interviews and desk research indicated that effective implementation of such provisions in practice could be problematic (see Box 11 for a more detailed analysis). In light of this, alongside the scale of the issues identified and the extensive socio-economic impacts outlined in Sections 2.1.1 and 2.3 above, this is considered to be a **main gap** in protection. The importance of this gap was also pointed out by many stakeholders consulted for this study as mentioned in Section 2.1.1 above.

While the data collected for this study suggest the existence of, at least perceived, racial or ethnic profiling in policing relating to stop and search activities and identity checks, additional data should be collected to better understand (the extent of) the problem. Challenges related to such data collection for instance because of underreporting and law enforcement bodies not generally documenting stops, checks, and inspections would need to be taken into account.

Where **acts of misconduct or excessive use of force by law enforcement authorities** amount to racist hate crime or hate speech under **Council Framework Decision 2008/913/JHA**, including where race intersects with religion, this is punishable as a criminal offence under EU law and national law implementing the Framework Decision⁶⁰⁸. Beyond that, no other relevant EU instruments were identified. In light of relevant measures that **partially address** this issue, this would appear to be a less significant gap. Socio-economic impacts of hate crimes and hate speech committed by police officers on grounds of racial or ethnic origin were not mapped under this study.

Although **not covered by EU or national non-discrimination law**, issues identified in relation to the **disproportionate representation of racial or ethnic minorities in prison** (including pre-trial detention) might not constitute a significant gap. Such issues are mentioned in fewer sources and extensive data on their scale and of socio-economic impacts in this area was not found. Issues related to **the judiciary**, e.g. biased decision-making of judges, is covered only to a limited extent in the anti-discrimination laws of the Member States (namely, in the anti-discrimination legislation of **Bulgaria, Croatia, Finland, and Slovenia**). Stakeholder consultation and desk research indicates that racial/ethnic discrimination, or at least perception thereof, is less prominent in the justice system. This can be explained by the fact that fewer people are in contact with the judiciary than, for example, the police. Furthermore, some issues in the field of the judiciary are rather linked to protection mechanisms than to a material gap (e.g., accessing justice services, such as lawyers, interpreters or pro bono services).

Contacts with the public administration

The gap in protection from racial or ethnic discrimination in the area of **contacts with public authorities other than law enforcement or judicial authorities** is only **partially addressed by other EU instruments** that do not necessarily address the specific issues identified in Section 2.1.2 above. The relevant EU instruments apply to very specific elements of public administration and the exercise of specific rights under EU law as follows:

- The **Visa Code** expressly prohibits racial or ethnic discrimination by **consular or central authorities** when performing their duties (Article 39(3)). Similarly, the Visa Code prohibits racial or ethnic discrimination by staff of external service providers (point (b) of

⁶⁰⁸ In this respect, Article 1(3) of Framework Decision 2008/913/JHA specifies that 'the reference to religion is intended to cover, at least, conduct which is a pretext for directing acts against a group of persons or a member of such a group defined by reference to race, colour, descent, or national or ethnic origin.'

Annex XC). The relevance of the Visa Code in addressing a gap in protection against racial or ethnic discrimination is limited to the extent that the consular activities in question are not already covered by access to and supply of services available to the public under the RED. Moreover, the Visa Code is not applicable in its entirety to those Member States not applying (Ireland) or not fully applying the Schengen *acquis* (Bulgaria, Croatia, Cyprus and Romania).

- As regards **access to Member State territory** by third-country nationals who are long-term residents, Article 11(1)(h) of **Directive 2003/109/EC** contains a specific requirement for equal treatment of long-term residents with nationals including in relation to free access to the entire territory of the host Member State. However, this requirement is curtailed by the qualification 'within the limits provided for by the national legislation for reasons of security' which leaves a degree of discretion to the Member States.
- Insofar as EU citizens and their non-EU family members are concerned, Recital 31 of **Directive 2004/38/EC** states that Member States should implement the Directive's free movement and residence rights without discrimination between the beneficiaries on a number of grounds including race and ethnic or social origin. While Recitals have interpretative value, they are not legally binding. On the other hand, Article 24(1) of the Directive sets out a right to equal treatment with host Member State nationals and is relevant where discrimination on racial or ethnic grounds intersects with discrimination based on nationality.

At **national level**, similarly to exercise of public authority by law enforcement or judicial authorities, exercise of public authority by other authorities (bodies of the public administration) is mainly covered in Member States whose **anti-discrimination laws** have a broad material and personal scope; thus, being applicable to the conduct of public authorities, including bodies of the public administration in all areas (i.e., **Bulgaria, Croatia, Finland, Hungary, and Slovenia**). Additionally, the anti-discrimination law in **Sweden** also covers the conduct of public authorities' employees; however, this is limited to their behaviour and use of language when in contact with the public. The **Romanian** anti-discrimination law prohibits the refusal by public administration bodies of legal and administrative public services. This could be relevant when discrimination occurs in areas not already covered by the RED, for example where public services are offered free of charge. In **Germany**, discrimination in public law actions by the administration and public bodies is prohibited only at the level of the Berlin Land. However, the constitutional guarantee of equality binds all public bodies. Similarly, in some other Member States, e.g., **Latvia and Estonia**, even if discrimination is not expressly prohibited in all fields of public administration, the constitutional prohibition of discrimination is interpreted as covering discrimination in any area by any public body.

Specific implementation challenges of the national rules in the Member States mentioned include administrative procedures designed to discriminate against some minority groups or immigrants, and under-reporting of discrimination incidents by such people due to fear that this would negatively affect the decision on their legal status or applications for legal documents or other public services.

EU instruments do not necessarily address the specific issues identified in relation to racial or ethnic discrimination in **contacts with public authorities other than law enforcement or judicial authorities and in their decision-making**. It should also be noted that acts of public authority fall outside EU competence. National provisions covering these issues are also very limited and are not always effectively implemented. Several stakeholders consulted for this study confirmed the persistence of racial or ethnic discrimination in this area. Given the possibly far-reaching socio-economic impacts that discrimination in this area might have as described in Sections 2.1.2 and 2.3 above, it can be considered that there is a **potentially important gap** in protection. However, the available data are insufficient to provide a strong enough evidence base to conclude that the occurrences of potential racial or ethnic discrimination are widespread enough to consider this as a main gap.

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Housing matters not necessarily within the scope of the RED – forced evictions, expulsions and residential segregation

As explained in Section 2.1.2 above, possible areas of discrimination related to housing beyond the scope of the RED include **forced evictions, expulsions** and **residential segregation**.

At **EU level**, the **Council Recommendation on Roma equality, inclusion and participation** covers these issues. One of its sectoral objectives states that Member States should ensure equal treatment of Roma people in access to adequate desegregated housing through a number of measures including measures to monitor, prevent and combat any spatial segregation and promote desegregation; measures to prevent forced evictions; and measures to improve the living conditions of Roma people. However, **Recommendations are not legally binding**. While they have political weight, they would not alone address gaps in protection from racial or ethnic discrimination in this area.

As regards legally binding measures, the gap in protection from racial or ethnic discrimination in these areas is only **partially addressed by Directive 2011/95/EU**. This Directive could contribute to addressing the issue of residential segregation but only **insofar as third-country nationals or stateless persons who are beneficiaries of international protection are concerned**.

The Proposal for a Regulation on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection also contains a specific requirement for beneficiaries of international protection to have access to accommodation under the same conditions as other third-country nationals legally resident in the Member States alongside a specific requirement for national dispersal practices to be carried out without discrimination and to ensure equal opportunities in access to accommodation. Should this Proposal be adopted it would also contribute to providing protection from discrimination in the form of residential segregation for third-country nationals or stateless persons who are beneficiaries of international protection. As a Regulation it would be legally binding in the Member States.

At **national level**, the **anti-discrimination laws** of Member States mentioned above under '*Contacts with the public administration*' (**Bulgaria, Croatia, Finland, Hungary, and Slovenia**) also provide protection against discrimination in housing not necessarily in the scope of the RED. Three of these Member States define segregation as a form of discrimination. In addition, the Romanian anti-discrimination law sets out as a separate material area the '*freedom of movement and right to freely choose a residence*', which includes forced evictions and residential segregation.

Specific implementation challenges were highlighted in Romania, where the courts prefer to apply sectoral laws concerning property or authorisations in constructions lacking provisions on non-discrimination, instead of the anti-discrimination law or social assistance laws which take into consideration the right to equal treatment or socio-economic rights of vulnerable groups.

In light of the above, and taking into account the socio-economic impact of racial or ethnic discrimination in relation to housing matters outside the scope of the RED as described in Sections 2.1.2 and 2.3 above, the legal gap in protection with respect to **forced evictions, expulsions** and **residential segregation**, in particular with respect to Roma people, is considered to be a **potentially important gap**. The importance of this gap was also pointed out by several stakeholders consulted for this study as mentioned in Section 2.1.2 above. However, due to legal uncertainties and the lack of available data there is not a strong enough evidence base to consider this as a main gap. It should also be noted that many of these housing matters are likely to fall outside EU competence.

Use of public spaces

Protection from racial or ethnic discrimination in the **use of public spaces and public transport** as described in Section 2.1.3 above, is **not covered by other EU law**.

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At **national level**, discrimination in access to public places is explicitly forbidden by the Romanian anti-discrimination law, implicitly by the anti-discrimination legislation of five Member States having a horizontal material scope (Bulgaria, Croatia, Finland, Hungary, and Slovenia), and to a limited extent in Belgium and Sweden. Nevertheless, it does not appear to be a main gap given the more limited evidence of discrimination in this area and the absence of sufficient evidence of significant socio-economic impacts

3 Mapping and analysis of possible gaps in the protection mechanisms offered by the RED

This Section presents the findings from **Task 2** of the project – **mapping possible gaps in the protection mechanisms offered by the RED**. The chapter analyses existing data and research findings from EU and national sources on discrimination and, in particular discrimination on racial and ethnic grounds. The extensive desk research was complemented with the results from the stakeholder consultation, including EU and national level interviews, a targeted stakeholder survey and an open public consultation. The results of the analysis were presented during a stakeholder workshop for validation.

3.1 Introduction

The Racial Equality Directive sets out specific mechanisms to protect persons from racial and ethnic discrimination in the areas within its material scope. An overview of the provided mechanisms, which may contribute to the prevention of and protection against discrimination, is given in the box below.

Box 31: Protection mechanisms offered by the Racial Equality Directive

Article of the Racial Equality Directive	Protection Mechanism
Article 5 on positive action	<ul style="list-style-type: none"> To ensure full equality in practice, Member State may maintain or adopt specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin to ensuring full equality in practice.
Article 7 on defence of rights	<ul style="list-style-type: none"> National judicial and/or administrative procedures and conciliation procedures for the enforcement of the Racial Equality Directive's obligations available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them. Associations or other interested legal persons may undertake proceedings either on behalf of, or in support of the complainant.
Article 8 on burden of proof	<ul style="list-style-type: none"> The victim of discrimination only needs to establish a presumption of discrimination after which it is for the respondent to prove that there has been no discrimination.
Article 9 on victimisation	<ul style="list-style-type: none"> National measures to protect individuals from any adverse treatment or consequence as a reaction to a complaint or proceedings aimed at enforcing the principle of equal treatment.
Article 10 on dissemination of information	<ul style="list-style-type: none"> The Racial Equality Directive's provisions must be brought to the attention of the individuals concerned.
Article 11 on social dialogue	<ul style="list-style-type: none"> National measures to promote social dialogue between social partners to foster equal treatment, specifically by monitoring practices in the workplace, producing codes of conducts and concluding collective agreements. Member States must encourage the conclusion of agreements establishing non-discrimination rules in the fields which fall within the scope of collective bargaining.
Article 12 on dialogue with NGOs	<ul style="list-style-type: none"> Civil dialogue with the civil society organisations concerned is encouraged.

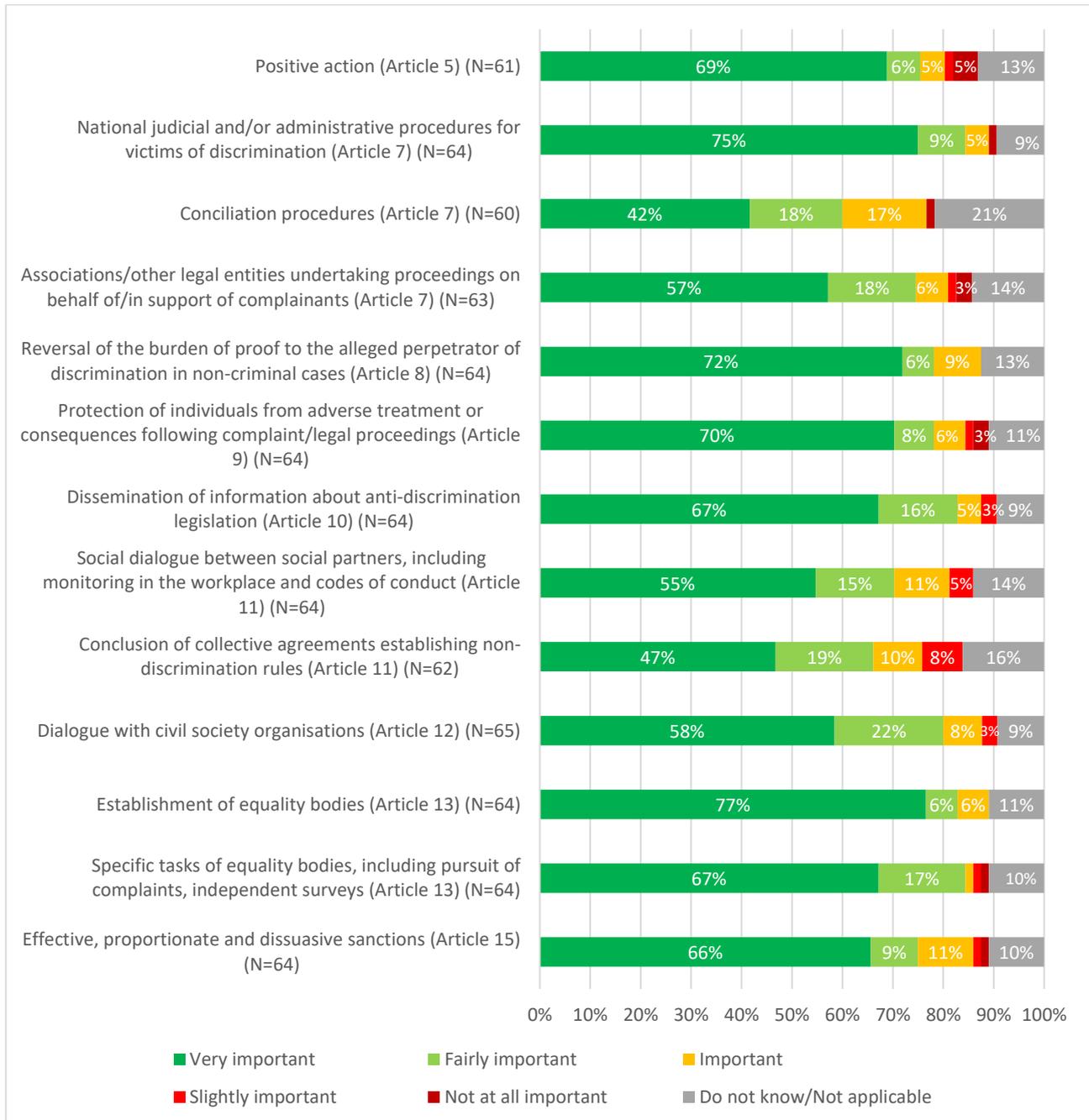
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Article of the Racial Equality Directive	Protection Mechanism
Article 13 on bodies for the promotion of equal treatment	<ul style="list-style-type: none"> • Each Member State must establish at least one body dedicated to the promotion of equal treatment of all persons without racial or ethnic discrimination. • These bodies must provide independent assistance to victims of discrimination in pursuing their complaints, conduct independent surveys, and publish independent reports and making recommendations on any issue relating to such discrimination.
Article 15 on sanctions	<ul style="list-style-type: none"> • Each Member State must provide effective, proportionate and dissuasive sanctions

As part of **the targeted survey** under this study, stakeholders were asked whether they consider the protection mechanisms in the RED provide **sufficient protection against racial or ethnic discrimination**. Opinions were divided as nearly half (49 %) of the 63 respondents to the targeted survey believe that the protection mechanisms in their respective countries provide sufficient protection, whereas 41 % do not think so.

The respondents to the **targeted survey** expressed themselves positively about all protection mechanisms provided by the RED. The majority of respondents indicated that the most important mechanism introduced by the RED is the establishment of the equality bodies (89 % considering this as important and 77 % as very important), and the requirement to have national judicial and/or administrative procedures available to victims of discrimination (89 % considering this as important and 75 % as very important). The reversal of the burden of proof to the alleged perpetrator of discrimination in non-criminal cases (Article 8), the dissemination of information about anti-discrimination legislation (Article 10), and the dialogue with civil society organisations (Article 12), were identified as equally important.

Figure 7: In your/your organisation’s opinion, how important are the following mechanisms for preventing and providing protection from racial and/or ethnic discrimination in your country?



At the same time, the research and stakeholder consultation clearly identified a need to **include additional protection mechanisms** in the legal protection offered to people from racial or ethnic discrimination.

As highlighted in the 2021 Report on the application of the RED, people across the EU continue to regularly experience high levels of discrimination because of their racial or ethnic origin⁶⁰⁹. The report notes that under-reporting of racial or ethnic discrimination remains a problem and

⁶⁰⁹ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

that data collection on the topic needs to be improved⁶¹⁰. The FRA highlights that measures to prevent discrimination and promote equality should operate in conjunction with more reactive dispute settlement mechanisms⁶¹¹. Preventive measures are more targeted to dealing with indirect discrimination and disadvantages experienced by minorities as a whole than measures tackling direct discrimination, such as prohibitions of discrimination and reactive dispute settlement mechanisms⁶¹². Since the adoption of the Directive, research and policy work has identified additional protection mechanisms and measures, including in other areas of discrimination, which aim at combating discrimination from a more preventive, but also “structural” perspective. Moreover, specific measures can be considered to enhance the implementation of the protection mechanisms in the RED. For instance, while reporting on discrimination and the number of complaints increased slightly since 2014, under-reporting remains a problem⁶¹³. Equality bodies, which have proved to be key in promoting and enforcing equal treatment legislation in the Member States, could also be empowered to take on additional responsibilities⁶¹⁴.

The respondents to the **targeted survey** considered it important to very important to include additional potential protection mechanisms in the legal protection offered to people from racial or ethnic discrimination. For instance, a large majority of respondents to the targeted survey consider the monitoring of implementation of policies aiming at combating racial/ethnic discrimination as important (89 %) or very important (67 %). Research on underlying factors of racial or ethnic discrimination (e.g., structural racism, racial bias) is seen as important by 90 % of the respondents and very important by 56 %. Collection and use of equality data was similarly seen as important by a large majority of respondents (more than 85 %). The absence of equality data is considered by the FRA as one major obstacle to developing proactive policies of social inclusion which would allow Member States to begin the process of assessing the extent of inequality in different sectors⁶¹⁵. Fourteen respondents to the targeted survey specifically noted the importance of equality data for understanding the nature and scale of racial and ethnic discrimination, while emphasising that currently available datasets do not allow for such an understanding. The development of national anti-racism strategies aiming to tackle racial and ethnic discrimination in a comprehensive manner is also identified as an important additional mechanism by more than 85 % of the respondents to the targeted survey as well as equality duties and equality mainstreaming.

⁶¹⁰ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

⁶¹¹ FRA (2012), The Racial Equality Directive: application and challenges.

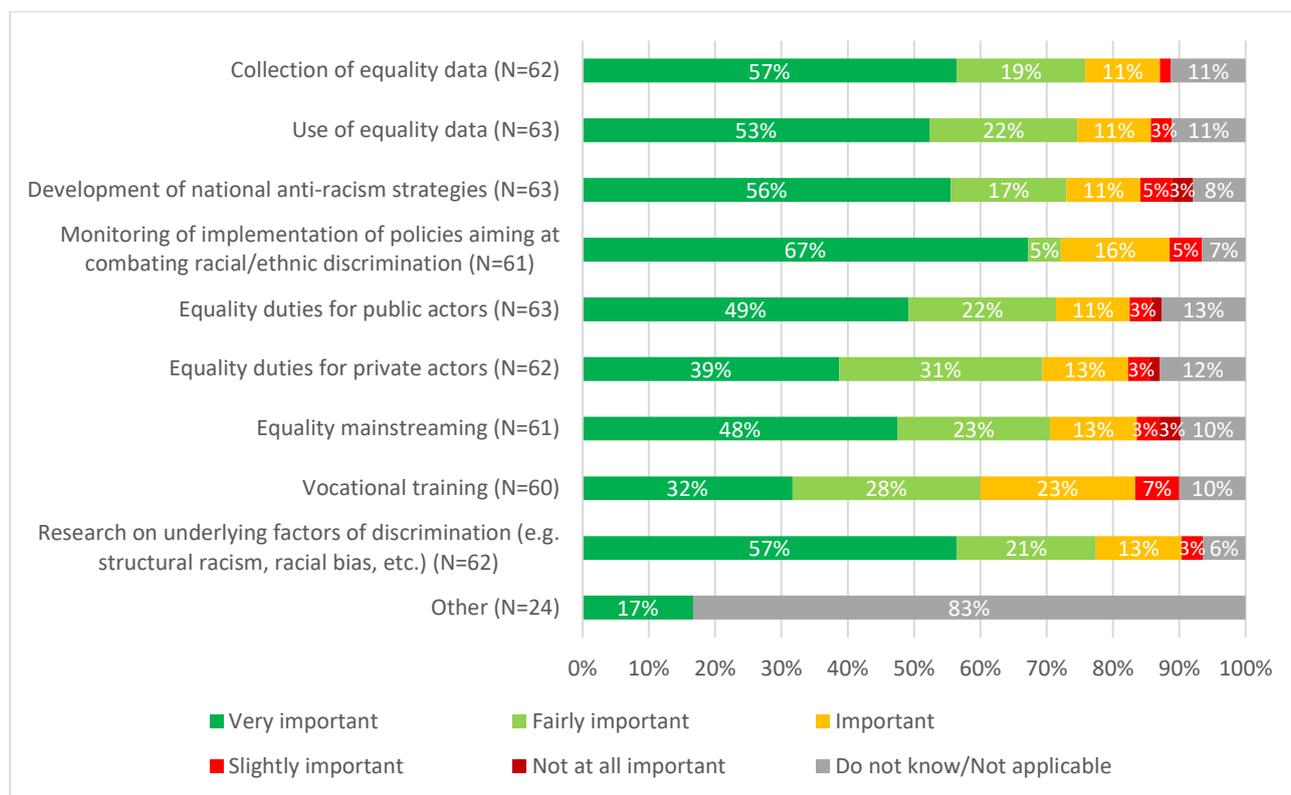
⁶¹² FRA (2012), The Racial Equality Directive: application and challenges.

⁶¹³ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final; Equinet (2021), [Addressing Gaps in the Racial Equality Directive](#).

⁶¹⁴ Migration Policy Group (2020), Handbook on the Racial Equality Directive: with a special focus on Italy, Romania and Sweden, Independent Report.

⁶¹⁵ FRA (2012), The Racial Equality Directive: application and challenges.

Figure 8: In your/your organisation’s experience, how important would it be to include the following additional protection mechanisms or related measures?



In the **OPC**, the majority of the respondents 85 % [68 %] also believed that it is (very) important to put in place **mechanisms to prevent discrimination**. Recommendations of OPC respondents for specific actions to adequately protect individuals and/or groups against discrimination based on racial or ethnic origin are referred to in *Section 5*.

In the **targeted survey**, nearly half of the respondents (27 in total, 47 %) mentioned that there are protection mechanisms for other grounds of discrimination that could be implemented for the area of racial/ethnic discrimination. In particular, measures tackling gender discrimination were identified by two respondents in this context⁶¹⁶. Finally, six respondents approached the question from a different angle and mentioned that future protection mechanisms should take into account intersectionality.

In several of the material areas where racial or ethnic discrimination occurs, multiple or intersectional discrimination will aggravate the situation of victims of racial or ethnic discrimination, such as, for instance, young men from ethnic minorities in stop and searches by the police, migrant and refugee woman especially when wearing headscarves, burqa or niqab in public spaces⁶¹⁷, LGBTIQ Roma persons⁶¹⁸, single mothers⁶¹⁹ and migrants with disabilities⁶²⁰. The

⁶¹⁶ Survey respondents from Ireland and Sweden.

⁶¹⁷ Information gathered through a stakeholder interview with a ministry in Austria.

⁶¹⁸ Information gathered through a stakeholder interview in Hungary.

⁶¹⁹ Information gathered through a stakeholder interview with Luxembourg.

⁶²⁰ Information gathered through a stakeholder interview in Italy.

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2015 Eurobarometer on discrimination in the EU revealed that around one-fourth of all discrimination experienced by respondents are of a multiple nature⁶²¹. The respondents of FRA EU-Midis Survey indicated that around 38 % of experiences of discrimination pertained to multiple grounds⁶²². Moreover, the EU MIDIS II Survey, showed that discrimination is experienced differently by women and men, young and old, and by first- or second-generation immigrants⁶²³. For instance, one out of five second-generation respondents (20 %) felt discriminated against because of their religion or religious beliefs, compared to one out of eight first-generation immigrants (12 %) ⁶²⁴. This shows that characteristics such as gender, age or socialisation patterns (first and second generation) also affect discrimination experiences and need to be taken into EU account when designing legal and policy responses⁶²⁵. Several sources identify protection mechanisms that can contribute to better understanding and capturing multiple discrimination.

This Section aims at mapping potential gaps in the protection mechanisms set up by the Directive. It focuses on identifying protection mechanisms and measures that ensure a more proactive and preventative approach to tackling discrimination, but also presents more specific mechanisms and measures that could support the implementation of the more general mechanisms included in the RED. The Section also proposes potential mechanisms to better tackle multiple or intersectional discrimination.

3.2 Protection mechanisms ensuring a proactive and preventative approach

A first set of protection mechanisms identified in the literature and through stakeholder consultations aim at ensuring a more proactive and preventative approach to tackling discrimination. The measures and mechanisms identified focus, for instance, on gaining a better understanding of racial and ethnic discrimination and its drivers, as well as preventing discriminatory practices constituting either direct or indirect discrimination on grounds of race or ethnicity. Most of the protection mechanisms identified in this Section are not foreseen in the RED, though several policy initiatives have been undertaken to tackle discrimination in a more preventive manner at the EU and Member State level.

3.2.1 National action plans, national Roma strategic frameworks

National action plans

Several sources of information identify the adoption of **national action plans** against racism and racial discrimination and regular reporting on their implementation as a good practice⁶²⁶. A national action plan maps in a comprehensive manner the activities a state plans to undertake to improve racial equality, including goals, responsible actors, target dates and performance indicators for each objective⁶²⁷. The EU Anti-racism Action Plan 2020-2025 notes that national

⁶²¹ Xenidis, R. (2018), Multiple Discrimination in EU Anti-Discrimination Law Towards Redressing Complex Inequality?, in Uladzislau BELAVUSAU and Kristin HENRARD (eds), EU anti-discrimination law beyond gender, referring to European Commission (2015), Special Eurobarometer 437: Discrimination in the EU in 2015.

⁶²² Xenidis, R. (2018), Multiple Discrimination in EU Anti-Discrimination Law Towards Redressing Complex Inequality?, in Uladzislau BELAVUSAU and Kristin HENRARD (eds), EU anti-discrimination law beyond gender, referring to calculations based on data from FRA (2010), 'Data in Focus Report Multiple Discrimination' EU-MIDIS: European Union Minorities and Discrimination Survey 4, 10.

⁶²³ FRA (2017), Second European Union Minorities and Discrimination Survey. Main results.

⁶²⁴ FRA (2017), Second European Union Minorities and Discrimination Survey. Main results.

⁶²⁵ FRA (2017), Second European Union Minorities and Discrimination Survey. Main results.

⁶²⁶ EU Anti-Racism Action Plan 2020-2025; ECRI (2019), 5th report on the Netherlands; ENAR (2020), A roadmap for EU institutions to address structural racism. Information provided by national experts for Austria, Germany and Finland through desk research.

⁶²⁷ UN High Commissioner for Human Rights (2013), National Action Plans Against Racial Discrimination.

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action plans have proven to be a successful way for Member States to offer an **effective response to racism and racial discrimination**, while at the same time adapting concrete actions to their own circumstances⁶²⁸.

More than 85 % of respondents to the **targeted survey** identify the development of national anti-racism strategies as an important additional mechanism to the protection mechanisms currently offered by the RED.

The **RED does not currently require** the adoption of national action plans against racism and racial discrimination. According to a 2020 FRA report, only around half of the Member States had such plans⁶²⁹. The Commission therefore recommended the adoption of such plans in the 2020-2025 EU Anti-racism Action plan and announced the proposal to identify **common guiding principles** for such action plans, in close cooperation with civil society. As the common guiding principles have been adopted in 2021, Member States have now been invited to produce their national action plans by 2022⁶³⁰.

It will be important to **follow up on the adoption** of national action plans as well as their **implementation**, including the application of the guiding principles elaborated by the Commission. This was identified as particularly important during the stakeholder workshop where participants noted that national action plans, while important instruments for tackling discrimination, require sufficient funding, continuous monitoring, institutionalised cooperation and political support that can incentivise their implementation. The **Commission** announced in its own Action Plan against Racism that it will **report regularly** on the implementation of national action plans against racism, with a first report at the end of 2023.

National Roma strategic frameworks

The first direct contribution to the EU Anti-racism Action Plan 2020-2025 is the new **EU Roma Strategic Framework** for equality, inclusion, and participation, presented by the European Commission on 7 October 2020⁶³¹. The EU Roma Strategic Framework establishes three cross-cutting objectives in the areas of equality, inclusion and participation, alongside four sectoral objectives in the areas of education, employment, housing and health⁶³². The European Commission proposes quantitative EU targets aimed at monitoring the advancement towards such objectives, and on the other hand, a list of specific actions to be taken at national level have been established⁶³³. Member States are requested to adopt **national Roma strategic frameworks** and communicate them to the European Commission by September 2021, and subsequently to report the implementation of such national strategies every two years⁶³⁴. However, as of February 2022 only some Member States had submitted their national Roma strategic frameworks⁶³⁵. The European Commission plans to publish an Assessment Report of the Member States' national Roma strategic frameworks in the autumn 2022.

⁶²⁸ EU Anti-Racism Action Plan 2020-2025.

⁶²⁹ EU Anti-Racism action plan 2020-2025. The Member States having adopted national action plans at that time were Belgium, Croatia, Czechia, Finland, France, Germany, Ireland, Italy, Lithuania, Netherlands, Portugal, Slovakia, Sweden, Spain and UK).

⁶³⁰ Information provided by the European Commission.

⁶³¹ [EU Roma strategic framework for equality, inclusion and participation for 2020 – 2030](#).

⁶³² [EU Roma strategic framework for equality, inclusion and participation for 2020 – 2030](#), pp. 3-5.

⁶³³ [EU Roma strategic framework for equality, inclusion and participation for 2020 – 2030](#), pp. 3 - 11.

⁶³⁴ [EU Roma strategic framework for equality, inclusion and participation for 2020 – 2030](#), p. 11.

⁶³⁵ [Roma inclusion set back as several EU countries delay national strategies – EURACTIV.com](#).

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Box 32: Examples of national Roma strategic frameworks

Examples of national Roma strategic frameworks

- **Bulgaria:** the National Strategy of the Republic of Bulgaria for Equality, Inclusion and Participation of the Roma (2021 – 2030) sets several areas of priority, including: education and training, healthcare, employment, housing conditions, rule of law and anti-discrimination⁶³⁶. In addition, a specific focus on culture and media has been established, with the goal to improve the active participation of Roma community in public cultural life⁶³⁷.
- **Germany:** the National Strategic Framework to Implement the EU Roma Strategic Framework provides for a combination of integrated and targeted measures⁶³⁸. On the one hand, the integrated measures foresee a continuation of the existing actions open to all migrants and which cover the areas of education, employment, health and housing. On the other hand, the targeted measures aim to establish specific programmes for Sinti and Roma people at federal-, state- as well as local- level⁶³⁹.
- **Poland:** besides interventions in the education and housing, the Programme for Social and Civic Integration of the Roma Community in Poland for 2021-2030 foresees innovative integration projects at local level as well as systematic tasks carried out by the Ministry of the Interior and Administration, including scholarship programmes for Roma pupils and students⁶⁴⁰.
- **Spain:** the National Strategy for Roma Equality, Inclusion and Participation 2021-2030 includes nine lines of action, in three macro areas, covering social inclusion, equal opportunity and non-discrimination, and participation⁶⁴¹.

3.2.2 Information, awareness raising, guidance and training

As mentioned in the 2021 Report on the application of the RED, low awareness of the anti-discrimination legislation and of the existence of equality bodies that assist victims remain major challenges in fighting discrimination⁶⁴². For instance, 71 % of members of ethnic or immigrant minority groups report to be unaware of any organisation offering support or advice to victims of discrimination⁶⁴³. In contrast, awareness among the general population of the existence of an institution offering support for victims of discrimination at work is relatively high (61 %) ⁶⁴⁴. Several reports and stakeholders point to the need to prepare tailored guidance and organise awareness-raising activities for a variety of actors and for the public in general, on the one hand, to inform people of the rights under the RED and national legislation and, on the other hand, to fight stereotypes based on racial or ethnic characteristics.

More specifically, **guidance and awareness raising** activities concerning racism, intolerance, prejudice and discrimination and explaining the relevant legal provisions should be delivered to

⁶³⁶ National Strategy of the Republic of Bulgaria for Equality, Inclusion and Participation of the Roma (2021 – 2030), pp. 22 -35.

⁶³⁷ National Strategy of the Republic of Bulgaria for Equality, Inclusion and Participation of the Roma (2021 – 2030), p. 35.

⁶³⁸ Tackling Antigypsyism, Ensuring Participation. National Strategic Framework to Implement the EU Roma Strategic Framework in Germany, p 17.

⁶³⁹ Tackling Antigypsyism, Ensuring Participation. National Strategic Framework to Implement the EU Roma Strategic Framework in Germany, p 17.

⁶⁴⁰ Programme for Social and Civic Integration of the Roma Community in Poland for 2021–2030, pp. 52 -57.

⁶⁴¹ National Strategy for Roma Equality, Inclusion and Participation 2021-2030

⁶⁴² European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

⁶⁴³ FRA EU-MIDIS II Survey; European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

⁶⁴⁴ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

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all **actors involved in the administration of justice** including **judges, lawyers, prosecutors, the police and prison officers**⁶⁴⁵. In several Member States⁶⁴⁶, guidance is provided by the higher courts in how the concept of the burden of proof should be applied in accordance with the Directive⁶⁴⁷. In France, guidance was developed for public prosecutors to deal with anti-discrimination cases in the form of a circular distributed to all public prosecutors⁶⁴⁸. The circular provides instructions to the public prosecutors in giving priority to discrimination cases, both criminal and civil cases. It also instructs the public prosecutor to use the investigation powers of the national equality body in discrimination cases and requires public prosecutors, for instance, to remain active in committees fighting racism when these enable the adoption of local prevention policies. In the Netherlands, the national equality body developed a decision tree for deciding whether profiling may be considered ethnic profiling or not with a view to provide further guidance to law enforcement authorities⁶⁴⁹.

Further **guidance on the use of rights** under the Directive can also be provided to the **general public** and, in particular, to (potential) victims of discrimination. Such guidance could be targeted to a specific audience and include, for instance, guidelines for filing complaints regarding discriminatory commercials and advertising⁶⁵⁰, or on the availability of free legal aid and of interpretation and translation services⁶⁵¹. Good practice guides can also be developed for companies across the EU to disseminate good practices to fight discrimination.

Box 33: Examples of guidance developed in the Member States

Examples of guidance developed in Member States

- **France:** guidance for **public prosecutors** for dealing with discrimination cases in criminal and civil law cases. Specific instructions developed to provide better legal protection against racism and hate crimes: e.g., public prosecutors should not hesitate to use civil procedures to quickly block access to websites or webpages which propagate hate speech, increased sensibilisation of investigation bodies for the procedural limitations or difficulties (e.g., gathering of evidence or prescription limits) and for the reception of victims, reactivate the specialisation of investigative judges and enhance the development of partnerships with local powers and civil society, including through participation in the local anti-racism committees⁶⁵².
- **Netherlands:** national equality body prepared guidance and a decision tree for determining whether profiling by law enforcement may be considered **ethnic profiling**⁶⁵³. The guidance document and accompanying decision tree provides tools for assessing a risk profile for discrimination. It contains a minimum norm which all public bodies, including law enforcement, should comply with when determining and using risk profiles. A risk profile may not be exclusively or predominantly based on ethnicity, origin or nationality. The use of ethnicity, origin or nationality may moreover only be used very exceptionally and the need for such necessity shall be unequivocal.

⁶⁴⁵ ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance; Interview with stakeholder from Belgium.

⁶⁴⁶ For instance, Austria, Denmark, Ireland, Slovakia, Spain.

⁶⁴⁷ See also below under 'burden of proof'.

⁶⁴⁸ Ministère de la Justice (France), [Circulaire du 4 avril 2019 relative à la lutte contre les discriminations, les propos et les comportements haineux](#), 2019.

⁶⁴⁹ Information provided by national expert for the Netherlands through desk research.

⁶⁵⁰ Interview with a national stakeholder in Austria.

⁶⁵¹ ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance.

⁶⁵² Ministère de la Justice (France), [Circulaire du 4 avril 2019 relative à la lutte contre les discriminations, les propos et les comportements haineux](#), 2019.

⁶⁵³ College voor de Rechten van de Mens (2021), [Discriminatie door risicoprofielen: voorkom etnisch profileren](#) (*Discrimination through risk profiles: prevent ethnical profiling*) and [Discriminatie door risicoprofielen: Een mensenrechtelijk toetsingskader](#) (*Discrimination through risk profiles: a human rights assessment framework*).

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Several ECRI reports identify the **support to educational establishments** in combating racial and ethnic discrimination, in particular to raise awareness about the specific difficulties faced by Roma children, as important protection mechanisms⁶⁵⁴. ECRI raised, for instance, the need for additional support for Roma children, such as Roma teaching assistants and support for their integration in mainstream education instead of in special needs classes. Such support can also help remove administrative obstacles, e.g., domiciliation requirements for registering in a school⁶⁵⁵. Municipal authorities in Belgium highlighted the need to address structural discrimination and racial bias through educational activities in schools, including awareness raising activities, such as theatre plays and information campaigns for children⁶⁵⁶.

Communication campaigns and dissemination of information should be organised for the individuals that could be (potential) victims of racial or ethnic discrimination as well as for the public at large. Specific campaigns regarding anti-discrimination legislation and derived rights should be set up, specifically **targeted to ethnic minorities and victims of discrimination**⁶⁵⁷. This can include preparing brochures, guides, carrying out general and targeted campaigns, running seminars, and other innovative communication campaigns. ECRI reports moreover that awareness-raising activities should also be **targeted at specific groups** (such as employers and employees, persons offering public services, members of the legal community and judiciary). For instance, in Ireland, the Equality Authority prepared special materials to raise awareness among the Traveller community about the existence of a new anti-discrimination legislative framework and complaints mechanism. In Belgium, a campaign 'Stop Ethnic Profiling', led by seven organisations⁶⁵⁸ and a human rights' activist was organised to inform those most at risk of ethnic profiling by the police of their rights and what they can do if they were victims of ethnic profiling⁶⁵⁹. In Portugal, information materials were prepared and distributed on discrimination and harassment in tenancy and housing acquisition⁶⁶⁰.

In parallel, **awareness-raising activities** should also target the **general public**, in particular with a focus on preventing racial and ethnic discrimination⁶⁶¹. A 2016 report by Equinet reported, through the national equality bodies, a significant rise in discrimination, hate speech and hate crime related to race and ethnic origin⁶⁶². The report highlights the need for awareness-raising campaigns for the public, such as lectures in universities, short movies or video games as well as national action weeks⁶⁶³. Messages in support of inclusion, in particular on the negative impacts of discrimination, should be disseminated to the public, and communication strategies and

⁶⁵⁴ ECRI (2018), 5th report on Latvia; ECRI (2015), 5th report on France; ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance; Interview with a national stakeholder in Belgium.

⁶⁵⁵ ECRI (2018), 5th report on Latvia; ECRI (2015), 5th report on France.

⁶⁵⁶ Interview with a national stakeholder in Belgium.

⁶⁵⁷ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final; Equinet (2016), Fighting Discrimination on the Ground of Race and Ethnic Origin; ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance; ECRI (2018), 5th report on Portugal; Information provided by national experts for Belgium, Finland, Portugal and Slovakia through desk research.

⁶⁵⁸ Amnesty International Vlaanderen, MRAX, LEVL, Liga voor Mensenrechten, Ligue des droits humains, Uit De Marge, JES.

⁶⁵⁹ Information provided by national expert for Belgium through desk research.

⁶⁶⁰ Information provided by national expert for Portugal through desk research.

⁶⁶¹ ENAR (2020), [Intersectional discrimination in Europe: relevance, challenges and ways forward](#); Equinet (2016), Fighting Discrimination on the Ground of Race and Ethnic Origin; OHCHR, Management Plan 2018-2021; FRA (2019), Roma and Travellers Survey,; Information provided by national expert for Czech Republic and France through desk research.

⁶⁶² Equinet (2016), Fighting Discrimination on the Ground of Race and Ethnic Origin.

⁶⁶³ Equinet (2016), Fighting Discrimination on the Ground of Race and Ethnic Origin.

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multi-media campaigns, using social media tools, should be used to reach youth and marginalised groups⁶⁶⁴. Awareness-raising campaigns should also focus on the subtle ways in which discrimination occurs, including through unintended, unconscious behaviour and on victims' rights of redress⁶⁶⁵. The FRA in particular underlines the need to include actions targeting anti-discriminatory sentiments in Roma inclusion strategies and to directly involve Roma communities in designing such campaigns⁶⁶⁶.

Box 34: Examples of communication and information campaigns in the Member States

Examples of communication and information campaigns in the Member States⁶⁶⁷

- **Estonia:** the Ombudsman participated in a campaign to raise awareness of the existence of his office.
- **Ireland:** the Equality Authority produced materials in different languages and formats to highlight the existence of a new anti-discrimination legislative framework and complaints mechanism.
- **Belgium:** federal campaign against racism launched in March 2019 to denounce stereotypes through videos broadcast on social media and in train stations. At local level, activities are organised by municipalities in schools to educate pupils about racism, for example through theatre plays.
- **France,** campaign by the Equality Body to raise young people's awareness of the importance to fight stereotypes and promote equality as well as an educational platform. Also in France, a communication campaign was launched against discrimination in sports followed by a legal guide on this topic. The Ministry of Interior has also published on its website practical guides regarding the fight against discrimination.
- **Romania:** various projects/campaign to raise awareness about discrimination of Roma people.
- **Latvia:** adopted guidelines (2021-2027) for the development of a cohesive and active civic society with the aim of facilitating the understanding of society of diversity, by reducing negative stereotypes towards certain groups in society.
- **Lithuania:** a number of public awareness activities have been implemented at a state level by the equality bodies, with the aim to prevent hate crimes and discrimination against Roma population and other minorities.
- **Czech Republic:** the "Know the truth and spread it further (*Poznej pravdu a šíř ji dál*)" project with the aim of detecting and refuting fake news about Roma and refugees. A media campaign was also carried out in 2019 via Czech Television, Czech Radio and social networks with the objective of mainstreaming the position of Roma culture in society. An online awareness raising campaign was also launched called "I did a terrible thing" (*Udělal jsem hroznou věc*). The campaign focused on the critical situation of the Romani LGBT+ community. Finally, a specific online campaign was organised to incentivise Roma communities to declare their Roma ethnic background and Romani mother tongue at the 2021 Population, Housing and Urban Census.
- **Portugal:** the plan for the Prevention of Discriminatory Practices in Security Forces and Services provides for a reinforcement in the external communication channels of the security forces to promote the visibility of women and minorities in the police.

⁶⁶⁴ OHCHR, Management Plan 2018-2021; FRA (2019), Roma and Travellers Survey; Information provided by national expert for Czech Republic and France through desk research.

⁶⁶⁵ ENAR (2020), [Intersectional discrimination in Europe: relevance, challenges and ways forward](#).

⁶⁶⁶ FRA (2019), Roma and Travellers Survey.

⁶⁶⁷ Examples gathered from: ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance; EC High Level Group on Non-discrimination, Equality and Diversity (2018), Guidelines on improving the collection and use of equality data; Equinet (2016), Future of equality legislation in Europe; Equinet (2016), Fighting Discrimination on the Ground of Race and Ethnic Origin; Equinet (2021), Assessing gaps in the Racial Equality Directive; FRA (2019), Roma and Travellers Survey; ECRI (2019) 6th report on Belgium; ECRI (2019), 5th report on Slovenia; Information provided by national expert for Czech Republic, Latvia, Lithuania and Romania through desk research.

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Conferences should be organised gathering researchers, policy makers and other experts to tackle racism and racial discrimination in the EU⁶⁶⁸. Such conferences can focus on specific topics or assess anti-discrimination policies and tools on a regular basis.

Through **public speech**, initiatives can also be taken to tackle racism and discrimination, including “structural” discrimination or racial bias. For instance, the EU Anti-racism Action plan notes the importance of acknowledging the historical roots of racism publicly to address prejudices and stereotypes⁶⁶⁹. The promotion of balanced and positive narratives, increasing awareness and knowledge of journalists and fostering media literacy are important tools in this respect⁶⁷⁰. Finally, equality bodies can also play a role through the issuance of public statements to acknowledge certain issues, such as, for example, ethnic profiling⁶⁷¹.

The obligations to provide information about the RED and assistance to victims are **included in the RED**. Article 10 of the RED requires Member States to bring the provisions of the RED to the attention of the individuals concerned. The equality bodies are also mandated, in Article 13, with the task to provide independent assistance to victims of discrimination in pursuing their complaints. **No more detailed requirements** are, however, included in the RED about the development of guidance for potential victims of discrimination, actors in the areas where discrimination may occur, and regarding awareness-raising activities and communication campaigns against racism, racial and ethnic discrimination, and unconscious bias for the public in general. While these activities are in many Member States within the core of the mandate of the national equality body, the specific activities organised by the national equality body will depend to a great extent of the national mandate in the Member State concerned and the available resources.

The Commission has undertaken **policy initiatives** to increase awareness of the provisions of the Directive and has supported awareness raising campaigns on key topics, e.g., the communication activities to fight anti-Roma discrimination and stereotypes, the EU Diversity Month and the annual designation of a European capital of inclusion and diversity to make good practices at local level more visible⁶⁷².

Participants in the stakeholder workshop and in interviews emphasised the importance of providing targeted guidance and raise awareness of the public in general about racial and ethnic discrimination, racism and unconscious racial bias. Participants noted that, while the RED foresees in the requirement to provide information, there is a need for further EU and national action to operationalise the current legal provisions.

Training about racial and ethnic discrimination is identified as particularly important by a range of stakeholders for different target audiences. As highlighted in the EU Anti-Racism Action Plan 2020-2025, teachers must be trained to work with all children and be sensitive to the needs of pupils from different backgrounds, including on issues relating to racial discrimination, so that schools can be safe havens, free from bullying, racism and discrimination⁶⁷³. **Children should be taught early** about equality, respect and inclusion and be empowered to promote such

⁶⁶⁸ Ontario (2017), [A better way forward: Ontario’s 3-year Anti-racism Strategic plan](#); Ontario (2020), **Error! Hyperlink reference not valid.** Annual progress report 2020: [Ontario’s Anti-Racism Strategic Plan](#).

⁶⁶⁹ EU Anti-Racism Action Plan 2020-2025.

⁶⁷⁰ EU Anti-Racism Action Plan 2020-2025.

⁶⁷¹ Equinet (2019), Equality bodies countering ethnic profiling.

⁶⁷² European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final; Communication activities to fight discrimination against Roma, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/roma-eu/communication-activities-fight-discrimination-against-roma_en; European Commission, Diversity and inclusion initiatives: [EU Diversity Month and European Capitals of Inclusion and Diversity Award](#).

⁶⁷³ EU Anti-Racism Action Plan 2020-2025.

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values among their peers and in their communities⁶⁷⁴. For that reason, **educational programmes** for schools and universities should integrate equality and non-discrimination⁶⁷⁵. ECRI, for instance, recommends including the history of Roma people and Travellers in school curricula and teaching materials. A Portuguese stakeholder recommended revising the school curriculum to tackle the colonialist and slavery past of Portugal⁶⁷⁶. Moreover, it is important to train school staff in inclusive education, human rights and tolerance⁶⁷⁷.

Box 35: Selected examples in relation to teaching on racial or ethnic discrimination in education

Selected examples in relation to teaching on racial or ethnic discrimination in education⁶⁷⁸

- Austria: human rights education has been formally integrated into the school system through 'citizenship education', which is primarily a cross-curricular educational principle, applicable to all subjects and to all types of schools at each level. This principle expressly defines 'overcoming prejudice, stereotypes, racism, xenophobia and antisemitism as well as sexism and homophobia' as its specific aim. At local level, the Board of Education for Vienna adopted the topic of human rights as one of its long-term pedagogical aims, offering relevant training seminars for teachers.
- Cyprus: the Ministry of Education encouraged all schools to adopt an anti-racism policy and develop activities with students, teachers and parents. If schools have incidents of racial discrimination, they are submitted in a summary report to the Ministry at the end of the school year. Moreover, a Code of Conduct against Racism and Guide for Managing and Reporting Racist Incidents in Schools in 2014, which set out an anti-racist policy and provides schools and teachers with advice on preventing racist incidents and violence in school context..
- Germany: the Standing Conference of the Ministers of Education and Cultural Affairs (KMK) is working on a document regarding the history, culture and way of life of Sinti and Roma. Human rights education is a cross-curricular topic in secondary education of children aged from 10 to 19 years.
- Netherlands: the anti-discrimination bureau of Friesland gives training in schools.
- Spain⁶⁷⁹: provision on ensuring knowledge of the Roma culture was introduced into the education system in new legislation on education at the end of 2020. The Spanish law requires that equal treatment and non-discrimination be addressed at the different stages of basic education. It adds that the study of, and respect for, other cultures, particularly the Roma and other groups, must be considered. The aim is to contribute to appreciating cultural differences and recognising and disseminating the history and culture of ethnic minorities in Spain, thus promoting knowledge about them and reducing stereotypes.

Similarly, training should be provided to public officials involved in or providing public services as well as the police officers, public prosecutors, judges and other personnel involved in law enforcement⁶⁸⁰. CEPOL could be involved in training provided to law enforcement. However, it is

⁶⁷⁴ EU Anti-Racism Action Plan 2020-2025.

⁶⁷⁵ OHCHR, Management Plan 2018 -2021; EU Anti-Racism Action Plan 2020-2025; ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance; ECRI (2020), 6th report on Austria; ECRI (2019), 6th Report on Germany; ECRI (2016), 5th Report on Luxembourg; ECRI (2018), 5th Report on Portugal; ECRI (2020), 6th Report on Czech Republic; Information gathered by national experts for Cyprus, France, Netherlands, Poland and Romania under this study; Interviews with stakeholders at EU level, in Belgium, Luxembourg, Netherlands, Poland, Portugal and Slovenia.

⁶⁷⁶ Interview with stakeholder in Portugal.

⁶⁷⁷ E.g. ECRI, 6th Report on Czech Republic.

⁶⁷⁸ Examples gathered by the national experts through desk research and stakeholder interviews.

⁶⁷⁹ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives.

⁶⁸⁰ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final; Commission Communication on Ensuring justice in the EU — a European judicial training strategy for 2021-2024, COM(2020) 713 final; ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance; Amnesty International (2019), [Observations to the United Nations Committee on the Elimination of Racial Discrimination's Draft General Recommendation no. 36 on](#)

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noted by CEPOL itself that training should in addition be provided in every EU official language in the Member States at a local level⁶⁸¹. Equinet notes that, while trainings can be useful for setting basic standards, there is little evidence that trainings change officer behaviour or institutional practices driving ethnic profiling. This underlines the importance of combining training with longer-term initiatives that include leadership, strong policies on ethnic profiling and monitoring police actions⁶⁸². FRA moreover calls for the need to develop guides to ensure that police officers do not conduct racial profiling in the framework of their mandate. Such guidance can be attached to relevant legislation included in police standard codes of conduct⁶⁸³. Some stakeholders recommend increasing the duration of general police training to prepare police officers to deal with specific situations, including situations of discrimination⁶⁸⁴. The increased duration of police training would allow the training programme to focus on a wider range of issue, including the preparation of police officers for concrete situations which they may encounter during their work.

Box 36: Selected examples in relation to training on racial or ethnic discrimination for public officials and law enforcement

Selected examples in relation to training on racial or ethnic discrimination for public officials and law enforcement⁶⁸⁵

- **Finland:** the Police University College in Tampere organises the official training programme for police officers. The basic police degree is a Bachelor's degree which takes three years to complete. The programme focuses on practical knowledge and skills, including to deal with situations of possible discrimination and to deal with possible discriminatory complaints by citizens.
- **Belgium:** Brussels Environment Agency provides staff members with written communication about the inclusive employment policy of the organisation. Internal awareness-raising events are organised.
- **France:** civil servants are regularly trained in the areas of diversity and fight against discrimination. The National School of Magistrates has introduced a six-day-training on the fight against discrimination.
- **Romania:** the 2015-2020 Strategy had the objective to introduce teaching modules on Roma population for specialists in public administration, social assistance, health, education. Public officials in the Ministry of Interior, the police, police schools and academies and gendarmerie schools are provided training on racism, discrimination and diversity. Police are briefed specifically on human rights issues including on violence against Roma.
- **Poland:** judges and prosecutors are trained on human rights and anti-discrimination by the National School for Prosecutors.
- **Cyprus:** training courses developed, among others, on intercultural sensitivity in policing. In addition to training provided by the Cyprus Police Academy, the Office for Combatting Discrimination of the Police offers in-house trainings alone or in conjunction with the Ombudsperson.
- **Germany:** National Action Plan against Racism develops and tests various training modules for criminal judges and public prosecutors in the field of racism. The trainings are to be used by judges and public prosecutors in responding appropriately to racist and hate-motivated acts, to deal appropriately with the experiences of those affected in criminal proceedings, and to thus enable them to have effective and non-discriminatory access to justice.

[preventing and combating racial profiling](#); FRA (2018), Report: Being Black in the EU; European Parliament (2019), Scaling up Roma Inclusion Strategies: Truth, reconciliation and justice for addressing antigypsyism; ECRI (2020), statement of June 2020 on racist police abuse, including racial profiling and systemic racism;; ECRI (2018), Discrimination, artificial intelligence, and algorithmic decision-making; European Commission (2021), How to put reasonable accommodation into practice – Guide of promising practices (for the Belgian and Hungarian example); Equinet (2019), Equality bodies countering ethnic profiling; Amnesty International (2016), Police and Minority Groups – Short paper series no. 3; ECRI (2015), 5th Report on France; ECRI (2016), 5th Report on Lithuania; ECRI (2016), 5th Report on Luxembourg; ECRI (2018), Conclusions on Greece; Information gathered by national experts for Czech Republic, France, Italy, Luxembourg, Netherlands, Poland and Romania under this study; Interviews with stakeholders at EU level, in France, Netherlands, Luxembourg, Poland, Portugal and Romania.

⁶⁸¹ Interview with stakeholder at EU level.

⁶⁸² Equinet (2019), Equality bodies countering ethnic profiling.

⁶⁸³ FRA (2018), Report: Being Black in the EU.

⁶⁸⁴ Interview with stakeholder in Belgium.

⁶⁸⁵ Examples gathered by the national experts through desk research and stakeholder interviews.

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Selected examples in relation to training on racial or ethnic discrimination for public officials and law enforcement⁶⁸⁵

- **Greece:** National School of Judges included lessons on racism and xenophobia into its 2017 curriculum for judges and prosecutors. Moreover, intensified training is provided to the police through courses on human rights protection and racial discrimination.
- **Czech Republic:** different measures have been introduced to increase the competence of police officials on hate violence and discrimination. In particular, specific modules on discrimination/hate crimes have been introduced in the basic training of law enforcement agencies and police corps.
- **Spain:** public officials from the judiciary are required to attend training courses aimed at tackling discrimination in public institutions. Police corps must follow a legal protocol in order to carry out their duties in a non-discriminatory manner. The Prosecutor General's office attends a training course on annual basis on hate crimes and racial discrimination.

Finally, diversity and anti-discrimination training should also be organised **within the private sector** and among professionals outside of the public sector. For example, in France, human resources staff in charge of recruitment in large companies have to follow compulsory training on discrimination at least every five years⁶⁸⁶. In Italy, an NGO provided training for lawyers and social workers, among others, to better address victims' needs by promoting a victim-centred approach. Training should also be organised for migrants and ethnic minority organisations on equality and anti-discrimination laws⁶⁸⁷ as well as for journalists⁶⁸⁸.

The RED does not contain specific provisions about the training of individuals or organisations with a view to increase awareness of racial or ethnic discrimination or the non-discrimination legislation and the rights and obligations it provides for. Article 10 of the RED provides for an information obligation for individuals about the provisions of the RED. While Article 10 RED provides a legal basis for more specific policy initiatives at EU level, including for training specific individuals, target groups or organisations, such as for example, judges or education professionals, stakeholders noted that there is a need for a further operationalisation of the existing legal provisions.

Policy initiatives at EU-level have been developed on specific issues, such as training of law enforcement officials on hate crimes and speech, the organisation of training and webinars by FRA on the prevention of unlawful profiling, and the training of judges under the EU Strategy on European judicial training, which includes a component on training on the rights of victims of gender-based violence, racism and discrimination⁶⁸⁹.

3.2.3 Collection and use of equality data

As highlighted in the 2021 EC Report on the application of the RED, **equality data** are crucial for raising awareness, sensitising people, quantifying discrimination, showing trends over time, proving the existence of discrimination, evaluating the implementation of equality legislation, demonstrating the need for positive action, and contributing to evidence-based policymaking⁶⁹⁰.

⁶⁸⁶ Interview with stakeholder in France.

⁶⁸⁷ Information gathered by the national expert for Malta through desk research.

⁶⁸⁸ EU Anti-Racism Action Plan 2020-2025.

⁶⁸⁹ Information provided by European Commission. E.g. in the High Level Group on combating hate speech and hate crime.

⁶⁹⁰ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

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However, the work carried out by the EC Subgroup on Equality data revealed much variation in how Member States collect and use equality data⁶⁹¹.

The absence of equality data was identified as a major obstacle for providing protection to ethnic minorities and victims of racial or ethnic discrimination by several interviewed stakeholders and during the stakeholder workshop for several reasons. The lack of equality data often makes it difficult to prove discrimination⁶⁹². Ethnically disaggregated data would allow Member States to assess inequality in different sectors and would therefore be an important instrument for the development of proactive social inclusion policies for ethnic minorities⁶⁹³.

Several sources therefore propose the adoption of measures relating to the **collection and use of equality data**. Equality data should be disaggregated by race or ethnic origin, based on self-identification, collected in accordance with the GDPR, covering underrepresented groups at risk of discrimination and gather experiences of discrimination⁶⁹⁴. Moreover, data on specific topics should be collected through dedicated projects, such as, for example on algorithmic discrimination when using artificial intelligence for decision-making⁶⁹⁵.

Several stakeholders highlight the need for a **harmonised methodology** to collect data in the EU, that includes the engagement of diverse actors in data collection⁶⁹⁶. **Data** on judgments and complaints received by equality bodies, the police, public services, inspectorates and the judiciary should be **made public**⁶⁹⁷. **Situation testing** is identified as a particularly useful method to examine patterns of discrimination and identify possible "structural" discrimination⁶⁹⁸. Several

⁶⁹¹ EC High Level Group on Non-discrimination, Equality and Diversity (2018), Guidelines on improving the collection and use of equality data.

⁶⁹² Equinet (2021), Assessing gaps in the Racial Equality Directive; Ministère de la Justice (France), [Circulaire du 4 avril 2019 relative à la lutte contre les discriminations, les propos et les comportements haineux](#), 2019.

⁶⁹³ FRA (2012), The Racial Equality Directive: application and challenges.

⁶⁹⁴ FRA (2021), Equality in the EU: 20 years on from the initial implementation of the equality directives.

⁶⁹⁴ ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance.

⁶⁹⁵ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final; European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives; European Commission (2021), Algorithmic discrimination in Europe: challenges and opportunities for gender equality and non-discrimination law; ECRI (2018), Discrimination, artificial intelligence, and algorithmic decision-making; ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance; ECRI (2015), 5th report on Poland; Information provided by national expert for Belgium and Finland through desk research; Interviews with stakeholders in Belgium.

⁶⁹⁶ Equinet (2021), Assessing gaps in the Racial Equality Directive; European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final; European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives; Interviews stakeholders at EU level, in France and Luxembourg.

⁶⁹⁷ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final; European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives; ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance; ECRI (2015), 5th report on France; ECRI (2018), 5th report on Portugal; Open Society Foundation (2013), The Race Equality Directive, a shadow report; Information provided by national expert for Poland through desk research; Interviews with stakeholders in Slovenia, Belgium and the Netherlands.

⁶⁹⁸ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final; European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment

Equality Directives; Migration Policy Group (2020), Handbook on the Racial Equality Directive: with a special focus on Italy, Romania and Sweden, Independent Report; Migration Policy Group and the Centre for Equal Rights (2009), Proving Discrimination Cases - the Role of Situation Testing; Equinet (2017), Fighting Discrimination on the Ground

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EU Member States are increasing the use of situation testing. In some Member States, the national equality body is authorised to conduct situation tests during an investigation of an alleged case of discrimination and to consider the results as evidence when taking a decision⁶⁹⁹. In France, the public prosecutors are encouraged to use situation testing to address the specific difficulty of gathering evidence in discrimination cases⁷⁰⁰. Situation testing can also be used to analyse the situation of vulnerable social groups at local level in different social areas. For instance, in Hungary, municipalities are required to adopt five-year local equal opportunities programmes containing an analysis of the situation of vulnerable social groups in different social areas, including education, housing, employment, health care⁷⁰¹. The analysis shall be used by municipalities as a basis for drafting local action plans. **Surveys** should be organised both among the general population and for specific target groups, including about the experiences and perceptions of potential victims of discrimination, e.g., in companies⁷⁰². FRA also recommends the use of population **censuses** for collecting equality data⁷⁰³.

Interinstitutional cooperation within the Member States, to gather data across different departments and entities, should be fostered to obtain timely and fit-for-purpose data, relevant to the needs identified in an efficient manner⁷⁰⁴. Such coordinated data collection should include the regular mapping of existing equality data sources as well as the identification of information gaps⁷⁰⁵. The FRA recommends that the national equality body should be involved in facilitating such interinstitutional cooperation within the Member States⁷⁰⁶. The expertise of the national equality bodies should moreover be used to gather data on specific cases of discrimination⁷⁰⁷. A **variety of relevant actors**, including statistical offices, public departments, inspectorates, research centres, civil society organisations, data protection authorities, the private sector and, **in particular minority organisations, should be involved in collecting and disseminating equality data**⁷⁰⁸. Overall, institutional capacity should be built to collect and reliable equality data. This should be matched with the availability of adequate resources to facilitate such tasks. Finally, statistics should be developed, including to serve as evidence of indirect discrimination⁷⁰⁹.

of Race and Ethnic Origin; Information gathered by national expert for Hungary under this study; Interviews with stakeholders at EU level, in Belgium and in Sweden.

⁶⁹⁹ For instance, Hungary and France. Information gathered by national expert for France and Hungary under this study.

⁷⁰⁰ Ministère de la Justice (France), [Circulaire du 4 avril 2019 relative à la lutte contre les discriminations, les propos et les comportements haineux](#), 2019.

⁷⁰¹ Interview with stakeholder in Hungary.

⁷⁰² FRA (2021), Equality in the EU: 20 years on from the initial implementation of the equality directives; ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance; European Commission (2021), How to put reasonable accommodation into practice – Guide of promising practices; ECRI (2020), 6th report on Austria; ECRI (2015), 5th report on France; ECRI (2015), 5th report on Poland; ECRI (2017), 5th report on Sweden; Information gathered by national expert for Portugal under this study; Equinet (2021), Why we need to reveal - Views on racism data collection in Europe; Interviews with stakeholders at EU level, in France and Luxembourg.

⁷⁰³ FRA (2021), Equality in the EU: 20 years on from the initial implementation of the equality directives.

⁷⁰⁴ FRA (2021), Equality in the EU: 20 years on from the initial implementation of the equality directives; EC High Level Group on Non-discrimination, Equality and Diversity (2018), Guidelines on improving the collection and use of equality data.

⁷⁰⁵ EC High Level Group on Non-discrimination, Equality and Diversity (2018), Guidelines on improving the collection and use of equality data; Information gathered by national expert for Spain under this study.

⁷⁰⁶ FRA (2021), Equality in the EU: 20 years on from the initial implementation of the equality directives.

⁷⁰⁷ E.g. in the Netherlands, the national equality body is in charge of carrying out research on the role of discrimination in relation to childcare benefits revocations. In Belgium, the national equality requested a study on racial profiling by police authorities, in collaboration with a local police zone, from the National Institute of Criminology.

⁷⁰⁸ OHCHR, Management Plan 2018 -2021; European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

⁷⁰⁹ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final; FRA (2021), Equality in the EU: 20 years on from the initial implementation of the equality directives.

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Several sources suggest that comprehensive data disaggregated by race or ethnic origin should be collected and made publicly available on **racial profiling by law enforcement**⁷¹⁰. For example, in Sweden, Belgium and the Netherlands, reports are being prepared on ethnic profiling by the police, in collaboration with the local police authorities⁷¹¹. ECRI also highlights the need to gather such data of racist incidents brought to the attention of law enforcement as well as on the ethnic origin of all persons who come into contact with the criminal justice system, as is being gathered in the United Kingdom⁷¹². Regarding stop and searches, the right data should be registered, such as, for example, unique identifiers, the outcome, why someone was stopped, etc., to combat the repetitive stop and searches for persons from specific minorities⁷¹³.

Equinet states that it could be beneficial to introduce a **regulatory framework** or legal instrument to reduce the obstacles identified in relation to the collection and use of equality data⁷¹⁴.

Box 37: Selected examples in relation to the collection and use of equality data

Selected examples in relation to the collection and use of equality data⁷¹⁵

- **Spain:** The General Council of the Judiciary set up a Monitoring Committee in 2016 for the monitoring of the Interinstitutional Convention against Racism, Xenophobia and all forms of Intolerance in their areas of competence. The Spanish Observatory on Racism and Xenophobia (OBERAXE), which works under the responsibility of the Ministry of Labour, Migration and Social Security's Secretary of State for Migration, collects information on racism in Spain.
- **United Kingdom:** Extensive ethnic monitoring of the criminal justice system including searches, arrests, cautions, homicides and deaths in custody.
- **France:** French Equality body recommends gathering data relating to identity checks by the police.
- **Sweden:** the Swedish Crime Prevention Council published a report on discrimination in the criminal justice process in Sweden.
- **Hungary:** situation tests represent an important tool for proving discrimination against Roma.
- **France:** Circular for public prosecution offices encourages the use of situation testing to gather evidence where other methods are unsuccessful.
- **Netherlands:** the joint anti-discrimination bureaus publish (online) reports and figures on the number of complaints that were submitted to them and to the police as well as on the type of complaints.
- **Belgium:** The Belgian public employment service (VDAB) has set up an ethical committee in charge of monitoring its algorithmic systems and ensuring that they are fair, ethical and do not lead to discrimination.
- **Czech Republic:** The AI Observatory and Forum was set up to serve as the '*Czech Republic's expert platform and forum for monitoring legal and ethical rules for artificial intelligence*'.

⁷¹⁰ UN High Commissioner for Human Rights (2021), [Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers](#), A/HCR/47/53; ECRI (2007), General Policy Recommendation no. 11 on combating racism and racial discrimination in policing; EU Anti-Racism Action Plan 2020-2025; ECRI (2020), Conclusions on Denmark; ECRI (2018), Conclusions on Estonia; ECRI (2019), 5th report on Slovenia; ECRI (2019), 5th report on the Netherlands; Equinet (2019), Equality bodies countering ethnic profiling; ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance; ENAR (2020), Policing racialised groups; Amnesty International (2016), Police and Minority Groups – Short paper series no. 3; FRA (2018), Report: Being Black in the EU; FRA (2021), Equality in the EU: 20 years on from the initial implementation of the equality directives; Interviews with stakeholders in the Netherlands, Sweden, Portugal and Belgium.

⁷¹¹ Information gathered by national experts for Belgium, Netherlands and Sweden under this study.

⁷¹² ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance.

⁷¹³ ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance.

⁷¹⁴ Equinet (2021), Assessing gaps in the Racial Equality Directive".

⁷¹⁵ Examples gathered by the national experts through desk research and stakeholder interviews.

There is **no general requirement under the Directive** to collect, analyse and use equality data, beyond the requirement in Article 13 for equality bodies to conduct independent surveys and publish independent reports⁷¹⁶. Moreover, some Member States⁷¹⁷ consider that data collection based on ethnicity is unlawful, resulting in the absence of equality data⁷¹⁸. Initiatives have been undertaken by the FRA to gather equality data at an EU-level. For example, the Eurobarometer provides regular insights on discrimination on the basis of the opinions of EU citizens. More specific surveys have gathered an understanding of perceptions of racial and ethnic discrimination in the EU, such as the EU survey on 'being black in the EU' and the upcoming FRA survey on discrimination and hate crimes against Jews, expected in 2023.

Stakeholders, including those participating in the workshop, identified the need for equality data, disaggregated by race and ethnicity, as essential for understanding the scale and manifestations of racial and ethnic discrimination in the EU. While initiatives have been set up, participants noted the need to operationalise the existing provisions further by continuing engaging into soft law initiatives at EU level. A participant moreover noted that it is important to have a legal basis underpinning data collection efforts to ensure their enforcement. Such legal requirements should be adopted at national level in a manner that takes consideration of the legal framework in which such data collection requirements are embedded.

3.2.4 Diversity in public sector

Ethnic diversity should also be represented in the public sector, including in the legal system and police. The OECD highlights the increasing awareness that diversity can help achieve important outcomes in major policy areas while promoting good governance practices by helping to improve the relations between the government and citizens, and by strengthening trust in government⁷¹⁹.

Minority representatives should be employed in equality bodies, ombudsmen, national human rights institutions as well as police forces⁷²⁰. Police forces should, for instance, include Roma and Travellers among their staff to increase their trust in the institutions⁷²¹.

There are no requirements in the RED about diversity in the public sector and the employment of minority representatives in public functions.

3.2.5 Collective agreements

Collective agreements should be drawn up by trade unions and employers' representatives as well as joint texts and guidelines to tackle racism and racial or ethnic discrimination in all fields

⁷¹⁶ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

⁷¹⁷ Austria, France and Hungary

⁷¹⁸ Equinet (2016), Fighting Discrimination on the Ground of Race and Ethnic Origin; FRA (2012), The Racial Equality Directive: application and challenges.

⁷¹⁹ OECD, "[Fostering diversity in the public sector](#)", 2009.

⁷²⁰ FRA (2019), Roma and Travellers Survey; Amnesty International (2016), Police and Minority Groups – Short paper series no. 3; Information gathered by national expert in Romania through desk research; Interview with stakeholder in the Netherlands, Portugal and Sweden.

⁷²¹ FRA (2019), Roma and Travellers Survey.

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which fall within the scope of **collective bargaining**, including on specific topics⁷²². For example, in Spain, a collective agreement was adopted within the banking sector for the prevention of discrimination caused by the use of artificial intelligence⁷²³.

Article 11 of the RED provides for the promotion of social dialogue between social partners through, among others, the adoption of collective agreements, codes of conduct, exchange of experiences and good practices. There is therefore no gap identified, though **exchanges of best practices** could further incentivise the conclusion of specific collective agreements to tackle racial and ethnic discrimination at the workplace.

3.2.6 Dialogue, cooperation and collaboration

An important protection mechanism in the fight against racial and ethnic discrimination is **dialogue and cooperation and collaboration between different actors**. Several sources point to the need for a regular dialogue with **civil society organisations and social partners**⁷²⁴. Civil dialogue with the civil society organisations concerned is encouraged in Article 12 of the RED. Some Member States provide by law for regular dialogue on equality with civil society organisations, including through advisory committees within their national equality bodies⁷²⁵. The EU Anti-racism plan 2020-2025 additionally mentions the need for cooperation with the **regional- and local-levels**, including through networks at EU-level as they have experience in developing effective strategies to combat racism and in building networks⁷²⁶. The UN additionally points to the need for partnerships with the **private sector, the media and parliaments**⁷²⁷. Cooperation between authorities and business organisations can, for instance⁷²⁸, be organised

⁷²² European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives; European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

⁷²³ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives.

⁷²⁴ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final; UN High Commissioner for Human Rights (2021), [Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers](#), A/HCR/47/53; EU Anti-Racism Action Plan 2020-2025; European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives; European Parliament (2019), Scaling up Roma Inclusion Strategies: Truth, reconciliation and justice for addressing antigypsyism; FRA (2019), Roma and Travellers Survey; ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance; Amnesty International (2016), Police and Minority Groups – Short paper series no. 3; ECRI (2020), 6th Report on Austria; ECRI (2019), 6th Report on Belgium; ECRI (2019), 6th Report on Germany; ECRI (2016), 5th Report on Luxembourg; ECRI (2018), 5th Report on Latvia; ECRI (2019), 5th Report on Lithuania; ECRI (2019), 5th Report on the Netherlands; ECRI (2017), 5th Report on Sweden; ENAR, "EU Anti-racism Action plan: civil society recommendations 2021, 2022", 2021, <https://www.enar-eu.org/eu-anti-racism-action-plan-civil-society-recommendations-2021-2022/>; Information gathered by national experts in Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Croatia, Spain and Slovak Republic through desk research;

⁷²⁵ E.g. Finland, Ireland and Spain.

⁷²⁶ As mentioned in the EU Anti-Racism Action Plan 2020-2025, this could include cooperation with the network of major European cities (EUROCITIES) and the UNESCO-led European coalition of cities against racism. International Urban Cooperation (IUC) programme and Covenant of Mayors for Climate and Energy could serve as platforms or models for further developing city-level action promoting racial equality.

⁷²⁷ UN High Commissioner for Human Rights (2021), [Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers](#), A/HCR/47/53.

⁷²⁸ EU Anti-Racism Action Plan 2020-2025; Equinet (2016), Fighting Discrimination on the Ground of Race and Ethnic Origin; [European Commission webpage on diversity and inclusion initiatives](#).

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in **Diversity Charters**, through which signatories make a voluntary commitment to create and maintain an inclusive work environment for their employees⁷²⁹.

Dialogue and cooperation should also be organised at an **interinstitutional level**⁷³⁰. Interinstitutional cooperation could result in the enhanced collection of equality data, covering a wider range of sources, and in a more accurate identification of data needs. Moreover, collaboration could be set up to investigate and address specific issues in relation to racial discrimination.

In **Spain**, the Government signed a cooperation agreement on institutional cooperation against racism, xenophobia and LGBTI phobia in 2018. In **France**, a department against discrimination is set up within each District Attorney's office, gathering all actors intervening in this area⁷³¹. Several stakeholders, moreover, point to the need to improve, in particular, the dialogue and cooperation with police, public prosecution and the justice system⁷³². For example, the participation of affected communities in the modification of policing and the reform of the criminal justice system should be encouraged and police officers should be frequently engaged in a constructive dialogue with minority groups. FRA emphasises, in its report 'Being Black in the EU', that state authorities should create synergies with police forces and communities. This synergy should be developed especially at the local level, cooperating with local minority residents, associations and businesses⁷³³. Dialogue should also aim at promoting cultural understanding and awareness of prejudice for persons involved in the administration of justice.

Cooperation should also be organised to tackle **specific topics**, such as, for instance, cooperation between equality bodies, data protection authorities and academics to tackle algorithmic discrimination by artificial intelligence⁷³⁴.

Finally, it is key to establish a dialogue and engage with the **persons affected by everyday racism**⁷³⁵. The dialogue between Member State authorities, national equality bodies and civil society should include representatives of diaspora networks, social partners, political parties, businesses, education and training providers, social workers, healthcare professionals, academia, cultural and sports organisations and youth-based organisations⁷³⁶.

Box 38: Selected examples in relation to dialogue, cooperation and collaboration

Selected examples in relation to dialogue, cooperation and collaboration ⁷³⁷

- Inclusion of local experts from the Roma population or Roma mediators. E.g. in **Romania**, local experts for Roma are being hired within the local public administration. In **Sweden**, Roma mediators have been implemented to provide support in the areas of education, social services and

⁷²⁹ European Commission, [Overview of Diversity Charters in the EU Member States](https://www.eudiversity2022.eu/european-diversity-month-2022/eu-platform-of-diversity-charters/). See also <https://www.eudiversity2022.eu/european-diversity-month-2022/eu-platform-of-diversity-charters/>

⁷³⁰ Equinet (2020), A perspective from the work of equality bodies on: European equality policy strategies, equal treatment directives, and standards for equality bodies; Equinet (2019), Equality bodies countering ethnic profiling; Equinet (2016), Fighting Discrimination on the Ground of Race and Ethnic Origin; ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance.

⁷³¹ Ministère de la Justice (France), [Circulaire du 4 avril 2019 relative à la lutte contre les discriminations, les propos et les comportements haineux](#), 2019.

⁷³² UN High Commissioner for Human Rights (2021), [Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers](#), A/HCR/47/53; ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance; Amnesty International (2016), Police and minority groups – Short paper series No. 3, p.16; ECRI (2020), Statement of June 2020 on racist police abuse, including racial profiling and systemic racism; FRA (2018), Report: Being Black in the EU; ECRI (2019), 5th Report on Romania; ECRI (2017), 5th Report on Sweden; Interviews national stakeholders in the Netherlands and Luxembourg.

⁷³³ FRA (2018), Report: Being Black in the EU.

⁷³⁴ ECRI (2018), Discrimination, artificial intelligence, and algorithmic decision-making.

⁷³⁵ EU Anti-Racism Action Plan 2020-2025; FRA (2018), Report: Being Black in the EU.

⁷³⁶ EU Anti-Racism Action Plan 2020-2025.

⁷³⁷ Examples gathered by the national experts through desk research and stakeholder interviews.

Selected examples in relation to dialogue, cooperation and collaboration ⁷³⁷

health. In **Belgium**, the Belgian National Roma Platform was launched in 2016 to encourage active dialogue between the relevant parties. In **Bulgaria**, involvement of Roma mediators with responsibilities to facilitate communication, access to services (justice), information, awareness raising or recognition of problems and persons in need. In **Germany**, four Länder (Berlin, Bremen, Hamburg and Schleswig-Holstein) have put in place Sinti and Roma mediators to improve interaction and cooperation between Sinti and Roma pupils, their parents and schools. Eg: in **Cyprus**, the National Roma Platform organised working meetings with the participation of representatives of public authorities, local authorities, the Ombudsperson and the Commissioner for the Protection of Children's Rights, academics involved with equality and/or discrimination and representatives of Cypriot Roma.

- **Netherlands**: anti-discrimination bureaus ensure the cooperation between social teams, police agents and housing corporations. Moreover, a Partnership Training Programme to improve cooperation between the police, public prosecution service, anti-discrimination centres and municipal authorities was set up.
- **Austria**: national monitoring in Austria takes place in a dialogue platform, in which both representatives of government agencies and those of civil society associations, as well as experts from science and research are involved. Moreover, the "Gemeinsam Sicher" (Safe together)" initiative aims to bring police closer to citizens.
- **Belgium**: use of peacekeepers (non-police public security 'officers'). The aim is to increase security through their presence in the neighbourhoods as they present a link between the municipality and the citizens of a neighbourhood. They do not have enforcement authority, but they can inform citizens and report problems to the municipal authority or the police.
- **Belgium**, specific inclusion activities have been set up by the Police zone of the North of Brussels, in collaboration with civil society organisations, e.g., internal diversity events such as la Quinzaine de la diversité and project on the Holocaust, police and human rights at the Kazerne Dossin
- **Denmark**: Danish National Police has initiated a broader dialogue with representatives of the Muslim Council and the Jewish community in Denmark.
- **Spain**, the OBERAXE (part of several Spanish ministries) collaborates and coordinates public and private organisations working in the prevention of racism and prepares plans and strategies to promote the inclusion of migrants in Spain.
- **Malta**, a LGBTIQ Consultative Council was set up to advise the Government on issues which impact this community. The Council includes representatives of organisations working in the field of LGBTIQ rights or experts.
- **Italy**: Law 101/1989 establishes a duty for the State to consult representatives of the Jewish community for programming inclusive actions in different areas of life (education, employment, sport etc).
- **Finland**: at the level of central administration, a working group for promoting non-discrimination and access to social and health services have been established.

While civil dialogue with the civil society organisations concerned is encouraged in **Article 12 of the RED** and further policy measures have been taken by the Commission and the Member States to encourage such dialogue, further steps are identified to encourage dialogue and cooperation involving all actors concerned by racial or ethnic discrimination.

3.2.7 Equality duties

Several sources of information point to the importance of imposing **legal duties on the public and/or private sector** as an effective and proactive way of promoting equality and preventing and eliminating discrimination. Equality duties may take many forms⁷³⁸. The RED does not currently require Member States to impose equality duties. According to Equinet, to stimulate the

⁷³⁸ See Equinet (2016), Making Europe more equal: a legal duty?

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adoption of statutory equality duties and ensure uniform quality across Member States, action at European level should be envisaged⁷³⁹.

In Ireland, all public bodies have a **statutory duty** to eliminate discrimination, promote equality of opportunity and treatment, and protect the human rights of its members, staff and the persons to whom they provide services⁷⁴⁰. Public bodies are required to assess in their strategic plan any equality issues relevant to its purpose and functions, set out how to address such issues, and report on developments and achievements⁷⁴¹. The Irish Human Rights and Equality Commission assists public bodies and reviews their performance, including through a requirement to implement an internal equality and human rights review and plan when there is failure of compliance⁷⁴².

To tackle the issue of multiple discrimination, some countries have introduced a **prohibition of multiple discrimination**, as is the case in Greece and in Norway, where discrimination is prohibited on multiple grounds, including ethnicity, and a combination of these grounds.

Equality planning, which refers to the obligation to draw up plans putting forward the necessary measures for the promotion of equality, falls under the category of equality duties. In Finland, this obligation applies to state and municipal authorities, education providers and employers and is supervised by the Non-Discrimination Ombudsman of Finland⁷⁴³. Equinet considers the powers of the Non-Discrimination Ombudsman of Finland, which include giving guidance and, in case the relevant entities fail to comply with this obligation, bringing the matter to a specialised tribunal, a good practice⁷⁴⁴. In Hungary, budgetary bodies and state-controlled companies with more than 50 employees are obliged to adopt an equal opportunities plan aimed at assessing the composition of the workforce, including the situation of Roma employees, so as to outline measures to prevent and address cases of discrimination, and at the same time establish positive measures⁷⁴⁵.

Several reports highlight the importance of carrying out **equality impact assessments**⁷⁴⁶. Equality impact assessments provide a '*systematic way of finding out whether a function, such as a policy or practice, is equality-compliant or if it has a disparate impact on particular communities, or groups within communities*'⁷⁴⁷. In Austria, draft legislation must go through an impact assessment covering equality and non-discrimination⁷⁴⁸. In the UK, equality impact assessments are also conducted focusing on the potential or past impact of laws and policies on the right to

⁷³⁹ Equinet (2016), Making Europe more equal: a legal duty?, pp. 8, 72 and 73.

⁷⁴⁰ Section 42 of the Irish Human Rights and Equality Commission Act 2014.

⁷⁴¹ Section 42 of the Irish Human Rights and Equality Commission Act 2014.

⁷⁴² See Equinet (2016), Making Europe more equal: a legal duty?

⁷⁴³ Finnish Non-Discrimination Act (1325/2014).

⁷⁴⁴ Equinet (2021), Compendium of good practises on equality mainstreaming: the use of equality duties and equality impact assessments, pp. 26 and 27.

⁷⁴⁵ Article 63 of the Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (ETA). Information obtained from the Hungarian Deputy Commissioner for Fundamental Rights Responsible for the Rights of National Minorities via interview held on 16 February 2022.

⁷⁴⁶ Equinet (2021), Compendium of good practises on equality mainstreaming: the use of equality duties and equality impact assessments; Amnesty International and Open Society Foundations (2021), [A Human Rights Guide for Researching Racial and Religious Discrimination in Counter-terrorism in Europe](#), p. 99; UN High Commissioner for Human Rights (2021), [Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers](#), A/HCR/47/53; ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance. Also, interview with Dutch independent expert working for ECRI.

⁷⁴⁷ Equinet (2021), Compendium of good practises on equality mainstreaming: the use of equality duties and equality impact assessments, p. 10.

⁷⁴⁸ Information obtained from representative of the Austrian Ministry of Justice via interview held in February 2022.

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equality⁷⁴⁹. Other Member States conduct more targeted impact assessments of policies⁷⁵⁰. For this purpose, the use of equality data to examine and evaluate the impact and effectiveness of non-discrimination legislation and to carry out impact assessment before the adoption of policies constitutes a good practice⁷⁵¹. Equality impact assessments are also an important tool to tackle discrimination specifically caused by AI⁷⁵².

ENAR and the Center for Intersectional Justice highlight that it is also important to consider the design, implementation and impact of policies from an **intersectional lens** to ensure they benefit all, including racialised groups, and do not have a detrimental impact on them and contribute to further racial inequalities⁷⁵³. To this end, existing policies and legislation can be routinely screened and reviewed from an equality and intersectional perspective. An **intersectional analysis of policies**, such as gender equality policies, could show how the specific situation of women at the intersections of race, religion, sexual orientation and gender identity, social class, disability and immigration status, are often overlooked⁷⁵⁴.

Duties may also be imposed on corporations to respect human rights and avoid adverse human rights impacts through their activities, including in what concerns racial discrimination⁷⁵⁵. The newly introduced proposal of the European Commission for a Directive on Corporate Sustainability Due Diligence intends to establish a horizontal framework for due diligence duties, including in relation to human rights⁷⁵⁶.

Linking **access to public funds, participation in public tenders, awarding contracts, loans and other benefits by public authorities**, to the observance of equality standards is considered a good practice by the European network of legal experts in gender equality and non-discrimination and ECRI⁷⁵⁷. At the EU level, the Recital of the Directive on public procurement mentions that the '*award of public contracts by or on behalf of Member States' authorities has to comply with the principles of the Treaty on the Functioning of the European Union (TFEU)*,

⁷⁴⁹ Amnesty International and Open Society Foundations (2021), [A Human Rights Guide for Researching Racial and Religious Discrimination in Counter-terrorism in Europe](#), p. 99.

⁷⁵⁰ Good practices identified by Equinet include the *ex officio* revision by the Office of the Ombudswoman of Croatia of the rulebooks on acquiring a state stipend for Roma students and the involvement of the Gender Equality and Equal Treatment Commissioner's Office of Estonia in the process of ensuring the effective implementation of the Welfare Development Plan in what concerns the promotion of the principle of equality. Also, in Northern Ireland, the Equality Commission for Northern Ireland advises public authorities in connection with their statutory duty to "have due regard to the need to promote equality of opportunity" between nine equality categories and reviews the effectiveness thereof. This promotion of equality of opportunity through the systematic screening of public authorities' policies was also considered a good practice by Equinet. – Equinet (2021), *Compendium of good practises on equality mainstreaming: the use of equality duties and equality impact assessments*, pp. 13, 14, 17 and 18.

⁷⁵¹ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final, p. 16 (with reference to the good practices reported by Belgium and Finland); Amnesty International and Open Society Foundations (2021), [A Human Rights Guide for Researching Racial and Religious Discrimination in Counter-terrorism in Europe](#).

⁷⁵² European network of legal experts in gender equality and non-discrimination (2020), *Algorithmic discrimination in Europe, Challenges and opportunities for gender equality and non-discrimination law*; Data Protection Working Party (2017), [Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679](#); Committee of Ministers, Council of Europe (2021), [Recommendation on the human rights impacts of algorithmic systems](#), CM/Rec(2020)1.

⁷⁵³ ENAR (2020), [Intersectional discrimination in Europe: relevance, challenges and ways forward](#).

⁷⁵⁴ ENAR (2020), [Intersectional discrimination in Europe: relevance, challenges and ways forward](#).

⁷⁵⁵ UN High Commissioner for Human Rights (2021), [Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers](#), A/HCR/47/53.

⁷⁵⁶ [Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive \(EU\) 2019/1937](#), of 23.2.2022, COM(2022) 71 final, 2022/0051 (COD).

⁷⁵⁷ European network of legal experts in gender equality and non-discrimination (2021), *Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives*, p. 114; ECRI (2019), 5th report on Finland; ECRI (2018), 5th report on Croatia.

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*and in particular [...] the principles deriving therefrom, such as equal treatment, non-discrimination*⁷⁵⁸. Therefore, under the Directive, Member States have a duty to guarantee that contracts should be awarded on the basis of objective criteria ensuring compliance with the principles of transparency, non-discrimination and equal treatment⁷⁵⁹.

Under Swedish law, large public procurement services and building contracts entered into by Sweden's largest Government agencies have to include an anti-discrimination condition. In Austria, state subsidies and public sector tenders above a specific value threshold can only be awarded to companies that commit to discrimination free behaviour⁷⁶⁰. Under Portuguese law, companies engaging in discriminatory practices are excluded from public tenders and, in the event of a conviction for discrimination, may be subject to other sanctions such as deprivation of the right to a subsidy or benefit⁷⁶¹. In this regard, ECCAR suggests adapting Articles 20 and 21 of the European Commission proposal for a Directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, which indicate the revocation of public benefits or the temporary exclusion from any award of financial inducements as penalty for the repeated infringement of the rights and obligations relating to equal pay between men and women, to ethnic equality and to adopt them in the context of the Racial Equality Directive⁷⁶².

ECRI encourages entities engaging in certain sectors of activity, such as the media, internet service providers, and in sport, to promote **self-regulation** through **codes of conduct**, aiming at, namely, preventing the negative stereotyping of minorities⁷⁶³. More broadly, ECRI recommends the adoption of codes of conducts by employers to promote equality and prevent and eliminate discrimination in the workplace, including in recruitment, selection, access to training, promotion and termination⁷⁶⁴. Such codes of conduct, which should guide the implementation of the relevant anti-discrimination standards, demonstrate the commitment of employers to the principle of non-discrimination. Moreover, ECRI recommends that the codes envisage the setting up of effective reporting channels⁷⁶⁵ and that specialised bodies are enabled to assist and oversee in the implementation of such codes⁷⁶⁶. In Luxembourg, the real estate chambre has established an ethic code and a quality charter that its 200 members agreed to respect and which prohibits discrimination⁷⁶⁷. In France, the Police and *Gendarmerie* are subject to a Code of Ethics which prohibits officers to establish distinctions based on origin or ethnicity, among others, and establishes disciplinary sanctions in case of infringement⁷⁶⁸. Several universities have also adopted codes of conduct prohibiting discrimination based on any ground, including racial and ethnic⁷⁶⁹.

⁷⁵⁸ Recital 1 of the Directive 2014/18/EC of the European Parliament and the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

⁷⁵⁹ *Ibid.*

⁷⁶⁰ Information obtained from a representative from the Austrian Ministry of Justice via interview held in February 2022.

⁷⁶¹ ECRI (2018), 5th report on Portugal.

⁷⁶² ECCAR (2022), Response - EU consultation on the Racial Equality Directive (Directive 2000/43/EC) concerning potential gaps and suitable measures to address those gaps.

⁷⁶³ ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance, p. 73; ECRI (2009), General Policy Recommendation no. 12 on Combating Racism and Racial Discrimination in the Field of Sport, par. 60.

⁷⁶⁴ ECRI (2012), General Policy Recommendation no. 14 on Combating Racism and Racial Discrimination in Employment, par. 10 c) and d); ECRI (2000) General Policy Recommendation No. 5 on Combating Intolerance and Discrimination against Muslims.

⁷⁶⁵ ECRI (2019), 5th report on Romania.

⁷⁶⁶ ECRI (2012), General Policy Recommendation no. 14 on Combating Racism and Racial Discrimination in Employment, par. 10 c) and d).

⁷⁶⁷ Information provided by national expert for Luxembourg through desk research.

⁷⁶⁸ ECRI (2015), 5th report on France; Information provided by national expert for France through desk research.

⁷⁶⁹ Information provided by national expert for Poland through desk research.

Box 39: Examples of equality duties

Examples of equality duties

- **Ireland:** all public bodies have a statutory duty to eliminate discrimination, promote equality of opportunity and treatment, and protect the human rights of its members, staff and the persons to whom they provide services.
- **Finland:** state and municipal authorities, education providers and employers are obligated to draw up plans putting forward the necessary measures for the promotion of equality. This obligation is supervised by the Non-Discrimination Ombudsman of Finland.
- **Hungary:** budgetary bodies and state-controlled companies with more than 50 employees are obliged to adopt an equal opportunities plan aimed at assessing the composition of the workforce so as to outline measures to prevent and address cases of discrimination, and at the same time establish positive measures.
- **Austria:** draft legislation must go through an impact assessment covering equality and non-discrimination.
- **UK:** equality impact assessments of laws and policies focus on their potential or past impact on the right to equality.
- **Belgium:** legal duty for legislative bodies to periodically examine and evaluate the effectiveness of anti-discrimination legislation.
- **Sweden:** legal obligation to include an anti-discrimination condition in large public procurement service and building contracts entered into by Sweden's largest Government agencies.
- **Austria:** state subsidies and public sector tenders above a specific value threshold can only be awarded to companies that commit to discrimination free behaviour.
- **Portugal:** exclusion of companies engaging in discriminatory practices from public tenders.

To ensure the existence of effective remedies for victims of racial discrimination, they shall be granted the possibility to lodge complaints before disciplinary boards. The adoption of **disciplinary measures** for dealing with racial discrimination is in particular suggested by ECRI in the field of sports⁷⁷⁰. In addition, a stakeholder notes that such disciplinary measures should be developed for persons representing governmental bodies or other state authorities using discriminatory language or behaving in a discriminatory way⁷⁷¹. Article 7 of the RED provides that Member States shall ensure that judicial and/or administrative procedures are available for the enforcement of obligations under the Directive. However, the availability for victims of racial discrimination of disciplinary procedures is not foreseen under the RED.

In light of the recent technological developments, the necessity to introduce **transparency obligations** has been recommended as a potential means to prevent discrimination linked to the use of algorithms⁷⁷². Indeed, due to the fact that there is currently no obligation for companies to disclose algorithm characteristics, it results in difficulty for victims to establish that they have been discriminated against based on racial or ethnic criteria⁷⁷³. To that extent, imposing an obligation of accessibility of algorithms may allow the difficulties linked to the identification of the source of algorithmic discrimination to be tackled and ensure that discrimination does not go unnoticed⁷⁷⁴.

If the issue of racial discrimination through new technology and in particular algorithms is not tackled in the RED, however, the General Data Protection Regulation (GDPR) provides in its

⁷⁷⁰ ECRI (2009), General Policy Recommendation No.12 on combating racism and racial discrimination in the field of sport, par. 10 c), 37 and 58.

⁷⁷¹ Information obtained from a representative of Open Republic Association via interview held on 23 February 2022.

⁷⁷² European network of legal experts in gender equality and non-discrimination (2020), Algorithmic discrimination in Europe: Challenges and opportunities for gender equality and non-discrimination law; Information obtained from a representative of the Maltese Equality Body via interview held on 8 February 2022.

⁷⁷³ European network of legal experts in gender equality and non-discrimination (2020), Algorithmic discrimination in Europe: Challenges and opportunities for gender equality and non-discrimination law, p.76.

⁷⁷⁴ European network of legal experts in gender equality and non-discrimination (2020), Algorithmic discrimination in Europe: Challenges and opportunities for gender equality and non-discrimination law, p.74-76.

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Article 5(1)(a) for a duty of transparency in the processing of personal data. In application of the principle of transparency, controllers are under the obligation of explaining to individuals the functioning of automated decision-making processes⁷⁷⁵. Articles 13(2)(f) 14(2)(g) and 15(1)(h) of the GDPR impose an obligation for data controllers to inform a data subject of the existence of automated decision-making. Furthermore, the Commission Proposal on artificial intelligence⁷⁷⁶ establishes transparency rules for high risk artificial intelligence systems. Article 13 (1) of the Commission Proposal on artificial intelligence establishes that high-risk AI systems shall be designed and implemented to ensure a sufficient transparency of their operations to enable users to interpret the system's output and use it appropriately. The European Law Institute has developed **model rules on impact assessment of algorithmic decisions** used by public administration⁷⁷⁷. According to such model rules, the implementing authority shall prepare an impact assessment report, including an evaluation of the measures taken to ensure the transparency of the system as well as the explainability of its decisions.⁷⁷⁸ The Council of Europe has adopted recommendations on the human rights' impacts of algorithmic systems in which it highlighted the role for Member States to ensure that the design, development and ongoing deployment of algorithmic systems do not have direct or indirect discriminatory effects⁷⁷⁹. The Council recommends that countries should establish **appropriate levels of transparency** with regard to the public procurement, use, design and basic processing criteria and methods of algorithmic systems implemented by and for them or by private sector actors⁷⁸⁰.

At the national-level, some initiatives and instruments have been adopted to tackle algorithmic discrimination.

Box 40: Examples of initiatives aimed at enhancing transparency in relation to AI

Examples of initiatives aimed at enhancing transparency in relation to AI

- **Poland:** introduction of a 'right to clarify' for banking legislation in creditworthiness cases (based on the provisions of the GDPR)⁷⁸¹
- **Netherlands:** a general obligation to ensure explainability, transparency and accessibility of algorithms has been established by the Dutch Council of State⁷⁸². Complaints where there is a suspicion of algorithmic discrimination can be submitted by citizens in one central location online: meld.nl.⁷⁸³
- **Malta:** the Government developed an Ethical Artificial Intelligence Framework based on the respect of the fundamental rights recognized at the EU level⁷⁸⁴. The Ethical AI Framework promotes the establishment of alternative transparency mechanisms such as traceability, auditability, providing information on system capabilities.

⁷⁷⁵ Data Protection Working Party (2017), [Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679](#), p.16.

⁷⁷⁶ European Commission, Proposal for a Regulation of the European Parliament and of the Council laying down harmonized rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts, COM(2021) 206 final.

⁷⁷⁷ European Law Institute (2022), [Model Rules on Impact Assessment of Algorithmic Decision-Making Systems Used by Public Administration](#).

⁷⁷⁸ European Law Institute (2022), [Model Rules on Impact Assessment of Algorithmic Decision-Making Systems Used by Public Administration](#), p. 17-18.

⁷⁷⁹ Committee of Ministers, Council of Europe (2021), [Recommendation on the human rights impacts of algorithmic systems](#), CM/Rec(2020)1.

⁷⁸⁰ Committee of Ministers, Council of Europe (2021), [Recommendation on the human rights impacts of algorithmic systems](#), CM/Rec(2020)1, par. 4.1.

⁷⁸¹ EDRI (2019), [Poland: Banks obliged to explain their credit decisions](#).

⁷⁸² European network of legal experts in gender equality and non-discrimination (2020), Algorithmic discrimination in Europe: Challenges and opportunities for gender equality and non-discrimination law, p. 113.

⁷⁸³ <https://meld.nl/melding/discriminatie/algorithmische-discriminatie/>

⁷⁸⁴ Malta towards trustworthy AI, Malta's ethical Artificial Intelligence Framework (October 2019).

Examples of initiatives aimed at enhancing transparency in relation to AI

- **Cyprus:** establishment of a Center for Algorithmic Transparency by the Open University⁷⁸⁵.

In order to prevent discriminatory identity checks or to ensure that they are sanctioned if they occur, the **use of bodycams by the police, wearing identification numbers or the possibility to require an identity check receipt** indicating the name of the agent carrying out the identity check has been mentioned⁷⁸⁶. The requirement could act as a deterrent for escalation and serve as evidence in situations of alleged discriminatory behaviour by law enforcement officers, as well as a data source for equality data in relation to stop and searches by police⁷⁸⁷.

The creation of a **police division at the local level** has been identified by a Belgian stakeholder as a way to strengthen citizens' trust towards the police by creating a partnership between the population and law enforcement authorities⁷⁸⁸. As mentioned above, the material scope of the RED does not cover the exercise of law enforcement activities. In Belgium, such mechanism is intended to be developed under the notion of **community policing** which aims at developing partnerships between the police and various actors of the community (social workers, representatives of the Justice system, associations, non-profit organisations...).

Several sources encouraged the introduction of **positive action including quota systems and supportive measures for disadvantaged groups** as a good practice⁷⁸⁹. Positive action is mentioned in Article 5 of the RED which provides that the principle of equal treatment shall not prevent Member States from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin. However, the RED does not oblige Member States to adopt positive actions such as quota systems. For instance, ECRI recommends the adoption of measures aiming at incentivising employers to hire racial and ethnic minority workers through awards or tax reduction⁷⁹⁰ as well as the adoption of measures to facilitate the representation of minorities in political life⁷⁹¹, or in education (quota system for members of certain minorities)⁷⁹².

Box 41: Examples of positive actions

Examples of positive actions

- **Netherlands:** companies with more than 35 employees must strive for a proportional representation of minority groups in their workforce⁷⁹³.

⁷⁸⁵ European network of legal experts in gender equality and non-discrimination (2020), Algorithmic discrimination in Europe: Challenges and opportunities for gender equality and non-discrimination law, p. 99.

⁷⁸⁶ Information obtained from the French legal expert through desk research; Information obtained from a representative of the Belgian commune of Anderlecht via interview held in February 2022; ECRI (2015), 5th report on France.

⁷⁸⁷ Interview with national stakeholders in Belgium and France.

⁷⁸⁸ Information obtained from a representative of the Belgian commune of Anderlecht via interview held in February 2022.

⁷⁸⁹ ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance; ECRI (2015), 5th report on Poland; ECRI (2019), 5th report on Luxembourg; ECRI (2015), 5th report on France; ECRI (2019), 5th report on Romania; ECRI (2019), 5th report on the Netherlands; ECRI (2017), 5th report on Sweden; Ontario (2017), [A better way forward: Ontario's 3-year Anti-racism Strategic plan](#); ECCAR response to consultation; Information obtained from the Slovak legal expert through desk research; Information obtained from Association Novo Dia (Portugal) via interview held in February 2022.

⁷⁹⁰ ECRI (2016), 5th report on Luxembourg, p. 29.

⁷⁹¹ ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance, p. 22-23.

⁷⁹² ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance, p. 60.

⁷⁹³ ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance, p. 62.

Examples of positive actions

- **Portugal:** development of employment support programmes for people from ethnic or racial minorities.
- **Luxembourg:** development of positive action for people disadvantaged in the labour market.
- **Estonia:** promotion of the recruitment of minority groups into law enforcement agencies through the award of extra points to members of minority groups for which Estonian was not their mother tongue⁷⁹⁴.
- **Romania and Sweden:** positive action to ensure the inclusion of Roma people (scholarships, free transportation to school, free school supplies...)
- **Ireland:** introduction of a flexible approach regarding the requirement of a permanent address to register on electoral lists in order to facilitate the vote of Travellers⁷⁹⁵.
- **Canada:** policies encouraging the nominations and appointment of candidates with an ethnic and social background in the judiciary.

Several reports highlight the importance of including **ethnic communities in the development of policies and reforms**⁷⁹⁶. ECRI, for instance, recommends the participation of the Roma population in the evaluation of the Swedish Roma strategy and its implementation⁷⁹⁷. Amnesty International highlighted that guidance for police officers relating to interactions with members of the Roma community should be drafted in collaboration with representatives of the Roma population⁷⁹⁸. The UN emphasises that people from African descent should have the opportunity to meaningfully participate and be represented in state institutions, including in law enforcement and the criminal justice system, and take part in decision-making processes⁷⁹⁹.

The RED does not require Member States to introduce equality duties in the public or private sector nor provide for the obligation for Member States to ensure the participation or representation of racial and ethnic minorities in decision-making and policies. These are therefore gaps in the legal protection offered by the RED. Article 5 of the RED refers to the possibility for Member States to maintain or adopt specific positive action measures to prevent or compensate for disadvantages linked to racial or ethnic origin, which could cover positive action measures such as quota in a voluntary manner. Participants in the stakeholder workshop noted that Article 5 is formulated in such a broad manner that it is difficult to assess whether a Member State complies with this provision.

3.2.8 Other initiatives to better tackle intersectional discrimination

In addition to the intersectional analysis of policy measures and the prohibition of multiple discrimination mentioned above⁸⁰⁰, stakeholders proposed legal initiatives to better tackle multiple or intersectional discrimination. For instance, ECCAR suggests that EU rules could clarify that intersectional discrimination shall be covered when other grounds contribute to the occurrence

⁷⁹⁴ ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance, p. 71.

⁷⁹⁵ ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance, p. 22.

⁷⁹⁶ ECRI (2017), 5th report on Sweden; Amnesty International (2016), Police and minority groups – Short paper series No. 3; UN High Commissioner for Human Rights (2021), [Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers](#), A/HCR/47/53; ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance.

⁷⁹⁷ ECRI (2017), 5th report on Sweden, p. 27.

⁷⁹⁸ Amnesty International (2016), Police and minority groups – Short paper series No. 3, p. 16.

⁷⁹⁹ UN High Commissioner for Human Rights (2021), [Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers](#), A/HCR/47/53, par. 63.

⁸⁰⁰ The RED refers to multiple discrimination as a type of discrimination that could affect women in its Recital 14, though the issue is not further addressed in the main body of the Directive.

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of discrimination, when the net effect of the combined grounds constitute discrimination, even if the proof concerning the separate grounds is insufficient to prove the occurrence of discrimination⁸⁰¹. A number of sources emphasise that the **2008 European Commission proposal for an Equal Treatment Directive**⁸⁰² should be adopted to establish such intersectional protection against discrimination⁸⁰³. The proposal offers protection against discrimination on the basis of religion or belief, disability, age or sexual orientation in the materials areas covered by the Racial Equality Directive⁸⁰⁴, thus incorporating multiple discrimination in the EU legal framework⁸⁰⁵. Its adoption would potentially allow for the development of an intersectional protection against discrimination through case law⁸⁰⁶.

From a national legislative point of view, a positive practice identified in many of the Member States is the **adoption of a multi-ground antidiscrimination law** covering all spheres of social life, not only employment and occupation⁸⁰⁷. Such a law facilitates the collection of data and consideration of multiple grounds of discrimination by the courts as national courts tend to rely in their decision on grounds of discrimination established by law rather than on an open list⁸⁰⁸.

3.3 Specific protection mechanisms to effectively and adequately implement the broader protections under the RED

The protection mechanisms set up by the RED are overall considered effective and important to very important by the stakeholders consulted throughout this study⁸⁰⁹. Nevertheless, more specific measures were identified that could enhance the implementation of the protection mechanisms under the Directive. This Section identifies specific measures in relation to the defence of rights, as guaranteed under Article 7 of the Directive, and considerations for strengthening the mandate and role of the equality bodies, set up by Article 13 of the Directive.

3.3.1 Defence of rights

Under Article 7 of the Racial Equality Directive, Member States shall ensure that judicial and/or administrative procedures are **available** to whomever considers having been a victim of the failure to enforce the obligations set forth in the Directive. Member States shall, therefore, ensure the **right to an effective remedy**, enshrined in Article 47 of the EU Charter on Fundamental Rights, also in the context of instances of discrimination on the grounds of racial or ethnic origin.

⁸⁰¹ ECCAR (2022), Response - EU consultation on the Racial Equality Directive (Directive 2000/43/EC) concerning potential gaps and suitable measures to address those gaps.

⁸⁰² European Commission, Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008)426, 2 July 2008.

⁸⁰³ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives; Equinet (2021), Assessing gaps in the Racial Equality Directive.

⁸⁰⁴ With the exception of employment as this material area is already covered by Directive 2000/78/EC on equal treatment in employment and occupation.

⁸⁰⁵ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final; Equinet (2021), Assessing gaps in the Racial Equality Directive.

⁸⁰⁶ ECCAR (2022), Response - EU consultation on the Racial Equality Directive (Directive 2000/43/EC) concerning potential gaps and suitable measures to address those gaps.

⁸⁰⁷ European network of legal experts in gender equality and non-(2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives.

⁸⁰⁸ Equinet (2021), Expanding the List of Protected Grounds within Anti-Discrimination Law in the EU.

⁸⁰⁹ Stakeholder consultations through targeted survey, interviews with EU and national stakeholders, open public consultation. See results in introduction.

As identified by the European Commission⁸¹⁰, **under-reporting** of incidents of discrimination remains significant. One issue that has been identified as possibly hampering access to justice in this context relates to the **financial burden of proceedings**⁸¹¹. In this connection, ECRI recommends that states provide free legal aid and raise awareness on how to access it⁸¹². Many Member States have initiatives in place to alleviate the costs of bringing a discrimination claim before the competent authority⁸¹³ such as reduced court fees for discrimination cases⁸¹⁴, tax incentives⁸¹⁵, funds to cover legal costs⁸¹⁶, exemption of court fees⁸¹⁷, free legal aid or exemption of obligation to have legal representation⁸¹⁸ and establishing an exception to the rule that losing party must support the litigation costs of winning party⁸¹⁹. A participant at the stakeholder workshop noted that the financial burden of legal proceedings, where the losing party is sentenced to pay for the procedural expenses related to the proceedings, is an even greater disincentive to start proceedings due to the difficulty to present evidence that is accepted as sufficient by judges.

In addition to the costs of legal proceedings, other procedural barriers may hinder access to justice in discrimination cases such as **linguistic barriers** and time-limits to present the complaint⁸²⁰. ECRI recommends that States provide 'adequate interpretation and translation facilities' at all stages of the proceedings, including in what regards access to counsel⁸²¹. Moreover, although the RED does not specify a minimum time-limit for introducing discrimination complaints under the Directive, **time-limits** which are very short may hamper the right to access the relevant procedure or a tardive reaction by the competent authorities may entail further victimisation or hinder reparation. In some Member States, expedited judicial proceedings in case of discrimination are in place⁸²².

⁸¹⁰ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final, pp. 6 and 7. Also European Commission (2011), How to present a discrimination claim: Handbook on seeking remedies under the EU Non-Discrimination Directives, p. 61.

⁸¹¹ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final, p. 7; Migration Policy Group (2020), Handbook on the Racial Equality Directive with a special focus on Italy, Romania and Sweden, Independent Report, p. 18; Equinet (2016), Discussion Paper on Fighting Discrimination on the Ground of Race and Ethnic Origin, p. 33; European Commission (2011), How to present a discrimination claim: Handbook on seeking remedies under the EU Non-Discrimination Directives, pp. 60-63. Also information obtained from Dutch, Slovenian representatives via interviews held in February 2022.

⁸¹² ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance, p. 38; ECRI (2002) General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination, par. 26.

⁸¹³ Examples gathered from: European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final, p. 6; European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives, pp. 57-60.

⁸¹⁴ E.g. CZ and DK.

⁸¹⁵ E.g. BE and RO.

⁸¹⁶ E.g. IT.

⁸¹⁷ E.g. BG, HR, MT, PT, RO.

⁸¹⁸ E.g. DK and IT.

⁸¹⁹ E.g. SE. Also, suggestion by ECCAR in response to consultation drawing inspiration from the European Commission's proposal for a Directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, of 4.3.2021, COM(2021) 93 final 2021/0050 (COD).

⁸²⁰ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final, p. 7.

⁸²¹ ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance, p. 38; ECRI (2002) General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination, par. 26.

⁸²² E.g. BE, HR, IT and SE. Examples identified in European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives, pp. 59 and 60. Also, as per the information provided by national experts for Luxembourg through desk research in Luxembourg, there is an

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Other obstacles relate to **fear** of further **victimisation** or **retaliation** and the **expectations** of the victim on the **prospect** of success of the proceedings⁸²³. In France, an **online platform** was set up in 2021 to facilitate reporting of instances of discrimination⁸²⁴. Taking consideration of the need to protect victim's privacy and ensure a **safe place** to report and testify, some Member States may make court proceedings in cases of discrimination inaccessible to the public⁸²⁵.

In connection with the above, **lack of access to relevant information** may also significantly hamper access to justice⁸²⁶. **Mediators** may play a relevant role in helping victims accessing the relevant services and authorities. In the Belgian city of Antwerp, the police station includes a Diversity Section which is in charge of building networks with different communities in the city and maintaining close contacts with them, thus ensuring that the police is accessible to those communities⁸²⁷. In Bulgaria, Roma mediators are tasked with facilitating communication between the Roma community and authorities, access to services, including justice and protection, awareness raising, among others⁸²⁸. In Italy, a multi-agency body formed by the Italian national Police and Carabinieri (OSCAD) facilitates access to police services by intermediating contacts between the victim and the police⁸²⁹. National equality bodies may also act as a mediator in discrimination cases, as set out below. Appropriate training in discrimination issues and exchange among the relevant authorities, such as police officers and magistrates, and other organisations, via specialised and collaborative **networks** is also identified as a good practice in this regard⁸³⁰.

Under Article 7(2) of the Racial Equality Directive, Member States have a duty to ensure that associations, organisations or other legal entities with a legitimate interest may engage, either on behalf or in support of the victim, with his or her approval, in any judicial and/or administrative procedure. Ensuring **legal standing to organisations**, such as NGOs or trade unions, has proven very relevant in cases of collective discrimination⁸³¹ or in cases dealing with particularly vulnerable minorities⁸³². Moreover, strategic litigation and *actio popularis* moved by specialised NGOs can take the burden of the litigation in each particular case off the victims and may provoke the necessary dialogue and action to bring about structural change⁸³³. In this connection, Equinet recommends that equality bodies are recognised the powers to enable strategic litigation⁸³⁴.

emergency procedure in place through which the nullity of the termination of a working contract can be declared if the dismissal is based on discriminatory behaviour.

⁸²³ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final, p. 7;

⁸²⁴ Information obtained from the representative of the French National Equality Body via interview held on 23 February 2022.

⁸²⁵ E.g. HR, IE, LT, PT and Norway, as identified in European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives, p. 60.

⁸²⁶ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final, p. 7.

⁸²⁷ Information obtained from an officer of the Police of Antwerp via interview.

⁸²⁸ Information provided by national experts for Bulgaria through desk research and interview held on 8 February 2022.

⁸²⁹ Information provided by national experts for Italy through desk research.

⁸³⁰ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final, p. 6.

⁸³¹ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final, pp. 7-8.

⁸³² European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives, p. 91.

⁸³³ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives, pp. 91-94.

⁸³⁴ Equinet (2021), Assessing gaps in the Racial Equality Directive.

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The collection and presentation of **evidence** has proven particularly difficult in discrimination cases, in particular in relation to indirect discrimination⁸³⁵. The European network of legal experts in gender equality and non-discrimination highlights the application of the principle of free admissibility of evidence by courts as a good practice⁸³⁶. Statistical data may enable the uncovering of structural inequalities and constitute, therefore, an important element to support claims of discrimination⁸³⁷. Several Member States accept the use of statistical data as key evidence in discrimination cases⁸³⁸. In France, a circular with instructions for public prosecutors in relation to discrimination cases provides guidance for the admission and collection of evidence in discrimination cases, including the use of situation testing to gather evidence.

Several sources recommend that, given the difficulties complainants face in collecting the necessary evidence in discrimination cases, the law should provide for a shared **burden of proof** whereby the complainant should establish facts allowing for the presumption of discrimination, whereupon the onus shifts to the respondent to prove that discrimination did not take place⁸³⁹. Thus, in case of alleged direct racial discrimination, the respondent must prove that the differential treatment has an objective and reasonable justification. Article 8 of the Racial Equality Directive establishes the shift in the burden of proof in racial discrimination cases. The reversed burden of proof applies to any judicial and/or administrative procedure (regardless of who brings the case) and to all forms of discrimination covered by the Directives⁸⁴⁰. However, the 2021 EC report on the implementation of the Directive highlighted that some stakeholders reported that national courts still do not always apply the rules correctly or consistently, and standards of proof may vary in practice⁸⁴¹. Particular difficulties were for example identified for claims of indirect discrimination, where the availability and accessibility of relevant statistical data plays an important role⁸⁴². The shift in the burden of proof could also be extended to cover, for instance, cases of indirect discrimination.

In some Member States, a **specialised judicial body** deals specifically with cases of discrimination⁸⁴³. Although this is not a requirement of EU law, the establishment of specialised tribunals may *'lead to increased professionalisation of the judicial body and to a coherent approach in dealing with discrimination'*⁸⁴⁴.

On the other hand, some areas of activity warrant a particular concern, such as citizen's interaction with law enforcement authorities. In this connection, some Member States have set up

⁸³⁵ Equinet (2016), Discussion Paper on Fighting Discrimination on the Ground of Race and Ethnic Origin, p. 33; European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final, p. 7.

⁸³⁶ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives, pp. 48-51.

⁸³⁷ Migration Policy Group (2020), Handbook on the Racial Equality Directive with a special focus on Italy, Romania and Sweden, Independent Report, p. 17.

⁸³⁸ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives, pp. 48-51.

⁸³⁹ ECRI (2002), General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

⁸⁴⁰ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

⁸⁴¹ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

⁸⁴² European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

⁸⁴³ E.g. FI and IE – ECRI (2019), 5th report on Finland; Also European Commission (2011), How to present a discrimination claim: Handbook on seeking remedies under the EU Non-Discrimination Directives, p. 61.

⁸⁴⁴ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives, p. 9.

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independent bodies to hear complaints against the police. For example, in Luxembourg, citizens who deem to be in the presence of misconduct or inappropriate behaviour can lodge a complaint against a member of the police to the General Inspectorate of the National Police (Inspection Générale de la Police Nationale, IGPN) by email, letter or using an online compliant system⁸⁴⁵. In France, a citizen can make a complaint to the Rights Defender, to the IGPN or to the General Inspectorate of the National Gendarmerie (Inspection Générale de la Gendarmerie Nationale, IGGN). The IGPN and the IGGN carry out audits as well as administrative and criminal investigations⁸⁴⁶. In Cyprus, the Independent Authority for the Investigation of Allegations and Complaints Against the Police has jurisdiction to investigate allegations and complaints. The Members of the Authority can act as criminal investigators⁸⁴⁷. Finally, in Belgium, the Standing Police Monitoring Committee (Comité permanent de contrôle des services de police - Comité P), was created to increase police accountability and enhance parliamentary oversight. Under the supervision of the Federal Parliament, the Comité P oversees the general operation of the police and policing powers⁸⁴⁸. Police oversight mechanisms allow collecting, managing, and investigating complaints more effectively. They contribute to police accountability and building trust between citizens and the police⁸⁴⁹.

While the RED does not regulate many of the procedural aspects mentioned, reference should be made to other instruments of EU law which already contain relevant provisions. The **six procedural rights Directives**⁸⁵⁰ and the **Directive 2012/29/EU**⁸⁵¹ already address the right to information, interpretation and translation, access to a lawyer and legal aid, among others, in the context of criminal proceedings. In other areas, however, the principle of procedural autonomy of the Member States should be recalled, according to which, in the absence of EU rules on the matter, it is for the '*domestic legal system of each Member State to designate the courts having jurisdiction and to determine the procedural conditions governing actions at law intended to ensure the protection of the rights*' of individuals deriving from EU law⁸⁵². This *in casu* establishes the obligation of Member States to ensure effective legal protection in the fields covered by EU Law, as results from Article 19(1) of the TEU and Article 47 of the Charter, in particular, for the enforcement of the obligations set out in the RED, as prescribed in its Article 7(1).

⁸⁴⁵ ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance, p. 69.

⁸⁴⁶ European Parliament (2022), Democratic Oversight of the Police, p. 42.

⁸⁴⁷ Information provided by national experts for Cyprus through desk research.

⁸⁴⁸ IPCAN, Independent Police Complaints Authorities Network, Committee P, <https://ipcan.org/members/committee-p>.

⁸⁴⁹ European Parliament (2022), Democratic Oversight of the Police, p. 24.

⁸⁵⁰ [Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings](#); [Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings](#); [Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty](#); [Directive \(EU\) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings](#); [Directive \(EU\) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings](#); [Directive \(EU\) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings](#).

⁸⁵¹ [Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime](#).

⁸⁵² CJEU, Case C-33/76, *Rewe-Zentralfinanz eG and Rewe-Zentral AG v. Landwirtschaftskammer für das Saarland*, 16 December 1976, ECLI:EU:C:1976:188; CEJU, Case C-3/16, *Lucio Cesare Aquino v Belgische Staat*, 15 March 2017, ECLI:EU:C:2017:209; CJEU, Case C-425/16, *Hansruedi Raimund v Michaela Aigner*, 19 October 2017, ECLI:EU:C:2017:776.

Box 42: Examples of good practices to promote defence of rights

Examples of good practices to promote defence of rights

- **Sweden:** in discrimination cases brought by individuals by themselves or by NGOs on their behalf, there is an exception to the general rule that the losing party should support the litigation costs of the winning party if there were reasonable grounds for bringing the dispute to court.
- **Italy:** victims of discrimination can access a solidarity fund which covers legal costs.
- **Luxembourg:** emergency procedure through which the nullity of the termination of a working contract can be declared if the dismissal is based on discriminatory behaviour.
- **Belgium:** in the city of Antwerp, the police station includes a Diversity Section which is in charge of building networks with different communities in the city and maintaining close contacts with them, thus ensuring that the police is accessible to those communities.
- **Bulgaria:** Roma mediators are tasked with facilitating communication between the Roma community and authorities, access to services, including justice and protection, awareness raising, among others.
- **France:** creation of a department against discrimination in each District Attorney's office gathering all actors intervening in this area. One magistrate is designated to hold the anti-discrimination department and is in charge of creating a local network to fight against discriminations, which, among others, develops training for the police.
- **France:** online platform set up in 2021 facilitates reporting of instances of discrimination.
- **Ireland:** a specialised Equality Tribunal has an investigative role in complaints. The procedure before this Tribunal is informal, complainants may represent themselves and hearings are held in private.
- **Cyprus:** the Independent Authority for the Investigation of Allegations and Complaints Against the Police is in charge of investigating allegations and complaints of discrimination filed against police officers.

3.3.2 Sanctions

Article 15 of the RED requires Member States to provide for **effective, proportionate and dissuasive sanctions** for the infringements of the Directive. The Directives do not prescribe specific measures and allow Member States to decide on suitable remedies for achieving the objectives pursued⁸⁵³. A wide range of sanctions has been put in place at national level in relation to discrimination cases, including the imposition of fines, compensation, injunctions for perpetrators to refrain from certain behaviour or actions, public apologies, or even criminal sanctions. In some Member States, sanctions can be imposed by the national equality bodies, in addition to the judicial proceedings before a court⁸⁵⁴.

In practice, the 2021 Report on the application of the RED still identifies **difficulties in the implementation** of Article 15 of the Directive, e.g., in relation to compensation ceilings and cases without an identifiable victim. Moreover, some national courts tend to establish rather moderate levels of damages, favour non-monetary compensation or offer amounts of compensation at the lower end of the scale⁸⁵⁵. This has an impact on victims who may be dissuaded to go to court or an administrative body for redress⁸⁵⁶.

⁸⁵³ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

⁸⁵⁴ Equality bodies making a difference; Equinet (2021); European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives.

⁸⁵⁵ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final. Also raised in Equinet (2020), A perspective from the work of equality bodies on: European equality policy strategies, equal treatment directives, and standards for equality bodies;

⁸⁵⁶ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final; European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives;

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Article 83(2) TFEU provides the possibility of establishing minimum rules with regard to the definition of criminal offences and sanctions in areas which have been subject to harmonisation measures, i.e., to ensure the effective implementation of a harmonised EU policy, thus providing a legal basis for further EU legislative action in this area. This could be of relevance as racial or ethnic discrimination could at times be intertwined with hate crime and/or hate speech.

Further measures are proposed that could enhance the application of effective, proportionate and dissuasive sanctions for discrimination cases while respecting the limitations of the Treaty.

The collection of equality data should include court statistics and data on outcomes of court cases, including on compensation offered and sanctions applied, to obtain a better understanding of the sanctions applied for discrimination cases in the Member States⁸⁵⁷.

Secondly, EU Member States should **step up efforts** to improve the effectiveness of measures and institutional arrangements they have in place to enforce anti-discrimination legislation, and ensure that sanctions are effective, proportionate and dissuasive⁸⁵⁸. Equinet suggests that guidance could be developed at European level in this respect⁸⁵⁹. Such guidance could include best practices gathered from the Member States. In the Netherlands, for example, a change in legislation in 2015 allowed victims of discriminatory dismissals to also request reasonable compensation instead of only requesting the court to invalidate the termination of the labour agreement⁸⁶⁰. Sweden allows specifically for discrimination compensation, which according to the Supreme Court can be divided into dignity compensation and preventive compensation⁸⁶¹. In Portugal, a new law in 2017 grants victims of harassment rights to damage compensation and imposes a duty upon the employer to approve a Code of Conduct in relation to harassment practices in the company as well as the duty to start a disciplinary procedure against perpetrators of harassment⁸⁶².

Finally, in some countries, multiple discrimination is considered an **aggravating circumstance in judicial or administrative proceedings**. In such cases, multiple discrimination can be considered an aggravating circumstance in the determination of damages⁸⁶³. For example, in Romania, multiple discrimination is an aggravating circumstance in establishing responsibility for a minor offence, when one of the offences is subject to criminal law⁸⁶⁴.

The **EU competence** to prescribe specific sanctions is **limited** under EU law. Article 19 TEU states that Member States have to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law. In the areas of discrimination, such measures can be established in criminal law (though mostly for hate crimes), administrative law or specific anti-discrimination legislation, and may include compensation for damages under civil or tort law. The

⁸⁵⁷ FRA (2021), Equality in the EU: 20 years on from the initial implementation of the equality directives.

⁸⁵⁸ FRA (2021), Equality in the EU: 20 years on from the initial implementation of the equality directives.

⁸⁵⁹ Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final. Also raised in Equinet (2020), A perspective from the work of equality bodies on: European equality policy strategies, equal treatment directives, and standards for equality bodies;

⁸⁶⁰ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives.

⁸⁶¹ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives.

⁸⁶² European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives.

⁸⁶³ This is for instance the case in Austria, Liechtenstein, Croatia, Serbia and Slovenia. Equinet (2016), [Innovating at the Intersections. Equality Bodies Tackling Intersectional Discrimination](#).

⁸⁶⁴ In 2018, a first case of multiple discrimination against Romani women was sanctioned by the Romanian national equality body on this basis: <https://www.equalitylaw.eu/downloads/4544-romania-first-case-of-multiple-discrimination-against-romani-women-sanctioned-by-the-romanian-national-equality-body-pdf144-kb>

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Directive limits itself therefore to requiring Member State to provide for effective, proportionate and dissuasive sanctions for the infringements of the Directive. Nevertheless, as recalled in recital 33 of Directive 2006/54/EC, it has been clearly established by the Court of Justice that in order to be effective, the principle of equal treatment implies that the compensation awarded for any breach must be adequate in relation to the damage sustained.

3.3.3 Equality bodies

As mentioned in the 2021 Commission Report on the application of the RED, the RED leaves Member States a wide margin of discretion on the functioning of equality bodies⁸⁶⁵. Article 13 requires only that they have certain minimum competences:

- providing victims of discrimination with independent assistance in pursuing their complaints;
- conducting independent surveys on racial discrimination; and
- publishing independent reports and making recommendations on any issue relating to such discrimination.

This resulted in significant differences between the equality bodies established in the Member States, in terms of the bodies' mandate, competences, structures, resources and operational functioning, and ultimately in unequal protection for citizens from one Member State to another⁸⁶⁶. To address some of the issues identified, in 2018, the Commission adopted a Recommendation on standards for equality bodies⁸⁶⁷. The aim of the initiative was to provide further guidance on the independence and effectiveness of the equality bodies through standards on their mandate, independence, the requirement for sufficient resources and adequate powers⁸⁶⁸. Equality bodies are identified as a key protection mechanism against discrimination, if provided with the necessary powers and resources to support victims, but also work on the prevention of discrimination⁸⁶⁹. The majority of respondents to the targeted survey indicated that the **most important protection mechanism** in the RED was the establishment of equality bodies, with 89 % thinking it is important and 77 % thinking it is very important, followed by the national judicial and/or administrative procedures for victims of discrimination, with 89 % thinking it is important and 75 % thinking it is very important⁸⁷⁰.

Good practices are identified in some Member States, going beyond the requirements of the RED, in particular in relation to **awareness-raising activities** set up by national equality bod-

⁸⁶⁵ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final; European Commission, Staff working document, Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies, SWD(2021) 63 final, Accompanying the document Report from the Commission to the European Parliament and Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive'), COM(2021) 139 final.

⁸⁶⁶ Recital 18, [Commission Recommendation \(EU\) 2018/951 of 22 June 2018 on standards for equality bodies](#), OJ L 167, 4 July 2018; European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

⁸⁶⁷ [Commission Recommendation \(EU\) 2018/951 of 22 June 2018 on standards for equality bodies](#), OJ L 167, 4 July 2018.

⁸⁶⁸ Equinet (2018), Standards for equality bodies, <https://equineteurope.org/what-are-equality-bodies/standards-for-equality-bodies>.

⁸⁶⁹ Targeted survey carried out within the framework of this study; European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

⁸⁷⁰ Targeted survey carried out within the framework of this study.

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ies, **dialogue** with civil society through specifically set up advisory committees as well as additional powers in relation to the **investigation** into specific discrimination cases as well as **broader research**⁸⁷¹.

Stakeholders identify several additional protection mechanisms or functions to further enhance the role and visibility of the national equality bodies in the protection from against racial or ethnic discrimination. Moreover, a role is seen for the equality bodies in supporting potential victims from multiple discrimination as well as in a more preventive role investigating and countering "structural" discrimination. ECRI General Policy Recommendation N°2 on equality bodies provide an overview of three potential core functions of the equality bodies: promotion and prevention of discrimination, support and litigation, and a decision-making function on specific complaints⁸⁷².

Nearly all Member States moreover provide the **national equality bodies with a comprehensive mandate covering all the grounds** protected in the Equality Directives⁸⁷³. The objective is to provide the equality bodies with the potential to understand and deal with multiple and intersectional discrimination more effectively. It is, however, noted that the **multi-ground mandate** is promising only when accompanied by the allocation of adequate resources for all grounds and a working structure that encourages exchanges and intersectional work⁸⁷⁴. In Bulgaria, the equality body has a specific mandate and composition to deal with multiple discrimination. Article 48(3) of the Bulgarian Protection Against Discrimination Act states that the Commission for Protection against discrimination shall consider cases of multiple discrimination with an enlarged five-member panel (instead of the usual composition of three members).

Equinet, however, also points to potential risks of a multi-ground mandate and emphasises the need to ensure that the mandate in such bodies is **managed in an integrated manner** rather than through parallel 'silo-based' structures, and in an active manner with guidance to maximise the potential of multi-ground activities⁸⁷⁵.

Equality bodies can also act as a **specialised helpline** in discrimination cases, as is the case in Italy⁸⁷⁶.

National equality bodies can also play an important role as a **mediator** between victims and (alleged) perpetrators of discrimination. For instance, in Belgium, the national equality body, UNIA, is known for its practice of assisting victims and alleged perpetrators in reaching a form of amicable settlement, additionally resulting in a lower number of court cases⁸⁷⁷. Where cases are brought before a court, national equality bodies can be provided with **legal standing** to act on behalf of potential victims of discrimination⁸⁷⁸. Several Member States have already introduced the *actio popularis*, with legal standing for civil society organisations or the equality

⁸⁷¹ More detailed information can be found in the European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

⁸⁷² [ECRI, "General Policy Recommendation N°2 revised on Equality Bodies to combat racism and intolerance at national level"](#), adopted on 13 June 1997 and revised on 7 December 2017.

⁸⁷³ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives; European network of legal experts in gender equality and non-discrimination (2021), A comparative analysis of non-discrimination law in Europe; European Network of legal experts in gender equality and non-discrimination (2018), Equality bodies making a difference; Equinet (2021), Expanding the List of Protected Grounds within Anti-Discrimination Law in the EU; ECRI (2016), 5th report on Italy, ECRI (2019), 5th report on Finland.

⁸⁷⁴ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives.

⁸⁷⁵ Equality bodies making a difference; Equinet (2021)

⁸⁷⁶ Information gathered by the national expert for Italy through desk research.

⁸⁷⁷ Interview with national stakeholder in Belgium.

⁸⁷⁸ Equality bodies making a difference; Equinet (2021).

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body⁸⁷⁹. Other Member States foresee a legal obligation to consult the national equality body and ask them for an opinion during civil and criminal discrimination cases. Finally, also before equality bodies, the burden of proof can be shifted towards the alleged perpetrator in discrimination cases.

The procedural mandate of the national equality bodies can also be reinforced to enhance the **investigation and even sanctioning of cases of discrimination**⁸⁸⁰. In several Member States, national equality bodies have the power to **investigate complaints of discrimination**⁸⁸¹. Equality bodies are, moreover, increasingly provided with powers to carry out own initiative investigations rather than reacting for a formal complaint to have been filed⁸⁸². Other Member States have expanded the mandate of the equality bodies to include **decision-making and sanctioning powers**⁸⁸³. In these Member States, equality bodies are in a position to adopt legally binding decisions or, in case of non-binding decisions, recommendations with the power to follow-up on their implementation. In this capacity, they can impose sanctions, e.g., a fine, and award remedies, including adequate compensation for victims. In spite of these extended mandates to take decisions and impose sanctions in specific discrimination cases, Equinet identified some limitations that affect the effectiveness of the decision-making and sanctioning powers of some equality bodies, including, for instance, the limited follow-up of decisions taken⁸⁸⁴.

Equality bodies also have an important role to play in **relation to equality data**. They may in particular **gather** ethnically disaggregated data, identify data needs, coordinate and organise research on ethnic discrimination, for instance, through situation testing, and organise **inter-institutional collaboration**, for instance, in relation to the collection of equality data (see above under data collection in *Section 3.2*). For example, in Germany, action by the equality body on intersectional issues included research work to develop a knowledge base on multiple discrimination⁸⁸⁵. **Collaboration** and exchanges around specific topics should be set up by the national equality bodies with other actors, for example, with data protection authorities on possible discrimination driven by artificial intelligence⁸⁸⁶.

The European Commission highlights that equality bodies are essential for ensuring that individuals and groups facing discrimination can enjoy their right in full, and should therefore be able

⁸⁷⁹ For equality bodies, this is for example the case in Belgium, Bulgaria, Croatia, Hungary, Ireland, Italy, Malta, Poland, Slovakia, Slovenia and Sweden. Other countries foresee legal standing for equality bodies as a third party providing observations ('amicus curiae'). Information gathered from Equality bodies making a difference; Equinet (2021).

⁸⁸⁰ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives, ECRI, 5th Report on Malta, ECCAR (2022), Response - EU consultation on the Racial Equality Directive (Directive 2000/43/EC) concerning potential gaps and suitable measures to address those gaps, Information gathered by national experts for Hungary and Portugal under this study, Interviews with stakeholders at EU level, in Malta, in Hungary.

⁸⁸¹ European network of legal experts in gender equality and non-discrimination, "[Equality bodies making a difference](#)", 2018, in particular Table 4 on p.73.

⁸⁸² E.g. Cyprus. European network of legal experts in gender equality and non-discrimination, "[Equality bodies making a difference](#)", 2018, in particular Table 4 on p.73. This is also recommended by ECRI, e.g. ECRI, 5th Report on Finland and ECRI, 5th Report on Italy.

⁸⁸³ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives, ECRI, "[General Policy Recommendation N°2 revised on Equality Bodies to combat racism and intolerance at national level](#)", adopted on 13 June 1997 and revised on 7 December 2017, ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance, ECRI, 5th Report on Luxembourg, ECRI, 5th Report on Portugal, ECCAR (2022), Response - EU consultation on the Racial Equality Directive (Directive 2000/43/EC) concerning potential gaps and suitable measures to address those gaps, Information gathered by national expert for Hungary under this study, Interviews with stakeholders in Malta, Netherlands, Poland and Slovenia.

⁸⁸⁴ Equality bodies making a difference; Equinet (2021).

⁸⁸⁵ Equality bodies making a difference; Equinet (2021).

⁸⁸⁶ ECRI (2018), Discrimination, artificial intelligence, and algorithmic decision-making.

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to effectively perform the tasks assigned to them under EU law⁸⁸⁷. Any such additional activities for the national equality bodies, beyond the tasks currently foreseen by the RED, would require the **resources and mandate of the equality bodies to be strengthened**⁸⁸⁸. Given the importance provided by survey respondents and literature to the role of national equality bodies in combating racial and ethnic discrimination, additional tasks within their mandate would need to be accompanied by an increase in resources. Sufficient resources are considered a key external factor in the effectiveness of equality bodies to deal with the range of competences afforded to them, in addition to internal factors, including strategic planning and stakeholder engagement⁸⁸⁹. Equinet highlights that, while 16 equality bodies received increased staffing and/or budget in recent years, 11 equality bodies experienced a decrease in staffing and/or budget in recent years⁸⁹⁰.

As a means to enhance protection against discrimination, national equality bodies should engage in **self-evaluation and self-reflection** regarding their structure and work, and also regularly assess the anti-discrimination legal protections in place⁸⁹¹, namely by making use of equality data. Two Member States already periodically examine and evaluate the effectiveness of anti-discrimination protections⁸⁹².

Article 13 of the RED requires each Member State to establish at least one equality body which must provide independent assistance to victims of discrimination in pursuing their complaints, conduct independent surveys, publish independent reports and make recommendations on any issue relating to racial or ethnic discrimination. The 2018 Recommendation on standards for equality bodies was considered an important step in the right direction providing further guidance on the powers and organisation of the equality bodies. However, its non-binding nature is

⁸⁸⁷ European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

⁸⁸⁸ UN High Commissioner for Human Rights (2021), Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers, A/HCR/47/53; 2021; European network of legal experts in gender equality and non-discrimination (2021), "Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives, ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance, ; ECRI (2002) General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination, Equinet (2020), A perspective from the work of equality bodies on: European equality policy strategies, equal treatment directives, and standards for equality bodies; Equinet (2016), Fighting Discrimination on the Ground of Race and Ethnic Origin; Equinet (2021), Assessing gaps in the Racial Equality Directive; FRA (2021), Equality in the EU: 20 years on from the initial implementation of the equality directives; FRA (2018), Report: Being Black in the EU; ECRI, 5th Report on Croatia, ECRI, 5th Report on Finland, ECRI, 5th Report on Italy, ECRI 5th Report on Luxembourg, ECRI, 5th report on Malta, ECRI, 5th Report on Poland, ECRI, 5th Report on Portugal, ECRI, 5th Report on Romania, ECRI, 5th Report on Sweden, ECRI, 6th Report on Slovakia, Information gathered by national experts for Czech Republic, Portugal and Romania under this study, Interviews with stakeholders in Finland, Luxembourg, Netherlands, Malta, Poland, Sweden and Slovenia.

⁸⁸⁹ Equality bodies making a difference; Equinet (2021).

⁸⁹⁰ Equality bodies making a difference; Equinet (2021).

⁸⁹¹ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives, p. 112

⁸⁹² France and Belgium - European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives, p. 113. Also, according to the same report, some Member States have carried out evaluations of anti-discrimination legislation (Austria, Finland, Germany, the Netherlands, Slovakia and Sweden).

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considered an obstacle by several stakeholders and has resulted in limited and unequal implementation across the Member States⁸⁹³. For that reason, the adoption of additional legislation is currently envisaged by the European Commission⁸⁹⁴.

⁸⁹³ Equinet, "Legislating for stronger, more effective equality bodies. Key elements for and expectations from future EU legislation on equality bodies, 2021; Benedi Lahuerta, S., "Equality Bodies: advancing towards more responsive designs?", in *International Journal of Law in Context*, 27 May 2021, Cambridge University Press, <https://www.cambridge.org/core/journals/international-journal-of-law-in-context/article/equality-bodies-advancing-towards-more-responsive-designs/19723D3A42A7C29760A88EF2A3C7C393>; Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

⁸⁹⁴ EU Anti-Racism Action Plan 2020-2025; Report on the application of Council Directives 2000/43/EC and 2000/78/EC, COM(2021) 139 final.

4 Good practices and/or pitfalls

4.1 Introduction

The aim of Task 3 was to identify and map **good practices** at national- or European-level that may offer inspiration for tackling possible gaps identified under Tasks 1 and 2. Information on good practices was collected via stakeholder consultation (interviews and survey) as well as via desk research at national- and EU-levels. Desk research was also used to look at relevant good practices in third countries, including the UK. As a first step, all good practices indicated in stakeholder consultation or identified via desk research were mapped in a table according to the areas described in Task 1 as outside the material scope of the RED or other/grey areas. Most of the practices identified referred to the area 'exercise of public authority by police'. The table below presents the thematic areas of good practices as well as the levels (Member States, third countries, EU/international) where examples of good/promising practices were found in this regard. It must be noted that the Tables below and the descriptions in the sub-sections do not aim to provide an exhaustive list of potential good practices or countries where related initiatives were taken.

Table 7: Thematic areas of good practices identified at EU level, in Member States or third countries

Thematic areas of good practices	Member States examples	Third country examples	EU/international examples
Exercise of public authority by police			
<i>Training of police officers in different subjects related to human rights, equality and non-discrimination, racial profiling, diversity management, etc.</i>	x	x	x ⁸⁹⁵
<i>Elaboration of guidelines / Codes of practice for the police</i>	x		x ⁸⁹⁶
<i>Recording stop and search actions of the police and monitoring</i>	x	x	
<i>Community policing and outreach</i>	x	x	
<i>Cooperation/organisation of meeting between the police and other stakeholders to debate or solve issues concerning racial/ethnic communities</i>	x	x	
<i>Measures aiming at ensuring diversity in the police forces</i>	x	x	
<i>Setting up independent police complaints' mechanisms</i>	x	x	
<i>Awareness raising activities on police stop and searches or racial profiling</i>	x		
<i>Ethnic data collection on police actions</i>	x	x	x ⁸⁹⁷
Immigration enforcement (by border guards and customs authorities)			
<i>Promoting fundamental rights in border guard training</i>			x ⁸⁹⁸

⁸⁹⁵ CEPOL and FRONTEX delivering training programmes for law enforcement officials

⁸⁹⁶ CoE Code of Police Ethics

⁸⁹⁷ FRA data collection on fair policing

⁸⁹⁸ Common Core Curriculum (CCC) for European border guards

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Thematic areas of good practices	Member States examples	Third country examples	EU/international examples
<i>Public complaint mechanisms in border management</i>		x	x ⁸⁹⁹
Judicial system			
<i>Use of AI software in criminal-law decision making</i>	x		
<i>Training of judges and prosecutors on equality and non-discrimination</i>	x		
<i>Guidance for public prosecution offices in dealing with anti-discrimination cases/hate crimes</i>	x		x ⁹⁰⁰
Contacts with the public administration beyond the scope of the RED			
<i>Measures ensuring that vulnerable groups lacking legal documents can have access to certain public services</i>	x		
Housing matters potentially outside the scope of the RED (forced evictions, expulsions and residential segregation)			
<i>Preventing and tackling discrimination in housing (de-segregation initiatives, legalisation of informal Roma settlements and establishment of procedures for limiting the risk of eviction)</i>	x		x ⁹⁰¹
Democratic participation and representation			
<i>Measures providing for the political representation of ethnic minorities or their participation in the adoption of public policies</i>	x		x ⁹⁰²
Sports			
<i>Initiatives countering racial discrimination or racism in sports</i>	x		x ⁹⁰³
Health promotion and disease prevention			
<i>Preventing and tackling racial discrimination in health promotion and disease prevention</i>	x		x ⁹⁰⁴

Good practices concerning protection mechanisms were also identified and mapped under Task 2. Examples are presented in the Table below.

Table 8: Examples of good practices concerning protection mechanisms, identified at EU level, in Member States or third countries

Protection mechanisms	Member States examples	Third country examples	EU/international examples
Awareness-raising and communication campaigns			

⁸⁹⁹ Frontex Individual Complaint Mechanism

⁹⁰⁰ Guidance prepared by the High-Level Group on combating hate speech and hate crime

⁹⁰¹ International Urban Cooperation (IUC) programme; Renovation Wave initiative.

⁹⁰² Intention of the European Commission to work with European political parties, the European Cooperation Network on Elections and civil society to improve democratic participation and representation.

⁹⁰³ 2021-2027 Erasmus+ programme with specific focus on grassroots sports.

⁹⁰⁴ EU Health Policy Platform - intention to focus on reducing inequalities based on racial or ethnic origin; and - selection of best practices by the Commission Steering group on health promotion, disease prevention and management of non-communicable,

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Protection mechanisms	Member States examples	Third country examples	EU/international examples
<i>Awareness-raising activities for tackling unconscious bias for the general public</i>	x		
Training			
<i>Educational programmes for schools and universities focusing on equality and non-discrimination</i>	x		
<i>Training of public officials involved in public services</i>	x		
Collection and use of equality data			
<i>Monitoring of discrimination in the justice system</i>	x	x	
<i>Collecting disaggregated equality data</i>	x	x	x ⁹⁰⁵
<i>Situation testing to examine patterns of discrimination</i>	x		
Dialogue, cooperation and collaboration			
<i>Dialogue with local communities (not law enforcement as included above) or specific actors from private sector/civil society</i>	x		
<i>Interinstitutional cooperation, e.g. equality body and data protection authorities, or for developing specific statistics.</i>	x		
Equality duties			
<i>Imposing legal duties on the public sector to promote equality in a proactive and systematic manner</i>	x	x	
<i>Equality impact assessments</i>	x		
Preventative/proactive actions			
<i>Employer self-reporting exercise as a basis for establishing positive measures / codes of conduct</i>	x		
<i>Supportive measures for disadvantaged groups: Support to educational establishments in combating racial and ethnic discrimination as well as the specific difficulties faced by Roma pupils</i>	x		
<i>Publish data on judgements and complaints received by equality bodies, the police, public services, inspectorates and the judiciary as well as on the outcomes of such procedures</i>	x		
<i>Examine and evaluate the impact and effectiveness of non-discrimination legislation</i>	x		
<i>Potential solutions and tools to prevent and remedy algorithmic discrimination.</i>	x		x ⁹⁰⁶
Remedies and enforcement			
<i>Alleviating the financial burden of proceedings with a view to facilitate the reporting of racial or ethnic discrimination cases.</i>	x		

⁹⁰⁵ European Commission, High Level Group on Non-discrimination, Equality and Diversity (2021), [Guidance note on improving the collection and use of equality data based on ethnic and racial origin.](#)

⁹⁰⁶ European Law Institute's Model Rules to regulate AI

Protection mechanisms	Member States examples	Third country examples	EU/international examples
<i>Other procedural changes aimed at reducing the barriers to start legal proceedings</i>	x		x ⁹⁰⁷
<i>Amicable conflict resolution (mediation)</i>	x		
<i>Enabling online reporting of discrimination</i>	x		
<i>Actio popularis</i>	x		
Application of the free admissibility of evidence by the courts in the course of the case	x		
Equality bodies			
<i>Decision-making and sanctioning-power of the equality body</i>	x		

As a second step, selection criteria were applied to the good practices identified. More specifically, those examples were selected which are **well-documented, easily transferable** from one country to another and their **effectiveness and added value could be evaluated**, in light of their impact, benefits and costs (where this was possible). The number of good practices that qualified based on these criteria varied in the different material areas or protection mechanisms. Therefore, the number of good practices described and the measures from different countries exemplified in boxes vary. Considering that most of the good examples were identified for 'Exercise of public authority by police', the most representative good practices for this material gap were selected and presented. Thematic areas selected for the gaps in material areas and protection mechanisms are emphasised in *Italics* in the Tables above.

Along with good practices, **pitfalls** and **implementation challenges** were also identified and mapped under Task 3. Pitfalls are initiatives or protection mechanisms which did not yield the expected results or had adverse direct or collateral results. Implementation challenges are not necessarily pitfalls, but are factors that limit the effectiveness of good practices/initiatives and should be considered if replicating them in other Member States.

4.2 Good practices and pitfalls concerning material areas

4.2.1 Exercise of public authority by police

Initial and continuous training

At EU level, CEPOL delivers training programmes for law enforcement officials. Nevertheless, a CEPOL representative interviewed for this study noted that CEPOL's training has limited outreach and due to language barriers (training being held in English), it is not accessible to all law enforcement forces and officials⁹⁰⁸. In 2021, CEPOL has set up an Expert Group on fundamental rights consisting of experts from the Member States. This group's task is to propose how fundamental rights and related issues could be better addressed through CEPOL's portfolio and how best to support Member States in integrating fundamental rights issues as a horizontal theme in law enforcement training⁹⁰⁹.

⁹⁰⁷ EU and CoE joint programme: JUSTROM3 project for access to Justice of Roma women

⁹⁰⁸ Interview with a CEPOL representative, held on 21 February 2022.

⁹⁰⁹ CEPOL (2021), [Call for a Co-chair and Experts contributing to the Expert Group on Fundamental Rights](#).

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In the Member States and the UK, training on different subjects related to (racial) equality and non-discrimination, provided to police officers as part of the initial training or as continuous education, were indicated as good practices. For example, **training on non-discrimination** is offered in the Netherlands to new police agents by the Antidiscrimination bureau in Limburg⁹¹⁰; and in France training on addressing racist acts or discrimination as well as on police ethics is part of both the initial and continuous training where external speakers from specialised organisations are invited (however, only a few hours are dedicated to such training)⁹¹¹. **General human rights' courses** are offered to police officers or police school students e.g., in Cyprus⁹¹², Ireland⁹¹³, Greece⁹¹⁴, Portugal⁹¹⁵. **Diversity or cultural sensitivity trainings** were identified in e.g., Hungary⁹¹⁶, Fuenlabrada - Spain⁹¹⁷, Slovenia⁹¹⁸ and London - UK⁹¹⁹. In Slovenia, Roma leaders are involved in the delivery of training on policing in multi-ethnic communities, which allows officers to understand the specific needs and expectations of Roma communities and can point to types of behaviours of the police that might be perceived as discriminatory by members of the community⁹²⁰. Police training programmes provided in the UK are often indicated as good practice; however, the type and frequency of training sometimes depends on the police force⁹²¹. For instance, the Metropolitan Police in London (MET) trains and has codes of practice on equality and diversity in general and officers with different ranks get different training, including diversity training, training on code of ethics and standards, unconscious bias, hate crime and racial hatred, stop and search, etc. In 2021, the Inspectorate of Constabulary and Fire and Rescue Service issued a report⁹²² in which it identified positive practices for **stop and search trainings** in different police forces; nevertheless, it also noted that not all relevant officers were receiving it regularly or using the skills acquired. **Training/initiatives for avoiding racial/ethnic profiling** in check and search activities of the police were mentioned in some EU countries as well. Relevant examples are described in Box 43 below. These examples also address **assumed or unconscious biases** of law enforcement officials, which was pointed out by several sources as **important for addressing systemic/institutional racism**⁹²³.

Box 43: Good practice examples of training addressing racial profiling and (unconscious) bias in stop and search and identity checks

Good practice examples of training addressing racial profiling and (unconscious) bias in stop and search and identity checks

Italy: for combating structural discrimination/racism, the Italian Observatory for Security against Acts of Discrimination (OSCAD) has been delivering a **module on discriminatory racial and ethnic pro-**

⁹¹⁰ Netherlands, Interview with a representative of a local administration, 14 February 2022.

⁹¹¹ Commission Nationale Consultative des droits de l'Homme, ['La lutte contre le racisme, l'antisémitisme et la xénophobie, Année 2019, Focus le racisme anti-noirs, la lutte contre la haine en ligne'](#), p.296-298.

⁹¹² ENAR (2019), Racist crime and institutional racism in Europe, [Shadow report 2014-2018](#); Interview with the Cyprus Police, May 2022.

⁹¹³ Information provided by an Irish survey respondent.

⁹¹⁴ ECRI (2018), Conclusions on Greece.

⁹¹⁵ Ministry of Home Affairs General Secretariat (2021), [The Role MHA Security Forces and Services in the Protection and Safeguarding of Human Rights](#).

⁹¹⁶ Information provided by a Hungarian survey respondent.

⁹¹⁷ Interview with a representative of the Fuenlabrada Police, 28 February 2022.

⁹¹⁸ Amnesty International (2016), ['Police and Minority Groups'](#), Short paper series No. 3, p. 35. See also: Lobnikar, B., (2013), [Policing the Roma Communities in Slovenia – Elements for a European Model?](#), CEPOL – European Police College; Strobl, S. (2013), [Police-Roma Cooperation in Slovenia: Effects of a Multi-Cultural Training Program](#).

⁹¹⁹ Metropolitan Police in London (MET) (2020), [Anti racism training incorporated into general police training](#).

⁹²⁰ Amnesty International (2016), ['Police and Minority Groups'](#), Short paper series No. 3, p. 35.

⁹²¹ Contribution of a participant to the Workshop held on 17 May 2022.

⁹²² Her Majesty's Inspectorate of Constabulary and Fire and Rescue Service (2021), [Disproportionate use of police powers A spotlight on stop and search and the use of force](#).

⁹²³ See for example FRA (2018), Preventing unlawful profiling today and in the future: a guide; Contribution of a participant to the Workshop of 17 May; Interview with a police officer from the Netherlands, held on 31 March 2022.

Good practice examples of training addressing racial profiling and (unconscious) bias in stop and search and identity checks

filing. The module has been delivered to trainee law enforcement officials since 2014 as in-person training⁹²⁴ and more than 5 000 people have participated in this module. It focuses in particular on alleged biases that may influence profiling; the consequences for the efficiency of police activities; and the negative impact on the relations with communities⁹²⁵. In 2021, the module was enriched with additional content and converted to **online modules**⁹²⁶.

Netherlands: training based on virtual reality was developed in the Netherlands to make police officers aware of the fact that their behaviour at times might result from **racial bias**. The principle of the training is to put police agents in situations of ID checks and to follow-up on who they check and why. Then there is a **group discussion** to understand the officers' choices and to raise awareness of racial discrimination. This is done by applying appreciative techniques, i.e., the focus is not on mistakes made by police officers, but on understanding the reasons behind their choices and making them aware of racial discrimination/profiling. Through these methods, officers are more likely to remember and apply in their activities the situations presented/discussed during the training⁹²⁷.

Belgium: a similar project is implemented by the Antwerp Police, and some other cities in Belgium also use such a method. The project of the Antwerp Police has three stages:

1. **E-learning** where several steps are illustrated: (i) verifying whether or not there is a legal basis for identity check; (ii) if yes, explaining to the person why he/she is subject to ID checks; (iii) dealing with the person in a professional and polite way; and (iv) carrying out a self-assessment of the ID control.
2. **Virtual reality training simulating real-life situations**, used to train at least 2,000 officers⁹²⁸
3. **Group discussion** about the decisions made in the virtual reality training. Usually, the feedbacks are considered useful because the training does not aim to give orders to police agents, but to provide support to them⁹²⁹.

Pitfalls/implementation challenges:

A stakeholder interviewed stressed that training on racial bias and profiling should be done in a **non-judgmental way**; otherwise, police officers might not embrace different perspectives and it might not lead to changes in practice⁹³⁰. Moreover, **training should not be the only measure** to address this issue. Other awareness raising activities for police officers, follow-up on the training and changes in the institutional structure and practices are needed for effective implementation of what the police officers learnt⁹³¹. Equinet also considers that, although training can be useful in setting basic standards, there is **little evidence showing that training changes officers' behaviour or institutional practices** leading racial/ethnic profiling. This enhances the need for combining training with longer-term initiatives, including leadership, strong policies on racial/ethnic profiling and monitoring of police actions⁹³². A Workshop participant had similar opinion, stating that, while training can have some results, lessons learnt from the US prove that anti-bias training alone does not necessarily lead to shift in the police's behaviour. Hence,

⁹²⁴ Interview with a police officer from Italy, held on 25 February 2022.

⁹²⁵ FRA (2018), Preventing unlawful profiling today and in the future: a guide.

⁹²⁶ Interview with a police officer from Italy, held on 25 February 2022.

⁹²⁷ Interview with a police officer from the Netherlands, held on 31 March 2022.

⁹²⁸ The Bulletin (2021), [Antwerp police trained using virtual reality to prevent profiling](#).

⁹²⁹ Interview with a police officer from the Netherlands, held on 29 March 2022. Presentation of the training is available at: <https://vimeo.com/586728895/1a433e6949>.

⁹³⁰ Interview with a police officer from the Netherlands, held on 31 March 2022.

⁹³¹ Interview with a police officer from the Netherlands, held on 31 March 2022.

⁹³² Equinet (2019), Equality bodies countering ethnic profiling.

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the approach towards policing, the mandate of the police and the tools used by them should also be changed⁹³³.

In countries where **police zones/forces have a high degree of autonomy** (e.g., **Belgium, the UK**), the approach in terms of training, organisation, priorities, etc. is determined per zone/force. This was pointed out by sources as a challenge, because the training and priorities are not uniform throughout the country, and police officers have different levels of education⁹³⁴.

Elaboration of guidelines / codes of practice for the police

At EU-level, there is no code of police ethics or code of practice for the police. The European Parliament asked the Commission to 'create an independent expert group tasked with developing an EU Code of Police Ethics that provides a set of principles and guidelines for the objectives, performance, oversight and control of the police in democratic societies'⁹³⁵, similarly to the 2001 **Council of Europe Code of Police Ethics**⁹³⁶. Such a Code can also 'help police actors in their daily work to properly enforce the prohibition on racism, discrimination and ethnic profiling'⁹³⁷.

FRA calls on the Member States to develop **specific, practical and ready-to-use guides** to ensure that police officers do not engage in **racial profiling** in the framework of their mandate. In FRA's view, such guidance can be attached to relevant legislation, included in standard operating procedures or codes of conduct for the police, or delivered regularly by senior officers⁹³⁸. Guidelines for the police specifically prohibiting ethnic or racial profiling have been indicated as good practices in the UK and the Netherlands. These are described in the Box below:

Box 44: Good practice examples of guidelines for the police prohibiting ethnic or racial profiling

Good practice examples of guidelines for the police prohibiting ethnic or racial profiling

UK (England and Wales): Code A of the Police and Criminal Evidence Act (PACE) Act 1984, revised in 2015, regulates the exercise by police officers of statutory powers to search a person or a vehicle without first making an arrest⁹³⁹. The officers must have reasonable grounds to believe that the person is in possession of stolen or prohibited item/property. The suspicion must be genuine and objective, based on facts, information and/or intelligence that relate to the likelihood of finding the item in question. The powers to stop and search must be exercised fairly, responsibly, with respect for the persons searched and without discrimination⁹⁴⁰. The Code states that personal factors (i.e., physical appearance with regards to protected characteristics, such as race or religion; or generalisations or stereotypical images that certain groups or categories of people are more likely to be involved in criminal activity) can never support reasonable grounds for suspicion. This code of practice must be readily available at all police stations for consultation by police officers, police staff, detained persons and members of the public⁹⁴¹.

⁹³³ Information obtained via the Consultation Workshop, held on 17 May 2022; Her Majesty's Inspectorate of Constabulary and Fire and Rescue Service (2021), [Disproportionate use of police powers A spotlight on stop and search and the use of force](#).

⁹³⁴ Interview with a research organisation in Belgium, held on 15 February 2022.

⁹³⁵ Guittet, E.-P., Vavoula, N., Tsoukala, A., Baylis, M. (2022), [Democratic Oversight of the Police](#), Study requested by the LIBE Committee, European Parliament

⁹³⁶ European Code of Police Ethics was established by [Recommendation Rec\(2001\)10](#), adopted by the Committee of Ministers of the Council of Europe on 19 September 2001.

⁹³⁷ Guittet, E.-P., Vavoula, N., Tsoukala, A., Baylis, M. (2022), [Democratic Oversight of the Police](#).

⁹³⁸ FRA (2018), Being Black in the EU, p.11; FRA (2018), Preventing unlawful profiling today and in the future: a guide, p.60.

⁹³⁹ UK Government, Guidance, [Police and Criminal Evidence Act 1984 \(PACE\) codes of practice](#).

⁹⁴⁰ Her Majesty's Inspectorate of Constabulary and Fire and Rescue Service (2021), [Disproportionate use of police powers A spotlight on stop and search and the use of force](#).

⁹⁴¹ UK, [PACE Code A 2015](#), Code of practice for statutory powers of stop and search and requirements to record public encounters by police officers and staff.

Good practice examples of guidelines for the police prohibiting ethnic or racial profiling

The College of Policing in the United Kingdom (the professional body for policing) has developed **Authorised Professional Practice (APP) guidance** covering various aspects of police work⁹⁴². There is an APP on stop and search, which explains what a stop and search is, why it is important to use these powers correctly, and the characteristics of lawful and effective stop and searches (fairness, legality, professionalism and transparency)⁹⁴³. This APP deals with the powers governed by Code A of PACE described above⁹⁴⁴.

As a potential impact of the above good practices, the **number of stop and search encounters** in England and Wales **has decreased** from a historic high of 1.2 million in 2010-2011 to a low of 280 000 in 2017-2018, and since then, steadily increasing to 558 973 in 2019-2020⁹⁴⁵. However, stop and search powers are still disproportionately used on Black, Asian and minority ethnic people (see below under pitfalls/implementation challenges).

Netherlands: in 2017 the Dutch **police** developed a **code of practice**⁹⁴⁶ together with civil society organisations, which describes the four principles of a professional stop:

1. A legitimate and justifiable selection of persons: selection should be made fairly, based on behaviour, facts and circumstances. This increases the chance to catch the perpetrator and to prevent unnecessary checks. Distinguishing on the basis of external features, such as skin colour, origin or religion is only permitted if there is an objective justification for doing so.
2. Explanation of the reason behind the stop and search: transparency and good explanation reduces the impact of the check on the person and ensures greater understanding and cooperation.
3. Use of professional communication and treating the person respectfully: this leads to obtaining more information and willingness of the person to cooperate.
4. Officers to reflect on their practices and provide feedback to each other: this increases individual and team professionalism, and strengthens the citizens' trust in the police.

To implement this last step, the police in Amsterdam have developed a bottom-up approach: field officers (ambassadors) are involved in the teams and are assisted by their leaders and trainers. According to an officer from the Amsterdam police force, only a few police officers are assigned as ambassadors but usually there are volunteers for spoke persons of the team who also train the other members of the team. In five years of implementation, this has proved to be very effective, as there is much more group reflection than before. However, more time is needed for the evaluation of the practice's results and potential for change⁹⁴⁷.

In addition to the aforementioned code of practice prepared by the police, in 2021 the Dutch **equality body** developed a **human rights' assessment framework for risk profiles**⁹⁴⁸ and a **decision tree** for determining whether ethnic profiling is allowed or not⁹⁴⁹. This assessment framework offers guidelines for screening and assessing a risk profile for discrimination. It contains a minimum standard that **government agencies, including police, tax authorities and municipalities**, must at least adhere to when drawing up and deploying a risk profile. According to the equality body, it is of the utmost importance not to use a risk profile based solely or predominantly on ethnicity, origin or nationality. The use of these characteristics is permitted in very exceptional cases and proof of this necessity must be indisputable⁹⁵⁰.

⁹⁴² College of Policing, [APP \(authorised professional practice\)](#).

⁹⁴³ FRA (2018), Preventing unlawful profiling today and in the future: a guide, p.73.

⁹⁴⁴ College of Policing (2016), Stop and search Authorised Professional Practice.

⁹⁴⁵ Her Majesty's Inspectorate of Constabulary and Fire and Rescue Service (2021), [Disproportionate use of police powers A spotlight on stop and search and the use of force](#).

⁹⁴⁶ Dutch Police (2017), Proactive monitoring framework (Handelingskader proactief controleren).

⁹⁴⁷ Interview with a police officer from the Netherlands, held on 31 March 2022.

⁹⁴⁸ College voor de Rechten van de Mens (2021), [Discriminatie door risicoprofielen - Een mensenrechtelijk toetsingskader.pdf](#)

⁹⁴⁹ College voor de Rechten van de Mens (2021), [Discriminatie door risicoprofielen - Beslisboom.pdf](#)

⁹⁵⁰ College voor de Rechten van de Mens (2021), [Discriminatie door risicoprofielen - Een mensenrechtelijk toetsingskader](#).

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Pitfalls/implementation challenges:

In **England and Wales**, despite numbers being lower than in 2010-2011, the **disproportionate use of stop and search powers** on Black, Asian and Minority Ethnic people, and Black people in particular, has increased. More specifically, in 2019-2020, Black, Asian and minority ethnic people were 4.1 times more likely to be stopped and searched than white people, and particularly for Black people, this was 8.9 times more likely. In some forces, the likelihood is even much higher⁹⁵¹. A 2021 report of the police inspectorate states that most forces cannot adequately explain why there is disproportionality in the way the powers are used⁹⁵². Other sources⁹⁵³ indicate that this disproportionality is due to the fact that British law provides the police with other legal powers to carry out stops that do not require reasonable suspicion that a person is or might be involved in the commission of any offence. This is the case in searches made under section 60 of the Criminal Justice and Public Order Act 1994, power that is 18 times more likely to be used against Black people in England and Wales than against white people⁹⁵⁴. This confirms previous findings that police officers rely more on stereotypes when given more discretion to conduct stops, and this leads to discrimination⁹⁵⁵.

In the **Netherlands**, the guidelines/codes of practice described above are quite recent; therefore, no publicly available evaluation has been identified on their effectiveness or on challenges in their implementation.

Recording stop and search actions of the police and monitoring

Recording the stop and search activities of the police can promote openness and accountability. This can be done by filling in paper forms, or via new technologies. According to FRA, the stop and search forms can help officials to reflect on whether the stops they make are based on reasonable grounds and allow senior officials to monitor possible discriminatory stop and search practices by individual officials⁹⁵⁶. Although sometimes seen as burdensome, the forms also provide data that can be used to determine whether stops are lawful⁹⁵⁷. The use of stop and search forms were pointed out as good practice in the UK and Spain. These are described in the Box below.

Box 45: Good practice examples for recording stop and search

Good practice examples for recording stop and search

UK (England and Wales): Code A of PACE described in the box above requires police officers to record the search. This must include information on self-defined ethnicity of the person stopped and searched, and if different, the ethnicity as perceived by the officer making the search; date, time and place the person or vehicle was searched; the object/s that officers were looking for; the legal power or authority

⁹⁵¹ Her Majesty's Inspectorate of Constabulary and Fire and Rescue Service (2021), [Disproportionate use of police powers A spotlight on stop and search and the use of force](#). Other sources state that Black people are 40 times more likely to be stopped under the Criminal Justice and Public Order Act 1994. See Etienne, M. (2020), '[Policing during the pandemic: an insight into racism in the UK](#)', Open Democracy; The Guardian (2019), [Black people '40 times more likely' to be stopped and searched in UK](#).

⁹⁵² Her Majesty's Inspectorate of Constabulary and Fire and Rescue Service (2021), [Disproportionate use of police powers A spotlight on stop and search and the use of force](#).

⁹⁵³ Etienne, M. (2020), '[Policing during the pandemic: an insight into racism in the UK](#)', Open Democracy; Open Society Foundations (2012), [Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices](#).

⁹⁵⁴ Her Majesty's Inspectorate of Constabulary and Fire and Rescue Service (2021), [Disproportionate use of police powers A spotlight on stop and search and the use of force](#). Other sources state that Black people are 40 times more likely to be stopped under the Criminal Justice and Public Order Act 1994. See Etienne, M. (2020), '[Policing during the pandemic: an insight into racism in the UK](#)', Open Democracy; The Guardian (2019), [Black people '40 times more likely' to be stopped and searched in UK](#).

⁹⁵⁵ Open Society Foundations (2012), [Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices](#).

⁹⁵⁶ FRA (2018), Preventing unlawful profiling today and in the future: a guide, p.75.

⁹⁵⁷ FRA (2018), Preventing unlawful profiling today and in the future: a guide, p.75.

Good practice examples for recording stop and search

used; the grounds for suspicion and the identity of the officer carrying out the search. There is no requirement to record the name, address and date of birth of the person stopped and searched, and the person should not be asked and is under no obligation to provide this information for the purpose of completing the record⁹⁵⁸.

Some police forces in the UK use **paper forms** to record stop and searches⁹⁵⁹, while others are increasingly using technologies such as **mobile phone apps, radio-based systems, mobile data terminals or laptops**. For instance, in 2014 the West Midlands Police adopted an 'eSearch' system which is based on a call between the field officer and a member of staff in the Contact Centre. The details of the stop and search are thus immediately recorded in a database and can be accessed and monitored both internally and externally. To make the recording quicker and more efficient, in 2017 the same police force launched a new mobile app which allows officers to record the details in their smart phones, without the need to call the Contact Centre⁹⁶⁰. Most forces in the UK also provide body-worn video cameras to their officers; however, these are rarely reviewed as part of their internal monitoring and external scrutiny of stop and search⁹⁶¹.

Spain: over the past decade, some Spanish police forces tried to undertake reforms designed to improve the fairness of identity checks and searches, in particular in relation to minority ethnic groups. The first reform effort was through the *Strategies for Effective Policing and Search (STEPSS)* project implemented in 2007-2008 by the Fuenlabrada Municipal Police, the Girona Municipal Police, and the Mossos d'Esquadra police division in Girona (as well as in selected police forces in Hungary and Bulgaria). The second large-scale reform took place through the project Programme for Effective Police Identification (*Programa para la Identificación Policial Eficaz - PIPE*), which was implemented by the municipal police agencies of Castellón and Pedrezuela in 2012 and 2013 (and in two more agencies in 2016)⁹⁶².

Taking forward the idea of the British police to fill out a form on each stop and search, the STEPSS project developed a **methodology to monitor identity checks, stop and searches** carried out by police officers **through a form**. This form had to be completed by police officers every time they decided to stop someone. The form included, among others, information on nationality; name of the police officer; the time, date and place of the stop; the reasons for the stop; the legal framework; and the obligations of the police agents. The data obtained could then be used to monitor discrimination by police officers. Other activities such as information campaigns and outreach to civil society and minority communities were also carried out⁹⁶³. The PIPE project replicated the STEPSS principles and aimed to improve police procedures concerning the identification of people in public places, in order to maximise the effectiveness of these identifications while preventing racial or ethnic bias⁹⁶⁴.

According to OSJI's evaluation, the reforms undertaken by the five police agencies in the STEPSS and PIPE projects were successful, as in most sites, **rates of stops and of searches declined** during the six months of the pilot study, because officers became more selective in their use of these tactics. At the same time, **the levels of disproportionality in stops were also reduced**. The positive benefits of reforms were sustained, since in Fuenlabrada the tools were used even after the finalisation of the STEPSS project in 2008⁹⁶⁵. Moreover, according to data published on the European Commission's website on the results of the STEPSS project in Fuenlabrada, *'over the six months of data gathering, the police in Fuenlabrada reduced the disproportionality in the rate at which they were stopping all persons of immigrant origin. They achieved a dramatic decrease in stops of Moroccans from 9.6 times more often*

⁹⁵⁸ UK, [PACE Code A 2015](#).

⁹⁵⁹ A stop and search form used by West Midlands Police in the United Kingdom is replicated on page 77 of the FRA study on [Preventing unlawful profiling today and in the future: a guide](#). This study also provides indications for how a stop and search form should be designed in order to be useful and effective (see pp.75-76).

⁹⁶⁰ FRA (2018), [Preventing unlawful profiling today and in the future: a guide](#), p.77.

⁹⁶¹ Her Majesty's Inspectorate of Constabulary and Fire and Rescue Service (2021), [Disproportionate use of police powers A spotlight on stop and search and the use of force](#).

⁹⁶² Open Society Foundations (2015), [Fair and Effective Police Stops Lessons in Reform from Five Spanish Police Agencies](#), Technical Report; Open Society Justice Initiative (2020), [Toolkit for the analysis of police identifications](#). A practical guide to the analysis of police stop data.

⁹⁶³ European Commission, [Strategies for Effective Police Stop and Search \(STEPSS\) in Fuenlabrada](#).

⁹⁶⁴ NET-Kard Project (2014), [Practical guide for police services to prevent discrimination against the Roma communities](#).

⁹⁶⁵ Open Society Foundations (2015), [Fair and Effective Police Stops Lessons in Reform from Five Spanish Police Agencies](#), Technical Report.

Good practice examples for recording stop and search

than Spaniards in the beginning of the project to a ratio of 3.4 at the end. Furthermore, the rate at which officers conducted stops overall fell by well over half, while the percentage of their stops that produced positive outcomes increased by nearly three times. Other good results were the new relationships of the police with communities they had not previously contacted, with benefits beyond monitoring the stop data⁹⁶⁶.

OSJI recommends other police forces in Spain and police throughout Europe to consider undertaking similar reforms⁹⁶⁷. According to a Spanish police officer, the principles of the STEPPS project were **replicated** in the Netherlands (Amsterdam and Rotterdam) and Austria as well, but mostly the Dutch police have made progress⁹⁶⁸.

Pitfalls/implementation challenges

In **Spain**, according to a police officer interviewed⁹⁶⁹, the STEPPS and PIPE projects are good practices in so far as they aim to evaluate the incidence of racial profiling. The **use of stop and search forms** is good for identifying and evaluating the problem (racial/ethnic profiling), but it does not solve it. Hence, the interviewee suggested as a solution awareness raising training for the police on their own biases, and changes to the system, making sure that the main responsibility of the police is protection of citizens instead of surveillance. Further approach suggested is community policing (see below).

The STEPPS and PIPE projects are **no longer implemented** in Spain, as during the COVID-19 pandemic, the police were dealing with issues related to the pandemic and had no time to focus on filling in the forms. Furthermore, after the adoption of the GDPR, the administrations are afraid of creating databases containing data on nationality. In addition, in the interviewee's view, in Spain there is no social demand to control the issue of racial profiling by the police, with the exception of some NGOs that push for change⁹⁷⁰.

OSJI's evaluation of the five Spanish police agencies undertaking the STEPPS and PIPE projects showed that **reforms** for fair and effective police stops **are challenging**: 'they involve a considerable amount of work, demand skills and expertise not always present in police agencies, and require a commitment to meaningful partnerships between police and community members', as well as 'senior leaders committed to reform, a high level of perseverance, and a detailed grasp of reform principles'⁹⁷¹.

In **the UK**, the 2021 Police Inspectorate's reported on stop and search disproportionality rates between Black, Asian and Minority Ethnic people on the one hand, and white people on the other hand. The report considers that **failing to record some ethnicity data** may be one of the reasons for this disproportionality. The report found that too many stop and search records do not include details of the ethnicity of the person searched. For instance, in 2019-2020, 17 % of all records show the ethnicity as 'not stated', ranging in the police forces from 2 % to 34 %. Furthermore, some forces monitor only self-defined ethnicity, but not also officer-defined ethnicity. The report points out that recording ethnicity is important because 'without a complete picture, police forces are not able to accurately understand the impact of stop and searches on

⁹⁶⁶ European Commission, [Strategies for Effective Police Stop and Search \(STEPSS\) in Fuenlabrada](#).

⁹⁶⁷ Open Society Foundations (2015), [Fair and Effective Police Stops Lessons in Reform from Five Spanish Police Agencies](#), Technical Report.

⁹⁶⁸ Interview with a police officer from Spain, held on 29.03.2022.

⁹⁶⁹ Interview with a police officer from Spain, held on 29.03.2022.

⁹⁷⁰ Interview with a police officer from Spain, held on 29.03.2022.

⁹⁷¹ Open Society Foundations (2015), [Fair and Effective Police Stops Lessons in Reform from Five Spanish Police Agencies](#), Technical Report.

different ethnic groups, meaning that decisions on whether to take action could be made on the basis of misleading information⁹⁷².

Reasonable grounds are not always recorded by the police officers either. From the review of a representative sample of 9 378 stop and search records from 2019, the Police Inspectorate estimated that in England and Wales, 81.7 % of stop and search records had reasonable grounds recorded, which was worse than in the 2017 review. This shows that there is not enough emphasis placed on ensuring that officers and their supervisors understand what constitutes reasonable grounds and how to accurately record it. Moreover, while searches based on accurate and current intelligence or information are more likely to be effective, in the records reviewed, more searches were self-initiated (5 096; 55 %) than were motivated by third-party information (3 411; 37 %), and relatively few were intelligence-based (797; 9 %)⁹⁷³.

Code A of PACE and the APP on stop and search also provides for effective supervision and monitoring, as well as public scrutiny. Each force should have an independent panel of community members that reviews records about stop and search and the use of force. The 2021 Police Inspectorate's report found that many means of **monitoring, governance and external scrutiny** were either **ineffective or non-existent**. In the majority of the forces inspected, reviewing body-worn video footages was not part of structured internal or external monitoring processes or regular debriefings with supervisors. Thus, these forces missed out on significant opportunities to learn from direct sources of information and to improve⁹⁷⁴.

The **use of body cameras** has been introduced in some EU countries as well (e.g., **Belgium, France and the Netherlands**); however, there is no evidence that these are effective in reducing ethnic profiling or police violence⁹⁷⁵. Sources state that in practice, these are rather used to protect the police officers, and not for monitoring stop and searches or other police activities⁹⁷⁶.

When it comes to recording reasonable grounds for suspicion, problems were indicated in **Finland** too. The Finnish Foreigners Act does not define what reasonable suspicion means and thus the **police are not required to specify the grounds for the checks**. This increases the risks of ethnic profiling in relation to the control of foreign nationals⁹⁷⁷. When the legal reform of internal immigration policing was undertaken in Finland in 2013-2015, the Minority Ombudsman and the Parliamentary Ombudsman suggested that the police should register the stops and identity checks, including the grounds for the check, but this suggestion was not taken into account⁹⁷⁸.

⁹⁷² Her Majesty's Inspectorate of Constabulary and Fire and Rescue Service (2021), [Disproportionate use of police powers A spotlight on stop and search and the use of force](#).

⁹⁷³ Her Majesty's Inspectorate of Constabulary and Fire and Rescue Service (2021), [Disproportionate use of police powers A spotlight on stop and search and the use of force](#).

⁹⁷⁴ Her Majesty's Inspectorate of Constabulary and Fire and Rescue Service (2021), [Disproportionate use of police powers A spotlight on stop and search and the use of force](#).

⁹⁷⁵ Contribution of a participant to the Workshop held on 17 May 2022.

⁹⁷⁶ Commission Nationale Consultative des droits de l'Homme, '[La lutte contre le racisme, l'antisémitisme et la xénophobie, Année 2019, Focus le racisme anti-noirs, la lutte contre la haine en ligne](#)', p.300 ; EU level interview with the POL.STOPS network held on 15.03.2022 ; Interview with an NGO in the Netherlands, held on 22 February 2022. In the Netherlands, police agents with bodycameras are free to decide which images they hold or delete. In Belgium, in a 2021 position paper, the League for Human Rights draws attention to the advantages and disadvantages of using bodycams by police forces, stating that there is no common framework or general guidelines, leaving it up to the different police areas to develop their own tools, protocols for use and system for further processing of the images. See League for Human rights (2021), [Note de position de la Ligue des Droits Humain ssur le recours aux bodycams par les forces de police](#).

⁹⁷⁷ Keskinen S, Alemanji Aminkeng A, Himanen M, Kivijärvi A, Osazee U, Pöyhölä N & Rousku V (2018), [The stopped – Ethnic profiling in Finland](#), SSKH Notat 2/2018, Helsinki: Helsingin yliopisto.

⁹⁷⁸ Himanen M. (2022), An Ambiguous Ban on Ethnic Profiling.

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Data collected and recorded on stop and search through different forms should not be used for **creating criminal records**⁹⁷⁹. For example, in the **Netherlands**, police record certificates required for job applications include information on identity checks by the police. This has direct economic impact on ethnic minorities who are more often checked by the police, because people with such records might not be hired⁹⁸⁰.

Community policing and outreach

Community policing entails the police working with local residents, businesses and other groups in the community to reduce crime and the fear of crime, to address anti-social behaviour, and to boost community cohesion⁹⁸¹. Community policing approaches can address ethnic profiling by supporting outreach to ethnic minority and immigrant communities, improving relationships, understanding, and service delivery. Community outreach can identify patterns and practices in law enforcement that create tensions; individuals who may engage in police-civilian interactions; and policing priorities and approaches with the support of the community, including alternatives to stop and search⁹⁸². General understanding of the culture and customs of ethnic groups can help avoid misunderstandings and unintentional provocations⁹⁸³.

FRA recommends Member States to ask CEPOL and FRA to assist them in developing guidance in community policing, as a means to offset the existing negative impact of racial profiling on trust in the police among members of ethnic minority groups⁹⁸⁴. Greater trust in the police should improve crime reporting rates and cooperation with the police in crime prevention and investigation⁹⁸⁵. Several **initiatives of community policing** and **community outreach** already exist in the Member States, whose model could serve as a basis for such guidelines. The Box below describes some examples:

Box 46: Good practice examples of community policing and outreach

Good practice examples of community policing and outreach

Belgium: several police zones have '**neighbourhood officers**' (**agent de quartier**)⁹⁸⁶ and others are considering setting up such functions (such as Anderlecht)⁹⁸⁷. The aim is to strengthen trust towards the police and ensure security of the residents. A neighbourhood officer maintains close contact with the community/neighbourhood on a daily basis and has very specific, district-related tasks such as: checking address changes, supervise compliance with the general administrative police regulations, reporting incidents in the neighbourhood, being present at local demonstrations, mediating conflicts, reporting problem situations, maintaining contacts with residents, organisations and other partners in the neighbourhood, participation in district and village affairs, etc. Thus, the officer acts as a mediator and is visibly present in the neighbourhood⁹⁸⁸. Community outreach can also be supported by the creation of local police divisions for establishing a partnership between the police and the local population. For instance, the **Diversity Section in the Antwerp police** was set up in response to high number of complaints in media about discrimination by Antwerp Police in the past. This Section built networks with different local communities and maintained access to them and plays the role of a mediator to earn the trust when

⁹⁷⁹ Interview with representatives of a research network in Belgium, held on 15 March 2022.

⁹⁸⁰ Interview with a police officer from the Netherlands, held on 31 March 2022.

⁹⁸¹ FRA (2018), Second European Union Minorities and Discrimination Survey, [Being Black in the EU](#), p.11.

⁹⁸² Open Society Foundations (2012), [Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices](#), p.150.

⁹⁸³ Amnesty International (2016), '[Police and Minority Groups](#)', Short paper series No. 3, p. 48.

⁹⁸⁴ FRA (2018), Second European Union Minorities and Discrimination Survey, [Being Black in the EU](#), p.11.

⁹⁸⁵ Open Society Foundations (2012), [Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices](#), p.150.

⁹⁸⁶ See e.g. [Namur Police](#); [Des Houts-Pays Police](#); [Antwerp Police](#).

⁹⁸⁷ Interview with the Commune d'Anderlecht in Belgium, held on 1 March 2022.

⁹⁸⁸ See e.g. Antwerp police, [Wat doet je wijkagent?](#)

Good practice examples of community policing and outreach

there is a complaint against the Police. It also reviews all complaints related to hate crimes, which helps to build trust with victims who know that their complaints are checked in a professional way⁹⁸⁹.

Finland: community policing is a visible part of policing in Finland and aims to ensure that police officers are part of local communities, are known and trusted by local people. Community policing helps maintain interaction with local communities and makes police more aware of what is happening in the area. Finland has one of the **highest confidence rates in the police** in Europe, which according to an interviewee, shows that the police is undertaking a good work in relation to minorities⁹⁹⁰. In 2019 The Government adopted a **new police strategy**⁹⁹¹, which shifted focus to **preventive work**. In practice, preventive police work means meeting with young people, working in suburban and peripheral regions and solving local problems together with other authorities, organisations and civil society organisations⁹⁹². The Strategy maintains the community policing functions of the police, but due to financial considerations, it envisages its reorganisation from smaller police departments where individual police officers used to work as village police officers or were responsible for a small number of residential blocks.

Slovakia: the Slovak police employ **'police specialists'** in often segregated and marginalised Roma communities. The appointment of police specialists was first introduced as a pilot project in 2006, after a survey of Roma people confirmed the need for such a function. These police professionals were **specifically trained in understanding Roma culture and customs and in specific communication and problem-solving skills**. Their tasks included participating in criminal investigations in the designated communities, assisting in the interrogation of Roma suspects, solving problems occurring within the community, and providing legal advice and assistance for the Roma in different areas of life. As the pilot project had positive feedback, the number of police specialists was increased in the following years⁹⁹³.

Other ways of community outreach and collaboration were also highlighted as good practices such as **police officers participating in different activities with children/young people from different backgrounds** (e.g. in the Netherlands, playing football or organising group dialogues⁹⁹⁴, or workshops involving games, discussions and drama-based activities aiming at fostering dialogue and mutual understanding to improve perceptions and interactions between police and young people from ethnic communities⁹⁹⁵).

Implementation challenges:

Open Society Foundations recommends community policing through a geographical or neighbourhood approach rather than an ethnically based approach. However, it draws attention to the fact that cooperation with law enforcement authorities is **not always viewed favourably** by all residents of a community, especially in communities where relations with the police are strained. Community outreach approaches have to be **adapted to the needs of the ethnically diverse communities**, considering language barriers or potential low level of literacy. It also has to be considered that it might be difficult to talk to local communities or to identify **representatives who are accepted as a legitimate voice of the community**⁹⁹⁶. Police officers need to have **communication and problem-solving skills**, which is often lacking. For instance, the Police Inspectorate in the UK found that in too many forces, officers and staff are not sufficiently trained in informal communication skills for everyday interactions. Training can help officials and staff

⁹⁸⁹ Interview with a police officer in Belgium, held on 29 March 2022.

⁹⁹⁰ Interview with a police officer in Finland, held on 29 March 2022.

⁹⁹¹ Finnish Ministry of Interior (2019), [Strategy on Police Preventive Work 2019-2023](#).

⁹⁹² Finnish Government (2018), [New police strategy shifts focus to preventive work](#).

⁹⁹³ Amnesty International (2016), ['Police and Minority Groups'](#), Short paper series No. 3, p. 15.

⁹⁹⁴ Interview with a police officer from the Netherlands, held on 31 March 2022.

⁹⁹⁵ Amnesty International (2016), ['Police and Minority Groups'](#), Short paper series No. 3, p. 15.

⁹⁹⁶ Open Society Foundations (2012), [Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices](#), p.147-50.

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to learn the skills needed to build relationships and prevent encounters from turning into conflict or confrontation⁹⁹⁷.

Ensuring diversity in the police forces

There are some police forces in the Member States which appointed Roma contact points for the police (e.g., in Catalonia, Spain⁹⁹⁸) or employed Roma police assistants (e.g., in the Czech Republic⁹⁹⁹) to mediate between the community and the police. Other Member States introduced positive actions and allocated places to Roma in police schools (e.g., in Romania¹⁰⁰⁰) or offered scholarships (e.g., in Hungary¹⁰⁰¹). Further Member States or certain police forces adopted recruiting strategies (e.g., Finland¹⁰⁰²), or undertook campaigns (e.g., Antwerp Police, Belgium¹⁰⁰³) or launched calls on social media (e.g., Ireland¹⁰⁰⁴). Positive impacts were reported from initiatives in which people with minority backgrounds were appointed/hired to act as liaison persons between the police and the communities for mediating or solving problems/conflicts and for improving communication/interaction between the two¹⁰⁰⁵.

Pitfalls/implementation challenges:

A study in Belgium found that *'even though some local diversity initiatives and policies exist, a comprehensive and well-integrated diversity plan is missing within the police organisation'*¹⁰⁰⁶. Research also found that in Belgium, police officers with a minority background do not perceive their role as a liaison between the police and the community, but they join the police because they want to become police officers¹⁰⁰⁷. On the other hand, being of a minority background does not ensure that the person is free of prejudices against certain communities¹⁰⁰⁸. A further issue signalled is that, despite recruitment, there are often no initiatives to keep the diverse workforce within the police (this is the case for example in the UK)¹⁰⁰⁹. In 2022, a Police Race Action Plan was adopted in the UK (England and Wales), which provides for targeted recruitment of Black staff as part of a strategy¹⁰¹⁰. The Action Plan was criticised by the chair of an independent scrutiny board for the police plan, stating that **Black police officers should not be expected to solve racism in forces**. She added that, while retention, recruitment and promotion are always positive aims for diversifying workforces, it is not sufficient. It is more important to examine the actual culture of an organisation, i.e., whether there is institutional racism¹⁰¹¹. Therefore, diversifying police workforces should not be the only measure taken. Other measures, such

⁹⁹⁷ Her Majesty's Inspectorate of Constabulary and Fire and Rescue Service (2021), [Disproportionate use of police powers A spotlight on stop and search and the use of force](#).

⁹⁹⁸ NET-Kard Project (2014), ['Practical guide for police services to prevent discrimination against the Roma communities'](#).

⁹⁹⁹ Amnesty International (2016), ['Police and Minority Groups'](#), Short paper series No. 3, p. 35.

¹⁰⁰⁰ APADOR-CH (2020), [Unconscious bias and discrimination of Roma people in the criminal justice system](#), p.26.

¹⁰⁰¹ OSCE (2010), Police and Roma and Sinti: Good Practices in Building Trust and Understanding.

¹⁰⁰² Interview with a police officer in Finland, held on 29 March 2022.

¹⁰⁰³ The Diversity Section of the Antwerp Police organised the 'We need you' ([Wij hebben je nodig](#)) campaign to incentivise greater diversity within the Antwerp Police force.

¹⁰⁰⁴ In 2022 there has been a [social media call](#) to try and recruit more diverse and minority members to the police force which would further legitimise and create trust between the police and these communities.

¹⁰⁰⁵ E.g., in Spain and the Czech Republic.

¹⁰⁰⁶ VUB (2021), ['Final Report: Voicing Diversity'](#).

¹⁰⁰⁷ Interview with representatives of a research network in Belgium, held on 15 March 2022.

¹⁰⁰⁸ Interview with a police officer in Finland, held on 29 March 2022.

¹⁰⁰⁹ Contribution of a participant to the Workshop held on 17 May 2022.

¹⁰¹⁰ College of Policing and the National Police Chiefs' Council (2022), [Police Race Action Plan](#).

¹⁰¹¹ The Guardian (2022), [Not up to black officers to solve police racism, says barrister as plan launched](#).

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as training on (unconscious) bias, guidelines/codes of practice prohibiting racial profiling, community policing, recording and monitoring police actions, etc. should be applied in a comprehensive and systemic manner throughout the police forces in the Member States.

Independent police complaints' mechanisms

Independent police complaints' mechanisms play an important role in identifying and raising awareness of discriminatory law enforcement practices and in recommending specific remedies. Independent bodies are considered more effective than internal police control mechanisms because of their greater autonomy. It is of utmost importance that ethnic minorities are aware of and have access to such complaint bodies and the complaint procedure¹⁰¹². Many Member States have set up independent police complaints authorities or assigned such functions to Ombudsmen or equality bodies¹⁰¹³. However, there are still several Member States that do not have such authorities, which ECRI considers a gap and recommends establishing a body which is independent of the police and prosecution authorities entrusted with the investigation of alleged cases of racial discrimination and misconduct by the police¹⁰¹⁴.

Pitfalls/implementation challenges:

The **independence and transparency** of certain police complaints authorities is **contested**¹⁰¹⁵. For instance, in Belgium, Comité P was created in 1991 as an external control body over the police and examines complaints from citizens, but it does not solve individual problems of complainants in relation to the police¹⁰¹⁶. Instead, it looks into structural practices within the police¹⁰¹⁷. Complaints lodged with Comité P are transferred for investigation to the police zone where the complaint originated from, which, according to a research organisation interviewed, could affect the independence of the investigation¹⁰¹⁸. A police officer interviewed confirmed that such complaints are indeed sent back to the police district, but asserted that the complaints are investigated by the internal affairs department that is completely independent¹⁰¹⁹.

4.2.2 Immigration enforcement (by border guards and customs authorities)

Promoting fundamental rights in border guard training

At EU level, the Common Core Curriculum for Border and Coast Guard Basic Training in the EU (CCC) is a tool promoting fundamental rights in border guards' training. The CCC establishes the core learning standards on the operational level of border guarding in the EU Member States¹⁰²⁰. The curriculum includes sections on non-discrimination and on ethnic profiling. The training strategy highlights possible risks linked with racism, racial discrimination, xenophobia, Islamophobia when conducting profiling¹⁰²¹. To complement the CCC, Frontex developed a trainer's manual with international organisations and universities¹⁰²². The manual provides a harmonised training to improve the knowledge and the skills of all EU border guards in the field of fundamental rights and international protection¹⁰²³. It explicitly mentions profiling and establishes rules to avoid

¹⁰¹² Open Society Foundations (2012), [Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices](#).

¹⁰¹³ For a list of independent police complaints authorities in Europe, see <https://ipcan.org/fr/members>.

¹⁰¹⁴ E.g. in Romania.

¹⁰¹⁵ See for example ENAR (2021), [The sharp edge of violence: police brutality and community resistance of racialised groups](#).

¹⁰¹⁶ IPCAN, Members, [Committee P](#). Website available at <https://comitep.be/index.html>.

¹⁰¹⁷ Interview with a police officer in Belgium, held on 29 March 2022.

¹⁰¹⁸ Interview with a research institute in Belgium held on 15 February 2022.

¹⁰¹⁹ Interview with a police officer in Belgium, held on 29 March 2022.

¹⁰²⁰ Common Core Curriculum for Border and Coast Guard Basic Training in the EU (2017), Changes booklet.

¹⁰²¹ FRA (2018), Preventing unlawful profiling today and in the future: a guide, p.64.

¹⁰²² Ibid.

¹⁰²³ Frontex (2013), Fundamental Rights Training for border guards, p.14.

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discrimination. Nevertheless, there is no permanent mechanism to evaluate the effectiveness of the training¹⁰²⁴.

Public complaint mechanisms in border management

Frontex established in 2016 an individual complaints mechanism to monitor the respect of fundamental rights in Frontex's activities¹⁰²⁵. According to the Regulation on the European Border and Coast Guard "any person who is directly affected by the actions of staff involved in a joint operation, pilot project, rapid border intervention, migration management support team deployment, return operation or return intervention and who considers him or herself to have been the subject of a breach of his or her fundamental rights due to those actions, or any party representing such a person, may submit a complaint in writing to the Agency"¹⁰²⁶. The Frontex fundamental rights officer is responsible for handling complaints received by the agency and decides on its admissibility. Nevertheless, the mechanism was criticised as only individual complaints are allowed and therefore the Frontex complaint mechanism is not available to all stakeholders with a legitimate interest. Moreover, the requirement to submit complaints in writing can also be an obstacle which prevents the victims from activating the procedure when the abuse takes place¹⁰²⁷. Another criticism is that the procedure largely relies on the discretionary power of internal bodies.

At Member States level, most complaints are lodged with independent bodies or administrative courts. For Example, in France the Defender of Rights appears to be the main body processing complaints of mistreatment or unlawful treatment during border check¹⁰²⁸. In Austria, Bulgaria, Greece, Romania, Slovakia and Spain the Ombudsman is also competent to receive complaints related to the violation of fundamental rights¹⁰²⁹. However, border management authorities are also entitled to process complaints. According to FRA, the possibility to access public complaint mechanisms increases transparency and fosters mutual respect and relationships between border guards and citizens¹⁰³⁰. An internal complaint mechanism from the UK is described in the Box below:

Box 47: Good practice example of public complaint mechanism in border management

Good practice example of public complaint mechanism in border management

In the UK, the Central Allocation Hub of Manchester Airport provides a single point of contact for passengers who would like to make a complaint. Complaints can be filed by email, letter, phone or fax, or face-to-face¹⁰³¹. The United Kingdom Border Force guidance gives possible ways of resolving complaints. Serious complaints are usually dealt with by the Professional Standards Unit. The guidance also includes

¹⁰²⁴ FRA (2018), Preventing unlawful profiling today and in the future: a guide, p.64.

¹⁰²⁵ FRA (2018), Preventing unlawful profiling today and in the future: a guide, p.95.

¹⁰²⁶ Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016, on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC.

¹⁰²⁷ Centre for European Policy Studies (CEPS) (2018), Complaint mechanisms in border management and expulsion operations in Europe, p.32.

¹⁰²⁸ FRA (2014), Fundamental rights at airports: border checks at five international airports in the European Union, p.14.

¹⁰²⁹ CEPS (2018), Complaint mechanisms in border management and expulsion operations in Europe, p.55.

¹⁰³⁰ FRA (2018), Preventing unlawful profiling today and in the future: a guide, p.94.

¹⁰³¹ FRA (2018), Preventing unlawful profiling today and in the future: a guide, p.94.

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a formula test for determining signs of potential discrimination, which would constitute serious misconduct¹⁰³². When there is strong evidence that the passenger's treatment can be explained by racist attitude, the case is usually referred for local resolution¹⁰³³. According to FRA, the Manchester Airport example sets a good practice as it illustrates how an internal complaint mechanism can work¹⁰³⁴.

4.2.3 Judicial system

Use of AI software in criminal law decision making

According to Equinet, monitoring government initiatives on AI and identifying opportunities for engagement is important to ensure that the principles of equality and non-discrimination are fully considered. At Member State level, there are examples of independent oversight from equality bodies. For example, in Slovenia, the Advocate for Equality is currently monitoring the development of an experimental software using AI in criminal law decision making. The software should be able to support judges by providing them with suggestions on sentencing decisions and excluding all data that could entail prejudices or prohibited discriminatory parameters, thus blocking the algorithm to use such data¹⁰³⁵. The Slovenian example illustrates the control and independent oversight of AI-technology in use by judicial authorities and stresses the importance of safeguards against the misuse of such technologies.

Training of judges and prosecutors on equality and non-discrimination

At Member State level, training of judges and prosecutors on equality and non-discrimination were indicated as good practices. For example, in France, the National School of Magistrates had introduced a 6-day training on the fight against discrimination¹⁰³⁶. Similarly, in Poland, judges and prosecutors receive training on human rights and anti-discrimination from the National School for Prosecutors¹⁰³⁷. In Greece, the National School of Judges included lessons on racism and xenophobia in its curriculum targeting judges and prosecutors¹⁰³⁸. In Spain, officials from the judiciary are trained in tackling discrimination in public institutions. Prosecutors from the Prosecutor General's office are also trained on an annual basis on hate crimes and racial discrimination. In Romania, the National Institute for Magistracy (Institutul National al Magistraturii - INM) started in 2016 a collaboration with the equality body as part of the continuous professional training for magistrates¹⁰³⁹. Moreover, the INM is currently implementing a project on "Capacity building and strengthening of the judiciary" (2019-2022), which includes specific trainings on the situation of Roma people in the criminal justice system¹⁰⁴⁰.

Training for magistrates guarantees a general understanding on fundamental rights and how to deal with discrimination cases. It equips them with the necessary skills for examining discrimination cases and better understanding the principle of equality and non-discrimination.

¹⁰³² FRA (2014), Fundamental rights at airports: border checks at five international airports in the European Union, p.14.

¹⁰³³ Ibid.

¹⁰³⁴ FRA (2014), Fundamental rights at airports: border checks at five international airports in the European Union, p.75.

¹⁰³⁵ Equinet: Regulating For An Equal AI: A New Role For Equality Bodies. [A Good Practice Guide](#), p. 2.

¹⁰³⁶ Commission Nationale Consultative des droits de l'Homme (2019), [La lutte contre le racisme, l'antisémitisme et la xénophobie, Année 2019, Focus le racisme anti-noirs, la lutte contre la haine](#), p.295.

¹⁰³⁷ See for example: <https://www.gov.pl/web/prokuratura-krajowa/szkolenie-dla-prokuratorow-i-sedziow-na-temat-ochrony-praw-czlowieka-1>.

¹⁰³⁸ ECRI (2018), ECRI conclusions on the implementation of the recommendations in respect of Greece subject to interim follow-up.

¹⁰³⁹ APADOR-CH (2020), [Unconscious bias and discrimination of Roma people in the criminal justice system](#).

¹⁰⁴⁰ Ibid.

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Guidance for public prosecution offices in dealing with anti-discrimination cases/hate crimes

At EU level, the European Commission via the High-level group on combating racism, xenophobia and other forms of intolerance, intends to 'support Member States in preventing discriminatory attitudes developing the necessary skills for investigation and prosecution against hate crimes and ensuring a fair and adequate treatment of victims'¹⁰⁴¹.

At Member State level, the development of guidance for public prosecution offices in dealing with anti-discrimination cases and hate crimes can promote and support the development of the necessary skills for investigating and prosecuting hate crimes and building networks for combatting discrimination. Examples are described in the Box below:

Box 48: Good practices examples of guidance for public prosecution offices in dealing with anti-discrimination cases/hate crimes

Good practices examples of guidance for public prosecution offices in dealing with anti-discrimination cases/hate crimes

France: a circular from the Ministry of Justice introducing the creation, in each District Attorney's office, of a department against discrimination was distributed on **11 July 2007**¹⁰⁴². Each head of the public prosecutor's offices should designate a referral magistrate, responsible for leading the Anti-discrimination Department and conducting criminal policy in this area. This magistrate should personally be involved, by going on site, as close as possible to the populations concerned. The objective of the Anti-discrimination Department is to explain the action and functioning of justice in the field of combatting racism and discrimination, to draw up a regular inventory of the situation in the jurisdiction and of the cases referred to the public prosecutor¹⁰⁴³.

The action of the Departments and the referring magistrates has been considered particularly **successful in the area of prevention and awareness-raising**, as reflected in the drafting and distribution of reporting forms to associative partners, the setting up of information brochures or meetings with the general public or targeted populations, the organisation of situational testing operations or awareness-raising actions for professional audiences and the definition of common guidelines with other institutional actors. Local associations are widely invited to work with the anti-discrimination Departments chaired by the public prosecutor. In this respect and according to the French Defender of Rights, these Departments are a rare opportunity to meet with associations in the field¹⁰⁴⁴. The Ministry of Justice highlighted that training sessions are also organised, particularly for elected officials and local government employees. Based on the Ministry of Justice's evaluation, the public prosecutors' offices emphasise the importance of training for those involved in the fight against discrimination, particularly investigators¹⁰⁴⁵.

Another **Circular from the Ministry of Justice was distributed in 2019** and provides **guidance and instructions to public prosecutors to deal with anti-discrimination cases**, both civil and criminal cases. The Circular calls for a particular vigilance regarding all types of racist offenses. It also addresses offenses committed via the Internet. Regarding civil remedies, the Ministry of Justice instructs public prosecutors not to hesitate to take advantage of civil summary proceedings to quickly order a host or an Internet service provider to block access to a site or pages containing hate speech. The Circular also notes that the Government prefers to focus on education when the perpetrator has no criminal record. The Circular requires public prosecutor to remain active in committees fighting racism and to provide information to the elected officials for the files having caused a local impact. It also instructs to use the investigative power of the French Defender of Rights. The Circular is expected to draw the attention of the magistrates of the public prosecutor's office to the actions required when a discrimination offense is committed. It should enhance the awareness of the magistrates and ensure that investigators are familiar with the specificities of these procedures.

¹⁰⁴¹ European Commission (2020), [EU anti-racism action plan 2020-2025](#), COM(2020) 565 final.

¹⁰⁴² Ministre de la Justice, Circulaire 11 juillet 2007, [Lutte contre les discriminations](#).

¹⁰⁴³ Ministre de la Justice, Circulaire 11 juillet 2007, [Lutte contre les discriminations](#).

¹⁰⁴⁴ Défenseur des Droits (2013), Contribution du Défenseur des droits à l'Examen Périodique Universel devant le Conseil des droits de l'Homme des Nations unies.

¹⁰⁴⁵ Ministère de la Justice (2020), Contribution du Ministère de la justice au rapport 2020 de la CNCDH sur la lutte contre le racisme, l'antisémitisme et la xénophobie, p.25.

Good practices examples of guidance for public prosecution offices in dealing with anti-discrimination cases/hate crimes

Bulgaria: A methodological guide for prosecutors working on criminal investigations of crimes with discrimination motive was developed in 2013 by the Bulgarian Supreme Prosecutor's Office of Cassation. Although the guide is not mandatory, it intended to provide a list of good practices and criteria for recognising hate-crimes¹⁰⁴⁶. Its main purpose is to increase the knowledge and awareness of the investigation and prosecution authorities on hate-crime issues. As highlighted by the ODIHR, the guidelines also provide a good basis to explain indicators designed to recognise, verify and prove the presence of discrimination motive¹⁰⁴⁷.

Pitfalls/implementation challenges:

The effectiveness of the Circular from 11 July 2007 for the creation of anti-discrimination departments within prosecution offices was criticised by the National Consultative Commission for Human Rights (CNC DH) deploring the disappointing results in terms of the implementation, in particular regarding the training and cooperation with local partners. The CNC DH highlights that only few magistrates have been trained and that this lack of specific expertise has not been compensated for by the establishment of close links with the relevant associations¹⁰⁴⁸.

4.2.4 Contacts with the public administration beyond the scope of the RED

At Member State level, in some places (e.g. Lublin, Poland or in Portugal¹⁰⁴⁹) measures have been taken during the COVID-19 pandemic to ensure that vulnerable groups lacking legal documents can have access to certain public services. However, no information could be identified whether these measures are still in place or policies have been changed to provide vulnerable groups with legal documents permanently.

A good practice for reducing bureaucracy and potential discriminatory treatment by officials of the different immigration services was highlighted by national stakeholders interviewed as part of this study¹⁰⁵⁰. More specifically, in Helsinki, Finland, immigration services are concentrated in one unit of the municipality in charge of informing minorities on their rights. The Immigration Unit is in charge of helping refugees with their integration process by proposing guidance, advisory services and carrying out initial review.

Pitfalls/implementation challenges:

A potential pitfall was reported from Italy, where the legislation prohibits discrimination of a foreign citizen by public officials in the exercise of their functions¹⁰⁵¹, due to their status as foreigners or belonging to a certain race, religion, ethnicity or nationality. However, this prohibition lacks implementation. There is also a lack of hierarchical control over public employees who, in the view of an interviewee¹⁰⁵², have 'excessive discretion' to act; thus, abuses of power by the public administration (including discrimination for instance during request of identity card or domicile, registration of a birth or a marriage) are not sanctioned¹⁰⁵³. Inclusion of specialised

¹⁰⁴⁶ Bulgaria, Interview with the General Prosecutor's Office, 10 February 2022.

¹⁰⁴⁷ OSCE (2018), Manual on joint crime training for police and prosecutors, Intended for use in Bulgaria.

¹⁰⁴⁸ Medard, R. (2015), La CNC DH esquisse un clair-obscur de l'investissement des pouvoirs publics dans la lutte contre le racism.

¹⁰⁴⁹ CoE (2020), Directorate of Anti-Discrimination, [The anti-discrimination, diversity and inclusion dimensions of the response to Covid-19](#), Introductory Note prepared by the Secretariat of the Steering Committee on Anti-discrimination, Diversity and Inclusion (CDADI), p. 4.

¹⁰⁵⁰ Finland, Interview with the city of Helsinki, held on 17 February 2022.

¹⁰⁵¹ Article 43 of the Consolidated Immigration Act (Legislative Decree 286/1998).

¹⁰⁵² Representing an Italian NGO.

¹⁰⁵³ Interview with an Italian NGO, 22 February 2022.

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officers on racial/ethnic discrimination in each public office was suggested as a possible solution/good practice, with the specific task of monitoring the work of the office, detecting any discrimination and reporting to the head of the office. This could potentially address structural discrimination in the public administration as well¹⁰⁵⁴.

4.2.5 Housing matters potentially outside the scope of the RED

At EU level, the European Commission noted in the EU anti-racism action plan for 2020-2025 that local initiatives, such as the International Urban Cooperation (IUC) programme or the Covenant of Mayors for Climate and Energy, can promote social inclusion through areas such as tackling energy poverty or access to decent housing and serve as platforms for further developing city-level action to promote racial equality¹⁰⁵⁵. The International Urban and Regional Cooperation 2021-2024 will focus on three thematic networks, among which: Urban and Regional Renewal and social cohesion, including subthemes as urban poverty, deprived neighbourhoods, housing. Furthermore, the Commission intends to support vulnerable households, social and affordable housing under the Renovation Wave initiative. One of the key principles is 'Affordability, making energy-performing and sustainable buildings widely available, in particular for medium and lower-income households and vulnerable people and areas'¹⁰⁵⁶. In 2015, the European Commission issued a [Guidance for Member States on the use of European Structural and Investment Funds in tackling educational and spatial segregation](#). The aim of the guidance is to assist the relevant public administration bodies of Member States, and in particular managing authorities, in effectively designing and implementing the investments to address, among others, the housing needs of marginalised communities (e.g., marginalised Roma, migrants and other socially disadvantaged groups), financed by the ESI Funds in the 2014-2020 period¹⁰⁵⁷.

At international level, the European Committee of Social Rights (ECSR) within the European Council has stressed the importance of setting up procedures to limit the risk of evictions. The UN Committee on Economic, Social and Cultural Rights in General Comment No.7 on right to adequate housing developed a number of procedural safeguards against forced evictions, including: the consultation with those affected by the eviction; providing a reasonable notice period; access to legal remedies; and alternative housing that does not result in further segregation and compensation for the losses. Furthermore, these procedural safeguards should ensure that evictions are not carried out at night or during the winter and that they do not render individuals homeless or vulnerable¹⁰⁵⁸.

At Member State level, **de-segregation initiatives, legalisation of informal Roma settlements and establishment of procedures for limiting the risk of eviction** have been pointed out as good practices. Examples are described in the Box below:

Box 49: Good practice examples for addressing housing issues outside the scope of the RED

Good practice examples for addressing housing matters outside the scope of the RED

Spain: financial commitments led to de-segregation of the Roma population, more specifically the percentage of Roma in substandard housing fell from 31 % in 1992 to 11.7 % in 2012. The success of the desegregation policies is partially explained by the fact that it does not only target Roma citizens¹⁰⁵⁹.

¹⁰⁵⁴ Interview with an Italian NGO, 22 February 2022.

¹⁰⁵⁵ European Commission (2020), [A Union of equality: EU anti-racism action plan 2020-2025](#).

¹⁰⁵⁶ Renovation Wave initiative, October 2020 (COM(2020)662).

¹⁰⁵⁷ European Commission (2015), [Guidance for Member States on the use of European Structural and Investment Funds in tackling educational and spatial segregation](#).

¹⁰⁵⁸ Council of Europe (2012), [Human rights of Roma and Travellers in Europe](#), p.152-153.

¹⁰⁵⁹ ROMA-Net (2012), [The Housing Challenges of Roma Inclusion](#).

Good practice examples for addressing housing matters outside the scope of the RED

This approach of 'explicit but not exclusive targeting' is considered as one of the best models for addressing the exclusion of Roma in various sectors and to ensure that positive action does not turn into segregated housing. The success of this policies also requires continuous monitoring of their implementation¹⁰⁶⁰.

Slovakia: in the city of Žilina, the deadline to demolish an apartment block was postponed until an agreement with the residents was reached. The city established a community centre with social workers to assist the families and adopted a four-year plan which introduced several measures for Roma, including the provision of assisted transit housing. Similarly, in Prešov Roma residents of buildings that had to be evicted due to the state of the buildings were relocated, some of them to flats of higher standard, so no one became homeless¹⁰⁶¹.

Croatia: the legalisation of informal Roma settlements in the Medimurje County and the adoption of infrastructure programmes improved significantly living conditions of their residents in contrast with the situation in illegal settlements¹⁰⁶².

France: Law of 5 July 2000 on the reception and dwellings of Travellers requires municipalities with a population of more than 5 000 to provide a site with facilities and access to water and electricity. Local authorities showed continued reluctance to implement this requirement, resulting in a shortage of available places for Travellers, and thus leading to illegal camps¹⁰⁶³. By a 2017 amendment of the Law, the prefects were given the power to hold the funds of local authorities that are reluctant to create the prescribed areas and sites. The implementing decrees relating to permanent reception and transit areas helped to improve the relationship between Travellers and local authorities. The rules applicable to the development and management of the sites and areas were elaborated in consultation with government services, local authorities, representative associations and the *Commission nationale consultative des Gens du Voyage*¹⁰⁶⁴.

Pitfall/implementation challenge:

Pitfalls were also identified, namely housing measures taken by authorities that instead of improving the situation, led to *de facto* segregation. For instance, this was the case of construction of housing units of lower standard for Roma in isolated areas in Cyprus¹⁰⁶⁵ or on the outskirts of municipalities in Slovakia¹⁰⁶⁶ or Romania¹⁰⁶⁷; relocation schemes for Roma settlements in Greece, removing Roma from urban areas to isolated areas¹⁰⁶⁸; or making municipal housing available for low-income people in the same area in cities Finland¹⁰⁶⁹. There are also cases when measures taken by local authorities to allegedly solve certain issues, such as cleanness or security of the city (e.g. by construction of fences in cities in Slovakia, Portugal or Romania), are used to segregate Roma communities from other residents.

¹⁰⁶⁰ Council of Europe (2012), [Human rights of Roma and Travellers in Europe](#), p.143.

¹⁰⁶¹ Equinet (2017), [Fighting Discrimination on the Ground of Race and Ethnic Origin](#), p.26.

¹⁰⁶² Council of Europe (2012), Human rights of Roma and Travellers in Europe, p.152, <https://rm.coe.int/the-human-rights-of-roma-and-travellers-in-europe/168079b434>.

¹⁰⁶³ Council of Europe (2012), [Human rights of Roma and Travellers in Europe](#), p.154.

¹⁰⁶⁴ French Government (2022), [2020–2030 French Strategy](#) in response to the recommendation by the Council of the European Union of 12 March 2021 for Roma equality, inclusion and participation.

¹⁰⁶⁵ ECRI (2016), [5th report on Cyprus](#), p. 9,

¹⁰⁶⁶ CERD (2017), [Concluding observations on the combined eleventh and twelfth periodic reports of Slovakia](#), p.6.

¹⁰⁶⁷ Interview with an NGO in Romania, 07 March 2022.

¹⁰⁶⁸ The Greek Ombudsman's Office, Equal Treatment, [Special Report 2017](#), p. 45–46.

¹⁰⁶⁹ Vaattovaara M. (2018), Alueellinen eriytyminen ja segregaatoin uhka. Lausunto Eduskunnan tarkastusvaliokunnalle (*Regional diversification and the threat of segregation, a position paper for the Finnish Parliament*).

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4.2.6 Democratic participation and representation

At EU level, in light of the obstacles to democratic participation and representation faced by racial or ethnic minorities, the Commission in the Anti-racism action plan 2020-2025¹⁰⁷⁰ highlighted its intention to work with European political parties, the European Cooperation Network on Elections and civil society to improve democratic participation and representation as a part of the European democracy action plan and the Commission's forthcoming report on EU citizenship. In the Action plan the Commission mentioned the fact that data collection on minorities' participation would allow to identify the scale of the issue at stake.

At Member State level, several countries took measures to increase the political representation of minority ethnic groups or to foster their participation in the adoption of public policies. Some examples are included in the Box below:

Box 50: Good practice examples for measures providing for democratic participation and representation of minorities

Good practice examples for measures providing for democratic participation and representation of minorities

Hungary: the 13 recognised national and ethnic minorities are allowed to elect their own minority representatives in the National Assembly elections. For those minority representatives, a lower threshold has been established¹⁰⁷¹. If the lower required threshold is not reached, the leader of a registered minority in the electoral lists is sent to the National Assembly as a minority advocate. Even if their influence is not as important as the one of representatives (they do not have voting rights), advocates still ensure the representation of minorities¹⁰⁷². In addition to this system, the recognised national and ethnic minorities, including the Roma is allowed to create own self-governments at local, city and national levels. These minority self-governments enable the effective protection of the cultural autonomy of the minority as well as the rights and interests of its members¹⁰⁷³.

Romania: to support minorities' representation, Romania provides for a special mechanism which reserves parliamentary seats for smaller minorities which do not meet the national 5% threshold to have seats in the parliament¹⁰⁷⁴.

France: a National Consultative Committee on Travellers has been established and includes Government and Roma representatives. The Committee is involved in the decision-making process of public policies which have an influence on the Traveller community¹⁰⁷⁵.

Spain: regional Roma councils were created in order to promote and enhance Roma's participation in the adoption of public policies linked to the fight against poverty, social exclusion and the promotion of equal opportunity for the Roma community¹⁰⁷⁶.

Pitfalls/implementation challenges:

In **Hungary**, despite the measures ensuring a lower threshold for obtaining a seat in the parliament, available information points out that in theory only two minorities have the possibility of

¹⁰⁷⁰ European Commission, [EU anti-racism action plan 2020-2025](#).

¹⁰⁷¹ EU- CITZEN Network (2018), [Political Participation of the Roma in the European Union](#), p.32.

¹⁰⁷² ECMI (2022), [How to lose \(the almost\) guaranteed representation – Recent developments concerning Roma parliamentary representation in Hungary](#), ECMI Minorities Blog.

¹⁰⁷³ EU- CITZEN Network (2018), [Political Participation of the Roma in the European Union](#), p.32.

¹⁰⁷⁴ Jikia, M., Sophio, D. (2020), [Parliamentary representation of minorities in Romania – Current challenges](#), Проблеми законності, Вип.148, p.202-204.

¹⁰⁷⁵ French Government (2022), [Pôle Gens du voyage](#) (*Travelers Division*).

¹⁰⁷⁶ See for instance for the Autonomous Community of Castilla la Mancha; [Consejo Regional del Pueblo Gitano](#).

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electing an MP insofar as the other minorities are too small¹⁰⁷⁷. As to the minority self-governments, they often lack financial resources which has an impact on their functioning and activities¹⁰⁷⁸. **In Romania**, many political organisations defending Roma's rights have been established; however, only the Roma representative organisation that is already in the parliament benefits from the provision on the 5 % threshold. More stringent requirements are applicable for organisations without a presence in the parliament, which was criticised in particular by Roma activists¹⁰⁷⁹.

4.2.7 Sports

At EU level, the European Commission has cooperated with organisations such as the Union of European Football Associations (UEFA) and the International Federation of Association Football (FIFA) to promote projects that counter stereotypes in sports¹⁰⁸⁰. Furthermore, the 2021-2027 Erasmus+ programme will have a specific focus on grassroots sports, and it will foster the participation of people from different backgrounds, including racial or ethnic background¹⁰⁸¹.

At Member State level, the German Football Association (Deutscher Fußball-Bund e.V. - DFB) in Germany has some projects and programmes to increase participation of persons with diverse ethnic backgrounds and to report discriminatory incidents at amateur soccer games and in clubs¹⁰⁸². The Box below describes one of these initiatives:

Box 51: Measures promoting participation of persons with diverse ethnic backgrounds in sports

Measures promoting participation of persons with diverse ethnic backgrounds in sports

The **Fanprojekte (fan projects)** has been considered as a successful initiative to tackle racism in sports. It started 30 years ago and is now funded by the German State, the DFB and the German Football League (Deutsche Fußball Liga e.V. - DFL). As part of this initiative, professional social workers across the country work with young football fans to educate them about extremism and promote the development of an inclusive and diverse fan culture. The fan projects enjoy a high level of trust among match-going fans and has promoted a public debate in Germany on racism in football¹⁰⁸³. Another initiative that has been recently launched is the online platform **SprachKick**, created to provide information on how associations, clubs, fans, fan projects and media representatives should speak and write respectfully and free of discrimination. This is a joint initiative of the DFB, Aktion Mensch and the KickIn! specialist counselling centre¹⁰⁸⁴.

Other initiatives: Spain adopted in 2007 a Law against violence, racism, xenophobia and intolerance in sport¹⁰⁸⁵. This law created the State Commission against Violence, Racism, Xenophobia and Intolerance in Sport and provides for sanctions against the organisers of sports competitions

¹⁰⁷⁷ ECMI (2022), [How to lose \(the almost\) guaranteed representation – Recent developments concerning Roma parliamentary representation in Hungary](#), ECMI Minorities Blog.

¹⁰⁷⁸ Magyar Narancs (2017), [Hungary's Roma self-government falls on hard times](#).

¹⁰⁷⁹ EU- CITIZEN Network (2018), [Political Participation of the Roma in the European Union](#), p.28; US State Department (2021), [Romania 2020 Human Rights Report](#), p. 20

¹⁰⁸⁰ UEFA, "European Commission signs for an Equal Game", 7 July 2021 <https://www.uefa.com/return-toplay/news/026b-12b29c0f6169-a357cd70f88a-1000--european-commission-signs-for-an-equal-game/>

¹⁰⁸¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (2020), [A Union of equality: EU anti-racism action plan 2020-2025](#).

¹⁰⁸² German equality body via the answers provided to survey.

¹⁰⁸³ "Racism in German football: Lots of progress made, but lots of work to do" 18 March 2020 <https://www.dw.com/en/racism-in-german-football-lots-of-progress-made-but-lots-of-work-to-do/a-52818911>

¹⁰⁸⁴ DFB "Gemeinsam Unsere Stimme Erheben, 05 April 2022 https://www.dfb.de/news/detail/gemeinsam-unsere-stimme-erheben-238719/?no_cache=1&cHash=9109ba0ae6bbb369271944b376f85f20

¹⁰⁸⁵ Ley 19/2007, de 11 de julio, contra la violencia, el racismo, la xenofobia y la intolerancia en el deporte, BOE-A-2007-13408 <https://www.boe.es/buscar/doc.php?id=BOE-A-2007-13408>

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and attendees for their participation in or encouragement and promotion of violent, racist, xenophobic or intolerant acts - among other conducts. In Romania, the Romanian Football Federation has adopted explicit provisions on diversity and non-discrimination in its internal regulation and has also launched a prevention campaign to use sports to promote diversity¹⁰⁸⁶.

4.2.8 Health promotion and disease prevention

At EU level, the Commission invited stakeholders to submit initiatives for a new cycle of Thematic Networks under the EU Health Policy Platform. Within a year, the Thematic Network will produce a Joint Statement summarizing the common position of stakeholders on selected public health areas including health inequalities based on ethnic origin. The aim of the Joint Statement is to advise the European Commission on its policy activities¹⁰⁸⁷.

In addition, the Commission Steering group on health promotion, disease prevention and management of non-communicable diseases will be asked to select best practices on the inclusion of people with a minority racial or ethnic background in health prevention strategies to be scaled up with EU budget support. Additional research projects under Horizon Europe could also contribute to this work¹⁰⁸⁸. DG SANTE kicked off three projects financed in 2020 of the previous 3rd Health Programme for improving the vaccination uptake by migrants, prisoners and other difficult-to-reach population groups.

In Europe, some countries (e.g. Italy, Poland) translated and disseminated information on COVID-19, in the main minority and migrant languages¹⁰⁸⁹. However, in Poland the omission in the translated information sheets that testing was also free for foreigners has been highlighted¹⁰⁹⁰. Other countries (e.g. Switzerland), took measures for accommodating the situation of Roma and travellers. Examples are described in the Box below:

Box 52: Good practice examples of health promotion and disease prevention targeting ethnic minorities

Good practice examples of health promotion and disease prevention addressed to migrants and ethnic minorities within the context of the COVID-19 pandemic

Italy: During the COVID-19 pandemic, Italy provided information on the pandemic specifically targeted at migrants. For instance, the website of the **Valle d'Aosta Region** provided for a guide on the governmental restrictions in place¹⁰⁹¹. Translation of the guide is available in various languages (Albanian, Arabic, Chinese, French, English and Spanish). In addition, the same website contains translations in Chinese, Spanish, French and Arabic of the declaration form required to be completed by people who were going out of their homes¹⁰⁹². The website of the **Emilia Romagna Region** features a section dedicated to information on the pandemic in various languages. The section contains links to various webpages of public bodies, associations, international organisations or professional organisations¹⁰⁹³.

¹⁰⁸⁶ European Commission against Racism and Intolerance (2019), ECRI REPORT ON ROMANIA, (fifth monitoring cycle), p.20, <https://rm.coe.int/fifth-report-on-romania/168094c9e5>

¹⁰⁸⁷ VPH Institute, [EU Health policy Platform calls for proposals: 2021 thematic networks](#).

¹⁰⁸⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (2020), A Union of equality: EU anti-racism action plan 2020-2025.

¹⁰⁸⁹ CoE (2020), Directorate of Anti-Discrimination, [The anti-discrimination, diversity and inclusion dimensions of the response to Covid-19](#), Introductory Note prepared by the Secretariat of the Steering Committee on Anti-discrimination, Diversity and Inclusion (CDADI), p. 4.

¹⁰⁹⁰ Karwowska, A. (2020), [Leczenie koronawirusa jest darmowe również dla cudzoziemców. - Rząd powinien to nagłośnić - apelują lekarze](#) ('Coronavirus treatment is also free for foreigners - the Government should publicize it - urge the doctors'), Gazeta Wyborcza.

¹⁰⁹¹ Valle D'Aosta, [Portale Immigrazione](#).

¹⁰⁹² Valle d'Aosta, [Portale Immigrazione](#).

¹⁰⁹³ Regione Emilia-Romagna, [COVID-19 Cosa c'è da sapere, in diverse lingue](#) ('COVID-19 what you need to know in different languages').

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Information about the pandemic is also available for migrants in various languages on the websites of associations such as Il grande colibri¹⁰⁹⁴ or Naga¹⁰⁹⁵.

Switzerland: during the COVID-19 pandemic, one Foundation has been charged by the Swiss Confederation to establish recommendations of measures which shall be adopted regarding the situation of the traveller community during the pandemic. Such recommendations initially published in March 2020 have been renewed in March 2021¹⁰⁹⁶. They recommended for instance keeping reception areas open so that travellers are spread over various reception areas. Furthermore, depending on the evolution of the sanitary situation, open provisional reception areas could be open if needed. However, those recommendations were not binding.

4.3 Good practices and pitfalls concerning protection mechanisms

4.3.1 Awareness-raising and communication campaigns

Awareness-raising activities for tackling unconscious bias for the general public

In 2016, Equinet reported a significant rise in discrimination, hate speech and hate crimes linked to racial and ethnic discrimination, which emphasised the need for prevention and awareness-raising activities and campaigns for the general public¹⁰⁹⁷. One of the conclusions is that inclusion messages should be communicated to the public. This can be done through movies, university lectures, video games, social medial tools or national and local actions weeks¹⁰⁹⁸. These activities or campaigns should highlight the negative impacts of discrimination and should address the ways in which discrimination occurs through unintended or unconscious behaviour. Member States have led campaigns at the national-level, the most relevant countries being Belgium, Czech Republic and France - these are described in the Box below:

Box 53: Good practice examples of awareness-raising activities for tackling unconscious bias for the general public

Good practice examples of awareness-raising activities for tackling unconscious bias for the general public

Belgium: in 2017, the Wallonia-Brussels Federation launched a campaign against racism and stereotypes, "Racism, you are better than this!". It relaunched it in 2019 by broadcasting videos on TV, social media and in public transportation stations¹⁰⁹⁹. At local- level, some municipalities organise activities in schools to educate pupils about racism, for example through theatre plays. The purpose is to ensure children recognise racism and become actors to fight against it.

Czech Republic: the Czech Republic launched a campaign called "Know the truth and spread it further" intended to detect and refute fake news about Roma and refugees. In 2019, a media campaign conducted via Czech television, radio and social media aimed at making mainstream the position of Roma culture in society. In addition, an online awareness raising campaign, "I did a terrible thing", was organised to address the plight of the Romani LGBT+ community. Another online campaign, "We are Roma", was launched to encourage Roma people to declare their Roma nationality and mother tongue at the census of population, housing and cities.

¹⁰⁹⁴ Il grande colibri, [Coronavirus in Italy : videos and information for migrants](#).

¹⁰⁹⁵ Naga (2020), [Traduzioni decalogo del Ministero per il coronavirus](#) ('Translations of the Ministry's Coronavirus guide').

¹⁰⁹⁶ Fondation Assurer l'avenir des gens du voyage suisses, [Coronavirus et aires d'accueil pour Yéniches, Sintés et Roms nomades : recommandations actualisées en accord avec l'office fédéral de la culture](#) ('Coronavirus and reception areas for Yenish, Sinti and nomad Roma populations : updated recommendations in compliance with the Federal office for Culture').

¹⁰⁹⁷ Equinet (2016), Fighting Discrimination on the Ground of Race and Ethnic Origin.

¹⁰⁹⁸ OHCHR, Management Plan 2018-2021; FRA (2019), Roma and Travellers Survey; Information provided by national expert for Czech Republic and France through desk research.

¹⁰⁹⁹ BX1 (2019), "La Fédération Wallonie-Bruxelles relance une campagne contre le racisme", <https://bx1.be/categories/news/la-federation-wallonie-bruxelles-relance-une-campagne-contre-le-racisme/>

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France: the equality body created an educational platform and initiated a campaign to raise awareness among the youth on the importance of fighting stereotypes and promoting equality. France also launched a communication campaign against discrimination in sports. In addition, one can find practical guides on the fight against discrimination on the website of the Ministry of Interior.

4.3.2 Training

Educational programmes for schools and universities focusing on equality and non-discrimination

At EU-level, the EU Anti-Racism Action Plan 2020-2025 states that, if schools are to be safe places without racism and discrimination, teachers need to be trained in issues related to racial discrimination and be aware of the needs of pupils and students from different backgrounds. Children themselves also need to receive education concerning equality and inclusion¹¹⁰⁰. The OHCHR and the ECRI both recommend that equality and non-discrimination be part of the educational curriculum in schools and universities¹¹⁰¹.

At Member State level, various countries, such as Austria, Belgium, Cyprus, Czech Republic, Germany, the Netherlands, Portugal, Romania and Spain, have taken measures to encourage or formally include issues related to discrimination or racism in school programmes. Under Spanish law, for example, equal treatment and non-discrimination must be addressed at different moments throughout basic education¹¹⁰², while in Romania, an objective of the 2015-2020 Strategy was to introduce teaching modules on the Roma population for people working in education. Examples are described in the Box below:

Box 54: Good practice examples of educational programmes for schools and universities

Good practice examples of educational programmes for schools and universities focusing on equality and non-discrimination

Austria: 'citizenship education' is a cross-curricular education principle applied in every class and at every level in the Austrian education system. Its objectives are 'overcoming prejudice, stereotypes, racism, xenophobia and antisemitism as well as sexism and homophobia'. In Vienna, the Board of Education made human rights one of its long-term educational goals and provides teachers with training seminars. In addition, diverse teaching material and workshops on human rights are offered to pupils and teaching staff by the Austrian Centre for Citizenship Education in Schools (Polis).

Belgium: officials at the municipality level in Belgium have stressed the need to fight against structural ethnic and racial discrimination through pedagogical activities in schools. These awareness raising activities can include theatre plays. For instance, the municipality of Anderlecht in Brussels organised a theatre play for children explaining the issues related to 'The Black Pete'. These activities aim at helping children to recognise racism and act to combat against it.

Cyprus: the Cypriot Ministry of Education and Culture advocates an anti-racism policy and activities in all schools. Those activities should be organised with teachers, students and their parents. The Ministry of Education and Culture also adopted a Code of Conduct against Racism and Guide for Managing and

¹¹⁰⁰ EU Anti-Racism Action Plan 2020-2025.

¹¹⁰¹ OHCHR, Management Plan 2018 -2021; EU Anti-Racism Action Plan 2020-2025; ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance; ECRI (2020), 6th report on Austria; ECRI (2019), 6th Report on Germany; ECRI (2016), 5th Report on Luxembourg; ECRI (2018), 5th Report on Portugal; ECRI (2020), 6th Report on Czech Republic; Information gathered by national experts for Cyprus, France, Netherlands, Poland and Romania under this study; Interviews with stakeholders at EU level, in Belgium, Luxembourg, Netherlands, Poland, Portugal and Slovenia.

¹¹⁰² European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives.

Good practice examples of educational programmes for schools and universities focusing on equality and non-discrimination

Recording Racist Incidents¹¹⁰³. This Code highlights the importance and necessity of fighting discrimination in schools and provides advice on how to prevent and address racist incidents. It contains templates of forms, such as one to record racist incidents or a template to help students self-reflect after an incident. Racial discrimination incidents at school are reported to the Ministry.

Germany: The German Conference of the Ministers of Education and Cultural Affairs, the KMK, intends to publish a document on Sinti and Roma history, culture and way of life. The project 'School without racism – School with courage' in Germany currently connects 3600 schools in action for human dignity¹¹⁰⁴. Those schools committed themselves to working for equality and against discrimination, but the main aim of the project is making pupils and students themselves active against all kinds of discrimination. Children choose the topics they want to address and determine the agenda. In addition, human rights is a cross-curricular subject in schools for children aged from 10 to 19 years.

Netherlands: in the Netherlands, the province of Friesland adopted an 'Anti-bullying policy' in 2021 aimed at preventing and tackling different types of bullying, including racist bullying and the use of racist language¹¹⁰⁵. The school community was involved in the drafting of the policy. The policy will be reviewed after two years, in 2023. In addition, the anti-discrimination Bureau of Friesland offers discrimination trainings in schools.

Training of public officials involved in public services

Training officials involved in public services is of utmost importance for fighting against discrimination and racism. There are examples at the Member State level which show that certain countries have adopted measures ensuring the training of public officials, including Belgium, France and Romania (see Box below). In Italy, the NGO COSPE launched a project intended to strengthen the ability of professionals, including social workers, to acquire relevant technical knowledge and better address victims' needs.

Box 55: Good practice examples of educational programmes for training of public officials involved in public services

Good practice examples of educational programmes for training of public officials involved in public services

Belgium: the Brussels Environment Agency organises internal awareness-raising activities and communicates with its staff members about the inclusive employment policy of the organisation.

France: France regularly trains its civil servants in the fields of diversity and anti-discrimination.

Portugal: Online training course for civil servants entitled "Literacy on racism and racial discrimination". It aims to train people to better understand racism and the judgements or beliefs that support it, and to consolidate knowledge on the evolution of anti-racist norms and measures to combat and prevent racism. The course is structured around four modules, offering a sequence of short-term activities (videos, animations, polls, resources, case studies of everyday life, and so on), and is open to the public at large as well¹¹⁰⁶.

Romania: the 2015-2020 Strategy set out different objectives such as the introduction of teaching modules on the Roma population for persons working in public administration, social assistance, health and education.

¹¹⁰³ Ministry of Education and Culture (2016), Code of Conduct against Racism and Guide for Managing and Recording Racist Incidents, <http://naos.risbo.org/wp-content/uploads/2017/04/Cyprus-antiracism-code.pdf>

¹¹⁰⁴ Schule ohne Rassismus – Schule mit Courage, Network, <https://www.schule-ohne-rassismus.org/netzwerk/>

¹¹⁰⁵ Friesland School (2021), 'Anti-bullying policy', <https://www.friesland.ttct.co.uk/wp-content/uploads/sites/12/2021/10/Anti-Bullying-Policy-2021.pdf>

¹¹⁰⁶ Commission for Equality and Against Racial Discrimination, High Commission for Migration and National Institute of Administration, <https://www.acm.gov.pt/-/ina-e-acm-cicdr-lancam-curso-literacia-sobre-racismo-e-discriminacao-racial->

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Pitfalls/implementation challenges:

Challenges in relation to the implementation of training programmes for public officials, however, remain. A survey of 11 public administration education and training programmes across nine countries of Central and Eastern Europe regarding their responses to multi-ethnic communities and diversity, revealed that none reported having any courses that addressed serving in public administration in diverse communities, though three reported having relevant activities related to research or projects¹¹⁰⁷. Moreover, the impact of training programmes for public officials is most often not measured¹¹⁰⁸, nor is there a knowledge base on discrimination in and by public authorities to act as a baseline¹¹⁰⁹. In Romania, the 2015-2020 National Roma Strategy was, for instance, challenged at national and international level for a lack of effective implementation. ECRI highlighted its "little impact" in its 2019 report and the Special Rapporteur's 2016 report mentioned the Government's ineffectiveness in implementing the strategy¹¹¹⁰. Experts recommend that trainings for public officials build both awareness of unconscious biases as well as the capacity to address the impacts of those biases through specific strategies and support, and that training activities be sustained rather than one-off¹¹¹¹.

4.3.3 Collection and use of equality data

Monitoring of discrimination in the justice system

Outside the EU, the United Kingdom offers a **good example of information gathering** on the racial/ ethnic origin of all persons who come into contact with the criminal justice system. The extensive ethnic monitoring includes searches, arrests, cautions, homicides and deaths in custody. For example, the latest statistics on stop and search from May 2022 shows that there were six stop and searches for every 1 000 White people, compared with 54 for every 1 000 Black people. In other words, Black people are seven times more likely to be stopped and searched than White people. This was higher for some police forces¹¹¹².

At the national-level of the EU Member States, in the Czech Republic, the equality body released a **specialised report** on access to justice for victims of discrimination. In Luxembourg, **annual figures** for judicial authorities' convictions in relation to racial discrimination are reported¹¹¹³. In Sweden, the Swedish Crime Prevention Council published a **report** on discrimination in the criminal justice process. In France, no report has been found in this area, but the Defender of Rights **recommends** gathering data relating to identity checks by the police. They have identified gaps in data on cases brought before the courts and gaps in data relating to identity checks by the police: the only information available is on the perception of discriminatory identity checks

¹¹⁰⁷ UN Department of Economic and Social Affairs (2022), UN DESA Policy Brief No. 136, Promoting non-discrimination in public administration: some entry points, <https://www.un.org/development/desa/dpad/publication/un-desa-policy-brief-no-136-promoting-non-discrimination-in-public-administration-some-entry-points/>

¹¹⁰⁸ Interviews with stakeholders

¹¹⁰⁹ For example, UN Department of Economic and Social Affairs (2022), UN DESA Policy Brief No. 136, Promoting non-discrimination in public administration: some entry points.

¹¹¹⁰ APADOR-CH (2020), Unconscious bias and discrimination of Roma people in the criminal justice system, https://apador.org/wp-content/uploads/2020/12/ROMA-report_APADOR-CH.pdf; ECRI (2019), Fifth Report on Romania, <https://rm.coe.int/fifth-report-on-romania/168094c9e5>; UN Human Rights Council (2016), Report of the Special Rapporteur on extreme poverty and human rights on his mission in Romania, <https://www.refworld.org/docid/576b98224.html>.

¹¹¹¹ UN Department of Economic and Social Affairs (2022), UN DESA Policy Brief No. 136, Promoting non-discrimination in public administration: some entry points,

¹¹¹² Gov.uk (2022), Ethnicity facts and figures, [Stop and search](#).

¹¹¹³ European Commission (2020), Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive'), SWD(2021) 63 final, 19.03.2021, p. 15.

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but not on the number of controls and how many can be considered as discriminatory. Examples of monitoring reports are described in the Box below:

Box 56: Good practice examples of monitoring discrimination in the justice system

Good practice examples of monitoring discrimination in the justice system

United Kingdom: the UK Government commissioned an independent review of the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System. The so-called Lammy review was chaired by David Lammy Member of the Parliament and the final report was published in 2017. The Lammy review had two distinctive features, the first of which was its broadness, since it analysed the role of the Crown Prosecution Service (CPS), the courts system, the prisons and young offender institutions, the Parole Board, the Probation Service and Youth Offending Teams (YOTS). The other distinctive feature was that it had access to resources, data and information held by the criminal justice system itself. The Lammy review developed analysis that leads the way on race and criminal justice in the country¹¹¹⁴.

Sweden: a report called *Discrimination in the criminal justice process (Diskriminering i rättsprocessen)* was produced by the Swedish Crime Prevention Council (BRÅ) in 2008. The report analysed the direct and indirect discrimination of individuals from a non-Swedish or other minority background. In 2003, a Swedish governmental inquiry aimed to analyse the issue of structural discrimination. The report from this inquiry noted that further research was needed to be carried out in the area. In 2006 the Swedish Government instructed the BRÅ to produce the report issued in 2008. The principal objective of the report was to describe the ways in which behaviours and structures within the justice system can lead to individuals with a non-Swedish background being disadvantaged in their contacts with the criminal justice process, and to discuss what steps might be taken within the justice system to reduce the risk for the occurrence of this discrimination¹¹¹⁵.

Collecting disaggregated equality data

Equality data are essential for measuring discrimination, raising awareness, demonstrate the existence of discrimination and analyse the effectiveness of the current legislative measures in place. Data helps as well to provide evidence for future policymaking.

At EU-level, in 2021 the Commission organised a round table on equality data bringing together key stakeholders to analyse and discuss how to harmonise the approach to data collection and what are the most common obstacles and how to face them. The sub-group on equality data presented at the Roundtable a guidance note on improving the collection and use of equality data based on ethnic and racial origin.

At Member State-level, some examples where **disaggregated equality data are collected** have been identified. In Poland, the national census of Population and Housing covered nationality, ethnicity and disability. The survey covers all people living in Poland, regardless of their origin or status. The goal is to define the national, ethnic and religious diversity of the country. This opportunity to count the inhabitants of Poland happens every 10 years. The census does not address the question of the basis and legality of the person`s residence in Poland. Participation in the survey is completely anonymous for every person living and staying in Poland. The absolute confidentiality of data is guaranteed by statistical disclosure, the breach of which is punishable by imprisonment of up to three years¹¹¹⁶. Ireland also collects data on ethnic background via national censuses (this example is described in the Box below). Other countries, for

¹¹¹⁴ The Lammy review (2017), An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System, p. 3

¹¹¹⁵ The Swedish National Council for Crime Prevention (2008), *Discrimination in the criminal justice process in Sweden: The direct and indirect discrimination of individuals from a non-Swedish or other minority background*, p. 5

¹¹¹⁶ Welcome Point, take part in the National Census of Population and Housing. Available at: <https://welcome.uw.edu.pl/take-part-in-the-national-census-of-population-and-housing/>

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example Spain, acknowledge the necessity to collect equality data, in order to have a better overview of the situation of those who suffer racial or ethnic discrimination¹¹¹⁷.

Box 57: Good practice examples of collecting disaggregated equality data

Good practice examples of collecting disaggregated equality data

Ireland: In 2006 the Irish Central Statistics Office (CSO) included a question about ethnic background on the Irish Census for the very first time. The question read: 'What is your ethnic or cultural background?' and included the following response categories: Irish; Irish Traveller; any other White background; African; any other Black background; Chinese; any other Asian background; and other, including mixed background. Following a 2017 consultation, the following new categories were added to the list: Roma; Indian / Pakistani / Bangladeshi; Arabic; Mixed. The categories 'Other' and 'Mixed' also include space for people to self-define. A newly-updated census questionnaire with a focus on ethnicity was used in April 2022. The issue of ethnicity is of growing importance in Ireland. From the 2011 to the 2016 census there was a dramatic increase in people who selected the 'Other' categories on the forms: 'Other White' increased by 8.2 %, 'Other Black' increased by 6.4 %, 'Other Asian' increased by 18.6 % and 'Other' increased by 73.4 %. The number of people who recorded dual Irish nationality increased by 50 %¹¹¹⁸.

United Kingdom: the Race Disparity Audit investigates racial disparities in public services. It is a programme that aims to gather data by race and ethnicity across several public services and government departments. The programme also contains a public website where racially disaggregated data is published, called "Ethnicity Facts and Figures". The data collection programme covers a large range of sectors, including justice, housing, employment, health care, etc. The Audit results in specific policy measures aimed at tackling some of the major disparities identified.¹¹¹⁹

Pitfalls/implementation challenges:

The UK Government identifies the insufficient number of cases to draw firm conclusions on differences between ethnic groups, and the ability to take account of other factors in the analysis, in addition to ethnicity, as a common challenge where relevant data is collected¹¹²⁰. The UK Government report notes that quality of data on the ethnicity of individuals varies and is generally better when reported by people themselves, as it is in surveys and the Census¹¹²¹. In other countries, implementation challenges relate to the national privacy rules, which do not allow for the collection of ethnically disaggregated data¹¹²².

Situation testing to examine patterns of discrimination

At Member State level, France provides good examples on the use of **situation testing** in the case-law concerning the ground of racial/ethnic origin. SOS Racism performed several situation testings to analyse the access to goods and services on the ground of ethnic origin. These cases of litigation led the Court of Cassation to admit situation testing before criminal courts¹¹²³. In Hungary, situation testing is regulated under the Equal Treatment Act (ETA) and authorises national authorities to conduct tests during the investigation phase and to consider the results

¹¹¹⁷ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination, p. 114

¹¹¹⁸ Ireland: Ethnicity issues in national census, available at: https://ec.europa.eu/migrant-integration/news/ireland-ethnicity-issues-national-census_en

¹¹¹⁹ UK government, "Race Disparity Audit", <https://www.gov.uk/government/publications/race-disparity-audit>. Issue also raised in interviews with stakeholders and during the Workshop.

¹¹²⁰ UK government, "Race Disparity Audit", <https://www.gov.uk/government/publications/race-disparity-audit>

¹¹²¹ UK government, "Race Disparity Audit", <https://www.gov.uk/government/publications/race-disparity-audit>, p.5.

¹¹²² Stakeholder interviews.

¹¹²³ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination, p. 49

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as evidence when taking a decision. In Belgium, Unia has developed a partnership with the Université Libre de Bruxelles (ULB) to use situation testing as a tool to bring intersectional discrimination to court. Situation testing has been used in the Netherlands (described in the Box below) and Sweden as well. The Swedish Discrimination Act allows situation testing to prove violations of the Act.

Box 58: Good practice examples of situation testing to examine patterns of discrimination

Good practice examples of situation testing to examine patterns of discrimination

Netherlands: Courts accept situation testing as a valid method to prove discrimination both in civil and criminal litigation. The Equal Treatment Commission accepts situation testing as well as evidence of discriminatory behaviour. The criteria for situation testing are numerous but they specifically define a series of requirements. It mostly concerns admittance to night clubs, bars and job applications¹¹²⁴. The Equal Treatment Commission has admitted situation testing resulting from an individual initiative in the past¹¹²⁵.

Pitfalls/implementation challenges:

Legal limitations may exist in some Member States for the admission of evidence obtained through situation testing by the national courts. For instance, in Belgium, the Council of State adopted an opinion in which it considered situation testing a form of incitement to commit an offence¹¹²⁶. This interpretation was, however, not supported by the European Court of Human Rights¹¹²⁷. In France, the Court de Cassation rejected evidence obtained through situation testing on grounds that it did not ensure a fair trial, though it noted that it was not because the technique in itself was assumed to be biased, but the assessment would have to be made on a case-by-case basis¹¹²⁸.

4.3.4 Dialogue, cooperation and collaboration

Dialogue with local communities or specific actors from private sector/civil society

Dialogue between different actors is fundamental when trying to eliminate and prevent racial and ethnic discrimination. At international level, the UN has underlined the necessity of partnerships with the private sector, the media and parliaments¹¹²⁹. At EU-level, Article 12 of the RED encourages dialogue with **civil society organisations**. The need for cooperation at regional and local levels has also been highlighted in the EC Anti-Racism Plan 2020-2025¹¹³⁰.

¹¹²⁴ Centre for Equal Rights, Proving discrimination cases – the role of situation testing. Available at: https://www.migpolgroup.com/_old/public/docs/153.ProvingDiscriminationCases_theroleofSituationTesting_EN_03.09.pdf

¹¹²⁵ 196 Opinion 2005-136, available in Dutch on the Equal Treatment Commission's website, www.cgb.nl.

¹¹²⁶ Belgian Council of State, opinion no. 32.967/2 of February 2002; Rorive, I., for the Migration Policy Group, "Proving discrimination cases. The role of situation testing, https://www.migpolgroup.com/_old/public/docs/153.ProvingDiscriminationCases_theroleofSituationTesting_EN_03.09.pdf.

¹¹²⁷ ECHR, Teixeira de Castro v. Portugal, 9 June 1998; Rorive, I., for the Migration Policy Group, "Proving discrimination cases. The role of situation testing.

¹¹²⁸ Court of Cassation (Criminal Division), 11 June 2002, no. 01-85.559; Rorive, I., for the Migration Policy Group, "Proving discrimination cases. The role of situation testing.

¹¹²⁹ UN High Commissioner for Human Rights (2021), [Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers](#), A/HCR/47/53.

¹¹³⁰ As mentioned in the EU Anti-Racism Action Plan 2020-2025, this could include cooperation with the network of major European cities (EUROCITIES) and the UNESCO-led European coalition of cities against racism. International Urban Cooperation (IUC) programme and Covenant of Mayors for Climate and Energy could serve as platforms or models for further developing city-level action promoting racial equality.

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At national-level, several Member States have enacted laws regarding regular dialogue on equality with civil society organisations, including Finland, Ireland and Spain.

Various Member States have also included **local experts** from Roma population or Roma mediators to generate dialogue and promote cultural understanding. According to ECRI, recruiting **Roma mediators** is a useful means to prevent and address the exclusion of Roma. Belgium and Cyprus both launched a National Roma Platform and Romanian local public administrations hired Roma experts. In Sweden, Roma mediators provide support in the areas of education, social services and health while; in Bulgaria, they are involved in access to services, information, awareness raising or recognition of problems and persons in need. In Germany, Sinti and Roma mediators enhance cooperation between Sinti and Roma pupils, their parents and schools in four different Länder (Berlin, Bremen, Hambourg and Schleswig-Holstein). There are also other initiatives in the Member States for dialogue and cooperation with different actors. Some examples are illustrated in the Box below:

Box 59: Good practice examples of dialogue with local communities or specific actors from the private sector/civil society

Good practice examples of dialogue with local communities or specific actors from the private sector or civil society

Belgium: Belgium employs peacekeepers (non-police public security 'officers'), who form a link between the municipality and its citizens. Although they do not have enforcement authority, their presence in neighbourhoods increases security, since they can inform citizens and report problems to the police or the municipality.

Finland: the central administration of Finland includes a working group fighting against discrimination and promoting access to social and health services.

Italy: there is a duty for the Italian State, embedded in the law 101/1989, to consult with Jewish community representatives in the programming of inclusive actions in different spheres of life, such as education, employment and sports.

Spain: OBERAXE, the Spanish Observatory of Racism and Xenophobia (OBERAXE), which is part of several ministries, collaborates and coordinates organisations, both public and private, that are working to prevent racism. OBERAXE also prepares plans and strategies promoting migrants' inclusion in Spain.

Interinstitutional cooperation, e.g. equality body and data protection authorities, or for developing specific statistics

According to Equinet, **interinstitutional dialogue** and **cooperation** is another means to fight against racial and ethnic discrimination¹¹³¹, as it may enhance the collection of equality data, may lead to a more accurate identification of data needs and could be a tool used to investigate and address issues of racial and ethnic discrimination. ECRI considers that it could help dealing with specific topics. As an example, cooperation could be organised between equality bodies, data protection authorities and academics to tackle the issue of algorithmic discrimination by means of artificial intelligence¹¹³². France and Spain have both taken measures to create inter-institutional dialogues and cooperation, these are exemplified below:

Box 60: Good practice examples of interinstitutional cooperation

Good practice examples of interinstitutional cooperation

¹¹³¹ Equinet (2020), A perspective from the work of equality bodies on: European equality policy strategies, equal treatment directives, and standards for equality bodies; Equinet (2019), Equality bodies countering ethnic profiling; Equinet (2016), Fighting Discrimination on the Ground of Race and Ethnic Origin; ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance.

¹¹³² ECRI (2018), Discrimination, artificial intelligence, and algorithmic decision-making.

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Spain: in 2018, Spain's government signed a cooperation agreement on institutional cooperation against racism, xenophobia and phobia against LGBTI-communities.

France: every District Attorney's office in France contains a department against discrimination where all relevant actors are gathered¹¹³³.

4.3.5 Equality duties

Several Member States have adopted measures aimed at promoting equality in the public sector. For example, Finnish state and municipal authorities, education providers and employers are under an obligation to set out plans including relevant measures to promote equality and are supervised by the Non-Discrimination Ombudsman of Finland, which can bring a case of non-compliance before a specialised tribunal. Hungarian legislation requires budgetary bodies and state-controlled companies of at least 50 employees to set out equal opportunities plans which include positive measures preventing and addressing cases of discrimination and to assess the composition of the workforce, such as the situation of Roma employees. The Box below highlights further examples:

Box 61: Good practice examples of imposing legal duties on the public sector

Good practice examples of imposing legal duties on the public sector to promote equality in a proactive and systematic manner

Ireland: in Ireland, there is a statutory duty for every employee of a public body to eradicate discrimination, to promote equality of opportunity and treatment and to safeguard the human rights' protection of the public body's members, its staff and those to whom they provide services. The statutory duty implies that public bodies assess relevant equality issues in their strategic plan. Public bodies are also required to determine how to tackle these issues and to report on the progress made. In implementing this duty, public bodies are assisted and monitored by the Irish Human Rights and Equality Commission.

UK: the UK has adopted the Equality Act 2010, a legal framework protecting individual rights and promoting equal opportunity which requires public authority to respect equality duties (Public Sector Equality Duty or PSED). The PSED concerns all organisations providing a public service (officers working for the police, in prisons and in the probation service, customs and excise, tax, trading standards and health and safety officers, licensing, the core functions of immigration authorities,...). It implies that those organisations need to eliminate discrimination, improve equality of opportunity between those who fall within a protected category of persons and those you do not, and encourage good relations between those groups of persons. Policies and service delivery shall incorporate those objectives and need to be reviewed regularly. The concerned organisations are required to publish equality information and targets, and monitor the progress made towards achieving these targets. Under the Act, individuals and groups are entitled to take legal action in case of unlawful distinction in treatment. This mechanism is supervised by the Equality and Human Rights Commission, which may conduct investigations, seek judicial review or issue compliance orders when a public body does not comply with its duties under the Equality Act 2010¹¹³⁴.

Pitfalls/implementation challenges:

Most existing positive equality duties, as obligations to take action, have been identified in legislation, formulated as positive duties imposed on an organisation, and accompanied by an obligation to report on progress. It is therefore difficult to assess whether the same effect would be achieved in countries where such duties are enshrined in policies rather than in legislation.

¹¹³³ Ministère de la Justice (France), [Circulaire du 4 avril 2019 relative à la lutte contre les discriminations, les propos et les comportements haineux](#), 2019.

¹¹³⁴ Equality Act 2010; Open Society Foundations (2012), Reducing Ethnic Profiling in the European Union: A Handbook of Good Practices, p.20, https://www.justiceinitiative.org/uploads/449dcf75-c97e-432c-8fd2-f7a884057d48/reducing-ep-in-EU-12172012_0.pdf; UN Department of Economic and Social Affairs (2022, UN DESA Policy Brief No. 136, Promoting non-discrimination in public administration: some entry points.

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4.3.6 Preventative/proactive actions

Supportive measures for disadvantaged groups: support to educational establishments in combating racial and ethnic discrimination as well as the specific difficulties faced by Roma pupils

ECRI has repeatedly advocated, along with other actors, for the introduction of **positive actions**, including **supportive measures** for disadvantaged groups¹¹³⁵. These actions could mean the adoption of measures creating incentives for employers to hire racial and ethnic minority workers, measures to promote the representation of minorities in political life or measures to support educational establishments in their fight against racial and ethnic discrimination.

Regarding educational establishments more specifically, ECRI considers that childhood education is a key factor in the development of future life opportunities and that ensuring Roma children an equal start in life can end the intergenerational cycle of poverty and is instrumental to ensure the inclusion of Roma pupils¹¹³⁶. Therefore, ECRI encourages to add teaching and integration support for Roma children in mainstream schools, instead of redirecting those pupils to special needs classes. Latvia, Portugal, Romania are the most relevant Member States when it comes to the adoption of **measures supporting educational establishments** to combat racial and ethnic discrimination, more particularly measures tailored to the difficulties faced by Roma pupils (for more details see the Box below). In addition, Roma NGOs in Austria offered school mediation, extra-curricular tuition and free after-school support services and language classes in public schools for Roma pupils.

Box 62: Good practice examples of supportive measures for disadvantage groups

Good practice examples of supportive measures for disadvantage groups

Latvia: five municipalities in Latvia have hired Roma mediators in the education sector, which has been considered as useful to increase school enrolment and prevent dropouts of Roma pupils and students¹¹³⁷.

Portugal: a school ID card system allows nomadic families to attend any school at the grade level specified on the school ID card.

Romania: Romania grants scholarships to secondary and professional Roma pupils and offers pupils in remote area free transportation by school buses. In addition, Roma children can receive free school supplies and be part of educational programmes such as "Second Chance" and "School after School"¹¹³⁸.

4.3.7 Remedies and enforcement

Alleviating the financial burden of proceedings with a view to facilitate the reporting of racial or ethnic discrimination cases

In order to provide all victims of racial discrimination with adequate means of legal protection, several measures to facilitate reporting have been identified in some Member States as an example of good practice. For example, **tax incentives** are offered in Belgium and Romania. In some Member States, **mediation or conciliation procedures are available free of charge** as part of the court proceedings. In Italy, the pre-trial mediation is mandatory, while in Romania pre-trial mediation is an optional solution. **Funds that provide victims of discrimination** with

¹¹³⁵ ECRI (2004), 10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance; ECRI (2015), 5th report on Poland; ECRI (2019), 5th report on Luxembourg; ECRI (2015), 5th report on France; ECRI (2019), 5th report on Romania; ECRI (2019), 5th report on the Netherlands; ECRI (2017), 5th report on Sweden; Ontario (2017), [A better way forward: Ontario's 3-year Anti-racism Strategic plan](#); ECCAR response to consultation; Information obtained from the Slovak legal expert through desk research; Information obtained from Association Novo Dia (Portugal) via interview held in February 2022.

¹¹³⁶ ECRI (2019), Fifth Report on Romania, p. 27.

¹¹³⁷ ECRI (2018), Fifth Report on Latvia, p. 25.

¹¹³⁸ ECRI (2019), Fifth Report on Romania, p. 71.

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advance coverage of legal costs are set up in Italy. Exceptions regarding the payment of court fees in discrimination cases are adopted in several Member States. More specifically, Croatia, Portugal, Romania, Malta and Bulgaria could be quoted as good examples¹¹³⁹. In the Czech Republic there is a **reduced court fee**. In Bulgaria, the Protection against Discrimination Act stipulates that, procedures both before the general courts and before the quasi-judicial equality body **are exempt from all costs**, both state fees and expenses. Poland has an interesting example regarding labour cases; an employee can be represented by a representative of a trade union, a labour inspector or another employee¹¹⁴⁰, so they do not have to pay for legal assistance.

Box 63: Good practice examples of alleviating the financial burden of proceedings with a view to facilitate the reporting of racial or ethnic discrimination cases

Good practice examples of alleviating the financial burden of proceedings with a view to facilitate the reporting of racial or ethnic discrimination cases

Sweden: a legal provision was adopted that represents a good example in this field. In discrimination cases brought by individuals by themselves or by NGOs on their behalf, each party may be ordered by the court to bear its own litigation costs, if the party that has lost the case had reasonable grounds for bringing the dispute to court. However, this does not apply when the Equality Ombudsman brings an action on behalf of an individual under Section 2 of the Discrimination Act, whereby the Equality Ombudsman becomes a party in the case and can bear the costs of the litigation, including the risk of having to pay the legal costs of the other party in case of failure¹¹⁴¹. This amenity protects individuals who bring their own cases or NGOs which bring cases on behalf of individuals, so that they will not be deterred from asserting their rights. The Swedish legislation includes a similar rule that applies in labour cases, but the Labour Court is quite restrictive concerning its use.

Italy: several good practice examples were found in Italy:

- The national equality body (UNAR) provides financial support¹¹⁴². The UNAR has created a solidarity fund for access to justice by victims of discrimination, providing lawyers with part of the legal costs of actions brought before the courts. The amount does not cover the overall legal expenses, but acts as an incentive for lawyers engaging in cases in this area.
- There is a general law on pre-trial mediation that applies to all anti-discrimination claims. Pre-trial mediation is now mandatory in anti-discrimination cases¹¹⁴³.
- Concerning standing to litigate, the victim can act personally without representation by a lawyer in the first instance. The judge can choose the best method for gathering evidence. If there is a particular urgency, the judge can as well issue an interim order¹¹⁴⁴. The Department for Equal Opportunities of the Presidency of the Council of Ministers keeps a list, approved by the Ministry of Labour and Social Policies and the Department for Equal Opportunities, of associations and bodies selected on the basis of 'their purpose and the degree of continuity in their action' which have standing to litigate in support of or on behalf of victims of discrimination.

Pitfalls/implementation challenges:

On the other hand, '**bad practice**' examples were also identified in some Member States, where **no measures were taken to alleviate the financial burden** of the proceedings. For example,

¹¹³⁹ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination, p. 57.

¹¹⁴⁰ Poland, Code of Civil Procedure, 17 November 1964, Article 465(1).

¹¹⁴¹ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination, p. 58.

¹¹⁴² Migration Policy Group (2020), Handbook on the Racial Equality Directive: with a special focus on Italy, Romania and Sweden, Independent Report, p. 21.

¹¹⁴³ Migration Policy Group (2020), Handbook on the Racial Equality Directive: with a special focus on Italy, Romania and Sweden, Independent Report, p. 20.

¹¹⁴⁴ Migration Policy Group (2020), Handbook on the Racial Equality Directive: with a special focus on Italy, Romania and Sweden, Independent Report, p. 20.

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in France, the person who loses the case before the courts must pay the court fees, which, along with the difficulty of gathering evidence and proving the case, serves as double a deterrent for the victim to take judicial actions. Legal aid may be granted for people with low incomes, but according to a workshop participant, the right to legal aid is controlled by the court and can be rejected. The court only grants legal aid if it estimates that the case is reasonable. As a result, the victims may need to pay the fees, which means that they may never go to court¹¹⁴⁵. Another deterrent reported from Member States such as Poland and Sweden refers to the low amount of compensation awarded to victims if discrimination is found¹¹⁴⁶.

Other procedural changes aimed at reducing the barriers to start legal proceedings

At EU-level, the joint EU/CoE programme 'Roma Women's Access to Justice', JUSTROM3¹¹⁴⁷ was created to improve access to justice of Roma women by supporting their empowerment through increasing their awareness about discrimination, complaint mechanisms, the justice system and human rights institutions/equality bodies. This example is described in the Box below:

Box 64: Good practice examples of improving access to justice for ethnic minorities

Good practice examples of improving access to justice for ethnic minorities

JUSTROM3 joint programme of the European Commission and the Council of Europe for access to justice of Roma women: the project's activities were organised in three pillars: empowerment of Roma women, increased synergies and partnerships to enhance institutional networking and increase partnership for policy change and enhancement of professional resources. The project linked minorities to social networks and institutions (providing certain services in different sectors) based on mutual trust. Several activities were carried out at local level to support the empowerment of Roma women and a dialogue of mutual understanding with the municipalities and offices they could approach to sustain their claims for justice¹¹⁴⁸.

At Member State level, there are some examples of procedural changes aimed at reducing the barriers to start legal proceedings. In some Member States, **the judicial procedures in case of discrimination are expedited**. The objective is to respond to the need to address discrimination effectively and to make sure that the prejudice-based incidents do not spiral into aggravation, the means of evidence do not disappear and the impact on the victims does not take root leading to increased vulnerability. This is the case in Belgium, where the judge can deliver an injunction imposing immediate cessation of the discriminatory practice, under the threat of financial penalties. **Fast track proceedings** are available in Italy and in Croatia¹¹⁴⁹, where the law prescribes that the bodies which conduct the proceedings are obliged to take action urgently. Sweden has accelerated proceedings in place which are used mainly by the Anti-discrimination Bureaus and the Equality Ombudsman. Luxembourg provides another remarkable example at national level, there is an **emergency procedure in place** through which the nullity of the termination of a working contract can be declared if the dismissal is based on discriminatory behaviour.

Pitfalls/implementation challenges:

The excessive length of judicial proceedings was identified as an important "bad" practice by a number of stakeholders, acting as deterrent for victims to initiate legal proceedings. Moreover, a stakeholder notes that the outcome of such legal proceedings is often not very visible, making

¹¹⁴⁵ Contribution of a participant to the Workshop held on 17 May 2022.

¹¹⁴⁶ Interview with a Polish lawyer, 1 March 2022; Interview with a Swedish NGO, 16 February 2022.

¹¹⁴⁷ Council of Europe, Access to Justice of Roma and Traveller Women, About JUSTROM3, available at: <https://pjp-eu.coe.int/en/web/access-to-justice-for-roma-women/about-justrom3>.

¹¹⁴⁸ E.g. in Bulgaria.

¹¹⁴⁹ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination, p. 60.

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potential victims reluctant to lodge complaints and start lengthy and often cumbersome legal proceedings without having had positive examples of potential outcomes. During the workshop, participants noted that it is important to consider the combined effect of the several thresholds identified above, e.g., length of proceedings in combination with the difficulty to gather evidence and cost of legal proceedings.

Amicable conflict resolution (mediation)

At international level, the Office of the Ombudsman and Mediation Services has joined a campaign to raise awareness and facilitate conversations about racism in the United Nations workplace¹¹⁵⁰. To promote diversity and inclusion and to explore how racism manifests itself within the Organization, their conflict-resolution experts developed a **dialogue model** that provides a framework using conversation guidelines and carefully considered questions. The goal is to create a safe space for participants to exchange perspectives and experiences relating to racism in the workplace.

At Member State level, mediators may play a relevant role in helping victims access the relevant services and authorities. When a mediation procedure is the decision of the victim and is carried out in a respectful manner, it may lead to a more constructive solution, avoiding conflict and allowing for increased awareness and respect. **Mediation procedures** can be available as a mandatory part of legal proceedings before a court (e.g., France, Portugal and Spain) or voluntary (e.g., Italy, Romania, Hungary and Slovakia)¹¹⁵¹. National equality bodies may act as mediators as well. In Belgium, the national equality body (Unia) is well-known for its mediation practices¹¹⁵². In Bulgaria, Roma mediators are entrusted with the task of facilitating communication, access to services etc. **Roma mediators** are also foreseen in National Strategy for the Integration of Roma Communities in Portugal. In Ireland, the Workplace Relations Commission runs a mediation service. In Greece, the Ombudsman has shown a multifaceted activity by introducing **mediation interventions**. Some examples are described in the Box below:

Box 65: Good practice examples of amicable conflict resolution (mediation)

Good practice examples of amicable conflict resolution (mediation)

Belgium: the national equality body (Unia) can act as mediator and assist the victim(s) and the alleged perpetrator of discrimination to reach a form of amicable settlement. This explains the low number of cases filed with the courts compared to the number of complaints handled by Unia.

Bulgaria: Roma legal mediators are entrusted with the task of facilitating the communication with representatives of target groups in Roma villages, consult and motivate them to participate in the mediation, organise location where they can receive services, conduct these services together with the representatives of the institutions; organise information campaigns; facilitate the access and communication to lawyers and secure translation when necessary.

Ireland: the Workplace Relations Commission (WRC) offers a mediation service called the *Early Resolution Service*. The mediation service is offered by equality officers in the case of all equality/discrimination disputes¹¹⁵³. This mediation facility is provided for in section 39 of the Workplace Relations Act, 2015¹¹⁵⁴. If both parties are agreeable, this form of mediation may be offered to the parties. The process is carried out over the phone by an employee of the Commission, a Mediation Officer, or in a face to face meeting.

¹¹⁵⁰ United Nations, Ombudsman and Mediation Services, Campaign on Addressing Racism and Promoting Dignity for All, available at: <https://www.un.org/ombudsman/special-initiatives/dialogues-on-racism>.

¹¹⁵¹ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination, p. 68.

¹¹⁵² European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination, p. 68.

¹¹⁵³ Workplace Relations Commission, Complaints & Disputes, Overview. Available at: https://www.workplacere-lations.ie/en/complaints_disputes/

¹¹⁵⁴ Workplace Relations Act, Number 16 of 2015, 20.05.2015, Art. 39.

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Enabling online reporting of discrimination as an additional means of reporting

Victims of discrimination may be afraid to come forward. This can be linked to fear of retaliation or further discrimination. Thus, several examples at national level have been identified that provide **alternative reporting mechanisms** that offer a remedy to the barrier posed by the fact that reporting discrimination in person might induce. Online reporting of discrimination is supported in some Member States, and could be developed in addition to other ways of reporting to ensure the widest possible range of options to lodge complaints. Examples enabling online reporting are described in the Box below.

Box 66: Good practice examples enabling online reporting of discrimination

Good practice examples enabling online reporting of discrimination

France: the website to report racial/ethnic discrimination (<https://www.antidiscriminations.fr/>), was created by the Defender of Rights in 2021. A team of lawyers specially trained in discrimination respond to the questions and complaints and provide legal advice. Once the situation has been established, they legally qualify the situation and determine whether or not the case is indeed a case of discrimination under the law. In the case of discrimination, they would suggest referring the matter to the Human Rights Defender using the online form or by contacting the Defender's delegate nearest the person submitting the complaint. The team answers free of charge and directly. The exchanges are confidential. A telephone relay is available for deaf people. The service is extended to French overseas departments as well.

The Netherlands: the Antidiscrimination Bureau has a national website through which discrimination can be reported and where victims can ask question and find useful information (<https://www.discriminatie.nl/#/home>). An online form is available to report discrimination or file a complaint. Witnesses can report an incident using the same form. There is also a phone number where one can get advice and ask questions. Discrimination can be reported via a smartphone app as well.

Ireland: the Irish Network Against Racism has an online portal to report racism named IREPORT.IE (<https://www.ireport.ie/>). The iReport.ie system was launched in July 2013 and those who experienced, witnessed or heard of a racist incident can report it. Reporting can also be done on behalf of someone else. It allows its users to upload photos, screenshots, videos, pdfs, audios and other files supporting their report. The information provided is fully confidential and anonymous.

Actio popularis

Actio popularis can be advantageous as it provides equality bodies, organisations, associations or other legal entities with a legitimate interest in combating discrimination with legal standing.

At Member State level, *actio popularis* is permitted by national law for discrimination cases in 19 countries¹¹⁵⁵. For example, in Hungary, *actio popularis* has been applied in cases that involve the Roma community or in cases of discrimination in housing¹¹⁵⁶. In the Netherlands, *actio popularis* is allowed following a general provision of civil law that allows associations or foundations to act on behalf of multiple victims. In Slovakia, *actio popularis* was used against a school that segregated Roma students. In France, provisions on *actio popularis* allow trade unions to denounce discriminatory collective agreements. In Portugal, NGOs are exonerated of costs if they use *actio popularis*¹¹⁵⁷. In Romania, associations, trade unions and other legal entities with a legitimate interest in combating discrimination can bring civil cases. Some examples are highlighted in the Box below:

¹¹⁵⁵ European Network of legal experts in gender equality and non-discrimination (2020), A comparative analysis of non-discrimination law in Europe 2019, p. 96.

¹¹⁵⁶ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination, p. 53.

¹¹⁵⁷ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination, p. 95.

Box 67: Good practice examples of *actio popularis*

Good practice examples of *actio popularis*

Italy: associations, organisations and trade unions can act in the public interest, without representing a specific victim. *Actio popularis* is regulated in several legislative decrees¹¹⁵⁸. Organisations with legal standing can act in cases of collective discrimination when victims cannot be identified. Representatives of trade unions can act against collective discrimination also when victims are not identifiable¹¹⁵⁹.

Hungary: social and interest representation organisations, the equality body and the Public Prosecutor can bring *actio popularis* claims, provided that the violation of the principle of equal treatment was based on a protected characteristic and the violation affects a larger group of people that cannot be determined accurately¹¹⁶⁰.

Potential solutions and tools to prevent and remedy algorithmic discrimination

At EU-level, the European Law Institute (ELI) has developed **model rules** to provide comprehensive assessment of algorithmic, including AI-based, decisions made by public administrations¹¹⁶¹. Algorithmic decision-making can raise problems in terms of protection of people against discrimination, thus the model rules could provide some guidance for the Member States.

At Member State level, in France, the French Defender of Rights and the National Commission on IT and Liberty (CNIL) created a **working group that addresses issues related to discriminatory biases** in the use of AI and coordinated a seminar to discuss this topic in 2020. As a result, recommendations for good practices were published¹¹⁶². Both institutions are carrying out research in the area and develop awareness raising activities by informing the public about biases and about their rights¹¹⁶³. Some Member States have published further research in the area, such as the national insurance agency in Sweden, the Portuguese Administrative Modernisation Agency (AMA) that published a Guide for the Ethical, Transparent and Responsible Artificial Intelligence, or the Federal Anti-Discrimination Agency in Germany that published a study named "Risks of discrimination through the use of algorithms". In Spain, a Charter of Digital Rights, prepared by the Government, recognises the right to equality, non-discrimination, and non-exclusion in digital environments¹¹⁶⁴. Malta's AI strategy makes reference to the importance of equality, non-discrimination, and solidarity in AI¹¹⁶⁵. In Poland, a 'right to clarify' has been introduced for banking legislation (see Box below). In the Netherlands, the Government announced in 2019 that they were working on a legislative measure to ensure the **quality of algorithmic decision-making**, in particular profiling and risk analyses relating to specific geographic areas, including to minimise the risk of discrimination. Two years later, in June 2021, they specified a legal basis to allow the processing of special category personal data, under strict

¹¹⁵⁸ Legislative Decree 215/2003, Art. 5; Legislative Decree 216/2003, Art. 5; Legislative Decree 67/2006, Art. 4).

¹¹⁵⁹ Country report, non-discrimination Italy. Pag. 71.

¹¹⁶⁰ European Commission (2011), How to present a discrimination claim: Handbook on seeking remedies under the EU Non-Discrimination Directives, p. 67.

¹¹⁶¹ Albert-Ludwigs-Universität Freiburg, European Regulatory Approach to Trustworthy AI in Public Administration, available at: <https://kommunikation.uni-freiburg.de/pm-en/press-releases-2022/european-regulatory-approach-to-trustworthy-ai-in-public-administration>.

¹¹⁶² France, CNIL, Défenseur des droits, Joint Recommendation (2020), Algorithmes: prévenir l'automatisation des discriminations, available at: https://juridique.defenseurdesdroits.fr/index.php?lvl=notice_display&id=32665&opac_view=-1.

¹¹⁶³ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination, p. 116.

¹¹⁶⁴ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination, p. 117.

¹¹⁶⁵ Malta, Towards trustworthy AI, Malta's ethical AI Framework, 199available 2019, 199available at: https://malta.ai/wp-content/uploads/2019/10/Malta_Towards_Ethical_and_Trustworthy_AI_vFINAL.pdf

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conditions, where this is necessary to prevent discrimination by algorithmic models¹¹⁶⁶. The Box below highlights a good practice example:

Box 68: Good practice example of potential solutions and tools to prevent and remedy algorithmic discrimination

Good practice example of potential solutions and tools to prevent and remedy algorithmic discrimination

Poland: since 2019, clients of Polish banks have a right to explanation when a bank makes a loan decision (including if this decision has been made automatically by using algorithms). They just have to submit an application to the bank. The bank must then provide the list of criteria it used. The explanation includes information on the factors, including the applicant's personal data, which affected the assessment of creditworthiness¹¹⁶⁷.

4.3.8 Equality bodies

Equinet advocates for the granting of decision-making and 'effective, proportionate and dissuasive' sanctioning powers to all equality bodies under EU law¹¹⁶⁸. At Member State level, different states have equipped their equality bodies with decision-making and sanctioning powers. The Equal Treatment Commission in Austria, for example, has been granted the power to investigate complaints and make recommendations. In Bulgaria, the Protection Against Discrimination Commission decides on cases and can impose sanctions. Other EU Member States have equality bodies which have both decision-making powers and sanctioning powers. Those include Cyprus, Denmark, France, Hungary, Lithuania, Norway, Portugal and Romania¹¹⁶⁹. Examples are highlighted in the Box below:

Box 69: Good practice examples of decision-making and sanctioning-power of the equality body

Good practice examples of decision-making and sanctioning-power of the equality body

Hungary: the Hungarian Equal Treatment Act (ETA) provides, in its Article 17/A(1), that the Parliamentary Commissioner for Fundamental Rights (Hungarian equality body) may impose the cessation of a situation constituting a violation of anti-discrimination provisions and a ban on its continuation. It may also decide to make public the decision of a breach and the potential fine that comes with it.

Romania: the National Council for Combating Discrimination in Romania has the power to receive complaints, investigate cases and issue administrative sanctions where it considers there has been a discrimination issue. The sanctions include warnings and fines. The Council may decide to publish relevant case briefs.

¹¹⁶⁶ European network of legal experts in gender equality and non-discrimination (2021), Effectively enforcing the right to non-discrimination, p. 118.

¹¹⁶⁷ Algorithm watch, available at: <https://algorithmwatch.org/en/poland-credit-loan-transparency/>.

¹¹⁶⁸ Equinet (2021), Legislating for stronger, more effective equality bodies, p. 7, <https://equineteurope.org/wp-content/uploads/2021/04/Legislating-for-strong-more-effective-NEBs-Recommendations.pdf>.

¹¹⁶⁹ European Network of Legal Experts in Gender Equality and Non-Discrimination (2018), Equality bodies making a difference, pp. 73-77, https://ec.europa.eu/info/sites/info/files/equality_bodies_making_a_difference.pdf.

5 Conclusions and recommendations

This section presents the results of Task 4 – which was dedicated to the development of conclusions and recommendations. **Section 5.1** presents the conclusions, whereas **Section 5.2** puts forward non-legislative and legislative recommendations.

5.1 Conclusions

The European Union is founded, amongst others, on the principles of equality and the respect for fundamental rights. The **principle of non-discrimination** is one of the common values of the European Union, as referred to in Article 2 of the TEU. Article 10 of the TFEU aims at combating discrimination in the development and implementation of policies and activities. Moreover, Article 20 of the Charter asserts that everyone is equal before the law. Article 21 further ascertains the prohibition of discrimination on a range of grounds, including race and ethnicity.

The EU has also enacted specific legislation to fight discrimination. One of such instruments is RED. The RED provides protection against racial or ethnic discrimination in a wide range of **material areas**, as set out in its Article 3(1).

The Study aimed to provide the European Commission with an overview of the possible gaps (legal and non-legal gaps alike) in the protection against racial or ethnic discrimination, as offered by the RED. To this end, **extensive research** was carried out, entailing both desk research (i.e., review of existing sources of information¹¹⁷⁰) and stakeholder consultations¹¹⁷¹. The research analysed both **qualitative** and **quantitative** datasets. Due to the scarcity of comparable and accurate quantitative equality data on racial or ethnic discrimination¹¹⁷², as well as the general underreporting of discriminatory incidents, it is challenging to estimate the exact scale of the problem. Several sources, including large scale surveys¹¹⁷³ monitoring the perceptions and experiences of relevant racial or ethnic minority groups, however, provide undeniable evidence that racial or ethnic discrimination remains a persistent problem in the EU. Considering the above, the Study puts forward evidence-based conclusions and recommendations with a note that some findings could potentially be further substantiated with more accurate and comparable (quantitative) equality data.

¹¹⁷⁰ This entailed the completion of EU-level and national-level desk research.

¹¹⁷¹ This entailed the completion of semi-structured interviews at EU- and national levels (10 and 72, respectively), a targeted online survey (68 respondents), an Open public consultation (OPC; 231 respondents, 18 written contributions) organised by the European Commission and a Workshop (23 participants).

¹¹⁷² According to a recent European Parliament (2022), '[Briefing on EU legislation and policies to address racial and ethnic discrimination](#)' there are three main reasons for the scarcity of (quantitative) equality data: (1) reports in many Member States can be filed with many different authorities; the data collected by these authorities are not combined; (2) the data collected are not disaggregated by race or ethnicity; moreover racism is not always registered as such, but as other form of discrimination, such as discrimination based on religion; (3) Member States might be reluctant to collect data on racial or ethnic discrimination, 'due to historical abuses of such records'; these concerns often translate to data collection related prohibitions in national laws.

¹¹⁷³ Such surveys are completed by the FRA for example (see for example: [FRA's second minorities and discrimination survey](#)). Moreover, the Eurobarometer surveys (see for example: [Discrimination in the European Union](#)) on discrimination also provide information on attitudes and perceptions.

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Public sector actions that entail **the exercise of public authority by law enforcement**¹¹⁷⁴ constitute **the main area where possible racial or ethnic discrimination materialises**. This area does not seem to be comprehensively covered by EU law, which could be explained by the fact that the EU's competence to act in this area is limited. The current section dedicated to conclusions and recommendations mainly focuses on this material area.

Moreover, some sources suggest that additional **potential gaps in protection** also relate to the following **material areas**:

- exercise of public authority by judicial and immigration authorities;
- exercise of public authority by bodies other than law enforcement and judicial authorities;
- in connection with the use of public spaces;
- in connection with 'other/grey areas'.

However, the scale of the issues / the evidence available are much more limited than in the field of law enforcement. The EU's competence to act is also limited in some of the fields above. Detailed conclusions and related recommendations linked to these potential gaps are provided in *Annex IX* to the Final Report.

The current Study also mapped **potential gaps** in the **protection mechanisms/measures** provided by the RED. In particular, it identified gaps relating to:

- mechanisms enabling for the use of proactive and preventive approaches to tackling discrimination;
- mechanisms that currently exist under the RED supporting the Directive's implementation and enforcement.

The Study also showed that protection against **multiple**¹¹⁷⁵, **intersectional**¹¹⁷⁶ and **structural**¹¹⁷⁷ discrimination is not / not perceived as sufficient.

5.1.1 Main area of potential discrimination beyond those already covered by the RED

The Study found possible (potentially structural) racial or ethnic discrimination in the exercise of public authority **by law enforcement authorities, in particular by the police**. The data collected seem to indicate the existence, or at least the perceived existence, of racial or ethnic profiling by the police, in relation to stop and search activities and identity checks. Racial or ethnic discrimination also seems to manifest in the increased use of force by law enforcement authorities towards certain racial or ethnic groups. Arbitrary attitudes by law enforcement authorities (manifesting in for example the increased use of fines for non-compliance with

¹¹⁷⁴ Not including law enforcement authorities in charge of immigration enforcement. This differentiation is necessary as the evidence-base gathered under the Study in connection with immigration enforcement is less conclusive; moreover, existing EU legislation in this area seems to cover some aspects of potential discriminatory practices.

¹¹⁷⁵ This refers to discrimination that occurs on the basis of more than one perceived characteristics. Source: [Intersectionality and Multiple Discrimination \(coe.int\)](#).

¹¹⁷⁶ This refers to cases when two or multiple grounds operate simultaneously and interact in an inseparable manner, producing distinct and specific forms of discrimination. Source: [Intersectionality and Multiple Discrimination \(coe.int\)](#).

¹¹⁷⁷ The [EU Anti-racism Action Plan 2020-2025](#) describes structural discrimination as encompassing discriminatory behaviours, including those based on unconscious bias, that are embedded in social, financial and political institutions, impacting on the levers of power and on policy-making and that puts barriers solely due to persons' racial or ethnic origin. Literature also refers to structural discrimination under other titles such as 'systemic discrimination', 'institutional discrimination' or 'systematic discrimination'.

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COVID-19 restrictions) towards certain racial or ethnic groups have also been reported on in the context of the COVID-19 pandemic.

The **RED is not applicable** to public sector actions that entail the exercise of public authority by law enforcement authorities. However, **some of the gaps** in protection appear to be **addressed** by other **EU law** (e.g., by Directive (EU) 2016/680) or **national law** instruments. In relation to **stop and search activities** and **identity checks** by the police and discriminatory profiling, the extent of protection, however, remains somewhat curtailed by the specific scope and purposes of the instruments identified. Moreover, the implementation of legal protection at the national level could be improved to ensure better protection.

Problems with racial or ethnic discrimination, in the areas not or not sufficiently covered by the RED (e.g., in the context of predictive policing or profiling in particular) may be caused or exacerbated by the use of **automatic data processing** and **algorithmic decision making**. Most Member States do not regulate the use of AI in a way that would take into account its potential impacts on racial or ethnic discrimination. The Proposal for the AI Regulation would contribute towards limiting the potential discriminatory impacts of the use of Artificial Intelligence (AI) technologies.

Some measures have already been taken at both EU- (e.g., CEPOL training programmes for law enforcement officials) and national-levels (e.g., measures for the better recording of stop and search activities) to address the gaps in protection.

5.1.2 Protection mechanisms/measures

The Study identified some mechanisms/measures that, if introduced and/or reinforced, could ensure **a more proactive and preventive approach to tackling discrimination**. These potential mechanisms/measures are **not / not sufficiently covered by the RED**:

- **Mechanisms to better define longer-term, specific objectives to address (the root causes of) discrimination and structural discrimination:** National Action Plans (NAPS) outlining in a comprehensive manner all activities that a Member State could undertake to improve racial equality, could be one such tool. Although the RED does not require the adoption of NAPS, the European Commission in the EU Anti-racism Action Plan reinforced the importance of NAPS by recommending their adoption by all Member States. In line with some guiding principles developed by the European Commission, all Member States are invited to adopt their NAPS by 2022¹¹⁷⁸. The European Commission will regularly monitor the implementation of the NAPS.
The **Roma national strategic frameworks** could also enhance equality, inclusion and participation. The European Commission called on the Member States to submit their national strategic frameworks by September 2021 and report on the implementation thereof every two years¹¹⁷⁹. The European Commission proposed, among the minimum targets to be achieved by the Member States, the objectives of e.g., '*cutting the proportion of Roma with experience of discrimination by at least half*', or '*doubling the proportion of Roma filing a report when experiencing discrimination*'. As of February 2022, the development of the national strategic frameworks was still on-going in some

¹¹⁷⁸ Information provided by the European Commission.

¹¹⁷⁹ [2020-2030 EU Roma Strategic Framework \(europa.eu\)](https://european-council.europa.eu/media/e3000420/1/2020-2030_EU_Roma_Strategic_Framework_(europa.eu).pdf).

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Member States¹¹⁸⁰. Moreover, in 2022 the European Commission will assess the commitments made by Member States in their national Roma strategic frameworks and provide guidance for their improvement, if needed¹¹⁸¹.

The stakeholder consultation workshop confirmed that initiatives similar to the NAPs or the Roma national strategic frameworks constitute important instruments for the Member States to tackle discrimination, including its structural dimension. Sufficient funding, continuous monitoring, institutionalised cooperation and political support that can incentivise their implementation, however, is necessary to ensure that they fulfil their objectives.

- **Information, awareness raising, guidance and training:** Despite existing national- and EU-level initiatives (see examples below), low awareness of anti-discrimination legislation and of the existence of equality bodies that could assist victims remains a major challenge in the fight against racial or ethnic discrimination¹¹⁸². A source suggests for example, that *'only one-third of EU citizens are fully aware that they are legally protected against discrimination'*¹¹⁸³. Hence the need for additional measures (e.g., awareness raising campaign, training, guidance documents) that could target a variety of actors, including victims, the general population and professionals (e.g., judges, lawyers, prosecutors, police and prison officers)¹¹⁸⁴. The workshop also confirmed the need for furthering the provision of information on racial or ethnic discrimination, racism and unconscious bias.

Examples of existing initiatives have been identified in several Member States¹¹⁸⁵. The European Commission has also developed or supported awareness raising initiatives¹¹⁸⁶. Article 10 of the RED already requires Member States to bring the provisions of the RED to the attention of all individuals concerned. Moreover, Article 13 mandates the equality bodies with the task of providing independent assistance to discrimination victims in pursuing their complaints. The RED does not contain more detailed requirements on the matter. Many Member States have mandated the equality bodies with related tasks; the scope of the activities however depends on the national mandate of the equality bodies and the sources available for them.

Collection and the use of equality data: *'Accurate and comparable data is essential in enabling policy-makers and the public to assess the scale and nature of discrimination suffered and for designing, adapting, monitoring and evaluating policies'*¹¹⁸⁷. Currently, Member State approaches towards data collection vary to a large extent¹¹⁸⁸ and some do not even collect data on the basis of racial or ethnic origin, as data collection

¹¹⁸⁰ [Roma inclusion set back as several EU countries delay national strategies – EURACTIV.com](#).

¹¹⁸¹ [EU Roma strategic framework for equality, inclusion and participation for 2020 – 2030](#), p. 11.

¹¹⁸² [European Commission, Report on the application of Council Directives 2000/43/EC and 2000/78/EC \(2021\)](#) , p. 11.

¹¹⁸³ Source: [Raising awareness on discrimination | European Commission \(europa.eu\)](#).

¹¹⁸⁴ ECRI (2004), [10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance](#); Interview with stakeholder from Belgium.

¹¹⁸⁵ In Austria, Denmark, Ireland, Slovakia, Spain for example guidance is provided by the higher courts on how the concept of the burden of proof should be applied in accordance with the Directive. In France, guidance was developed for public prosecutors to deal with anti-discrimination cases in the form of a circular distributed to all public prosecutors.

¹¹⁸⁶ See for example: [Communication activities to fight discrimination against Roma | European Commission](#).

¹¹⁸⁷ [EU anti-racism action plan 2020-2025](#), p. 15.

¹¹⁸⁸ EC High Level Group on Non-discrimination, Equality and Diversity (2018), [Guidelines on improving the collection and use of equality data](#).

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based on such sensitive characteristics is considered unlawful¹¹⁸⁹. EU law does not contain a general requirement to collect, analyse and use equality data. Article 13 of the RED mandates the equality bodies with the competence of carrying out independent surveys and of publishing reports. Moreover, the EU has taken additional steps to reinforce consistent and comparable data collection by the Member States. Amongst others in 2018, a Subgroup on Equality Data was set up to assist Member States in improving the collection and use of equality data¹¹⁹⁰. The Sub-group is mandated to develop a practical guidance for Member States on improving the collection of data disaggregated by racial or ethnic origin. Moreover, in 2021 the European Commission organised a virtual Roundtable discussion on equality data, examining obstacles for the collection of equality data and providing a forum for the exchange of good practices on data collection. The Roundtable ultimately aimed to encourage Member States to continue, in full respect of their national contexts, their efforts¹¹⁹¹ of collecting equality data disaggregated by racial or ethnic origin, in particular¹¹⁹².

- **Diversity in the public sector:** The reinforcement of diversity measures, ensuring the better representation of racial or ethnic minorities in the public sector could improve equality by among others increasing trust in public institutions or by improving the relationship between public authorities and the general public¹¹⁹³. Since 2010, the EU's Platform of Diversity Charters has been supporting among others public institutions in putting diversity, inclusion and solidarity at the core of their activities. Whilst mainly private sector organisations have signed the national diversity charters, some public institutions are also amongst the signatories.
- **Dialogue, cooperation and collaboration:** While Article 12 of the RED encourages dialogues with civil society organisations, and further policy measures have been taken by the European Commission and the Member States to encourage such activities¹¹⁹⁴, there seems to be a need to further reinforce dialogue and cooperation involving all actors concerned by racial or ethnic discrimination, including e.g., with persons affected by or at risk of racial discrimination, private sector, and regional or local organisations.
- **Equality duties:** Equality duties imposed on the public/private sector can offer effective and proactive ways of promoting equality and preventing and eliminating discrimination. Equality duties may take many forms¹¹⁹⁵ (e.g., equality impact assessment, self-regulation, disciplinary measures) and have already been developed in some Member States¹¹⁹⁶. The RED does not explicitly require Member States to impose equality duties. It does, however, allow Member States, under its Article 5 on positive actions,

¹¹⁸⁹ Equinet (2016), [Fighting Discrimination on the Ground of Race and Ethnic Origin](#); FRA (2012), [The Racial Equality Directive: application and challenges](#).

¹¹⁹⁰ Source : [Equality data collection | European Commission \(europa.eu\)](#).

¹¹⁹¹ A compendium or practices for equality data collection per ground and Member State is available at: [Compendium of practices for equality data collection | European Union Agency for Fundamental Rights \(europa.eu\)](#).

¹¹⁹² [EU anti-racism action plan 2020-2025](#), p. 16.

¹¹⁹³ OECD (2009) ['Fostering diversity in the public sector'](#), p. 39.

¹¹⁹⁴ For example, In Spain, the Government signed a cooperation agreement on institutional cooperation against racism, xenophobia and LGTBiphobia in 2018. In France, a department against discrimination is set up within each District Attorney's office, gathering all actors intervening in this area.

¹¹⁹⁵ See Equinet (2016), [Making Europe more equal: a legal duty?](#)

¹¹⁹⁶ For example, in Ireland, all public bodies have a statutory duty to eliminate discrimination, promote equality of opportunity and treatment, and protect the human rights of its members, staff and the persons to whom they provide services. In Austria, draft legislation must go through an impact assessment covering equality and non-discrimination.

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to maintain or adopt specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin. This could potentially cover positive action measures, such as quota in a voluntary manner. In the EU Anti-Racism Action Plan, the Commission has committed to continuing to facilitate the sharing of good practices among the Member States in legislating for and implementing statutory duties.¹¹⁹⁷

The Study also identified some mechanisms/measures that could ensure a more **effective implementation** of the generally phrased **protection mechanisms/measures** that are already **envisaged by the RED**:

- **Defence of rights:** Article 7 of the RED obliges Member States to set up judicial/administrative procedures to ensure that obligations under the RED could be enforced. However, the effective exercise of defence rights could be hampered at national level by several issues, including the costs of legal proceedings¹¹⁹⁸, linguistic barriers and the typically short time-frame available for filing complaints¹¹⁹⁹, or difficulties linked to the collection of evidence in (indirect) discrimination cases¹²⁰⁰. The Study identified some specific measures that Member States have typically developed to overcome these issues. These include, for example, mechanisms to ease the financial burden of judicial and administrative proceedings (e.g., reduced court fees for discrimination cases¹²⁰¹, tax incentives¹²⁰²). Moreover, in some Member States specialised courts dealing exclusively with discrimination cases have been set up, thereby facilitating the implementation of anti-discrimination rules in practice¹²⁰³.
- **Sanctions:** Member States are required (Article 15 RED) to provide for effective, proportionate and dissuasive sanctions for the infringements of national law transposing the RED. Implementation challenges at national level exist for instance because some national courts tend to offer low amounts of monetary compensation¹²⁰⁴. These might discourage victims from seeking redress from courts and/or administrative bodies¹²⁰⁵. Some Member States have developed practices to overcome these challenges¹²⁰⁶.

¹¹⁹⁷ [EU anti-racism action plan 2020-2025](#), p. 21.

¹¹⁹⁸ [European Commission \(2021\), Report on the application of Council Directives 2000/43/EC and 2000/78/EC](#), p. 7; Migration Policy Group (2020), [Handbook on the Racial Equality Directive](#) with a special focus on Italy, Romania and Sweden, Independent Report, p. 18; Equinet (2016), [Discussion Paper on Fighting Discrimination on the Ground of Race and Ethnic Origin](#), p. 33; European Commission (2011), [How to present a discrimination claim: Handbook on seeking remedies under the EU Non-Discrimination Directives](#), pp. 60-63. Also information obtained from Dutch, Slovenian representatives via interviews held in February 2022.

¹¹⁹⁹ [European Commission \(2021\), Report on the application of Council Directives 2000/43/EC and 2000/78/EC](#), p. 7.

¹²⁰⁰ Equinet (2016), [Discussion Paper on Fighting Discrimination on the Ground of Race and Ethnic Origin](#), p. 33; [European Commission \(2021\), Report on the application of Council Directives 2000/43/EC and 2000/78/EC](#), p. 7.

¹²⁰¹ Such measures have been introduced for example in CZ and DK.

¹²⁰² Such measures have been introduced for example in BE and RO.

¹²⁰³ European network of legal experts in gender equality and non-discrimination (2021), [Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives](#), p. 9.

¹²⁰⁴ [European Commission \(2021\), Report on the application of Council Directives 2000/43/EC and 2000/78/EC](#). Also raised in Equinet (2020), [A perspective from the work of equality bodies on: European equality policy strategies, equal treatment directives, and standards for equality bodies](#).

¹²⁰⁵ [European Commission \(2021\), Report on the application of Council Directives 2000/43/EC and 2000/78/EC](#); European network of legal experts in gender equality and non-discrimination (2021), [Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives](#).

¹²⁰⁶ In the Netherlands, for example, a change in legislation in 2015 allowed victims of discriminatory dismissals to also request reasonable compensation instead of only requesting the court to invalidate the termination of the

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- **Equality bodies:** Article 13 of the RED obliges Member States to designate a national equality body/bodies. Equality bodies are identified as **a key protection mechanism** against discrimination, if provided with the necessary powers and resources to support victims, but also work on the prevention of discrimination¹²⁰⁷. As Article 13 only requires Member States to empower the equality bodies with certain minimum competences, in practice significant differences exist between the equality bodies established in the Member States, in terms of their mandate, competences, structures, resources and operational functioning. Ultimately this might lead to the provision of unequal protection for citizens from one Member State to another¹²⁰⁸.

Most of the above measures/mechanisms could contribute to enhancing the protection against **structural/systemic discrimination**. These forms of racist or discriminatory behaviours deeply embedded in the way social, financial and political institutions often unintentionally operate, might contribute to the less favourable, or even discriminatory treatment of minority groups (including racial or ethnic minority groups)¹²⁰⁹. The Study also identified insufficient (legal) protection against **intersectional discrimination**¹²¹⁰ as a potential shortcoming¹²¹¹.

5.2 Recommendations

The recommendations below were developed based on the views of the stakeholders consulted as part of the Study, as well as the results of the national- and EU-level desk research. Stemming from the limits of the EU's competence to act in certain areas, the recommendations below, where necessary, differentiate between possible EU- and national-level actions. Likewise, difference is made between the possibility of introducing non-legislative and legislative actions.

The specific recommendations presented under this section focus on the **main gaps identified** as part of the Study, hence on the **main areas of potential discrimination** beyond those already covered by the RED (*Section 5.2.1*); and **main potential gaps in the protection mechanisms/mechanisms** (*Section 5.2.2*). Recommendations specific to other potential material areas of concern are presented in *Annex IX* to this Final Report.

labour agreement. Sources: European network of legal experts in gender equality and non-discrimination (2021), [Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives](#).

¹²⁰⁷ Targeted survey carried out within the framework of this study; European Commission, [European Commission \(2021\), Report on the application of Council Directives 2000/43/EC and 2000/78/EC](#).

¹²⁰⁸ Recital 18, [Commission Recommendation \(EU\) 2018/951 of 22 June 2018 on standards for equality bodies](#), OJ L 167, 4 July 2018; European Commission, [European Commission \(2021\), Report on the application of Council Directives 2000/43/EC and 2000/78/EC](#).

¹²⁰⁹ [EU anti-racism action plan 2020-2025](#), pp. 2 and 13. The workshop held at the end of the Study also confirmed that structural/systemic discrimination is not sufficiently addressed.

¹²¹⁰ Intersectional discrimination – happens when two or multiple grounds operate simultaneously and interact in an inseparable manner, producing distinct and specific forms of discrimination. Source: [Intersectionality and Multiple Discrimination \(coe.int\)](#).

¹²¹¹ The workshop held at the end of the Study also confirmed that intersectional discrimination is not sufficiently addressed.

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5.2.1 Recommendations linked to the main area of potential discrimination beyond those already covered by the RED

Stemming from two reasons, the **recommendations** in relation to this area are mainly **non-legislative** in nature. First of all, the **Treaties** confer **limited power** on the EU to **legislate in relation to matters related to the police**.

Regarding the **EU's competence to act**, it is recalled that the RED was adopted based on a Treaty provision¹²¹², which has since been repealed, but which corresponds to Article 19(1) of the TFEU. Pursuant to Article 19(1), the EU may legislate to '*combat discrimination based on [...] racial or ethnic origin [...] within the limits of the powers conferred by [...]*' other provisions of the Treaties. The Box below provides a brief overview of some relevant Treaty provisions that could be of relevance for assessing the EU's right to act. These provisions confirm that in this area the EU's power to legislate remains very limited. As a matter of fact, the legislative framework in the area of law enforcement is predominantly regulated by national laws.

Box 70: EU's (limited) power to legislate in relation to the police

EU's (limited) power to legislate

Articles 87¹²¹³ et seq. of the TFEU (Chapter V): provisions referring to police cooperation. The relevant provisions suggest that legal bases set out in Chapter V are to be relied on in a cross-border context. Consequently, it could be argued that based on these Treaty provisions the EU would not have the power to regulate purely domestic issues.

Article 67(3)¹²¹⁴ of TFEU: provision setting out that the '*Union shall endeavour to ensure a high level of security [...] through measures for coordination and cooperation between police and judicial authorities and other competent authorities*'. Article 67(3) should be read together with Title V, which follows up on the types of measures that could be taken to ensure coordination and cooperation between police and judicial authorities. None of the relevant provisions of Title V specify the type of measure (e.g., Directive) that could be of relevance for the purposes of Article 67(3). Hence, it could potentially be argued that the EU's right to act could be limited to issuing non-binding acts, such as Commission Recommendations.

Secondly, the **stakeholder inputs** received also favour non-legislation actions:

- **Targeted survey:** the slight majority of the respondents¹²¹⁵ favoured non-legislative interventions over legislative ones (19 responses compared to 18¹²¹⁶);

¹²¹² Article 13 of the Treaty establishing the European Community.

¹²¹³ For example, Article 87(1) of the TFEU provides that '*The Union shall establish police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences.*'

¹²¹⁴ Article 67(3) of the TFEU provides that '*The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.*'

¹²¹⁵ Representing equality bodies (six), a Ministry (one), NGOs (six), representatives of the academia/research (four), the police (one) and other organisations (one).

¹²¹⁶ It is noteworthy that out of the 18 survey respondents advocating for the adoption of legislation, only one called on to adopt legislation alone. The remaining 17 stakeholders saw the need for a combined approach, i.e., combination of legislation with non-legislative measures.

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- **Stakeholder interviews**¹²¹⁷: Four EU-level stakeholders¹²¹⁸ out of the five and 12¹²¹⁹ out of the 17 national-level stakeholders who recommended action to tackle related forms of discrimination referred to the importance of soft/non-legislative measures;
- **Workshop**: confirmed¹²²⁰ that non-legislative intervention is the preferred option.

Finally, the **literature** consulted mainly envisages non-legislative actions.

5.2.1.1 Non-legislative intervention

Based on the sources consulted, several possible non-legislative actions could be recommended; many of these aim at upscaling already existing EU- and/or national-level initiatives. An inventory of these actions is provided in the Box below.

Box 71: Overview of non-legislative actions

Overview of non-legislative actions that could be considered to tackle possible racial or ethnic discrimination in the exercise of public authority by law enforcement authorities

- **Training**
- **Use of tools to enhance the transparency of police actions**
- **Diversity in recruitment**
- **Equality data collection**
- **Dialogue, cooperation and collaboration**
- **Accountability/control/oversight**
- **Positive action/equality duties**

Training

The importance of **reinforcing police training efforts** (as such training to some extent is already provided in some Member States¹²²¹ and by EU level training bodies, such as CEPOL¹²²²) was acknowledged by several stakeholders. For example, out of the 12 national-level stakeholders interviewed, seven¹²²³ referred to the importance of training. Moreover, 23 respondents (22 %) to a relevant question of the OPC referred to the importance of ensuring

¹²¹⁷ It is recalled that as opposed to the targeted online survey, the interviews were better tailored to the profiles of the interviewees. As part of the interviews, questionnaires could be better tailored to the real experiences/knowledge of the interviewees, thereby ensuring the collection of more in-depth information on specific issues and solutions.

¹²¹⁸ Representing the academia, two EU institutions/agencies and an international organisation.

¹²¹⁹ Representing four NGOs, two lawyers, one representative of the academia, three public authorities/police, one public authority and one company.

¹²²⁰ The majority of the workshop participants who responded to a related question (i.e., Do you agree with the recommendations identified for addressing the main possible material gap?) agreed to the recommendations identified for addressing the main possible material gap.

¹²²¹ Reference to existing training modules is provided in e.g., FRA Guide (2018) [Preventing unlawful profiling today and in the future: a guide](#), pp. 63-65.

¹²²² See for example, CEPOL [Webinar 3060/2022: Police stops, searches and profiling | CEPOL \(europa.eu\)](#).

¹²²³ Representing two NGOs, a lawyer, a representative of the academia/research, two public authorities/police, one public authority,

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mandatory police training¹²²⁴. The importance of training is also emphasised, among others¹²²⁵ in the EU Anti-racism action plan 2020-2025¹²²⁶.

In terms of **content**, literature recommends training as a tool to minimise discriminatory police practices, and in particular discriminatory ethnic profiling¹²²⁷. As acknowledged by the European Code of Police Ethics¹²²⁸ developed by the Council of Europe, police training is essential in combating racism and xenophobia within the police. Police training could cover awareness raising on the consequences of discriminatory attitudes and the impact of certain behaviours on public trust in the police; applicable laws; could challenge existing stereotypes and prejudices; could inform about how to deal with victims and/or perpetrators of discrimination. Training could be organised for police officers as well as for leaders within the police¹²²⁹. The development of training programmes was also recommended in connection with AI by one EU-level stakeholder¹²³⁰.

In relation to possible **EU-level actions**, literature recalls the important role that CEPOL could play in delivering comprehensive training packages to police officers on for example fair and inclusive policing or ethics and human rights¹²³¹. Likewise, FRA, FRONTEX and EJTN training programmes could reinforce protection against potentially discriminatory, or bias practices. The promotion of CEPOL's Exchange Programme was also recommended. Such a programme could enable police officers from Member States, where according to FRA surveys the rate of discriminatory profiling is higher, to conduct exchanges with police officers from Member States with lower rates. This could facilitate the exchange of good practices¹²³².

In addition to scaling up training efforts at the EU-level, it is essential that at the **national-level**, Member States also further invest in police training and the education of officers¹²³³.

Use of tools to enhance the transparency of police actions

To reinforce public trust in police, Member States could consider **the use of new tools/technologies** allowing for better accountability/oversight over police actions. Literature acknowledges, for instance, the potential benefits of **stop and search forms**¹²³⁴. Such forms could encourage police officers to carry out stops/searches on well-funded grounds and by way of registering details about their actions could ensure more transparency and openness towards the public. In Member States where such forms are used, or the use thereof is considered,

¹²²⁴ The relevant OPC question was: In your opinion, what should be done to adequately protect individuals and/or groups against discrimination based on racial or ethnic origin? What is missing from the current protection? Is there anything else you would like to tell us in relation to the protection against discrimination based on racial or ethnic origin? 104 stakeholders responded to this question.

¹²²⁵ Another example is CERD (2020) '[Preventing and combating racial profiling by law enforcement officials](#)', p. 10.

¹²²⁶ [EU anti-racism action plan 2020-2025](#), p. 7.

¹²²⁷ FRA (2010) '[Towards More Effective Policing. Understanding and Preventing Discriminatory Ethnic Profiling: A Guide](#)'. p. 64.

¹²²⁸ Committee of Ministers of the Council of Europe (2001) [The European Code of Police Ethics | OSCE POLIS](#).

¹²²⁹ FRA (2010) '[Towards More Effective Policing. Understanding and Preventing Discriminatory Ethnic Profiling: A Guide](#)'. pp. 50-52.

¹²³⁰ Representing an EU institution/agency.

¹²³¹ [EU anti-racism action plan 2020-2025](#), p. 6.

¹²³² European Parliament (2022) '[Democratic Oversight of the Police](#)', p. 58.

¹²³³ European Parliament (2022) '[Democratic Oversight of the Police](#)', p. 58.

¹²³⁴ Whilst no universal definition of the term exists, such forms are commonly used to register reasons for stopping and searching individuals.

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training packages for police officers could be developed to support the use/introduction of the forms¹²³⁵.

According to one national-level stakeholder¹²³⁶, the **use of body cameras** on police officers could be recommended to increase police accountability. A recent bulletin published by CEPOL, which looked into the results of nine impact assessments on the topic, concluded that the positive results (e.g., decreased use of force¹²³⁷) could be achieved by the use of body cameras¹²³⁸. The article highlights though that the overwhelming majority of the data on the potential positive impacts of the use of body cameras come from non-EU countries, such as the US or the UK¹²³⁹.

It falls under the **competence of Member States** to decide over the possible introduction of these new tools/technologies. Their efforts, however, could to some extent be supported by **EU-level actions**. For example, literature recommends for the EU to invest in further research to better understand the impact of new technologies on policing¹²⁴⁰.

Diversity in recruitment

Ensuring **more diversity** in the **composition of the police** can contribute to prevent discriminatory attitudes within the police towards certain racial or ethnic minority groups and can reinforce public trust in law enforcement work¹²⁴¹.

The importance of ensuring more diversity within the police and other state bodies was acknowledged by some stakeholders. For example, two national-level stakeholders interviewed referred to the importance of the measure¹²⁴². Literature also recalls the importance of recruitment measures that promote diverse workforces¹²⁴³. Such recruitment measures have the potential to diminish the risk of discrimination and bias attitudes towards certain groups¹²⁴⁴. One stakeholder¹²⁴⁵ recalled that retaining the diversity of a workforce is also important. Hence, the stakeholder referred to the necessity of ensuring that employees belonging to racial or ethnic minorities also benefit from promotions.

The **European Commission** could be **recommended** to further encourage **Member States** in scaling up their efforts of ensuring more diversity within the police.

¹²³⁵ FRA (2010) '[Towards More Effective Policing. Understanding and Preventing Discriminatory Ethnic Profiling: A Guide](#)'. p. 53.

¹²³⁶ Representing the category of lawyers.

¹²³⁷ Out of the nine studies five did not contain information on the impact on body cameras on the use of force by police; one reported no change, whereas the remaining three reported decreased use of force by the police.

¹²³⁸ CEPOL (2018), [Opening Up the Black Box: Understanding the Impact of Bodycams on Policing | European Law Enforcement Research Bulletin](#).

¹²³⁹ CEPOL (2018), [Opening Up the Black Box: Understanding the Impact of Bodycams on Policing | European Law Enforcement Research Bulletin](#) p. 1.

¹²⁴⁰ European Parliament (2022) '[Democratic Oversight of the Police](#)', p. 60.

¹²⁴¹ European Parliament (2022), '[Democratic Oversight of the Police](#)', p. 45 and [EU anti-racism action plan 2020-2025](#), p. 8.

¹²⁴² Representing a NGO and a public authority/police.

¹²⁴³ See for example, Open Society Justice Initiative (2009), '[Addressing Ethnic Profiling by Police](#)' p. 15.

¹²⁴⁴ See for example, CERD (2020) '[Preventing and combating racial profiling by law enforcement officials](#)', p.10 , or ECRI (2020), '[Statement of the ECRI on racist police abuse, including racial profiling and systematic racism](#)', p. 1.

¹²⁴⁵ View expressed by a workshop participant, representing the academia.

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Equality data collection

Two national-level stakeholders¹²⁴⁶ interviewed referred to the importance of data gathering to monitor potential discriminatory police practices. Literature¹²⁴⁷ also emphasises the importance of gathering and publishing data on potential discriminatory policing. Literature notes that in the absence of comparable data and research across the EU, discussions about potential discriminatory police practices might be dominated by allegations and anecdotes¹²⁴⁸. Additional data would facilitate a better understanding of the specificities of possible or perceived racial or ethnic discrimination by police, possible structural causes or other potential reasons for overrepresentation of certain groups in stop and searches by law enforcement. Literature also recalls that Member States, while reinforcing data collection efforts, should ensure the full respect for EU data protection law, human rights and constitutional standards¹²⁴⁹.

Even if it is up to Member States to step up the collection of the above equality data at national level, it is also **recommended** for the **European Commission** to continue its efforts (e.g., via the support provided to Member States by the Subgroup on Equality Data) in ensuring that Member States follow a consistent approach in relation to equality data collection¹²⁵⁰. **Complementary to national data collection efforts**, a recent European Parliament study¹²⁵¹ recommends additional possible **EU-level actions** to improve knowledge of police activities, including:

- Further encouraging the FRA to carry out equality data collection and to coordinate with national organisations in setting up good practice examples relating to the '*collection, management, analysis, and disclosure of the data*'¹²⁵². FRA could '*potentially follow up with Member States regarding the use and effectiveness of its outputs at national level*'¹²⁵³.
- Considering the establishment of an EU observatory of police misconduct, in charge of carrying out research, gathering reports from national police oversight bodies and based on these establishing trends and statistics.

Dialogue, cooperation and collaboration

Effective engagement, dialogue and cooperation between police and local communities can play a key role in successfully combating potentially discriminatory police practices. Several means¹²⁵⁴ have already been developed to establish dialogue and cooperation between police

¹²⁴⁶ Representing an NGO, and a company.

¹²⁴⁷ See for example, [EU anti-racism action plan 2020-2025](#), p. 7., or CERD (2020) '[Preventing and combating racial profiling by law enforcement officials](#)', p. 11.

¹²⁴⁸ See for example European Parliament (2022), '[Democratic Oversight of the Police](#)', p. 58.

¹²⁴⁹ See for example, Open Society Justice Initiative (2009), '[Addressing Ethnic Profiling by Police](#)', p. 15.

¹²⁵⁰ EU's efforts in this direct are among others acknowledged by [EU anti-racism action plan 2020-2025](#), p. 16.

¹²⁵¹ See for example European Parliament (2022), '[Democratic Oversight of the Police](#)', p. 58.

¹²⁵² European Parliament (2022), '[Democratic Oversight of the Police](#)', p. 58.

¹²⁵³ European Parliament (2022), '[Democratic Oversight of the Police](#)', p. 43.

¹²⁵⁴ Examples of means to reach minority groups are provided among others in [OSCE High Commissioner on National Minorities 'Recommendations on Policing in Multi-Ethnic Societies'](#) pp. 25-26.

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and members of racial or ethnic minority groups. According to one national-level stakeholder¹²⁵⁵ and a recent European Parliament resolution¹²⁵⁶ **national-level efforts** (e.g., football matches, integration days) **could be reinforced** in ensuring the police's better engagement with local communities.

Accountability/control/oversight

Internal (within police service) and/or **external** (by non-police oversight bodies) **checks** over police activities can contribute to ensuring that police forces perform their duties as expected and that they could be held accountable in cases when they fail to do so. Another aspect of ensuring police accountability is assurance that **citizens' complaint** mechanisms are in place and are taken seriously and are treated impartially¹²⁵⁷.

In terms of **national-level actions**, literature recommends the reinforcement of accessible, independent and effective complaint mechanisms for reporting on possible discriminatory policy actions. Some workshop participants confirmed the importance of independent complaint mechanisms, by referring to the shortcomings of the current system, whereby complaints against potentially racist police actions in some Member States have to be filed at police stations where the alleged perpetrators work¹²⁵⁸. Such practices, making reporting uncomfortable for victims, could contribute to underreporting. The literature adds that existing complaint mechanisms are not widely known among the general population, hence information campaigns or similar could also be launched for making the complaint mechanisms more accessible. Accessibility could also be enhanced by removing barriers that might currently prevent people from filing complaints. This could entail the translation of materials on the existence of complaint mechanisms to minority languages, or the provision of necessary support (e.g., legal aid) to victims to encourage reporting¹²⁵⁹.

Literature also **calls on Member States** to step up their efforts in empowering **non-police oversight bodies**. In particular, the mandates/powers and resources of non-police oversight bodies should be improved¹²⁶⁰. The European Parliament, among others has also called on the EU Member States to scale up their efforts in investigating, prosecuting and sanctioning police brutality and abuses¹²⁶¹.

At the **EU-level**, ensuring **further collaboration** between EU-level organisations, such as the FRA and CEPOL and Independent Police Complaints Authorities' Network (IPCAN) could be recommended. IPCAN is an informal forum of several European non-police oversight bodies used to exchange expertise and good practices. Hence, it would be well-placed to act as an intermediary between the EU and national-level bodies¹²⁶².

As a **possible EU-level action**, the European Parliament has called on the European Commission to set up an *'independent expert group tasked with developing an **EU Code of Police Ethics** that provides a set of principles and guidelines for the objectives, performance, oversight and control of the police in democratic societies governed by the rule of law, which can*

¹²⁵⁵ Representing a public authority/police.

¹²⁵⁶ [The Anti-racism protests following the death of George Floyd - Friday, 19 June 2020 \(europa.eu\)](#).

¹²⁵⁷ European Parliament (2022), '[Democratic Oversight of the Police](#)', pp. 39-42.

¹²⁵⁸ This was referred to by two workshop participants.

¹²⁵⁹ See for example, Ligue des droits humains (2020) '[Rapport Police Watch – Abus policiers et confinement](#)', p. 22.

¹²⁶⁰ European Parliament (2022), '[Democratic Oversight of the Police](#)', pp. 59.

¹²⁶¹ [The Anti-racism protests following the death of George Floyd - Friday, 19 June 2020 \(europa.eu\)](#).

¹²⁶² European Parliament (2022), '[Democratic Oversight of the Police](#)', pp. 59.

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*also help police actors in their daily work to properly enforce the prohibition on racism, discrimination and ethnic profiling*¹²⁶³.

Positive action/equality duties

Literature also reports on **positive actions** that could reduce possible discrimination. At the **national-level**, action plans or similar, setting out positive duties for the police could have such effects¹²⁶⁴. A duty to conduct impact assessments could also assist in designing appropriate policies and actions. The importance of impact assessments was highlighted in the context of the use of body cameras (see above) and the use of AI technologies, in particular. Two stakeholders¹²⁶⁵ recommended introducing the mandatory obligation of carrying out a fundamental rights' impact assessment each time a public authority decides to use AI systems. Literature also reinforces the importance of fundamental rights impact assessments prior to applying AI systems¹²⁶⁶.

Though it is not a recommendation per se, some of the sources consulted acknowledge that certain actions targeting the police could not only address potential racial profiling, but contribute to tackling discrimination overall. For example, awareness raising on discrimination could reinforce positive attitudes towards the handling of complaints made in alleged discrimination cases¹²⁶⁷. Likewise, complaints reported by the police could provide valuable equality data.

5.2.1.2 Legislative intervention

As mentioned above, most stakeholder consultation tools recommend the adoption of non-legislative actions. Only one, namely the **written contributions to the OPC**, seem to favour legislative intervention. Out of the eight respondents to the OPC who in their written contributions accompanying their OPC responses were advocating for action to address discrimination in the exercise of public authority by law enforcement¹²⁶⁸, six¹²⁶⁹ referred to the necessity of an EU-level legislative intervention. It is noteworthy that the OPC overall, taking into account the responses from all 231 contributors, paint a more diverse picture. Based on the responses it cannot be concluded that a legislative option would be the preferred one. To the contrary, only 28 % of the 104 respondents who responded to a related question of the OPC questionnaire¹²⁷⁰ were advocating for the establishment of a strong legal framework and 19 % referred to the necessity of introducing reforms to laws and the justice system; and only 5 % of the respondents provided some information on the possible content of legislative measures, by referring to the need for legislating in relation to the prevention of housing

¹²⁶³ [The Anti-racism protests following the death of George Floyd - Friday, 19 June 2020 \(europa.eu\)](#).

¹²⁶⁴ See for example College of Policing '[Police plan of action on inclusion and race](#)'.

¹²⁶⁵ Representing a public authority and an independent expert.

¹²⁶⁶ See for example, CERD (2020) '[Preventing and combating racial profiling by law enforcement officials](#)', p.12. or FRA (2020), '[Getting the future right – Artificial Intelligence and fundamental rights](#)' p. 87.

¹²⁶⁷ See for example, Independent Office for Police Conduct '[Discrimination](#)'.

¹²⁶⁸ The related question covered both law enforcement and judicial authorities.

¹²⁶⁹ Representing three NGOs, one public authority, one private company and one organisation falling under the category of 'other'.

¹²⁷⁰ Question reads as follows: In your opinion, what should be done to adequately protect individuals and/or groups against discrimination based on racial or ethnic origin? What is missing from the current protection? Is there anything else you would like to tell us in relation to the protection against discrimination based on racial or ethnic origin?

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segregation. Similarly, to the OPC results, the survey, the interviews and the workshop also back up the need for non-legislative action (see above).

In addition, it is recalled that all legislative recommendations put forward by the stakeholders and identified in literature should be tested against the limits posed by the Treaties for the EU to legislate. Deriving from such limitations it does not seem feasible for the EU to legislate in connection with the above gaps in the exercise of public authority by law enforcement; it could hence be concluded that all legislative recommendations identified are for the **Member States to consider**.

These recommendations are:

- **Extension of coverage of non-discrimination legislation against racial or ethnic discrimination in the exercise of public authority by law enforcement and judicial authorities:** According to CERD¹²⁷¹ or ECRI¹²⁷², amongst others¹²⁷³, comprehensive legislation against racial or ethnic discrimination is indispensable to combat racial or ethnic discrimination in the exercise of public authority by law enforcement and judicial authorities. Whilst it is not legally feasible to make such amendments to the RED, all stakeholders suggesting legislative intervention referred to the **possible extension of the scope** of the RED to cover discrimination in the exercise of public authority by law enforcement and judicial authorities. Member States without such legislation in place could amend their national rules. Literature also suggests the necessity of **reviewing the existing regulatory framework** that governs the work of law enforcement authorities with a view to strengthen non-discriminatory standards and practices¹²⁷⁴. The same source suggests that law should contain clear guidance for carrying out stops, checks and searches. In particular, legislation should allow for the initiation of stops, checks and searches based on a reasonable individualised suspicion. Legislation should clarify that race, ethnicity or other personal characteristics should not constitute a reason for police action¹²⁷⁵.
- **Extension of the mandate of equality bodies:** One stakeholder¹²⁷⁶ contributing to the OPC, noted that the mandate of equality bodies, as set out in EU legislation, should cover all areas where discrimination occurs. Whilst, deriving from the wording of Article 19 of the TFEU, it is not legally feasible at the EU-level to introduce such a change to the applicable legislation, at the national-level Member States could consider empowering the equality bodies with a more extensive mandate.

5.2.2 Recommendations linked to potential gaps in protection mechanisms

It is recalled that the Study did not cover in details possible shortcomings/gaps linked to the role and competences of equality bodies, given the European Commission's on-going parallel work on the topic. Our Study found, however that equality bodies are perceived as an important protection mechanism in the fight against discrimination. The majority of the respondents to the targeted survey confirmed this finding¹²⁷⁷. Moreover, the Study found that equality

¹²⁷¹ CERD (2020) '[Preventing and combating racial profiling by law enforcement officials](#)', p. 9.

¹²⁷² ECRI (2019), '[ECRI Report Romania](#)', p. 23

¹²⁷³ Other example is Council of Europe resolution and report '[Ethnic profiling in Europe: a matter of high concern](#)'.

¹²⁷⁴ Open Society Justice Initiative (2009), '[Addressing ethnic profiling by the Police](#)'. p. 14.

¹²⁷⁵ Open Society Justice Initiative (2009), '[Addressing ethnic profiling by the Police](#)'. p. 14.

¹²⁷⁶ Representing an organisation that falls under the category 'other'.

¹²⁷⁷ Targeted survey carried out within the framework of this study.

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bodies given their role/competences (especially if reinforced) could enhance the effectiveness of other protection mechanisms. Hence, the recommendations below touch upon the potential role/competences of equality bodies. This section also includes reference to non-legislative and legislative recommendations that are not linked to the role of equality bodies.

5.2.2.1 The role of equality bodies

Our Study recommends a larger role for equality bodies in relation to the protection mechanisms/measures listed in the Box below. They could be integrated in the legislation on standards for equality bodies, which is currently under preparation¹²⁷⁸.

Box 72: Overview of recommendations linked to the role of equality bodies

Overview of recommendations linked to the role of equality bodies

- Information, awareness raising, guidance and training
- Equality data collection
- Dialogue, cooperation and collaboration
- Protection against intersectional discrimination
- Positive action/equality duties
- Defence rights
- Sanctions

Information, awareness raising, guidance and training

Article 13 of the RED requires the equality bodies to provide independent assistance to victims. Equality bodies should be provided with the mandate and resources necessary to fulfil this role. In some Member States the core mandate of national equality bodies also extends to other **specific awareness raising** activities.

Literature¹²⁷⁹ recommends that EU legislation should require all equality bodies to hold more powers in connection with awareness raising. Equality bodies could play a role through the issuance of **public statements** to acknowledge certain issues¹²⁸⁰. Likewise, Member States could ensure that equality bodies are enabled with the competence to provide training, information, advice, guidance and support to public and private actors¹²⁸¹. To this end, they could engage in **public debates** or **regular dialogues** with private and public actors¹²⁸².

The role of equality bodies in **informing victims** about support mechanisms, including psychological support, could also be reinforced.

Equality bodies, when entrusted with decision-making powers could also be requested to publish, in an anonymised format that secures the identity of the victim, a **summary of their decisions**.

¹²⁷⁸ [Equality bodies – binding standards \(europa.eu\)](#).

¹²⁷⁹ Equinet (2021), '[Assessing Gaps in the Racial Equality Directive](#)', p. 8.

¹²⁸⁰ Where national legislation has extended the mandate of equality bodies to law enforcement, they would be able to conduct dedicated awareness raising activities in this field Equinet (2019), '[Equality bodies countering ethnic profiling](#)'.

¹²⁸¹ European Commission (2018), [Commission Recommendation on standards for equality bodies](#), p. 7.

¹²⁸² European Commission (2018), [Commission Recommendation on standards for equality bodies](#), p. 8.

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Member States could be recommended to reinforce the mandate of equality bodies in relation to the organisation of sensitisation **campaigns** which could play a role in reducing (unconscious) bias was mentioned by some sources¹²⁸³. Likewise, equality bodies could play a key role in the organisation of campaigns on anti-discrimination legislation and the use of rights under the RED, targeting racial or ethnic minorities and victims of discrimination¹²⁸⁴.

Equality data collection

Literature recalls that all equality bodies should be empowered with the means necessary to fulfil their mandate, which is to promote the equal treatment of all persons. To fulfil this role, it is recommended to provide equality bodies with all relevant equality data. One of the possible means to supply relevant equality data is to empower, by EU legislation, all equality bodies to **get access to non-personal equality data** collected at national level¹²⁸⁵.

To ensure that these actors collect the data necessary, equality bodies could be specifically asked to issue related **recommendations** to public and private sector actors. Likewise, equality bodies could **support** these actors in their data collection efforts by providing them with guidance and information via roundtable gatherings or similar. To address one of the obstacles for equality data collection, which lies with the incomplete nature of relevant datasets due to the presence of multiple entities that collect such data, FRA recommends the enhancement of interinstitutional cooperation between, for example, '*ministries, national statistical offices, equality bodies, national human rights institutions, research institutions and the scientific community, as well as other relevant actors and data providers*'¹²⁸⁶. According to the FRA national equality bodies should be involved in facilitating **interinstitutional cooperation**¹²⁸⁷.

Moreover, equality bodies could be encouraged to collect more data on their activities. Consequently, their power, as envisaged by Article 13(2) of the RED, in relation to the gathering of discrimination related data via **surveys** could be reinforced.

Dialogue, cooperation and collaboration

Dialogue, cooperation and collaboration among all actors plays a key role in promoting equality. To this end, Member States could be recommended to enable equality bodies '*to engage in dialogue and cooperate effectively with relevant national authorities and bodies in the same Member State*'¹²⁸⁸. Similar mechanisms of cooperation with private sector actors, including civil society, could also be recommended.

Member States should ensure that equality bodies are **consulted** in a transparent and timely manner on policy and legislative developments covered by their mandates¹²⁸⁹. The possibility

¹²⁸³ Recommended by one national-level stakeholder, representing a public authority.

¹²⁸⁴ Example of sources: European Commission (2021) '[Report on the application of the racial equality directive and the employment equality directive](#)'; Equinet (2016), [Fighting Discrimination on the Ground of Race and Ethnic Origin](#); ECRI (2004), [10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance](#); Information provided by national experts for Belgium, Finland, Portugal and Slovakia through desk research.

¹²⁸⁵ Equinet (2021), '[Assessing Gaps in the Racial Equality Directive](#)', p. 5.

¹²⁸⁶ FRA also refers to the judiciary and the police. This would be for Member States to implement.

¹²⁸⁷ FRA (2021), [Equality in the EU 20 years on from the initial implementation of the equality directives](#).

¹²⁸⁸ European Commission (2018), [Commission Recommendation on standards for equality bodies](#), p. 9.

¹²⁸⁹ European Commission (2018), [Commission Recommendation on standards for equality bodies](#), p. 9.

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of allowing equality bodies to issue **opinions** on related policy and legislative initiatives could also be considered.

Protection against multiple and intersectional discrimination

It was also recommended to entrust equality bodies with the **promotion of non-discrimination on all grounds**¹²⁹⁰. Member States might be best placed to implement this recommendation, given that in line with recent interpretation provided by the CJEU¹²⁹¹, the EU's competence to act in relation to intersectional discrimination seems to be limited. Regarding this point it is also recalled that nearly all Member States already provide the national equality bodies with a comprehensive mandate covering all the grounds¹²⁹². A multi-ground mandate is promising only when accompanied by the allocation of adequate resources for each ground and a working structure that encourages exchanges and intersectional work¹²⁹³.

Positive action/equality duties

Equality bodies could play a key role in **promoting** the maintenance and adoption of **positive actions** and **equality duties**. To this end, Member States could be recommended to enable equality bodies with the competence of adopting strategies to promote equality duties and positive actions among public and private actors. Literature also recalls that in some Member States, equality bodies have already taken some actions to promote equality duties and positive actions by, for example, issuing advice, recommendations and options; quasi-judicial opinions, etc.¹²⁹⁴.

Defence rights

Several sources confirm the low level of reporting of discriminatory incidents¹²⁹⁵. Many reasons could lie behind the underreporting, including the belief that nothing would happen, lack of knowledge on available complaint mechanisms, practical obstacles for filing complaints (e.g., bureaucracy, length of proceedings)¹²⁹⁶.

Literature acknowledges that equality bodies could help **make the complaint systems more user-friendly** and **accessible**, could **facilitate** the **reporting** process by victims and could **raise awareness** on existing complaint mechanisms¹²⁹⁷. Equality bodies could play a key role

¹²⁹⁰ Recommended by one national-level interviewee, representing an NGO. This is also enshrined in EC (2021)' [Report on the application of the racial equality directive and the employment equality directive](#)' p. 5.

¹²⁹¹ Judgment of 24 November 2016 in David L. Parris (C-443/15, EU:C:2016:897).

¹²⁹² Example of sources: European network of legal experts in gender equality and non-discrimination (2021), '[Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives](#)'; European network of legal experts in gender equality and non-discrimination (2021), '[A comparative analysis of non-discrimination law in Europe](#)', etc.

¹²⁹³ European network of legal experts in gender equality and non-discrimination (2021), '[Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives](#)'

¹²⁹⁴ Equinet (2022) [Exploring positive action as a means to fight structural discrimination in Europe](#), pp. 66-73.

¹²⁹⁵ The [EU-MIDIS survey 2010](#) notes for example that 82% of those who were discriminated against did not report their experience.

¹²⁹⁶ European Parliament (2022), '[Briefing on EU legislation and policies to address racial and ethnic discrimination](#)' p. 6.

¹²⁹⁷ [European Commission, 'Joint Report on the application of the RED and the Employment Equality Directive \(2014\)'](#), p. 6.

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in promoting trust, the lack thereof is also one of the issues behind underreporting. For that, however, it was recommended to ensure the full independence of equality bodies¹²⁹⁸.

Equality bodies could also assist victims of discrimination in complaint cases, when they have **legal standing**. It was recommended to empower equality bodies with litigation power and the resources needed (e.g., dedicated budget and human resources) to fulfil such power¹²⁹⁹.

Equality bodies, when provided with the competence of **carrying out investigations** of possible violations of non-discrimination principles could also be empowered to review the practices of private and public actors and issue relevant recommendations.

Member States could also envisage, as forms of assistance to victims, the possibility of engaging equality bodies in activities of **mediation** and **conciliation**¹³⁰⁰ and allowing equality bodies to submit oral/written statements to national courts in discrimination cases.

Whilst the EU Equality Directives do not spell out that assistance to victims encompasses the **competence of receiving and handling complaints**, the Recommendations of the European Commission on Standards for Equality Bodies seem to confirm such interpretation. To reinforce the equality bodies' related competences, it is recommended for Member States to ensure that complaints can be submitted easily, e.g., orally, online, free of charge, etc. It is equally important to ensure that whistleblowers and witnesses are offered confidentiality. It should also be ensured that equality bodies' services could be accessed throughout the entire national territory¹³⁰¹.

A stakeholder¹³⁰² recalled that physical accessibility and proximity of existing complaints mechanisms might play a role in enhancing the use of complaint mechanisms. It could therefore be recommended for Member States to ensure the **local/regional presence of equality bodies**. Such presence could *'bring equality bodies closer to the individuals, offer face-to-face contact and ensure local outreach and visibility. They are key to overcoming high levels of underreporting by victims'*¹³⁰³.

Sanctions

According to two stakeholders¹³⁰⁴, equality bodies could potentially play a role in applying effective, proportionate and dissuasive sanctions, when they are entrusted with decision-making powers. **When** equality bodies are **entrusted with decision-making powers** they could, when deciding on the outcome of cases, consider the imposition of **preventive measures**. According to literature, in some Member States national equality bodies can already impose

¹²⁹⁸ Recommended by one respondent to the OPC that provided written contribution. The respondent represented the category 'other'.

¹²⁹⁹ Recommended by one respondent to the OPC that provided written contribution. The respondent represented the category 'other'. Also recommended by a national-level interviewee, representing a public authority.

¹³⁰⁰ European Commission (2018), [Commission Recommendation on standards for equality bodies](#), p. 9.

¹³⁰¹ European Commission (2018), [Commission Recommendation on standards for equality bodies](#), pp. 8-9.

¹³⁰² Recommended by one respondent to the OPC that provided written contribution. The respondent represented the category 'NGO'.

¹³⁰³ European Commission (2021) [Commission staff working document -Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies](#), p. 22.

¹³⁰⁴ Recommended by one respondent to the OPC that provided written contribution. The respondent represented the category 'other'. This was also recommended by a national-level interviewee, representing an NGO.

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sanctions, in addition to courts¹³⁰⁵. Member States could also be requested to ensure that equality bodies receive **mandatory feedback** on the implementation of their decisions from their recipients which could be published in an anonymised format. Moreover, Member States could be requested to consider the introduction of sanctions in case of non-compliance with the equality bodies' decisions.

5.2.2.2 Non-legislative intervention

The majority of the recommendations identified via the stakeholder consultations and the literature review are non-legislative (soft) in nature. The related recommendations are briefly listed in the Box below.

Some of the recommendations identified touch upon actions that could be covered by the potentially reinforced role/mandate of equality bodies. The recommendations below do not repeat these actions and focus only on those that could be tackled by organisations other than equality bodies.

Box 73: Overview of non-legislative recommendations

Overview of non-legislative recommendations

- Information, awareness raising, guidance and training
- Equality data collection
- Diversity in recruitment
- Dialogue, cooperation and collaboration
- Equality duties, positive action
- Defence rights
- Sanctions
- Good practices

Information, awareness raising, guidance and training

Whilst the RED in its Article 10 already requires Member States to disseminate discrimination related information to all persons concerned and several national- and EU initiatives have already been launched to raise awareness, the sources consulted recommend further EU- and national action to operationalise the current framework:

- **Guidance, awareness raising activities:** It is recommended to focus more awareness raising activities on tackling structural discrimination which is often rooted in prejudices and stereotypes, by acknowledging the historical roots of racism¹³⁰⁶. The promotion of balanced and positive narratives, increasing awareness and knowledge of journalists and fostering media literacy are important tools in this respect¹³⁰⁷.
- **School curriculum:** it was recommended for Member States to consider the incorporation of the topic of discrimination into the school curriculum¹³⁰⁸.

¹³⁰⁵ Example sources: European network of legal experts in gender equality and non-discrimination (2021), '[Effectively enforcing the right to non-discrimination: Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives](#)'.

¹³⁰⁶ [EU Anti-Racism Action Plan 2020-2025](#), p. 14.

¹³⁰⁷ [EU Anti-Racism Action Plan 2020-2025](#), p. 14.

¹³⁰⁸ Recommended by five national-level stakeholders, representing the categories 'lawyer', 'academia/research', 'NGO' and 'public authority'.

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Equality data collection

Equality data are of utmost importance in understanding the nature/scale of discrimination. Hence, several sources recommend means to improve equality data collection. Literature notes that **quantitative equality data** should be disaggregated by race or ethnic origin, based on self-identification and in line with the GDPR¹³⁰⁹.

In addition to quantitative data, more **qualitative information** might be necessary to better understand some forms of discrimination¹³¹⁰. Consequently, it was, for example, recommended to carry out more targeted research¹³¹¹. Moreover, situational testing was identified as an effective method for deepening the understanding of 'structural' discrimination¹³¹². FRA also recommends the use of population censuses for collecting equality data¹³¹³.

The lack of equality data makes it difficult to prove discrimination in complaint cases. One workshop participant by referring to the fact that official equality data could be used as evidence, recommended that Member States could be recommended to ensure the **publication of equality data**¹³¹⁴ by public/private actors. Moreover, more data might make it easier to prove the existence of multiple or intersectional discrimination¹³¹⁵.

Interinstitutional cooperation within Member States (e.g., among statistical offices, courts, police, civil society, private sector) was acknowledged as necessary to ensure the timely collection of fit-for-purpose data¹³¹⁶.

Diversity in recruitment

As acknowledged by the conclusions, ensuring racial or ethnic diversity in particular in the public sector remains a challenge. Hence, it was recommended for Member States to reinforce mechanisms to **engage public sector** actors in **fostering diversity** among their staff¹³¹⁷. For example, public sector actors could be encouraged to **join the European Diversity Charters**.

Dialogue, cooperation and collaboration

As highlighted by the conclusions, further reinforcement of existing initiatives might be necessary to ensure effective dialogues among all actors concerned by racial or ethnic discrimination. As mentioned above (See *Section 5.2.2.1*), the equality bodies could play a key role in ensuring collaboration with relevant national and local-level public and private actors. The

¹³⁰⁹ FRA (2021), [Equality in the EU 20 years on from the initial implementation of the equality directives](#).

¹³⁰⁹ ECRI (2004), [10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance](#).

¹³¹⁰ Recommended by one national-level stakeholder, representing an NGO.

¹³¹¹ Recommended by three national-level stakeholder, representing an NGO and two public authorities.

¹³¹² Recommended by one national-level stakeholder, representing the category 'lawyer'.

¹³¹³ FRA (2021), [Equality in the EU 20 years on from the initial implementation of the equality directives](#).

¹³¹⁴ Representing an NGO.

¹³¹⁵ Recommended by one national-level interviewee, representing an NGO. This is also enshrined in EC, '[Report on the application of the racial equality directive and the employment equality directive](#)' p. 5.

¹³¹⁶ FRA (2021), [Equality in the EU 20 years on from the initial implementation of the equality directives](#); EC High Level Group on Non-discrimination, Equality and Diversity (2018), [Guidelines on improving the collection and use of equality data](#).

¹³¹⁷ This was recommended by one workshop participant representing the academia.

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UN additionally recommends for countries the establishment of partnerships with the **media**¹³¹⁸. It is also recommended for Member States to reinforce mechanisms for **dialogue** with the **persons** affected by everyday racism¹³¹⁹.

Equality duties/positive action

Member States could be further encouraged by the EU to promote the **introduction of equality duties** (e.g., by means of prescribing these as legal duties) in the day-to-day operation of public authorities and private organisations¹³²⁰. Duties may also be imposed on corporations to respect human rights and avoid adverse human rights impacts through their activities, including in what concerns racial discrimination¹³²¹. Several forms of equality duties could be developed, e.g., equality planning, equality impact assessment.

The RED in its Article 5 specifically allows Member States to adopt positive actions. Several sources further **encourage Member States to introduce** such positive actions, including quota systems and supportive measures for disadvantaged groups¹³²².

Defence rights

The exercise of defence rights is hampered by several shortcomings. To address the root causes of the issue (e.g., cost of proceedings, issues linked to burden of proof), the following recommendations have been identified:

- **Guidance on the burden of proof:** one of the issues is that burden of proof rules are not always properly understood or applied by national courts. Moreover, in some Member States the threshold for shifting the burden of proof is set too high. According to a stakeholder¹³²³ more guidance would be needed on the application of burden of proof. Another stakeholder noted that training could provide more guidance to practitioners¹³²⁴.
- **Easy/effective access to proceedings:** one stakeholder noted that victims might refrain from reporting by fear of retaliation. This was seen as one of the reasons for underreporting. The stakeholder¹³²⁵ recommended the anonymisation of victims, while filing complaints and giving testimonies. Under Article 7(2) of the RED, Member States have a duty to ensure that associations, organisations (e.g. NGOs) or other legal entities with a legitimate interest may engage,

¹³¹⁸ UN High Commissioner for Human Rights (2021), [Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers](#), A/HCR/47/53.

¹³¹⁹ [EU Anti-Racism Action Plan 2020-2025](#); FRA (2018), [Being Black in the EU](#).

¹³²⁰ [EU Anti-Racism Action Plan 2020-2025](#), p. 21.

¹³²¹ UN High Commissioner for Human Rights (2021), [Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers](#), A/HCR/47/53.

¹³²² ECRI (2004), [10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance](#); ECRI (2015), [5th report on Poland](#); ECRI (2019), [5th report on Luxembourg](#); ECRI (2015), [5th report on France](#); ECRI (2019), [5th report on Romania](#); ECRI (2019), [5th report on the Netherlands](#); ECRI (2017), [5th report on Sweden](#); Ontario (2017), [A better way forward: Ontario's 3-year Anti-racism Strategic plan](#); ECCAR response to consultation; Information obtained from the Slovak legal expert through desk research; Information obtained from Association Novo Dia (Portugal) via interview held in February 2022.

¹³²³ Recommended by one respondent to the OPC that provided written contribution. The respondent represented the category 'other'.

¹³²⁴ Recommended by one EU-level stakeholder.

¹³²⁵ Recommended by one EU-level interviewee, representing an NGO.

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either on behalf or in support of the victim, with his or her approval, in any judicial and/or administrative procedure. One stakeholder recommended the reinforcement of the NGOs' strategic litigation powers by for example establishing funds for such purpose¹³²⁶.

As legal proceedings in discrimination cases might be lengthy, one stakeholder recommended the introduction of fast-paced procedures in discrimination cases¹³²⁷.

ECRI recommends for States to provide '*adequate interpretation and translation facilities*' at all stages of the proceedings, including in what regards access to counsel¹³²⁸.

Many sources consulted suggest recommendations to alleviate the financial burden of proceedings. Literature highlights some specific initiatives that could be considered. These include the reduction of court fees for discrimination cases, the creation of tax incentives, or the creation of funds for providing victims with the means to cover legal costs¹³²⁹. Stakeholders also noted that legal aid should be made available in these cases¹³³⁰. ECRI also recommends that states should provide free legal aid and raise awareness on how to access it¹³³¹. Moreover, the rule that the party losing the case should pay the legal and judicial costs could be removed, according to one stakeholder¹³³².

Sanctions

Related recommendations all acknowledged that sanctions that are currently imposed at national level do not tend to meet the RED's requirement of being proportionate, effective and dissuasive. In other words, in practice difficulties seem to exist regarding the implementation of the RED¹³³³. To address the root causes of the issue the following recommendations have been identified:

- **Guidance on sanctions:** the RED provides little guidance as to what could be considered as a proportionate, effective or dissuasive sanction. Although there are some relevant CJEU rulings, it was recommended to develop further guidance at the EU-level on what is meant under these characteristics¹³³⁴.
- **Dissuasive sanctions:** if Member States mainly focus on a reparatory model, this might not necessarily serve as a deterrent. Punitive, higher sanctions towards perpetrators could serve such a purpose. It was recommended for Member States to consider

¹³²⁶ Recommended by one respondent to the OPC that provided written contribution. The respondent represented the category 'NGO'.

¹³²⁷ Recommended by one national-level interviewee, representing an NGO.

¹³²⁸ ECRI (2004), [10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance](#), p. 38; ECRI (2002) [General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination](#), par. 26.

¹³²⁹ EC, '[Report on the application of the racial equality directive and the employment equality directive](#)' p. 10.

¹³³⁰ Recommended by two national-level interviewees, representing an NGO and a public authority.

¹³³¹ ECRI (2004), ECRI (2004), [10 years of combating racism in Europe: a review of the work of the European Commission against racism and intolerance](#), p. 38; ECRI (2002) [General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination](#), par. 26.

¹³³² Recommended by one national-level interviewee, representing the category 'lawyer'.

¹³³³ [Report on the application of the racial equality directive and the employment equality directive \(2021\)](#)

¹³³⁴ Recommended by one respondent to the OPC that provided written contribution. The respondent represented the category 'other'. European Commission (2021), [Report on the application of the racial equality directive and the employment equality directive \(2021\)](#). Also raised in Equinet (2020), [A perspective from the work of equality bodies on: European equality policy strategies, equal treatment directives, and standards for equality bodies](#).

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ways of ensuring that monetary sanctions are sufficiently high¹³³⁵ and that they are more consistently imposed¹³³⁶. According to one stakeholder¹³³⁷, the sanctions should take into account the size and turnover of the organisation, when applicable; another suggested that higher sanctions could be imposed in certain cases, for example, when the perpetrator fails to cooperate with the equality bodies¹³³⁸.

- **Preventative sanctions:** It was also recommended to apply sanctions with increased focus on preventing future harm. One stakeholder noted that in some non-EU countries, such as Canada, courts can also impose as a sanction on defendants the obligation of setting up some positive actions¹³³⁹.

Good practices

The Study identified several good practices that have been developed at national- and/or EU-level to address some of the potential gaps linked to the protection mechanisms, including existing EU-level mechanisms for sharing information on these good practices. A possible non-legislative recommendation for the European Commission could be to reinforce its efforts of information sharing.

5.2.2.3 Legislative intervention

A limited number of sources suggest recommendations which are legal in nature. The related recommendations, to be considered by the Member States, are:

- **Collection and the use of equality data:** There is no general requirement under the Directive to collect, analyse and use equality data, beyond the requirement in Article 13 for equality bodies to conduct independent surveys and publish independent reports. A workshop participant noted that, while soft law initiatives are the preferred tool for setting detailed requirements for equality data collection, it is important to have a legal basis underpinning such initiatives to ensure their enforcement. Member States could be encouraged to introduce related legal obligations in their national rules.
- **Equality duties:** According to some literature, it is necessary to develop legal provisions to ensure that equality duties are applied in a uniform way across the Member States¹³⁴⁰. The introduction of equality duties could address discrimination on all prohibited grounds, hence not only in connection with racial or ethnic discrimination. Member States could be encouraged to introduce related provisions in their national legislation.
- **Protection against intersectional/multiple discrimination:** Member States could amend their national anti-discrimination legislation to cover intersectionality and multiple discrimination.

¹³³⁵ Recommended by two respondents to the OPC that provided written contribution. The respondents represented the category 'other' and 'NGO'.

¹³³⁶ Recommended by an EU-level stakeholder interviewed.

¹³³⁷ Recommended by one respondent to the OPC that provided written contribution. The respondent represented the category 'NGO'. It was also recommended by six national-level interviewees two representing NGOs and four public authorities.

¹³³⁸ Recommended by one respondent to the OPC that provided written contribution. The respondent represented the category 'other'.

¹³³⁹ Recommended by one national-level stakeholder, representing the category 'lawyer'.

¹³⁴⁰ Equinet (2021), '[Assessing Gaps in the Racial Equality Directive](#)', p. 6.

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Several stakeholders¹³⁴¹ recommended the inclusion of intersectional/multiple discrimination as protected grounds under the RED. Some workshop participants¹³⁴² specifically referred to the necessity of covering intersectionality by the RED. It is recalled though that the CJEU so far has not acknowledged intersectional discrimination as a protected ground. In 2016, it only acknowledged that multiple discrimination i.e. *'discrimination [...] based on several of the grounds'* is protected by EU law. Moreover, Article 19 of the TFEU, on which the RED is based, does not refer to intersectionality in its wording. The RED in its recital (hence not in the main body of the RED) refers to multiple discrimination as a type of discrimination that could affect women. The RED, however, applies in certain material areas only. The adoption of the pending Equal Treatment Directive¹³⁴³, a horizontal piece of legislation at the EU-level covering four different grounds (religion or belief, disability, age and sexual orientation) was therefore recommended by a stakeholder¹³⁴⁴.

As a final point, several sources recall that racial or ethnic discrimination is to a large extent intertwined with **structural/systemic discrimination**, as racism often results from old stereotypes and prejudices which are deeply embedded in our society¹³⁴⁵. According to several workshop participants to tackle racial or ethnic discrimination one has to tackle these structural/systemic shortcomings. This requires systemic, national-level responses, *'involving a comprehensive set of measures that address the different factors that lead to their persistence'*¹³⁴⁶.

¹³⁴¹ Recommended by 10 out of the 18 respondents to the OPC that provided written contribution. These represented five NGOs, three public authorities, one company and one representing the category 'other'. Two EU-level interviewees, and two national-level interviewee representing a public authority and an NGO, also put forward the same recommendation.

¹³⁴² Five workshop participants, three representing NGOs, one an EU-level organisation and another an organisation falling under 'other'.

¹³⁴³ COM(2008)426

¹³⁴⁴ Recommended by one respondent to the OPC that provided written contribution. The respondent represented the category 'NGO'.

¹³⁴⁵ See for example: [EU Anti-Racism Action Plan 2020-2025](#); p. 13.

¹³⁴⁶ Open Society Justice Initiative, [Lawsuit to Stop Ethnic Profiling by French Police - Open Society Justice Initiative](#).

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Annex II – Online survey analysis

Profile of respondents

The targeted survey gathered a total of 68 responses across 26 different Member States. In addition, 3 respondents indicated that besides having experience with the topic of racial/ethnic discrimination in a certain Member State, they have experience also at EU-level. One organisation based in Portugal indicated having experience also in Spain. An EU-level organisation indicated that it has experience in all Member States, except for Poland.

Table 1: In which country(ies) do you have experience with the topic of racial/ethnic discrimination? (N=68)

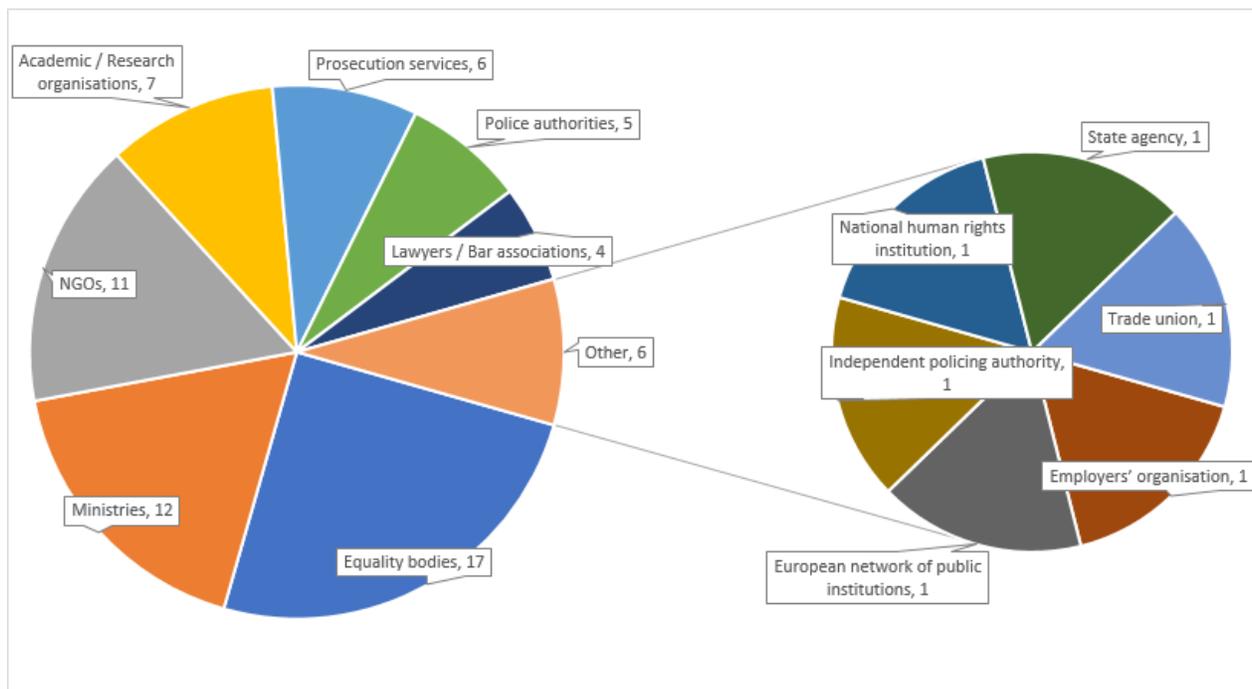
Member State	Number of respondents
Austria	2
Belgium	2
Bulgaria	2
Croatia	1
Cyprus	2
Czechia	2
Denmark	0
Estonia	2
Finland	3
France	1
Germany	1
Greece	3
Hungary	6
Ireland	2
Italy	3
Latvia	5
Lithuania	2
Luxembourg	2
Malta	1
Netherlands	1
Poland	2
Portugal	5
Romania	5
Slovakia	2
Slovenia	2

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Member State	Number of respondents
Spain	1
Sweden	4
EU-level	4

The largest group of respondents were representatives of equality bodies (17 in total, 25%), followed by ministries (12 in total, 18%) and NGOs (11 in total, 16%). Seven respondents were from academic/research organisations (10%), six were representatives from prosecution services (9%), five from police authorities (7%), and four lawyers/representatives of bar associations (6%). In addition, there were six other stakeholders which are merged together for the analyses: one employers' organisation, one European network of public institutions, one independent policing authority, one national human rights institution, one state agency, and one trade union (see Figure 1 below).

Figure 1: Are you replying as: (N=68)



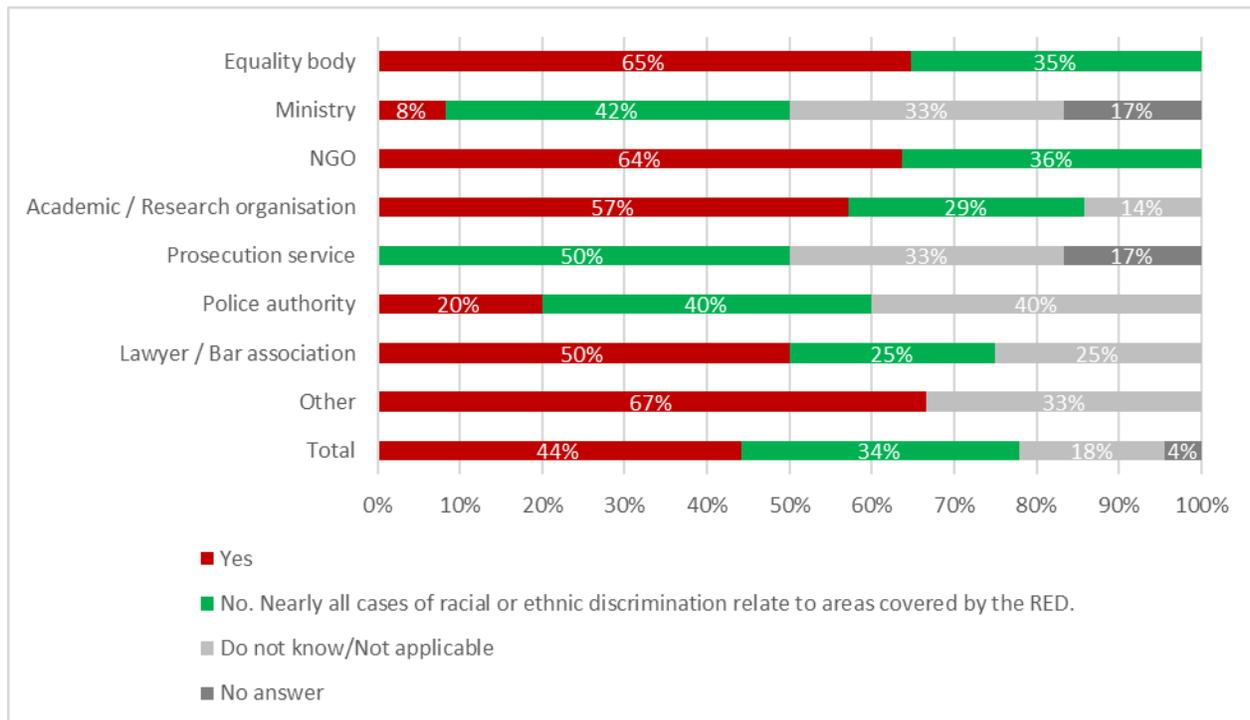
Racial and ethnic discrimination outside of the material scope of the RED

General questions on the material scope

Areas outside of the material scope of the RED in which racial or ethnic discrimination occurs on a significant scale

Out of the 68 total respondents, 30 (44%) indicated that there are areas in which racial or ethnic discrimination occurs significantly outside of the scope of the RED, which was answered mostly by equality bodies and NGOs. In addition, 23 stakeholders (34%) thought that nearly all cases of racial or ethnic discrimination are covered by the RED. This was the common opinion amongst ministries and prosecution services.

Figure 2: In your/your organisation’s opinion, are there important areas in which racial or ethnic discrimination occurs on a significant scale that are outside of the material scope of the RED? (N=68)



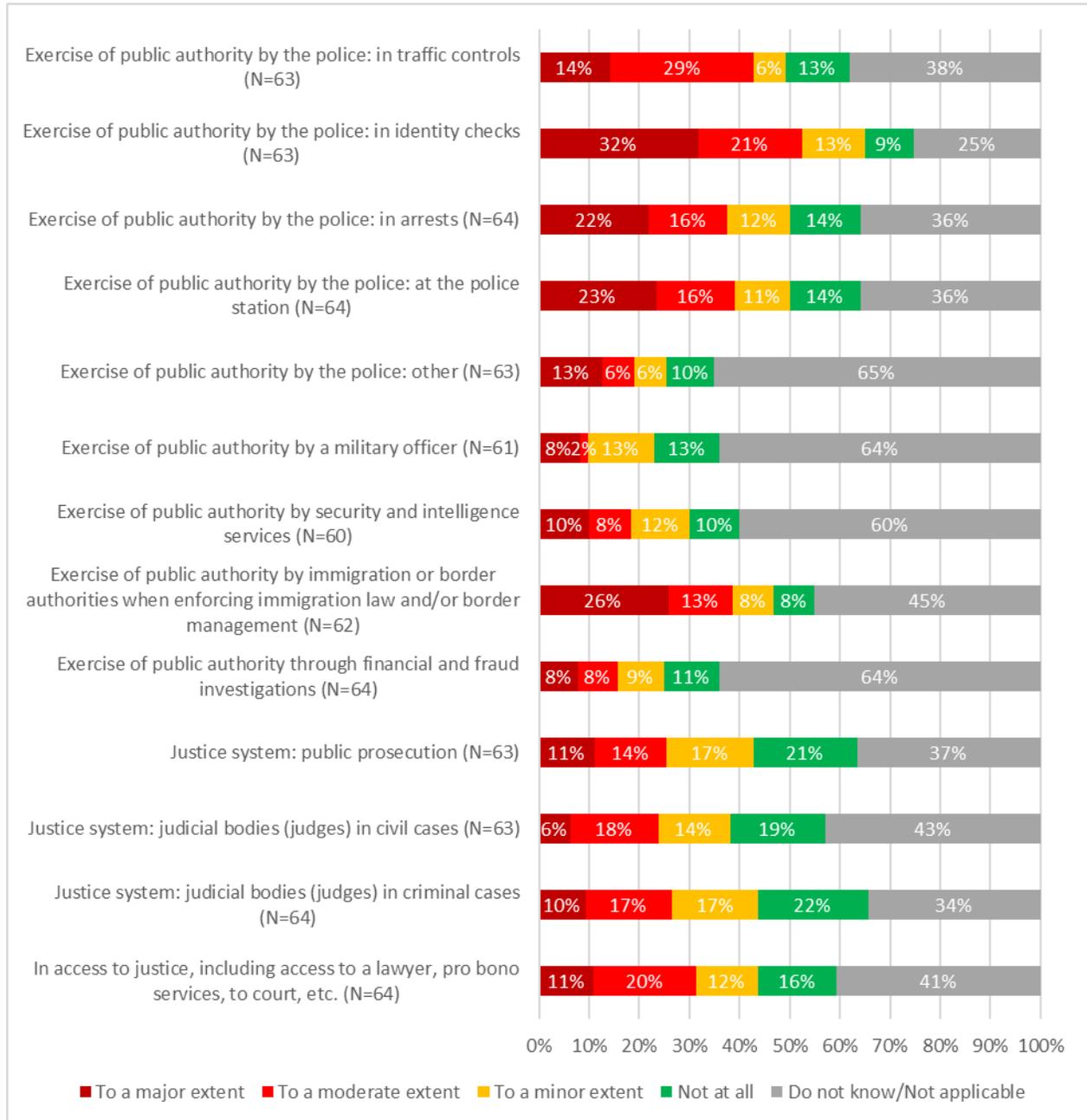
40 stakeholders further explained their reasoning behind their opinion, of which 25 mention various forms of discrimination. This is typically in relation to race or ethnicity and carried out by the police and other law enforcement authorities. Racial profiling is described as an issue outside the scope of the RED by four NGOs, two equality bodies, and one academic/research organisation. An overarching theme is that discrimination exists on a larger scale, both structurally and institutionally. This includes existing laws and practices, coupled with practices by law enforcement authorities and public administration. Three stakeholders argue that the RED does not cover the legal statute that regulates the entry and stay of foreign nationals, with the Portuguese equality body mentioning cases of the police's abusive approach. Similarly,

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three stakeholders mention the disproportionately high level of identity checks, which is perceived as a security issue not covered by the RED. The lack of police protection is also reported as an issue, and discrimination in the exercise of public authority and the difficulty of accessing certain services or activities is considered a persisting issue by eight stakeholders. The most prominent minority targeted by discrimination are Roma people, who are explicitly mentioned by eight stakeholders.

Looking more closely into the potential areas outside of the scope of the RED in which racial or ethnic discrimination could take place regarding the **exercise of public authority by law enforcement and judicial authorities**, more than half of the respondents (41 in total, 65%) indicated that there is a certain extent of racial/ethnic discrimination taking place during the exercise of public authority by the police when executing identity checks. Moreover, around half of the respondents believe this also occurs at the police station (32 in total, 50%), during arrests (32 in total, 50%), and in traffic controls (31 in total, 49%). Out of those that indicated other areas in which discrimination occurs by the police, two respondents mentioned the treatment of witnesses, two others mentioned fines imposed on administrative offences, and one stakeholder emphasized the interaction with citizens during protests/demonstrations. In addition, 29 responses (47%) indicated at least a minor extent of discrimination during the exercise of public authority by immigration or border authorities when enforcing immigration law and/or border management. In terms of the justice system, there appear to be relatively fewer cases of discrimination identified outside of the scope of the RED. However, still a significant number mentioned there is discrimination taking place by judicial bodies (judges) in criminal cases (28 in total, 44%), or in civil cases (24 in total, 38%), in the access to justice (28 in total, 44%), and during public prosecution (27 in total, 43%).

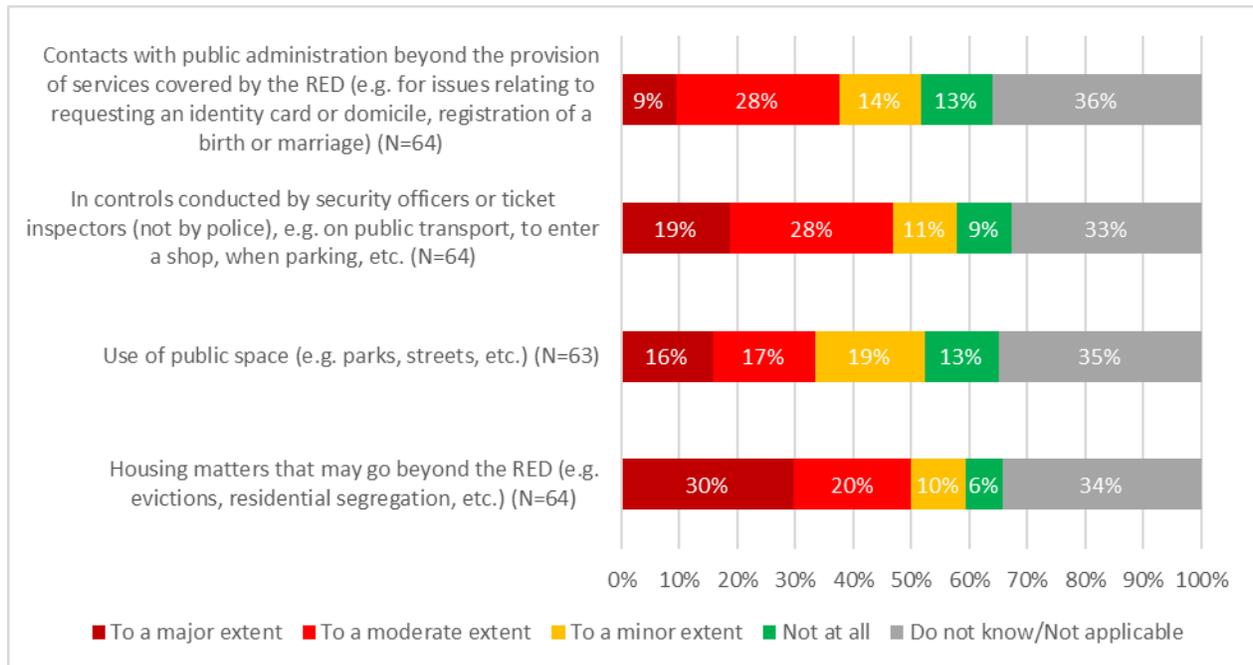
Figure 3: In your/your organisation’s opinion, to what extent does racial or ethnic discrimination take place in the exercise of public authority by law enforcement and judicial authorities, potentially not covered by the material scope of the RED?



Regarding **contacts with the public administration (beyond law enforcement and judicial authority)**, the majority of the respondents (38 in total, 59%) observed racial or ethnic discrimination for housing matters that go beyond the RED, such as evictions or residential segregation. Also, controls conducted by security officers or ticket inspectors (not by police) was mentioned by 58% of respondents (37). More than half of the respondents additionally indicated discrimination in the use of public spaces and contacts with public administration beyond the provision of services covered by the RED (33 in total, 52%).

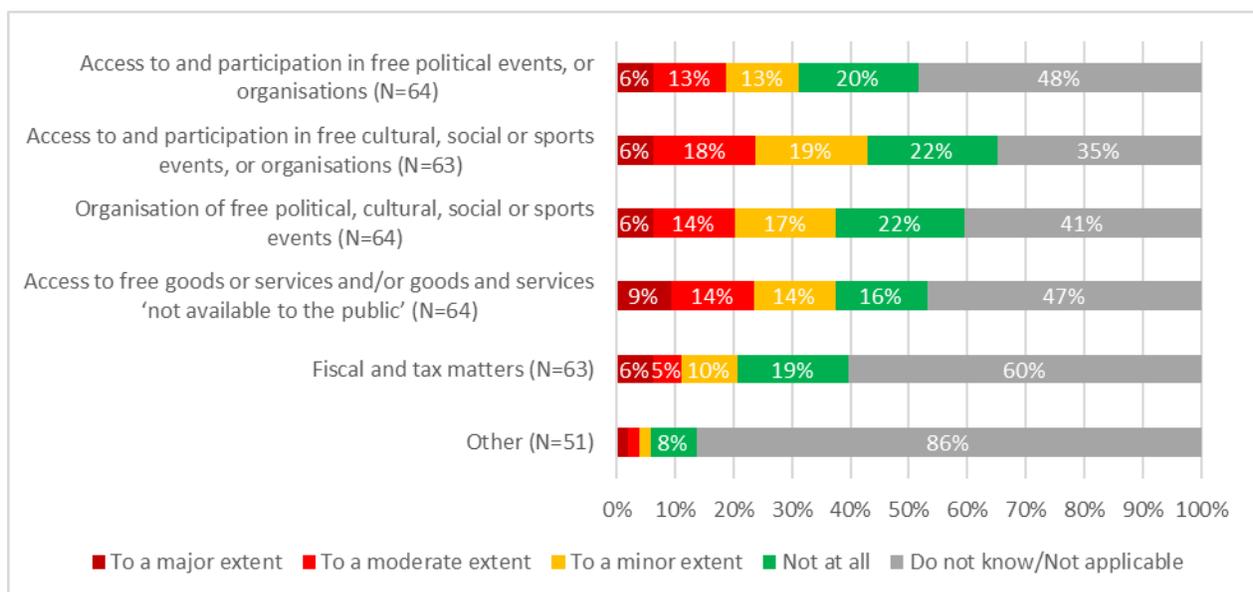
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Figure 4: In your/your organisation’s opinion, to what extent does racial or ethnic discrimination take place in the contacts with the public administration (beyond law enforcement and judicial authority), potentially not covered by the material scope of the RED?



Regarding **other areas** potentially not covered by the RED, opinions were more mixed among the different stakeholders. 27 respondents (43%) observed discrimination for the access to and participation in free cultural, social or sports events, or organisations, whereas 14 respondents (22%) thought there was no racial or ethnic discrimination taking place at all.

Figure 5: In your/your organisation’s opinion, to what extent does racial or ethnic discrimination take place in other areas, potentially not covered by the material scope of the RED?



26 stakeholders provided **examples** to the questions on the **occurrence of racial and ethnic discrimination**. A commonly occurring theme is that of policing, with 14 stakeholders mentioning that the police tend to target minorities. This notion was particularly prominent amongst equality bodies, with seven of them mentioning this. According to respondents, racial and ethnic discrimination occurs in widespread scenarios, including housing, marriage refusal based on nationality, and less favourable treatment in terms of access to rights and the judicial system overall, interference with religious practices, identity checks, and investigations in communities.

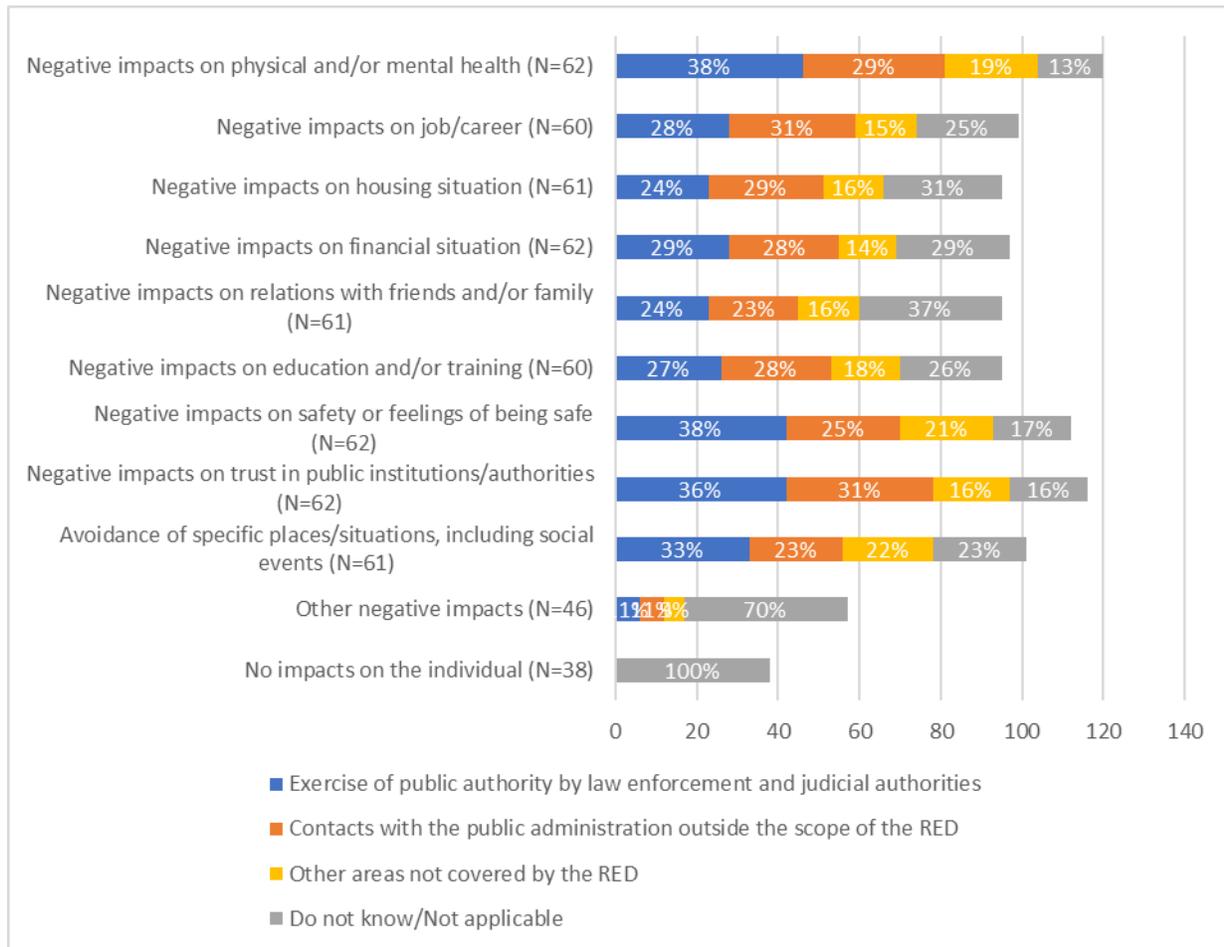
Eight stakeholders point towards the difficulty of addressing racial profiling, with some also referring to the overall difficulty of proving discriminatory decisions and police checks. Seven stakeholders also state that RED does not adequately cover racial profiling. The lack of sufficient data on this issue or ability to prove misconduct of the police is also mentioned by stakeholders in Austria, Finland, France, Hungary, Ireland, Luxembourg, Malta, Sweden, as well as at EU-level. The most targeted minority appears to be Roma people, who are mentioned by respondents from Croatia, Czech Republic, France, Hungary, Romania, Slovakia, Slovenia, and at EU-level. Muslims are mentioned by respondents from Austria, Cyprus, Sweden, and by an EU-level stakeholder. Travellers were mentioned by respondents from France and Ireland.

Socio-economic impacts

On an **individual** level, the majority of respondents found negative impacts on physical and/or mental health (104 replies), trust in public institutions/authorities (97 replies), and safety or feelings of being safe (93 replies). This is mostly the case for the exercise of public authority by law enforcement and judicial authorities.

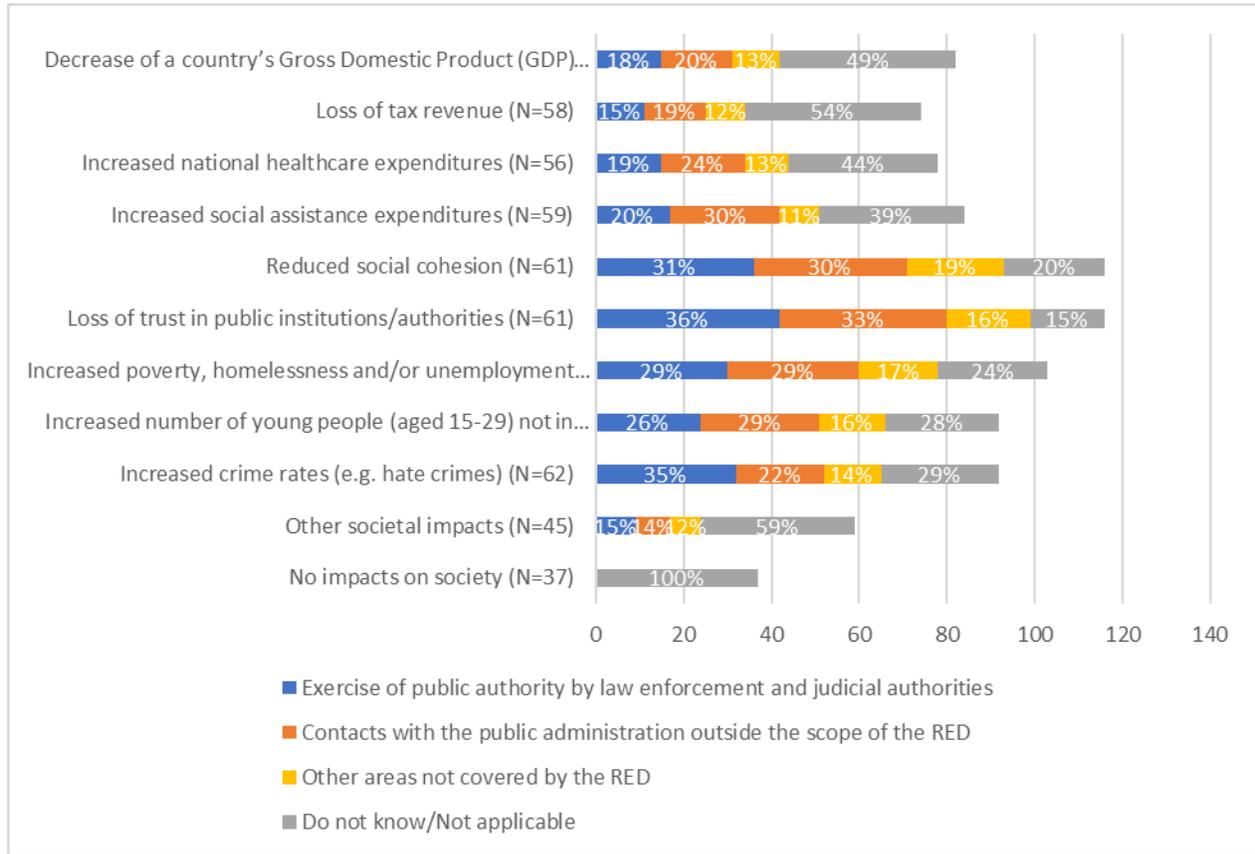
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Figure 6: In your opinion, what impact does experiencing racial or ethnic discrimination have on the individual person concerned? Please indicate the impact per area.



On a **societal** level, the most observed negative impacts were a loss of trust in public institutions/authorities (99 replies) and reduced social cohesion (93 replies).

Figure 7: In your opinion, what impact does the occurrence of racial or ethnic discrimination have on society as a whole? Please indicate the impact per area. Please indicate the impact per area



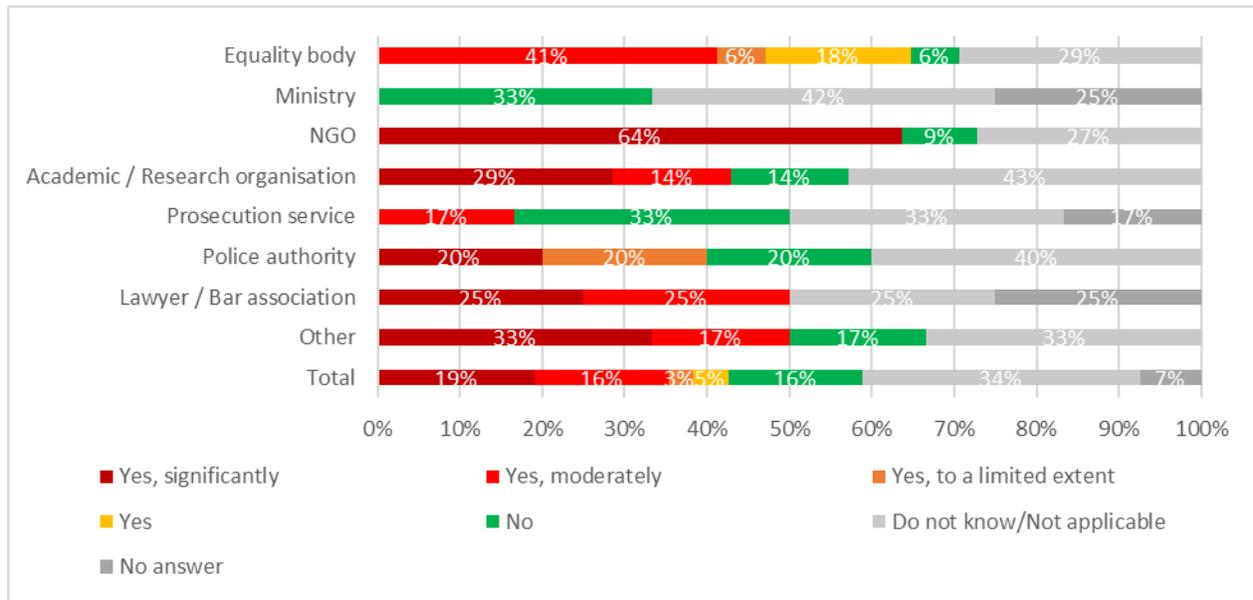
Use of Artificial Intelligence technologies

Out of 63 respondents, nearly half (29 in total, 46%) were of the opinion that **Artificial Intelligence** technologies exacerbate racial or ethnic discrimination. This view was mainly prevalent among equality bodies (11 in total, 65%) and NGOs (7 in total, 64%). As further examples and supporting information, at least ten stakeholders pointed out that AI has resulted in systemic bias (e.g. in selecting candidates for job interviews, risk profiles for insurance/financial services). One respondent highlighted the risk of Facial Recognition technologies for racial profiling and the need to include nationality under the scope of the RED.

On the other hand, 11 respondents (17%) thought AI did not pose problems at all. Amongst those, one prosecution service emphasised that if there is no human factor it reduces the subjectivity. In addition, one ministry believed that the use of AI could assist in detecting hate speech and racist/discriminatory content online.

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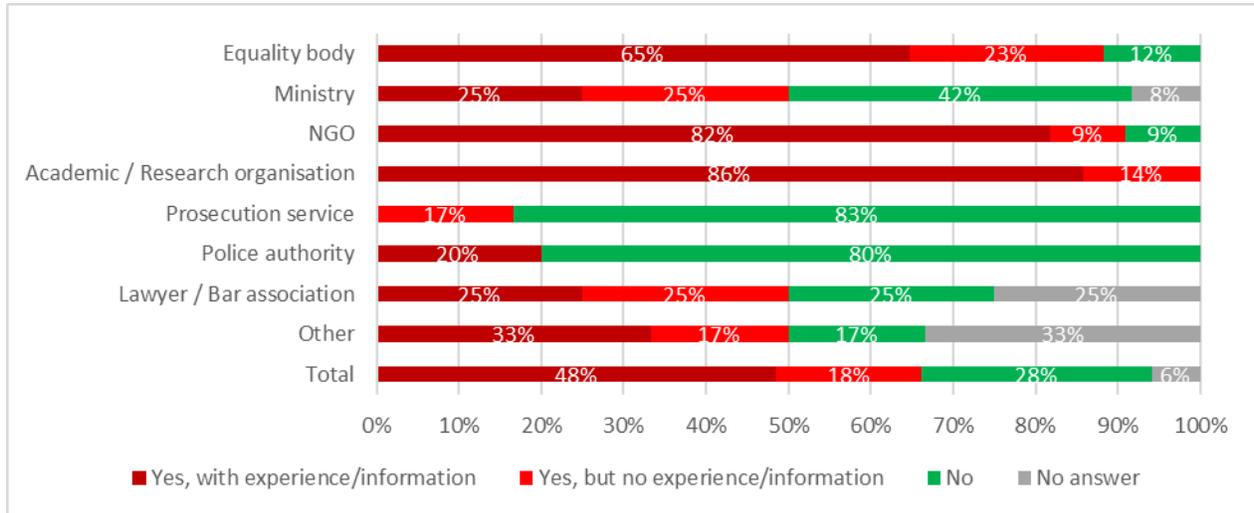
Figure 8: In your/your organisation’s opinion/experience, is potential racial or ethnic discrimination exacerbated by the use of Artificial Intelligence technologies, such as automated data processing and algorithmic decision-making? (N=68)



Exercise of public authority by law enforcement and judicial authorities

The majority of respondents (45 in total, 66%) believed that racial or ethnic discrimination by law enforcement or judicial authorities occurs, of which 33 have actual experience/information. This view was mostly prevalent among equality bodies (15), NGOs (10), and academic/research organisations (7). Opinions were mixed among ministries, lawyers/bar associations, and other stakeholders. In turn, 19 stakeholders (28%) thought that no discrimination occurs by law enforcement or by judicial authorities, which was the main opinion among prosecution services (5) and police authorities (4).

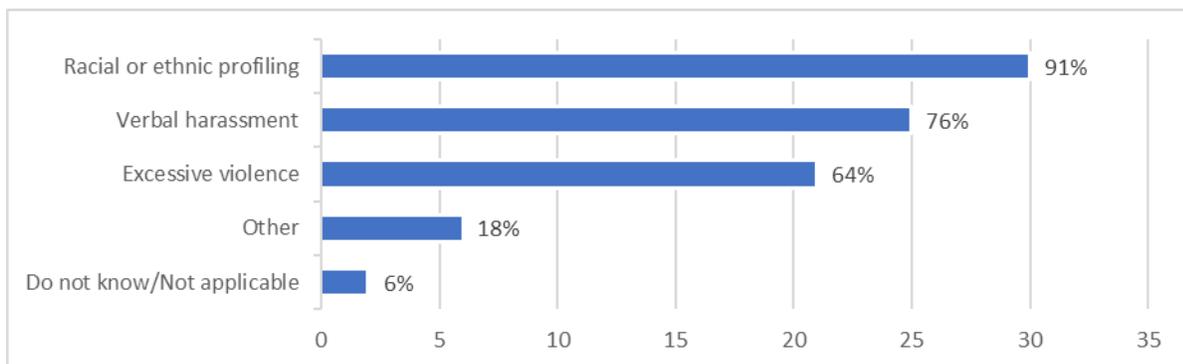
Figure 9: Are you/your organisation of the opinion that racial or ethnic discrimination by law enforcement or judicial authorities occurs? If yes, do you/your organisation have experience/information concerning racial or ethnic discrimination by law enforcement or judicial authorities? (N=68)



In terms of the main **situations** in which racial or ethnic discrimination by law enforcement or judicial authorities occurs, the 33 respondents that answered that discrimination in this area occurs mostly observed it in racial or ethnic profiling (30 in total, 91%), followed by verbal harassment (25 in total, 76%) and excessive violence (21 in total, 64%). The provided examples to support their answers were mostly related to cases concerning the Roma community.

From those that answered 'Other', two national NGOs mentioned the refusal of assistance and support for a victim. Another NGO at EU-level highlighted the increased risk of coercion, a higher chance of being incarcerated pre-trial, and a higher chance to get sentenced and longer sentences. One lawyer/bar association pointed out that it can be found in a number of hidden situations, such as nationalist symbols in the room of an investigator and openly hostile questioning.

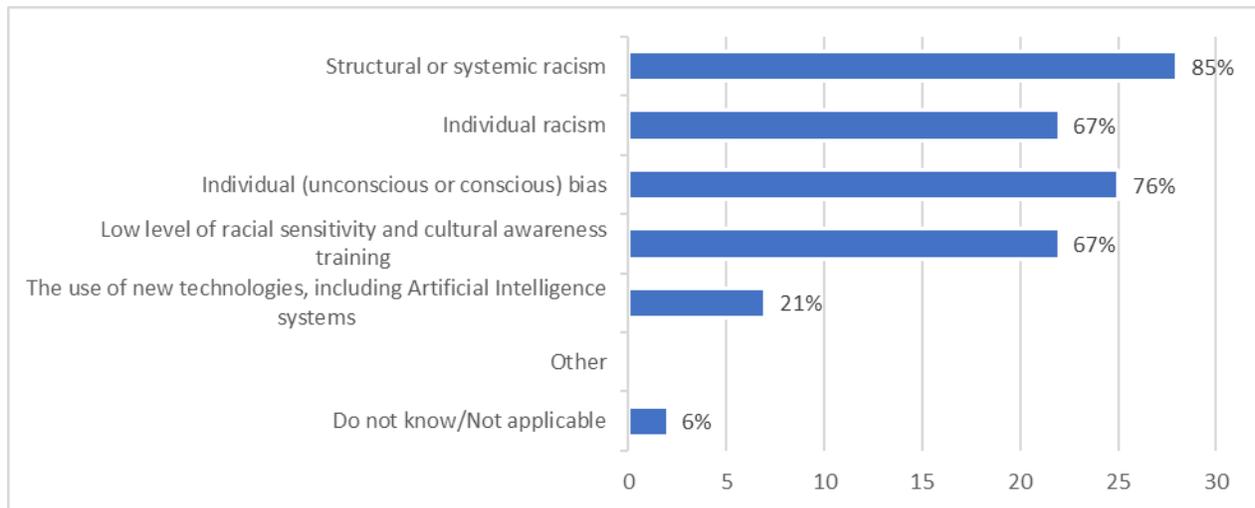
Figure 10: What are in your/your organisation's opinion the main situations in which racial or ethnic discrimination by law enforcement or judicial authorities occurs? (N=33 and 84 total replies)



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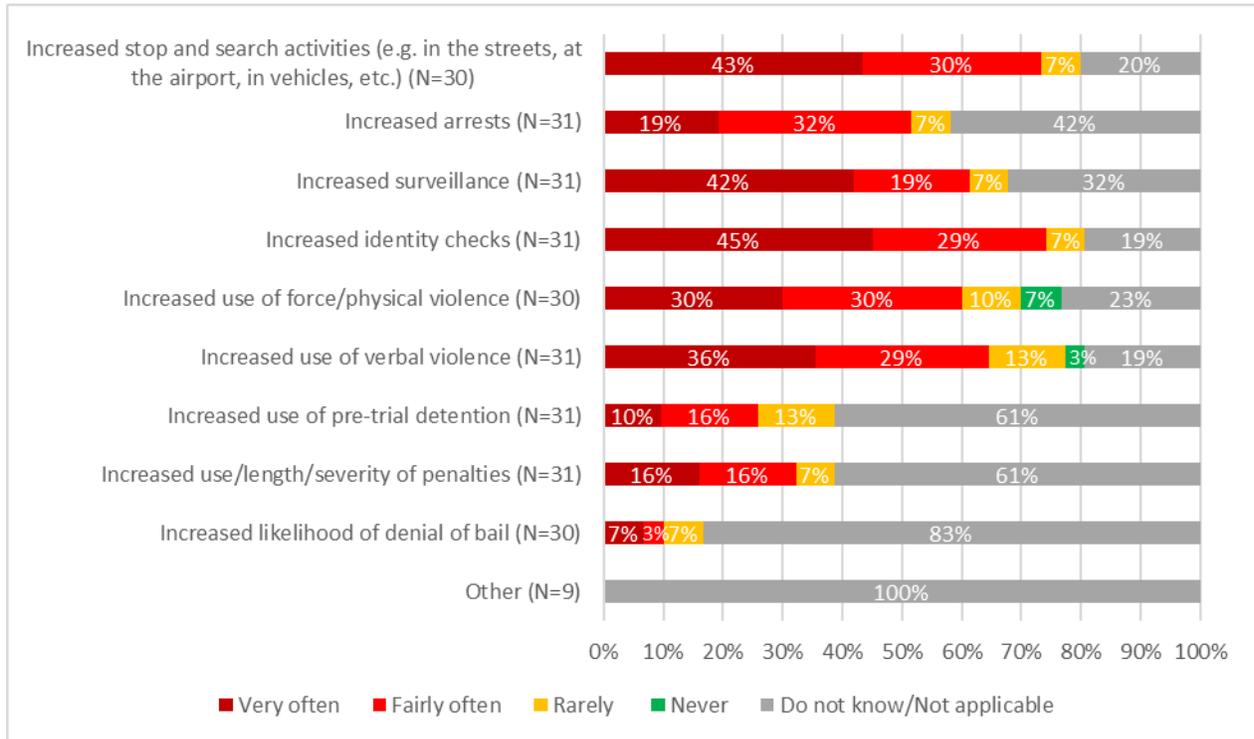
Regarding the main **causes** of discrimination by law enforcement or judicial authorities, most respondents believed it is caused by structural or systemic racism (28 in total, 85%) and (un)conscious individual bias (25 in total, 76%), followed by individual racism and low level of racial sensitivity and cultural awareness training (22 in total, 67%). As further explanation, several stakeholders emphasised the structural/institutional racism engrained within societies, which stand at the root of all above-mentioned causes of racial or ethnic discrimination.

Figure 11: What are in your/your organisation’s opinion the main causes of such discrimination? (N=33 and 106 total replies)



Regarding the main **consequences** of such discrimination, increased identity checks (23 in total, 74%) and increased stop and search activities (22 in total, 73%) were mainly indicated as effects that happen very or fairly often. Several equality bodies and NGOs provided further examples in the case of Roma people.

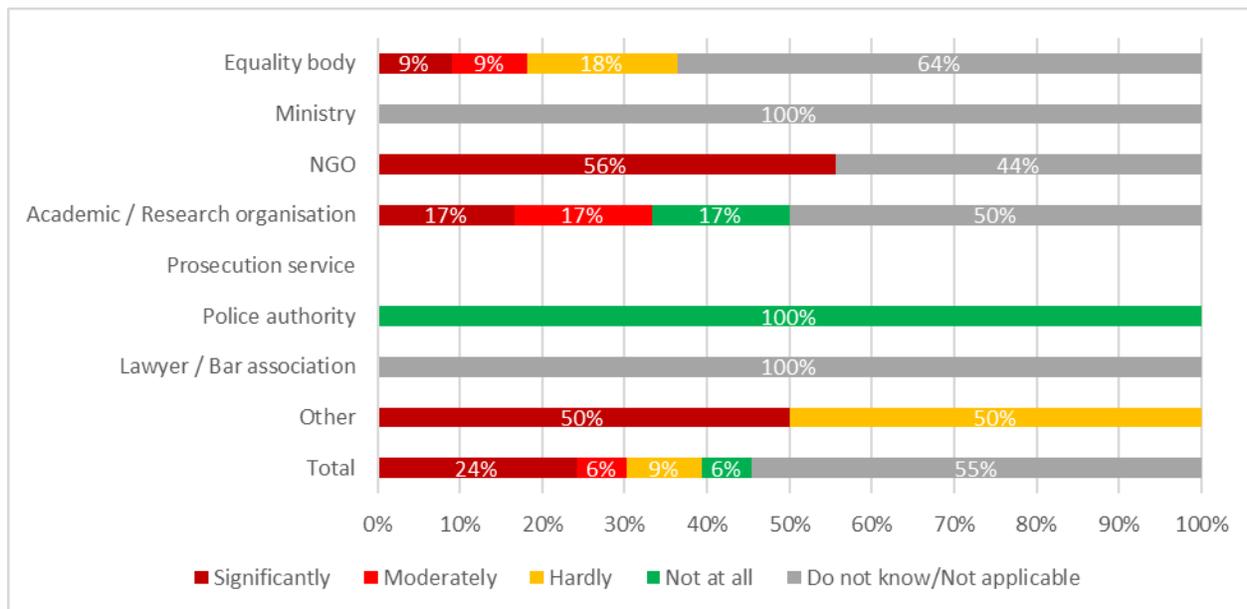
Figure 12: What are in your/your organisation’s opinion the main consequences?



Of the 13 respondents (39%) that thought racial or ethnic discrimination increased significantly, moderately and/or hardly during the **COVID-19 pandemic**, they were active in the following Member States: EU-level (3), Romania, Slovakia, Slovenia (2), Hungary, Ireland, Portugal, and Spain (1). Five stakeholders observed increased surveillance controls by law enforcement, particularly for the Roma people. One NGO in Hungary was of the opinion that the pandemic contributed to discriminatory practices becoming more amplified in the field of administrative offences, especially in cases of Roma people living in deprivation and segregation.

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Figure 13: In your/your organisation’s experience, has racial or ethnic discrimination by law enforcement or judicial authorities increased during the COVID-19 pandemic? (N=33)



Racial profiling in the areas of law enforcement and judicial authority

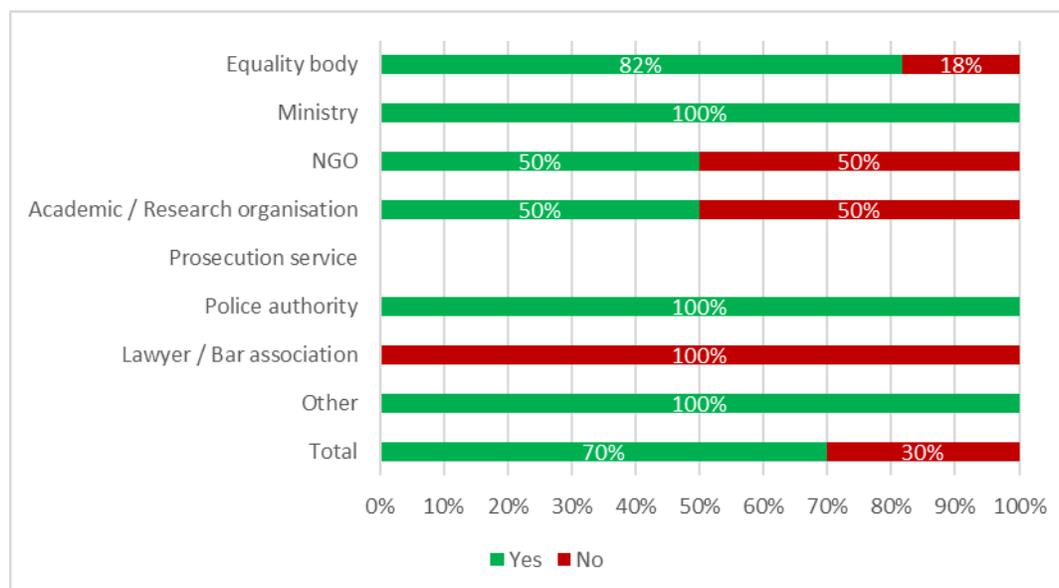
When asked in which areas of law enforcement and judicial authority (e.g. authority exercised by the police, the military, border management, criminal judges, prosecutors, civil judges, financial investigation units, customs authorities, etc.) **racial profiling** exists and is the most prominent, an EU-level organisation mentioned stop and search activities by police, border management, intelligence services (which is now fuelled by AI). Another EU-level stakeholder argued that the system operates in a loop and is structurally biased, meaning that racial profiling exists at every level. A third EU stakeholder added that it is a major issue in law enforcement and tax/fiscal fraud investigations, exacerbated using AI.

The police were mentioned by stakeholders from Austria, Croatia, Hungary, Ireland, Italy, Germany, Slovenia, Slovakia, Romania, and Portugal. This includes checks, stop and searches, racial profiling, as well as border control. A Croatian stakeholder mentioned that traffic police targets Roma drivers, and that police checks of migrants at borders are stricter. Another Croatian stakeholder found that that racial profiling is predominantly present in the criminal justice system, with local social service providers coming as a close second. Two Swedish stakeholders pointed to border controls and financial investigation where racial profiling is most prominent. On top of the police force, a Slovakian organisation indicated that they documented racial profiling in the work of other law enforcement authorities and the judiciary, including civil court judges deciding anti-discrimination disputes. Finally, stakeholder from Italy also included tax evasion units, customs authorities and border management, in addition to the various police forces.

Good practices

From the 21 respondents (70%) who were able to identify **good practices**, they were active in Hungary, Portugal (3), Greece, EU-level (2), Belgium, Croatia, Cyprus, Finland, Ireland, Italy, Netherlands, Poland, Romania, Slovakia, and Sweden (1). Most stakeholders that were aware of good practices included equality bodies (9), NGOs (4), and ministries (3).

Figure 14: Are you/your organisation aware of any good practices that would enhance the prevention of and protection against potential racial or ethnic discrimination by law enforcement or judicial authorities? (N=30)



Several respondents highlighted training and guidelines for law enforcement officers as good practices. For example, an Italian NGO indicated as a good practice the training of law enforcement officers on understanding, recognising and fighting discrimination and related intolerances within and outside the law enforcement community. However, it did not provide concrete examples, only noted that in the last 10 - 15 years LEAs have undertaken some such training thanks to EU project the Ministry of the Interior has participated in. The ministry is currently running online courses understanding and countering hate crimes, in collaboration with CEPOL. Training of police officers, judges and prosecutors was also identified as a good practice by an academic from Portugal.

A respondent referred to the Compendium of Promising Practices on Ethnic Profiling compiled by Equinet in collaboration with Open Society Justice Initiative. This brings together good practices from different areas. The following examples were pointed out:

- In Cyprus, the Ombudsman’s Office receives and investigates ethnic discrimination complaints submitted by individuals and sends reports to the implicated authority with views and recommendations for resolving the complaint.
- In Germany, the Federal Anti-Discrimination Agency organised a panel debate in 2017 regarding policing and minority groups, with a focus on anti-gypsyism. Using data and other evidence, the panel highlighted how anti-gypsy stereotypes are pervasive in policing.
- In Sweden, the Equality Ombudsman actively engages in the Swedish legislative process and has explicitly warned against the risk of ethnic profiling with respect to a proposal to grant the police further search powers with respect to the stop and search of minority groups.
- In Finland, the Non-Discrimination Ombudsman has provided training to police officers as well as border guards covering issues such as the legal prohibition on ethnic profiling, the reasons for this prohibition, and the steps that authorities should take to prevent ethnic profiling.

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The Croatian equality body considers that the collection of racially and ethnically segregated data on police actions have proven to be effective in detecting occurrences of discrimination; therefore, they have been recommending such data on police actions (e.g. traffic and identity checks) to be collected. However, their recommendations have not been acknowledged or implemented.

Furthermore, a Portuguese respondent indicated as good practice the recently approved National Plan to Combat Racism and Discrimination 2021-2025 (PNCRD)¹³⁴⁷, drafted with the contribution of minority representatives. In addition, in March 2021, the Government presented a Plan for the Prevention of Manifestations of Discrimination in the Security Forces and Services (PPMD-FSS)¹³⁴⁸, which was later also reflected in the PNCRD. Protocols signed between CICDR (Comissão para a Igualdade e Contra a Discriminação Racial) and law enforcement authorities to enhance cooperation and reinforce training actions on combatting racism were also mentioned.

Measures and/or initiatives necessary to address any gaps in protection against racial or ethnic discrimination by law enforcement or judicial authorities

In terms of the **measures and/or initiatives** needed to address the gaps, opinions were mixed among the 33 respondents. The majority believed that the most effective way includes at least some form of EU legislation combined with national-level soft law measures, which would ensure a level playing field and protection to potential victims. Twelve respondents further elaborated on the potential nature of the measures/initiatives. Several ideas were proposed to update EU legislation, such as expanding the scope of the RED, or expanding on the mandate of the equality bodies to ensure some sort of monitoring role over law enforcement or judicial authorities, and treating race as a social construct. One EU-level stakeholder suggested concrete soft-law measures which could offer solutions to racial or ethnic discrimination by law enforcement or judicial authorities. According to the stakeholder concerned, soft-law measures could be designed and implemented through the National Plans Against Racism, or the National Strategic Roma Frameworks. Soft measures could include activities outlined in for example the Compendium of Promising Practices on Ethnic Profiling¹³⁴⁹. Other soft measures could include awareness raising or training. One independent policing authority, advocating for the necessity of adopting EU soft measures combined with domestic legislation, thinks the EU must have a supporting role in this, but at the same time each country should legislate for themselves as policing, crime and overall culture varies across Member States.

¹³⁴⁷ <https://dre.pt/dre/detalhe/resolucao-conselho-ministros/101-2021-168475294>

¹³⁴⁸ Portugal, Plan for the Prevention of Manifestations of Discrimination in the Security Forces and Services (PPMD-FSS), <https://www.sg.mai.gov.pt/Documents/Plano%20de%20Preven%C3%A7%C3%A3o%20de%20Manifesta%C3%A7%C3%B5es%20de%20Discrimina%C3%A7%C3%A3o%20nas%20For%C3%A7as%20de%20Servi%C3%A7os%20de%20Seguran%C3%A7a.pdf>.

¹³⁴⁹ Equinet 'Compendium of Promising Practices on Ethnic Profiling', 2019, available at: [equinet_comp-dium-eth-
nic-profiling_a4_def_web.pdf \(equineteurope.org\)](https://equineteurope.org/equinet-comp-dium-eth-nic-profiling-a4-def-web.pdf).

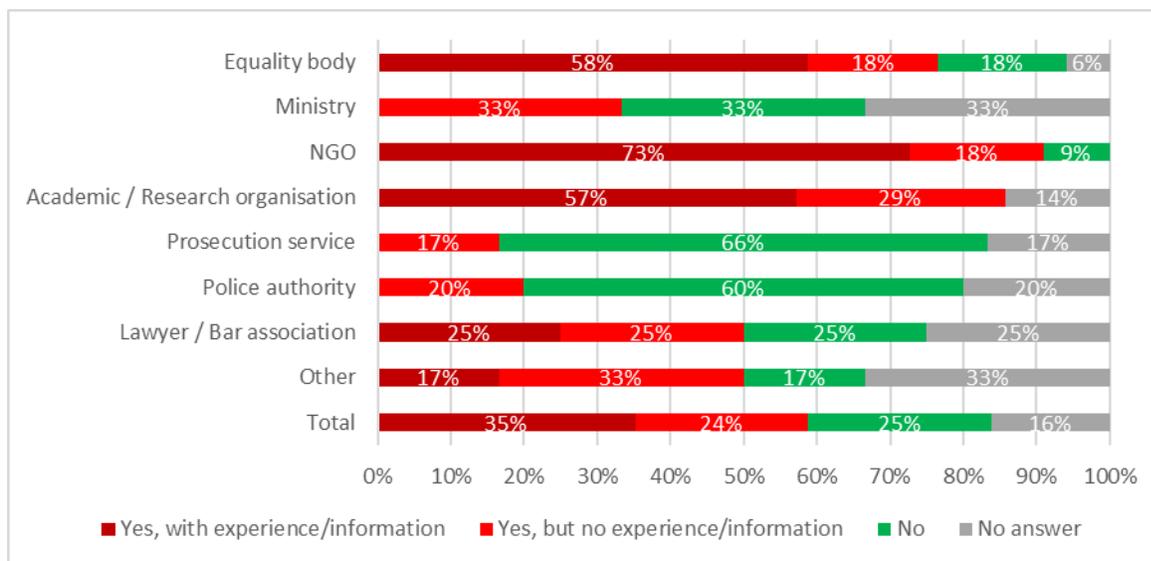
Figure 15: In your/your organisation’s opinion, what measures and/or initiatives are necessary to address any gaps in protection against racial or ethnic discrimination by law enforcement or judicial authorities? (N=33)



Contacts with the public administration outside the scope of the RED (beyond law enforcement and judicial authority)

Out of the 68 respondents, the majority (40 in total, 59%) believed that racial or ethnic discrimination by other contacts with the public administration (e.g. immigration, tax or civil administration) occurs, of which 24 have actual experience/information. This view was mostly prevalent among equality bodies (13), NGOs (10), and academic/research organisations (6). Opinions were mixed among ministries, lawyers/bar associations, and other stakeholders. Only 16 stakeholders (24%) thought that no discrimination occurs in this area, which was the main opinion among prosecution services, ministries (4), and police authorities (3).

Figure 16: In your/your organisation’s opinion, does racial or ethnic discrimination occur in other contacts with the public administration, such as immigration, tax or civil administration, etc.? If yes, do you/your organisation have experience/information concerning racial or ethnic discrimination in other contacts with the public administration? (N=68)



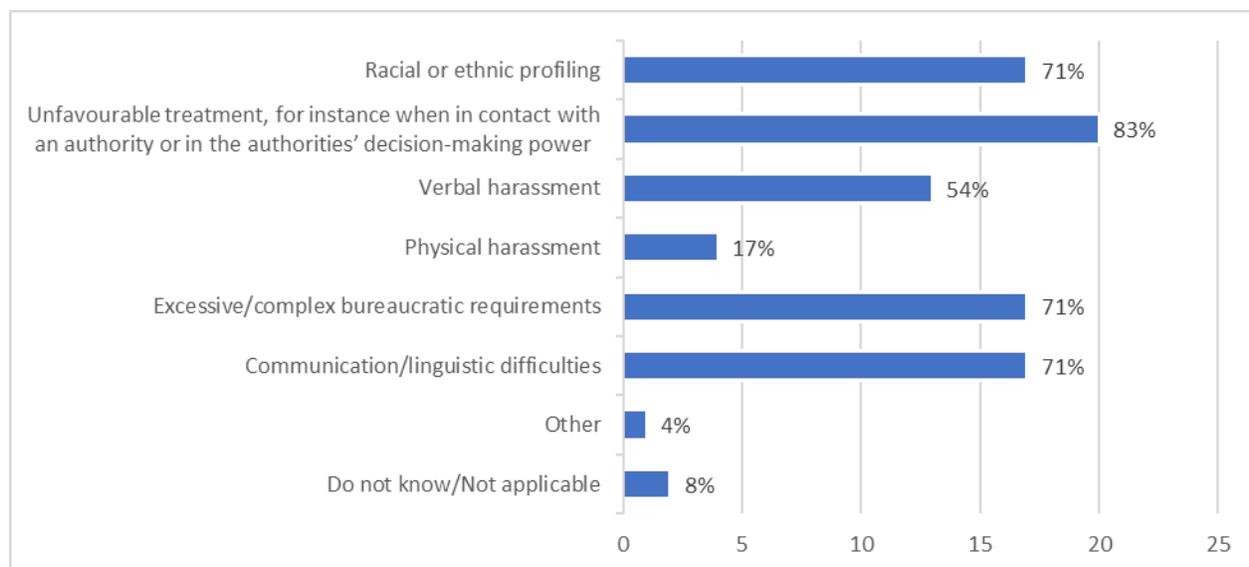
In terms of the **areas and administrations concerned**, according to an EU-level respondent, this includes security controls (e.g. in Poland during the arrival of Ukrainian refugees), and racial discrimination at immigration services. Evictions in Roma communities without alternative housing solutions (e.g. France) are another example, along with residential segregation. Another EU stakeholder argues that the increasing use of AI in public administration across member states, such as in migration administration, school allocation, and Tax and Fiscal services, is significantly increasing the risk and occurrence of racial or ethnic discrimination in contact with public administration

A Croatian stakeholder mentions access to social support services, access to other public authorities, and difficulty of obtaining papers for Roma people. The Hungarian equality body finds that municipal (local government) authorities, and public transport companies are the primary areas concerned. It states that Roma people have been dislocated without alternative housing as part of renovation projects in residential areas. A Hungarian NGO adds that the lack of waste collection, drinkable tap water and central heating are a considerable problem in segregated areas. A Portuguese respondent finds that it is most rampant by immigration authorities and in education, with a Cypriot respondent mainly pointing at immigration authorities, along with public allowance authorities. A Slovenian respondent finds that preventing marriage based on nationality (third country) constitutes discriminatory conduct.

A Dutch stakeholder finds that the main administrations are the tax authorities and tax and customs administration. A Slovakian respondent mentions racial profiling, police violence and discrimination of Roma by municipalities and courts. More generally, disrespect towards Roma people in everyday situations. This includes treatment in hospitals, which is particularly prominent among women. A disproportionately large amount of Roma children is also segregated in school. A Romanian stakeholder finds that it is most rampant in public and civil administration. An Italian NGO finds that the primary issues lie in evictions, social benefits, and with public services, whereas an Austrian NGO finds that they refer to public housing, applying for a residence permit, and applying for social assistance.

In terms of the main **situations** in which racial or ethnic discrimination occurs in other contacts with the public administration, the 24 respondents that answered the question mostly observed it in unfavourable treatment (20 in total, 83%), followed by racial or ethnic profiling, excessive/complex bureaucratic requirements, and communication/linguistic difficulties (17 in total, 71%). The provided examples were mostly related to cases concerning the Roma community.

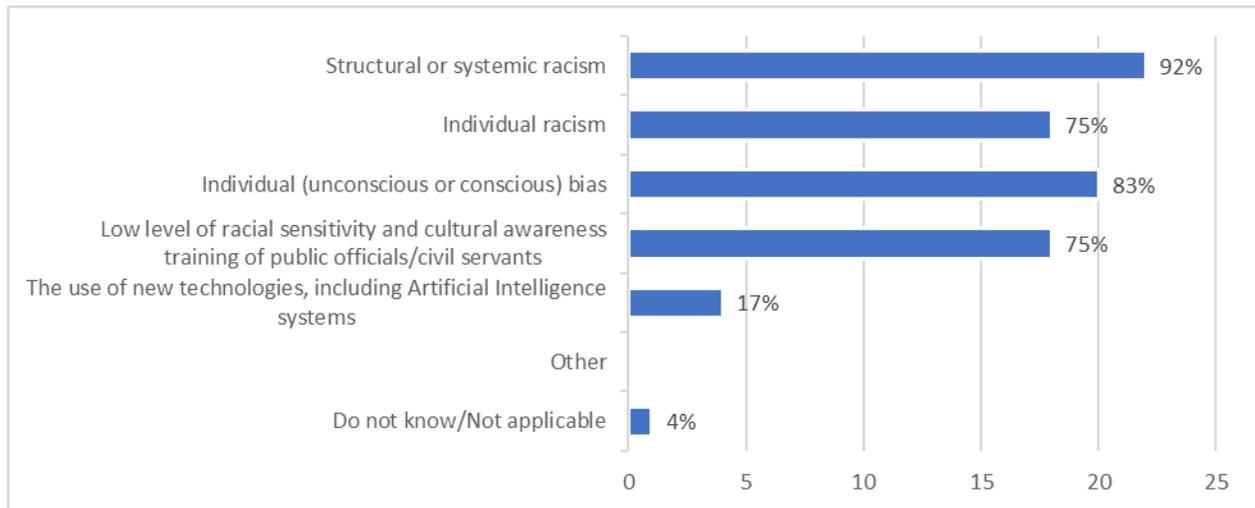
Figure 17: What are, in your/your organisation's opinion, the main situations in which discrimination occurs in other contacts with the public administration? (N=24 and 91 total replies)



Regarding the main **causes** of such discrimination, most respondents believed it is caused by structural or systemic racism (22 in total, 92%) and (un)conscious individual bias (20 in total, 83%), followed by individual racism and low level of racial sensitivity and cultural awareness training of public officials/civil servants (18 in total, 75%). As further explanation, one NGO from Slovakia highlighted the structural problem of racism, stemming from individual opinions and biases of people in public administration and other public institutions, but also a general negative racial perception towards the Roma.

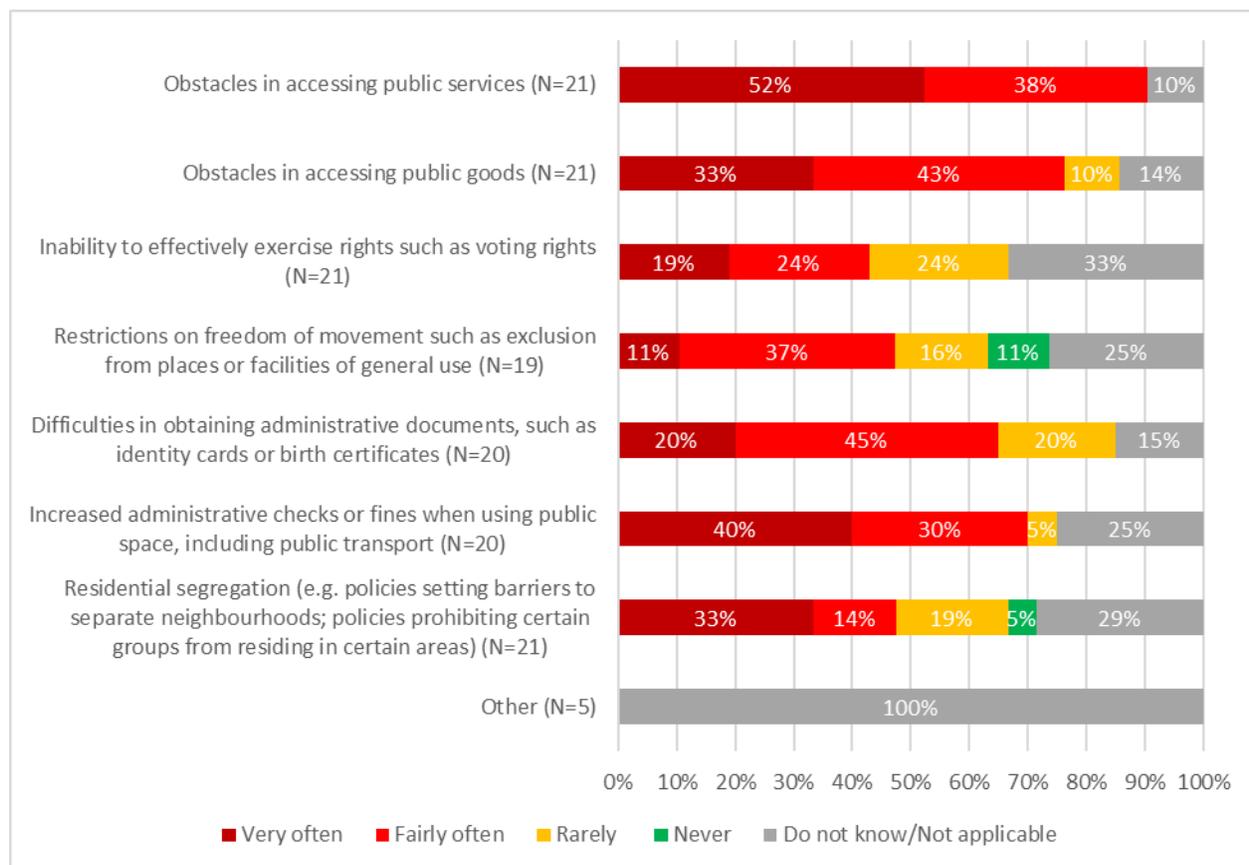
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Figure 18: What are, in your/your organisation's opinion, the main causes of such discrimination? (N=24 and 83 total replies)



Regarding the main **consequences** of such discrimination, obstacles in accessing public services was mainly indicated as happening very or fairly often (19 in total, 90%), followed by obstacles in accessing public goods (16 in total, 76%) and increased administrative checks or fines when using public spaces (14 in total, 70%). Several NGOs and equality bodies provided further examples in the case of Roma people.

Figure 19: What are, in your/your organisation’s opinion, the main consequences?

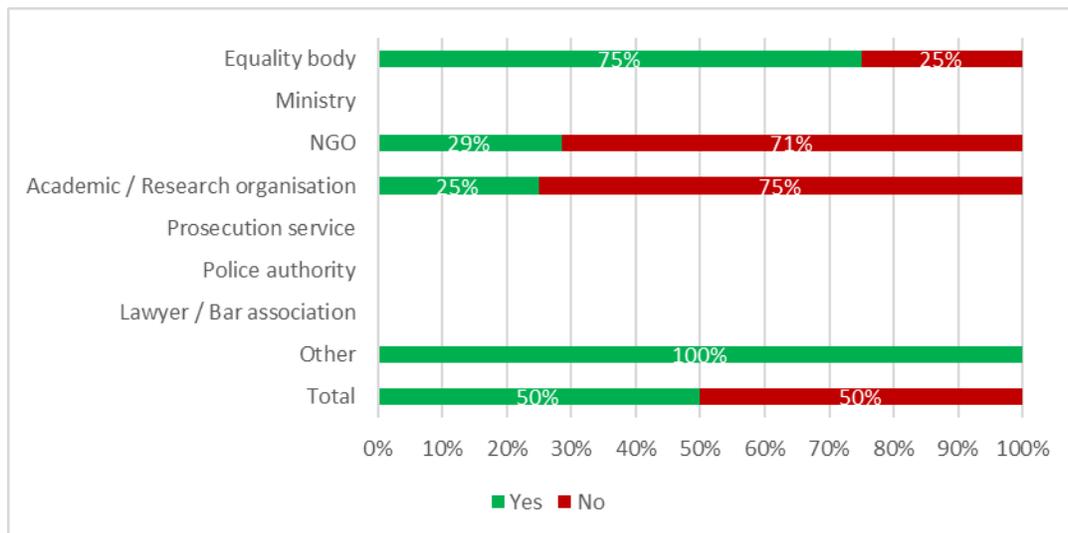


Good practices

From the 10 stakeholders who were able to identify **good practices** in the area of other contacts with public administration, they were active in Hungary (2), Croatia, Cyprus, EU-level, Germany, Italy, Poland, Romania, and Sweden (1). Most of them were equality bodies (6) and NGOs (2).

Five stakeholders highlighted trainings and education in their country to raise awareness and minimise barriers to access. In Hungary, the equality body pointed out that there have been initiatives taken by the Budapest-Capital Local Government to implement a housing policy that reduces residential segregation in the districts of Budapest.

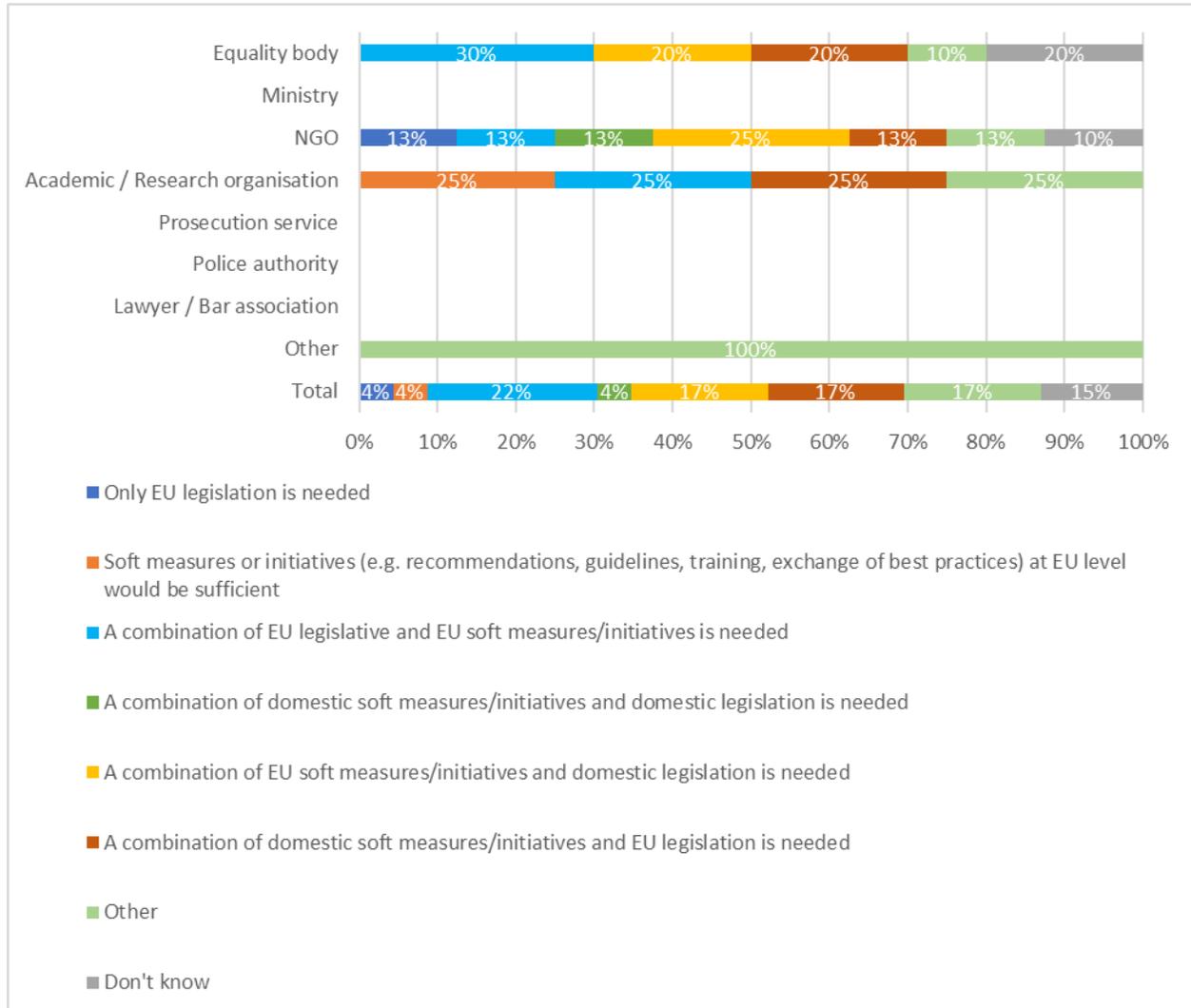
Figure 20: Are you/your organisation aware of any good practices that would enhance prevention of and protection against potential racial or ethnic discrimination in other contacts with the public administration? (N=20)



Measures and/or initiatives necessary to address any gaps in the protection against racial or ethnic discrimination in other contacts with the public administration

In terms of the **measures and/or initiatives** needed to address the gaps, opinions were mixed among the 23 respondents. Five respondents, representing the majority of views, believed that the most effective way includes at least some form of EU legislation, which would ensure a level playing field and protection to potential victims. The remaining responses were rather mixed, with three response categories receiving equal number of responses. Four respondents, hence just slightly lower than the majority were advocating for soft measures at the EU level and domestic national legislation at the national level. The same number of respondents (four) noted that EU legislation coupled with soft measures at the national level would be desirable. And four respondents vouched for national level legislation and national soft measures. Five respondents provided further details explaining their responses. Only one respondent, representing an EU-level stakeholder, went into the precise content of possible action, reflecting on the possible content of EU legislation. According to this stakeholder, areas not currently covered by the RED should be covered by new EU rules. The same respondents suggested that the mandate of equality bodies should be extended to cover the monitoring of potential discrimination cases also in these areas which are not covered by the RED. One NGO that in general (hence without detailing the content of EU legislation) recommended to adopt EU legislation, after which EU authorities will adopt measures on how to monitor the implementation by EU member state and introduce effective sanctions in cases of violation. Domestic and/or soft measures are mainly seen as means to complement legislation. One respondent, representing an EU-level stakeholder specified the possible content of national soft measures, by referring to the implementation of soft measures through the National Plans Against Racism and the National Strategic Roma Framework, as well as to promising initiatives identified in the Compendium of Promising Practices on Ethnic Profiling.

Figure 21: In your/your organisation’s opinion, what measures and/or initiatives are necessary to address any gaps in the protection against racial or ethnic discrimination in other contacts with the public administration? (N=23)



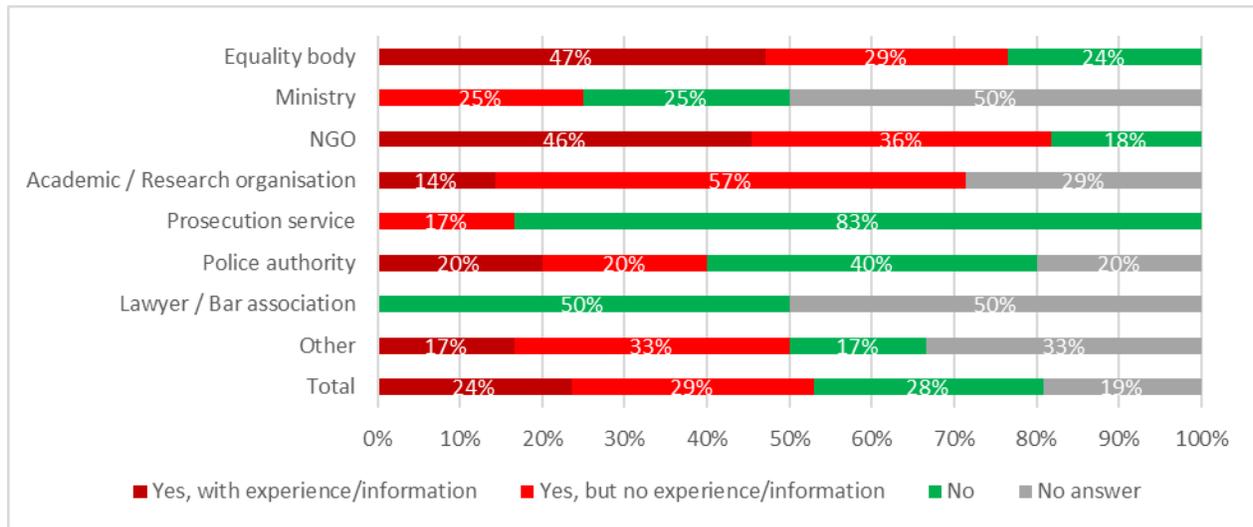
Other areas

Out of the 68 respondents, a slight majority (36 in total, 53%) believed that racial or ethnic discrimination occurs in other areas not yet mentioned nor covered by the RED, of which 16 have actual experience/information. This view was mostly prevalent among equality bodies (13), NGOs (9), and academic/research organisations (5). However, a significant amount (19 in total, 28%) also thought that there is no discrimination in other relevant areas, which was the main opinion among prosecution services (5).

Figure 22: In your/your organisation’s opinion, does racial or ethnic discrimination occur in other areas not yet mentioned and not covered by the RED, such as access to and participation in free political, cultural, social or sports events or organisations, access to free goods

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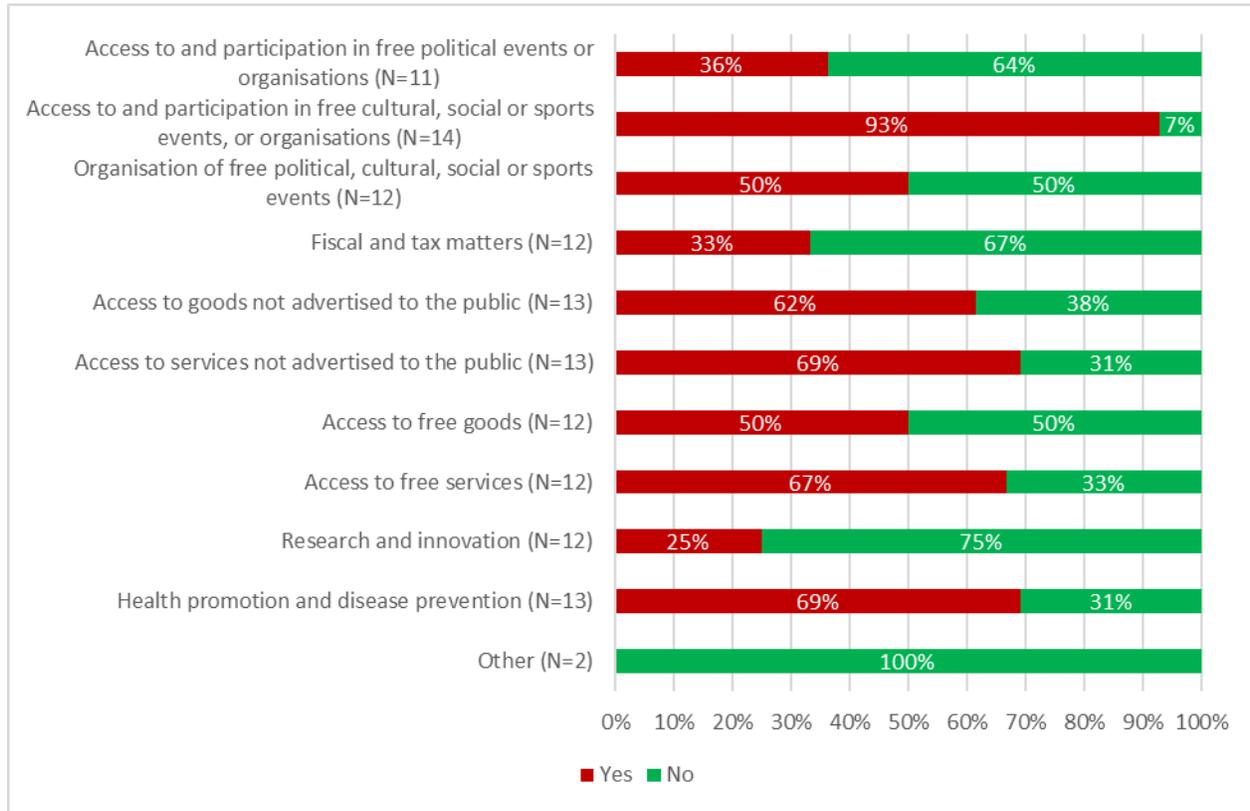
and services, research and innovation, fiscal and tax matters, etc.? If yes, do you/your organisation have experience/information concerning racial or ethnic discrimination in such other areas? (N=68)



The respondents were also asked about the various other areas not mentioned by the RED in which they were aware of the occurrence of racial or ethnic discrimination, beyond the exercise of public authority. The vast majority of the stakeholders that answered this question (13 in total, 93%) have observed racial or ethnic discrimination in the access to and participation in free cultural, social or sports events, or organisations. This was followed by discrimination in the access to services not advertised to the public, health promotion and disease prevention (9 in total, 69%), and access to free services (8 in total, 67%).

As additional information and examples, two stakeholders highlighted the racial and ethnic discrimination in the areas of access to free goods and services for the Roma people. The equality body in Portugal referred to situations of alleged discrimination on the Internet/social media. Also, the equality body in Germany provided examples in terms of fiscal matters (i.e., not being able to claim child benefits due to unnecessary questioning of identity) and access to free cultural, social or sports events (i.e., regular complaints concerning the membership and participation in sports).

Figure 23: Are you/your organisation aware of racial or ethnic discrimination occurring in any of the areas below?



As to the main **situations** in which discrimination in the above areas occurs, stakeholders from five Member States and an EU-level stakeholder provided further information. The latter finds that physical harassment, linguistic and communication difficulties, and excessive or complex requirement for access all occur. An Italian stakeholder had similar opinion. According to a Slovakian stakeholder, the most occurring ones are verbal harassment and the rise in hate speech. A Germany stakeholder finds that it tends to involve communication difficulties, excessive or complex requirements, unfavourable treatment, or verbal harassment. An NGO from Romania finds that verbal and physical harassment is the greatest issue, whereas the Romanian equality body mentions the linguistic and communication difficulties, as well as the excessive or complex requirement for access. A Finnish police authority indicates public places and public transport or restaurants as the main areas in which harassment occurs.

In terms of the main **causes** of discrimination in the areas listed in the Figure 23 above, out of the ten respondents that addressed the question, one was an EU representative, and the others were equality bodies and NGOs. The EU level stakeholder, an Italian NGO and the Hungarian equality body find that all causes listed in the question as examples apply, i.e. bias, (structural) racism, underrepresentation, socio-economic exclusion, geographical isolation, and the use of new technologies. The Hungarian equality body adds that the causes are complex. Bias is explicitly mentioned as a cause by three equality bodies and one NGO, with racism explicitly being mentioned by three NGOs and three equality bodies.

The issue of **consequences** on discrimination was answered by five equality bodies, three NGOs, and one academic/research organisation. The latter mentions institutional racism and

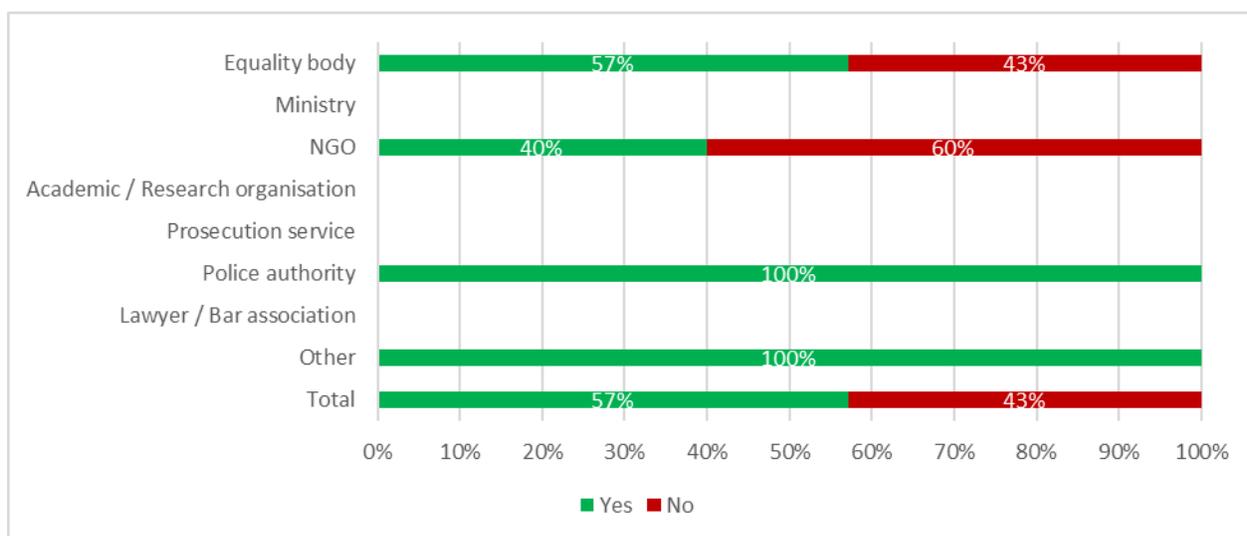
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individual bias. Social and economic exclusion is mentioned by two NGOs and one equality body. Two equality bodies also mention segregation, with another two equality bodies stating limited inclusion in society and segregation as a consequence.

Good practices

From the 8 stakeholders who were able to identify **good practices** in other areas, they were active in EU-level, Finland, Germany, Hungary, Italy, Poland, Portugal, and Sweden (1). Most of them were equality bodies (4) and NGOs (2). The equality body in Germany referred to initiatives from the federal soccer association (DFB) which aim to increase participation of people with diverse ethnic backgrounds and to assist with the reporting of discriminatory incidents at amateur soccer games and clubs. Furthermore, the Portuguese National Plan to Combat Racism and Discrimination (PNCRD) includes measures as regards to other relevant areas, such as sports.

Figure 24: Are you/your organisation aware of any good practices that would enhance prevention of and protection against potential racial or ethnic discrimination in any of these other areas? (N=14)

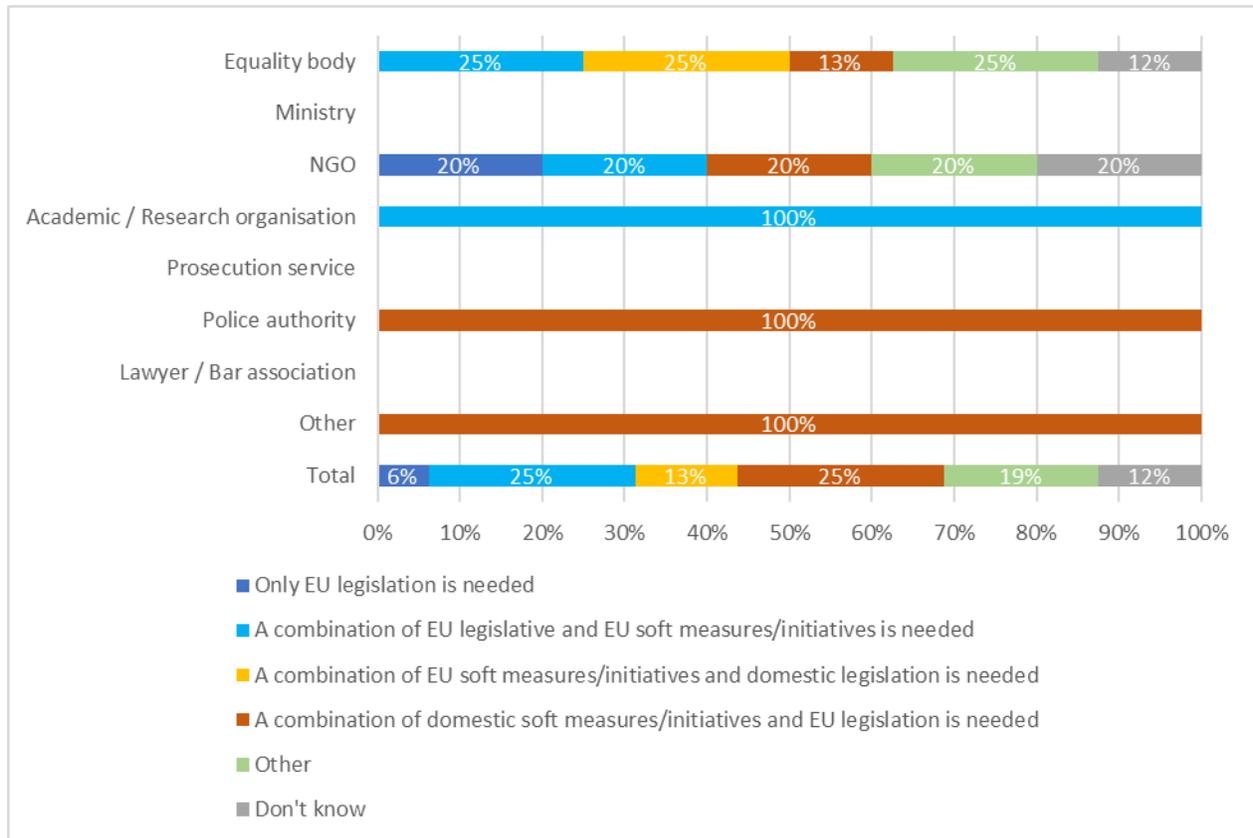


Measures and/or initiatives necessary to address any gaps in the protection against racial or ethnic discrimination in these other areas

Regarding the **measures and/or initiatives** needed to address the gaps in these other areas, opinions were mixed among the 16 respondents. The majority, representing eight respondents, believed that the most effective way includes at least some form of EU legislation, which would ensure a level playing field across Member States and protection to potential victims, combined with other soft measures to complement it. Out of the eight respondents four were advocating for the adoption of soft measures at national level in addition to EU legislation, and four supported the idea of introducing EU-level soft-measures to accompany the new EU level rules. Five respondents provided further explanations on their responses. Out of these, one provided details regarding the potential content of EU-legislation, thereby referring to the necessity of extending the RED's scope to all material areas that are not covered. The same respondent suggested that the mandate of equality bodies should be extended to cover the monitoring of potential discrimination cases also in these areas which are not covered by the RED. According to the same stakeholder, soft measures at the national

level could be implemented through the National Plans Against Racism and the National Strategic Roma Framework, as well as through promising initiatives identified in the Compendium of Promising Practices on Ethnic Profiling. Two respondents, representing equality bodies from two different Member States were both referring to the importance of training and awareness raising, while referring to potential soft measures.

Figure 25: In your/your organisation’s opinion, what measures and/or initiatives are necessary to address any gaps in the protection against racial or ethnic discrimination in these other areas? (N=16)



Protection mechanisms established by the RED

According to the 63 respondents across the EU, almost half (31 in total, 49%) believed that the **protection mechanisms** in their respective countries provided sufficient protection against racial or ethnic discrimination, whereas 26 stakeholders (41%) did not think so.

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Figure 26: In your/your organisation’s opinion, do the protection mechanisms in your country provide sufficient protection against racial or ethnic discrimination? (N=63)



Importance of existing mechanisms for preventing and providing protection from racial and/or ethnic discrimination

Taking a closer look at the various protection mechanisms in place, the majority of respondents indicated that the most important mechanisms are the establishment of equality bodies (Article 13), with 89% thinking it is important and 77% thinking it is very important, and the national judicial and/or administrative procedures for victims of discrimination (Article 7), with 89% thinking it is important and 75% thinking it is very important. This is closely followed by the reversal of the burden of proof to the alleged perpetrator of discrimination in non-criminal

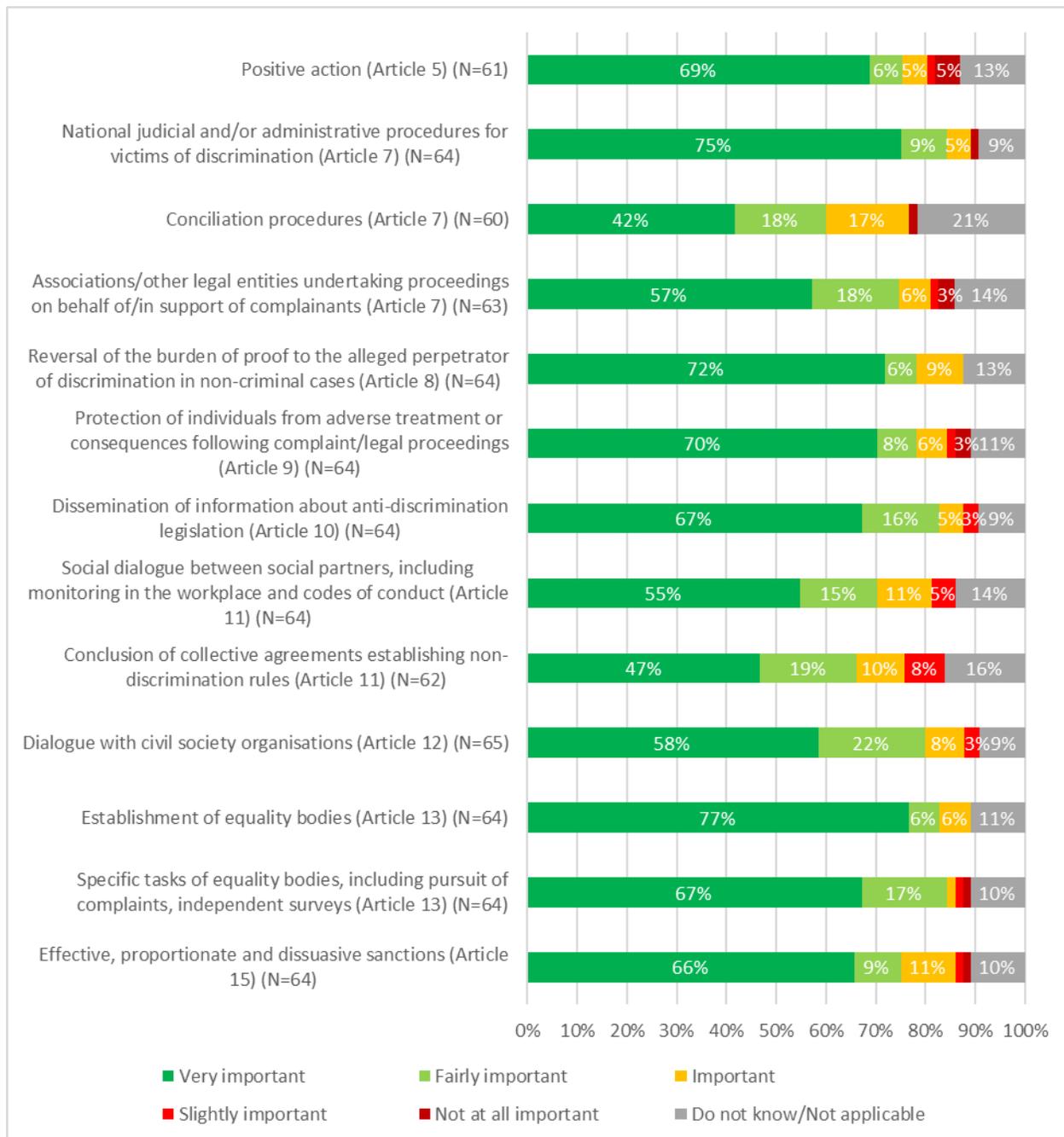
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cases (Article 8), the dissemination of information about anti-discrimination legislation (Article 10), and the dialogue with civil society organisations (Article 12), with 88% indicating it is important.

One stakeholder at the EU-level indicated that effective, proportionate and dissuasive sanctions are an important mechanism to prevent discrimination on racial and ethnic grounds, but that current legislation regarding sanctions as put forward in Article 15 has not proven to live up to its full potential. Similarly, a prosecution service in Malta highlighted that Article 15 does not impose any specific rules on sanctions and therefore it is left entirely in the Member States' hands and should therefore be amended to provide clearer terms on punishment. A stakeholder at EU-level and the equality body in Croatia called for the recognition of the key role that equality bodies play in combatting discrimination by providing them with strong mandates, independence and sufficient resources so they can provide effective support to decision makers and other stakeholders. Also, three stakeholders indicated that there is not sufficient recording of data and statistics, which makes it difficult to assess the effectiveness of the provisions from the Directive.

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Figure 27: In your/your organisation’s opinion, how important are the following mechanisms for preventing and providing protection from racial and/or ethnic discrimination in your country?



Factors inhibiting progress in combatting discrimination

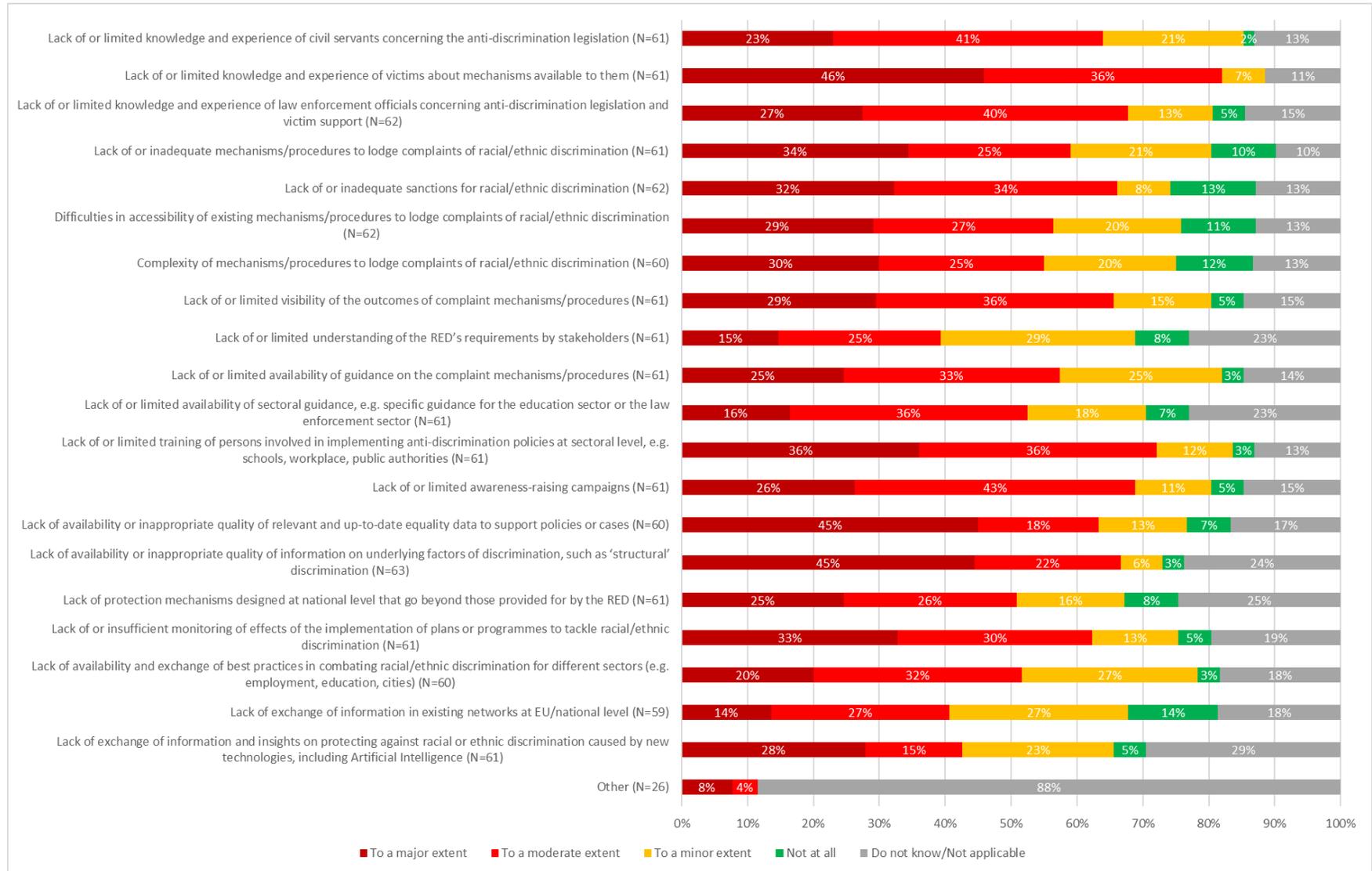
When asked about what **factors inhibited progress** in combatting discrimination, the most selected factor was the lack of or limited knowledge and experience of victims about mechanisms available to them (89%, and 46% thinking to a major extent). After this, it was widely believed that the lack of or limited knowledge and experience of civil servants concerning the

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anti-discrimination legislation (85%) had an impact to an extent, as well as the lack of or limited training of persons involved in implementing anti-discrimination policies at sectoral level (84%). It is also worth noting that a significant number of respondents found issues to a major extent in the lack of availability or inappropriate quality of relevant and up-to-date equality data to support policies or cases (27 in total, 45%) and of information on underlying factors of discrimination (28 in total, 44%). The equality body in Czechia noted as additional factors the lack of willingness of victims to defend their rights, lack of trust in public authorities, seeing no point in making a complaint, and the lack of evidence in cases.

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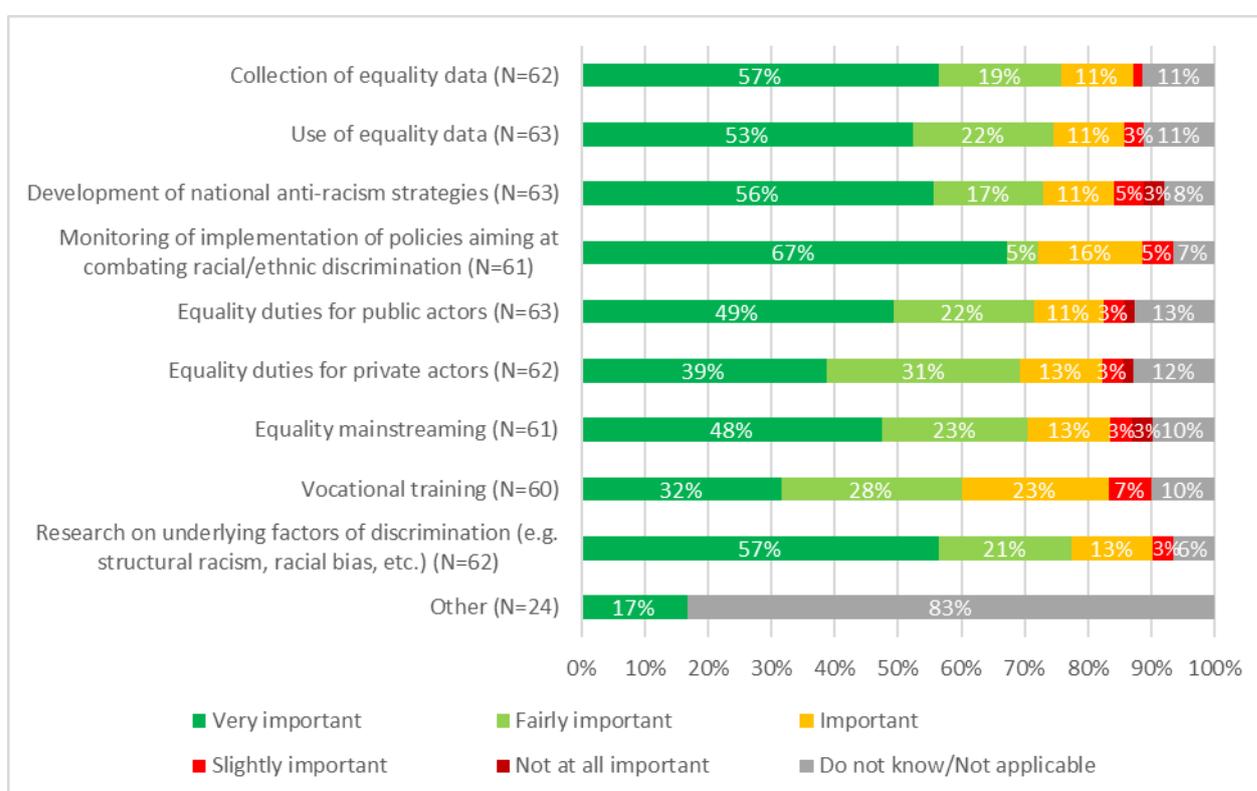
Figure 28: In your/your organisation’s opinion, to what extent have the following factors inhibited progress in combatting discrimination?



Additional protection mechanisms or related measures

As **additional protection mechanisms** or measures, the majority of respondents are in favour of the monitoring of implementation of policies aiming at combating racial/ethnic discrimination, with 89% thinking it is important and 67% thinking it is very important. Also, an emphasis is put on the collection of information and data. For instance, research on underlying factors of discrimination (e.g. structural racism, racial bias) is seen as important by 90% of the respondents and very important by 56%. Collection of equality data was similarly seen as important by 54 respondents (87%). Fourteen respondents further elaborated on their answers, by means of responding to an open question. Thirteen out of the 14 respondents emphasised the importance of equality data in understanding the nature and scale of racial/ethnic discrimination. They all emphasised that currently available datasets do not allow for such understanding.

Figure 29: In your/your organisation’s experience, how important would it be to include the following additional protection mechanisms or related measures?

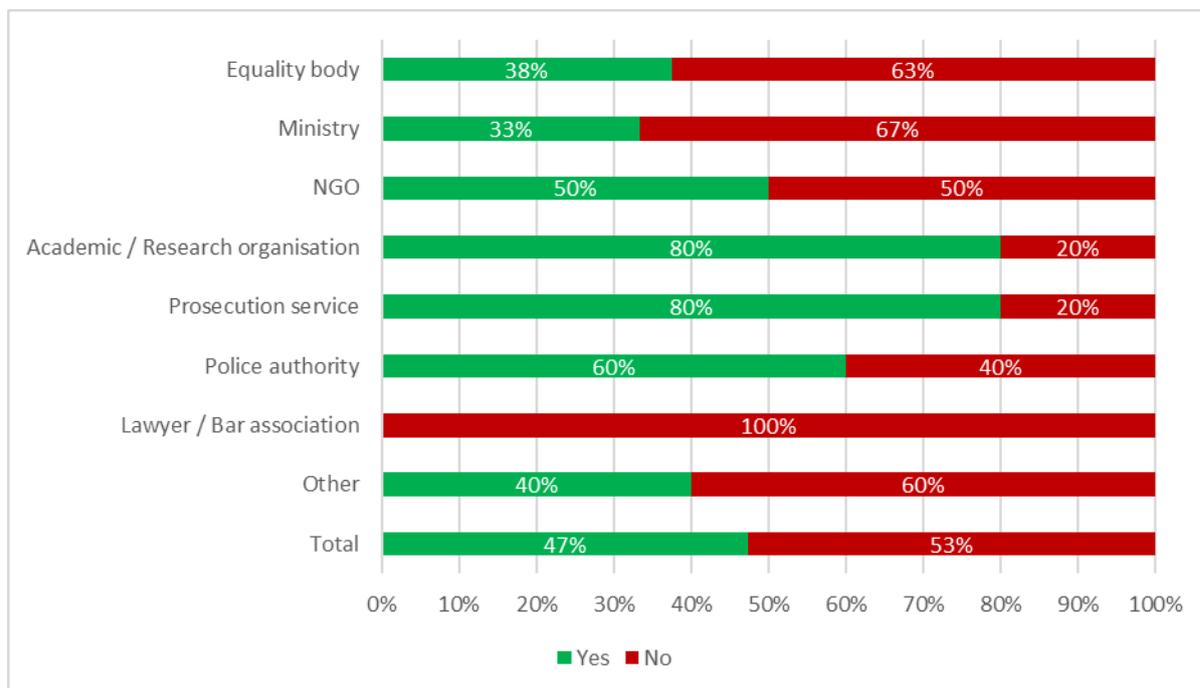


Protection mechanisms for other grounds of discrimination

Nearly half of the respondents (27 in total, 47%) mentioned that there are protection mechanisms for other grounds of discrimination that could be implemented for the area of racial/ethnic discrimination. These stakeholders are active in Sweden, Romania (3), Greece, Hungary, Ireland, Lithuania, Portugal, Slovakia, Slovenia (2), Austria, Belgium, Cyprus, Estonia, EU-level, Italy, and Spain (1).

One academic/research organisation in Sweden indicated that there is much to learn from the national measures against gender discrimination which have been widely successful. Similarly, another academic/research organisation in Ireland mentioned that there are stronger legal remedies available for cases of gender discrimination in Irish discrimination law. Six respondents approached the question from a different angle and mentioned that future protection mechanisms should take into account intersectionality.

Figure 30: In your/your organisation's opinion, are there any protection mechanisms for other grounds of discrimination (e.g. gender, sexual orientation, religion or belief, age, etc.) that should also be considered for the area of racial or ethnic discrimination? (N=57)



Good practices

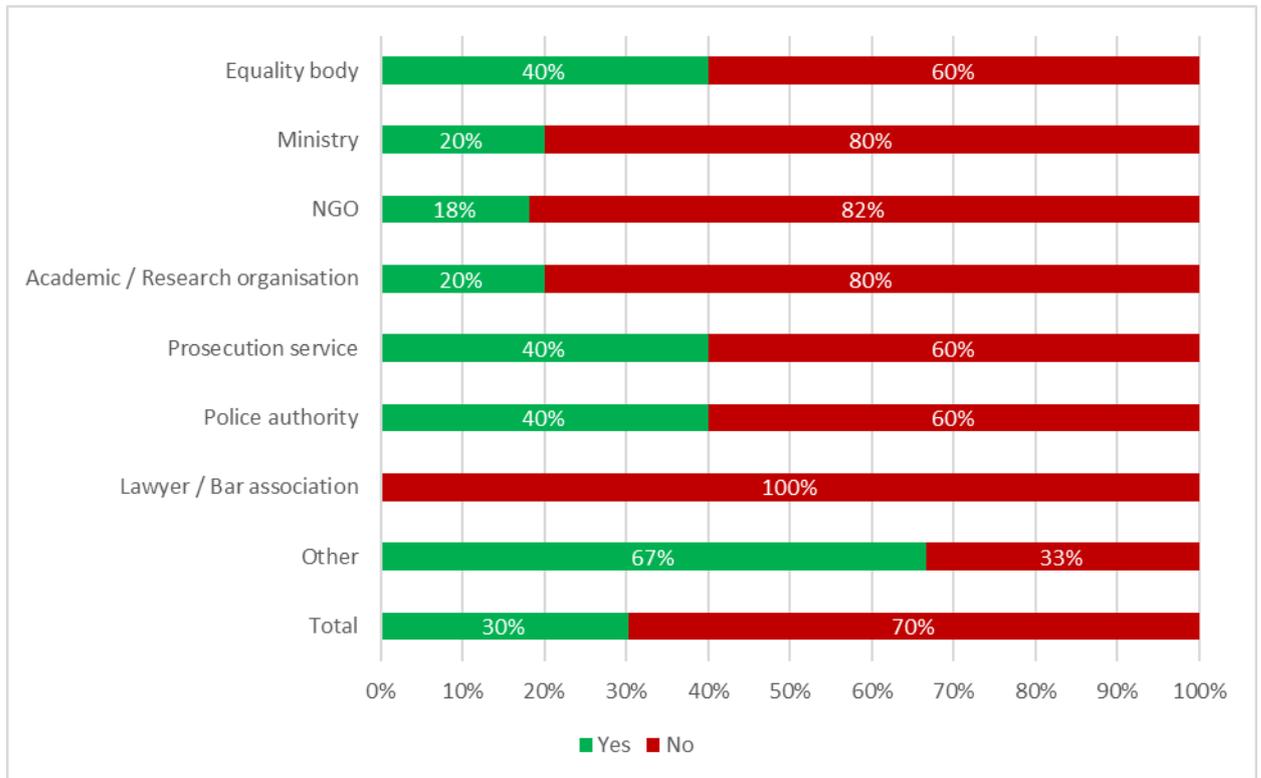
From the 17 respondents who identified protection mechanisms at Member State level that could be considered a good practice, they are active in EU-level, Ireland, Romania, Slovakia (2), Croatia, Czechia, Finland, Greece, Hungary, Portugal, Slovenia, Spain, Sweden (1).

A stakeholder at the EU-level observed good practices in several Member States:

- Increase visibility of equality bodies for victims of discrimination: setting up regional offices (FR and BG), establishing solidarity funds to cover legal fees for victims (IT), or developing online forms to report complaints more easily (PT).
- Training on anti-discrimination: for the public (BE) and private sector (BE and PT).
- Awareness raising campaigns: creating short movies (BE) and video games (IT) aimed at tackling stereotypes, developing websites to collect incidents of hate crimes (DK and FR) or implementing national action weeks on specific topics (IT and PT).
- Research: study on popular attitudes towards Sinti and Roma (DE), or reasons for underreporting (CZ).
- Evidence gathering: through situation testing (FR and IT), or investigative powers (BG).
- Enforcement powers: through *actio popularis*/class action suits and sanctions (BG, HU and PT).

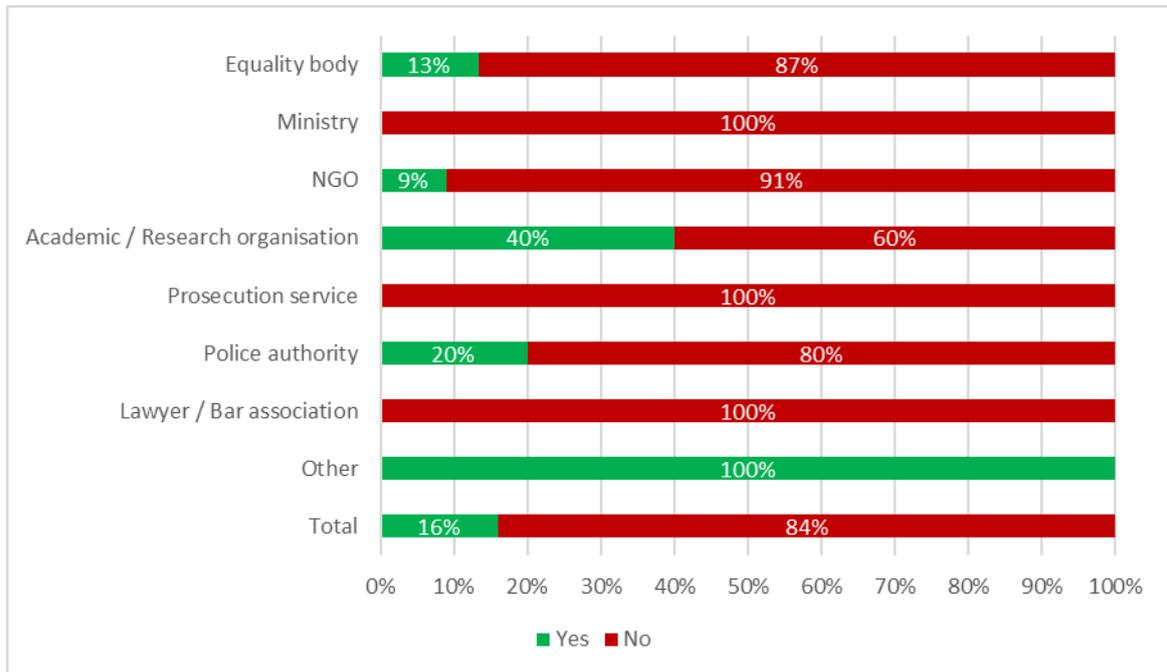
Furthermore, one NGO mentioned public sector equality duty in Ireland. In Hungary, there are initiatives and programmes of NGOs active in the field of combatting racial and ethnic discrimination, including awareness raising (e.g. Hungarian Helsinki Committee, Hungarian Civil Liberties Union). In Slovakia, the equality body points out examples of positive action measures adopted in the employment sector, targeting people with Roma origin.

Figure 31: Are you aware of any protection mechanisms at Member State level that could be considered a good practice for combating racial or ethnic discrimination? (N=56)



In third (non-EU) countries, there have also been several **good practices** identified by 9 respondents. For example, one stakeholder at EU-level pointed out that Canada has legal provisions for reasonable accommodation designed for people with disability, which could be used to introduce reasonable accommodation on grounds other than disability, including race and ethnic origin. Also, one academic/research organisation referred to the use of equality data in the United Kingdom.

Figure 32: Are you aware of any protection mechanisms in third (non-EU) countries that could be considered a good practice for combating racial or ethnic discrimination in the EU? (N=56)



Annex III – OPC analysis

1. Introduction

1.1 Objective

Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin¹³⁵⁰ has shaped the legal protection against discrimination on grounds of racial or ethnic origin for over two decades. It prohibits discrimination based on racial¹³⁵¹ or ethnic origin in the areas of employment and occupation, vocational training, education, social protection including healthcare, social advantage, and access to and supply of goods and services available to the public, including housing.

Further to the EU anti-racism Action Plan¹³⁵², the purpose of the Open Public Consultation (OPC) was to help the European Commission identify potential gaps in the protection against discrimination based on racial or ethnic origin and suitable measures to address those gaps. It gathered data on experiences of discrimination based on racial or ethnic origin, opinions related to the legal protection against such discrimination and possible future improvements.

1.2 Methodology

The questionnaire was accessible via a link through EUSurvey from 17/1/22 until 11/4/22 (11 weeks). It was made available to the general public via the EU's 'Have your Say' portal in all EU languages and included both open and closed questions to allow respondents to provide personalised and detailed answers¹³⁵³. The consultation mainly covered personal experiences with and opinions on racial or ethnic discrimination in the following 12 areas:

- Education and work;
- Health and childcare;
- Housing;
- Administrations;
- Public transport and leisure;
- Police and authorities;
- Justice system;
- Structural discrimination;
- Individual impacts;
- Artificial intelligence;
- COVID-19;
- The scope of legal protection and how to improve protection.

¹³⁵⁰ [Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000, p. 22–26.](#)

¹³⁵¹ The use of the term 'racial origin' in the Treaty of the Functioning of the EU and Council Directive 2000/43/EC does not imply any acceptance by the European Union of theories that attempt to determine the existence of separate human races.

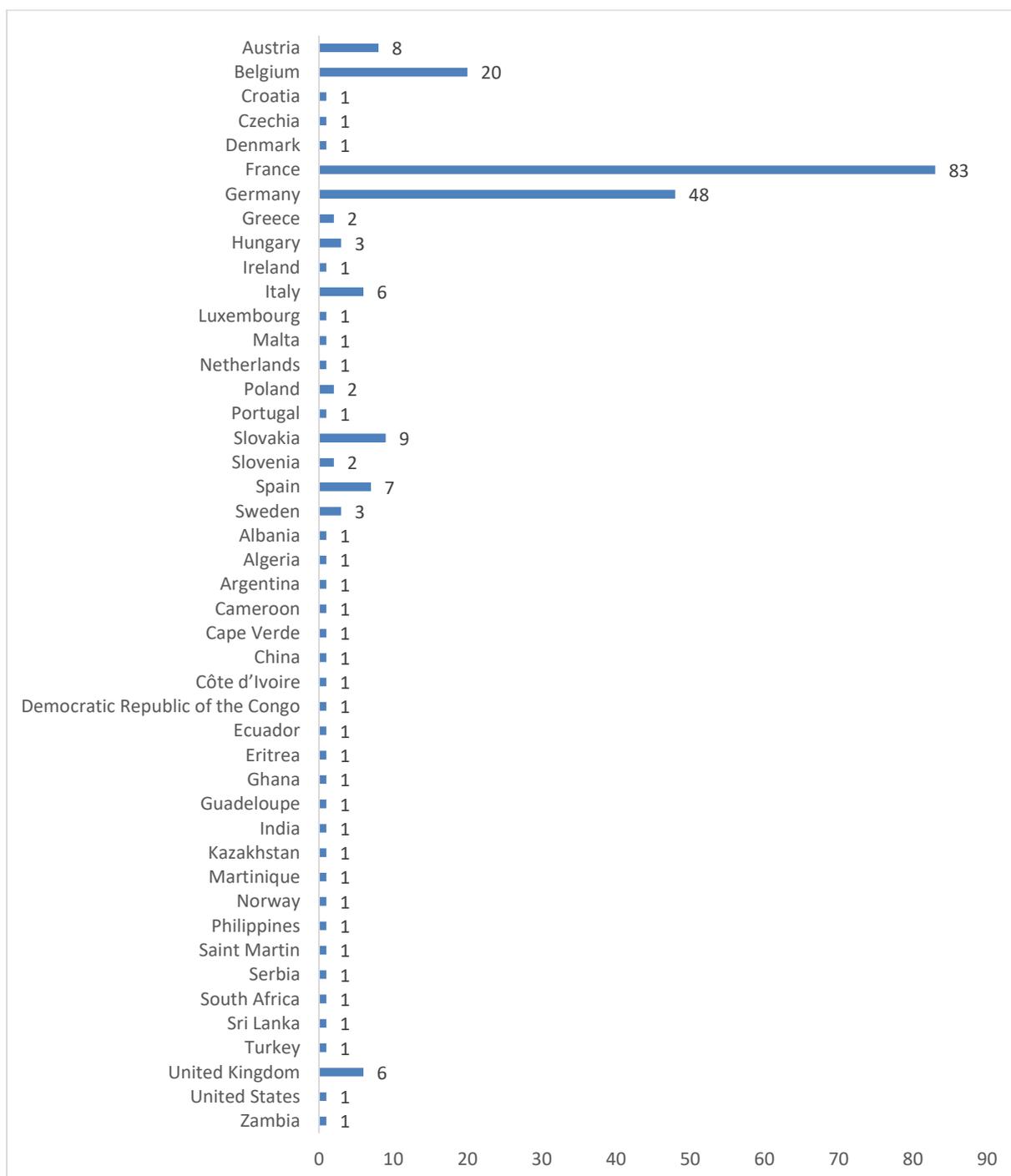
¹³⁵² [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A Union of equality: EU anti-racism action plan 2020-2025', COM\(2020\)565 final.](#)

¹³⁵³ [Addressing possible gaps in the Racial Equality Directive \(europa.eu\).](#)

2. Overview of responses

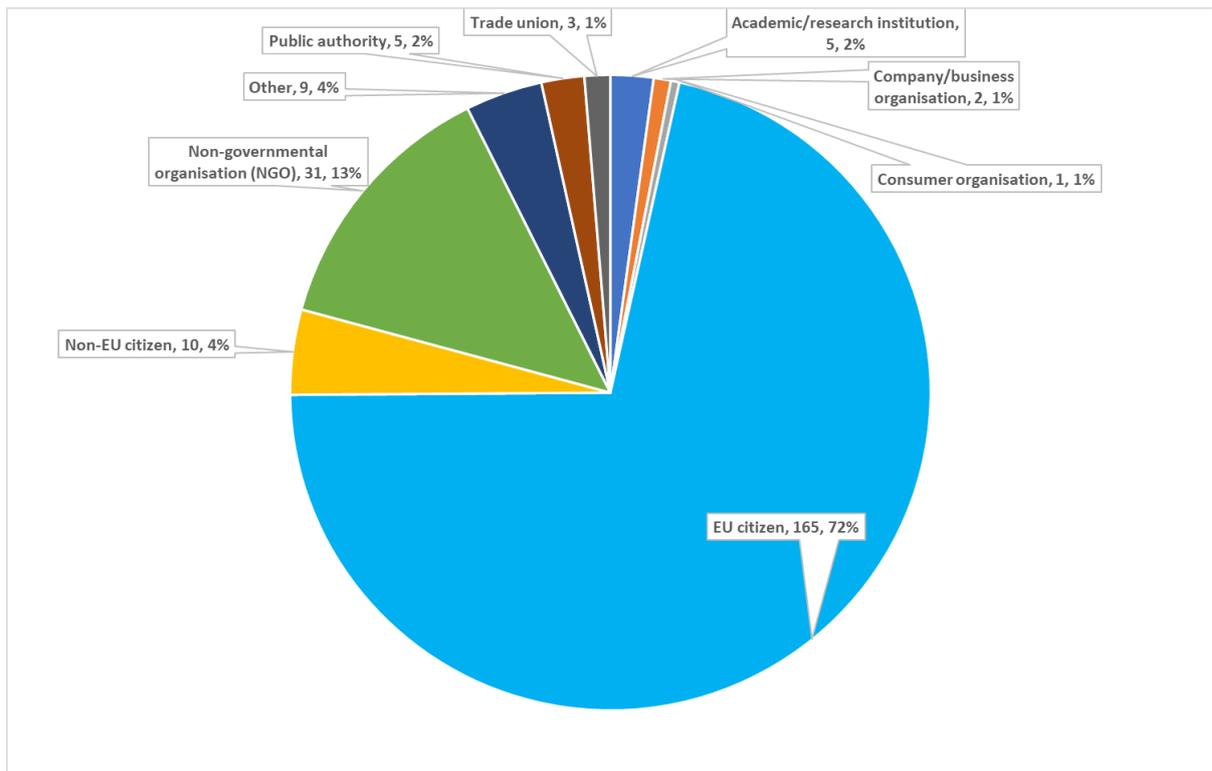
The OPC received a total of 231 replies (and 18 documents annexed as additional written contributions) from 45 different countries of origin, including 20 EU Member States¹³⁵⁴, mainly from France (36%), Germany (21%) and Belgium (9%). EU citizens provided the most contributions accounting for 71% of all respondents (number of responses 'N'=165), followed by non-governmental organisations (NGOs) with 13% of all respondents (N=31), and non-EU citizens with 4% (N=10).

Figure 1: Number of respondents to the OPC by country of origin (N=231)



¹³⁵⁴ Within the EU-27, there were no contributions from Bulgaria, Cyprus, Estonia, Finland, Latvia, Lithuania, and Romania.

Figure 2: Participants in the OPC by stakeholder group (N=231)



Among those, 69 responses (30% of the total), expressing rhetoric on anti-white racism, predominantly French, were identified as being part of a potential campaign and were analysed separately, as per the Better Regulation guidelines. Accordingly, the responses will hereafter be presented with a focus on the results excluding the possible campaign, whereas the figures including the campaign will be shown in italicised brackets. The graphs present information only without the possible campaign.

3. Analysis of responses

3.1 Experiences of discrimination¹³⁵⁵ based on racial or ethnic origin

1. Do you consider yourself as being at risk of discrimination based on racial or ethnic origin? (N=162)

Out of the 162 [231] respondents, 53% [64%] considered themselves being at risk of racial or ethnic discrimination, whilst 42% [33%] did not.

¹³⁵⁵ In the context of the OPC, the following working definitions were used: Discrimination based on racial or ethnic origin means that, based on racial or ethnic origin, a person is treated less favourably than another person is, has been or would be treated in a comparable situation (= direct discrimination). Discrimination also covers a situation in which a provision, criterion or practice apparently treats a person in a neutral manner but in fact leads to a particular, illegitimate, and inappropriate disadvantage compared with others on grounds of racial or ethnic origin (= indirect discrimination). In addition, discrimination occurs when an unwanted conduct related to a person's racial or ethnic origin takes place with the purpose or effect of violating that person's dignity and of creating an intimidating, hostile, degrading, humiliating or offensive environment (= harassment).

2. Have you ever experienced discrimination based on your racial or ethnic origin? (N=162)

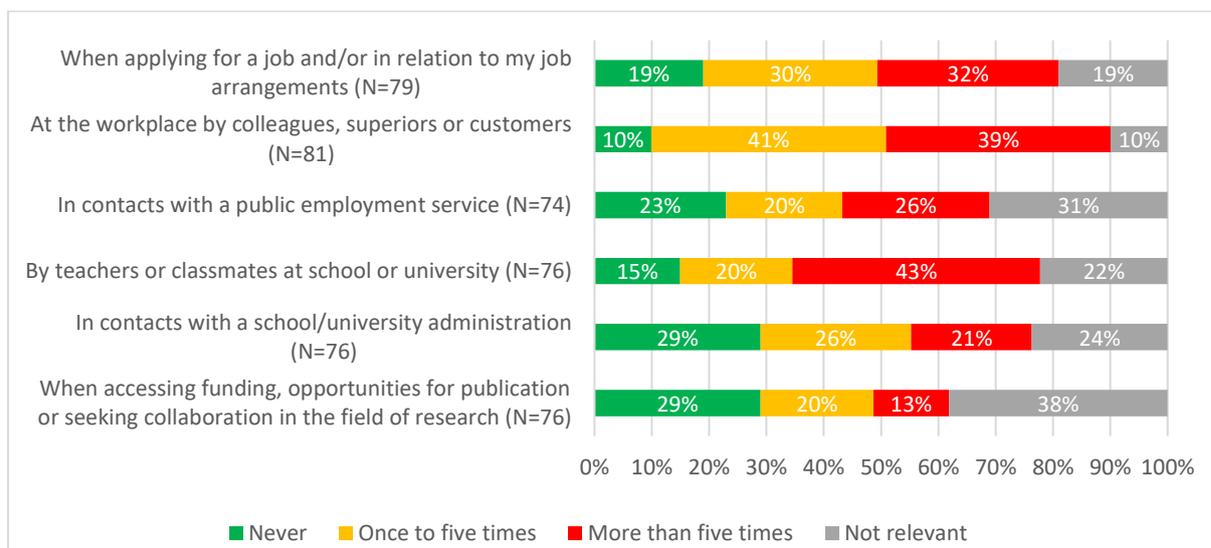
Among those at risk, 52% [63%] reported that they had experienced such discrimination, whereas 42% [33%] did not.

3. In the past three years, in what kind of situation(s) and how often do you consider you have been discriminated against based on your racial or ethnic origin?

In situations related to *work*, 80% [76%] experienced racial/ethnic discrimination at least once at the workplace by colleagues, superiors or customers, of which 39% [35%] did so more than five times. Also, when applying for a job, 62% [56%] experienced it at least once, of which 32% [24%] more than five times.

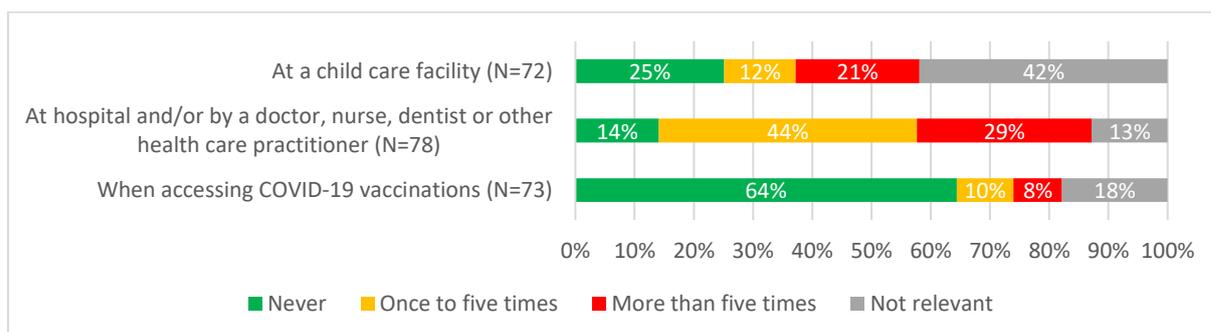
Regarding *education*, 63% [58%] reported discrimination by teachers or classmates at school/university, which occurred more than five times for 43% [41%]. Although 29% [39%] reported to have never experienced discrimination in contacts with a school/university administration, 47% [42%] faced it at least once.

Figure 3: Education and work-related situations



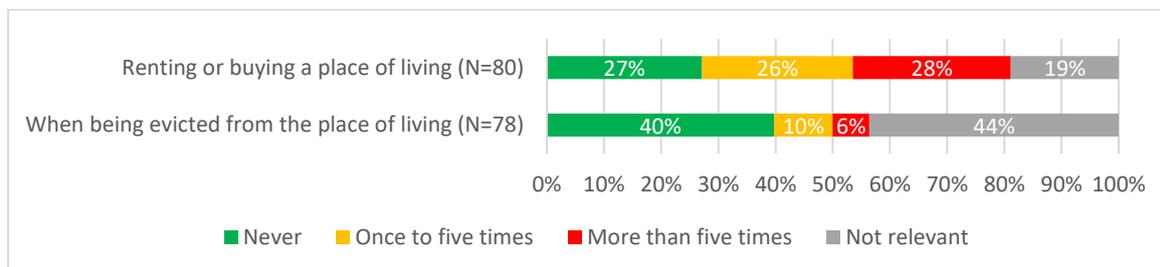
Concerning *health* and *childcare*, 73% [59%] witnessed discrimination at least once at the hospital and/or by a doctor, nurse, dentist or other health practitioner. 33% [27%] reported at least one incident at childcare facilities, whilst 25% [38%] had never experienced it. In relation to access to COVID 19 vaccines, 64% [65%] indicated to have never experienced it.

Figure 4: Health and childcare



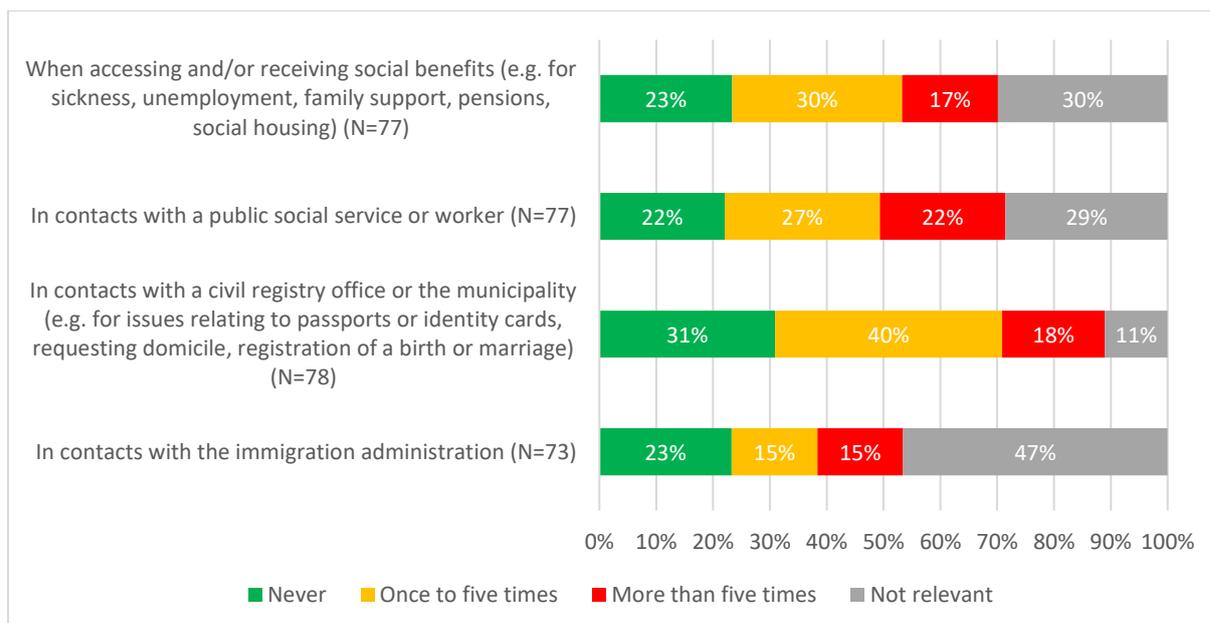
Regarding *housing*, 54% [48%] reported at least one case when renting or buying a place of living, of which 28% [22%] indicated they faced it more than five times. When it comes to being evicted from the place of living, 40% [49%] reported to have never experienced discrimination.

Figure 5: Housing



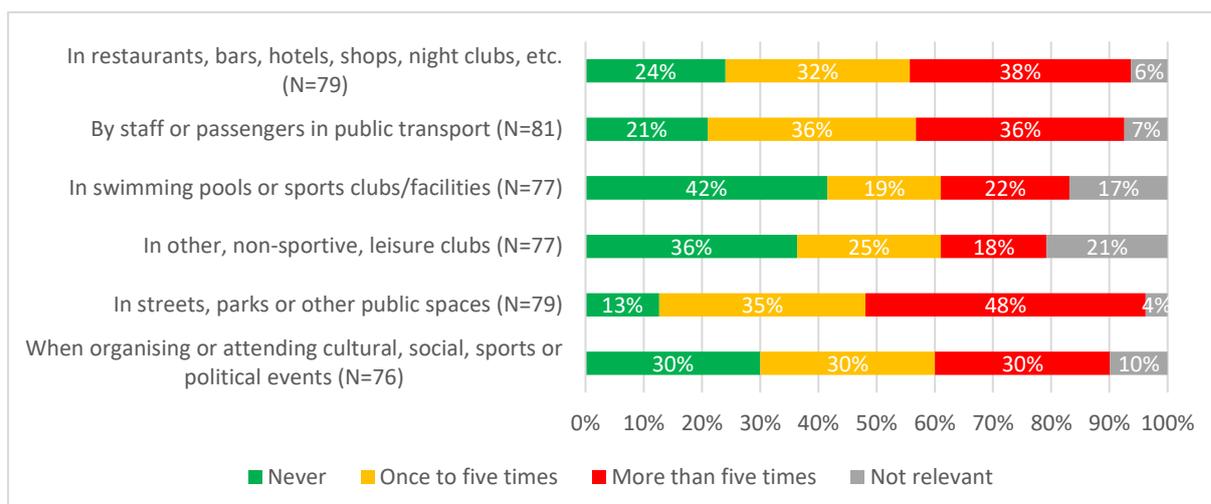
In *contacting administrations*, 58% [46%] experienced discrimination in contacts with a civil registry office or municipality, whilst those who never faced it were 31% [42%]. This was followed by 49% [50%] who indicated at least one case of discrimination in contacts with a public social service or worker, and 47% [51%] when accessing and/or receiving social benefits.

Figure 6: Contacts with administrations



Regarding *public transport and leisure*, 83% of respondents [85%] experienced discrimination in streets, parks or other public spaces, of which 48% [54%] did so more than five times. Incidence with staff or passengers in public transport was of 72% [72%] and in restaurants, bars, hotels, shops and night clubs of 70% [68%].

Figure 7: Public transport and leisure

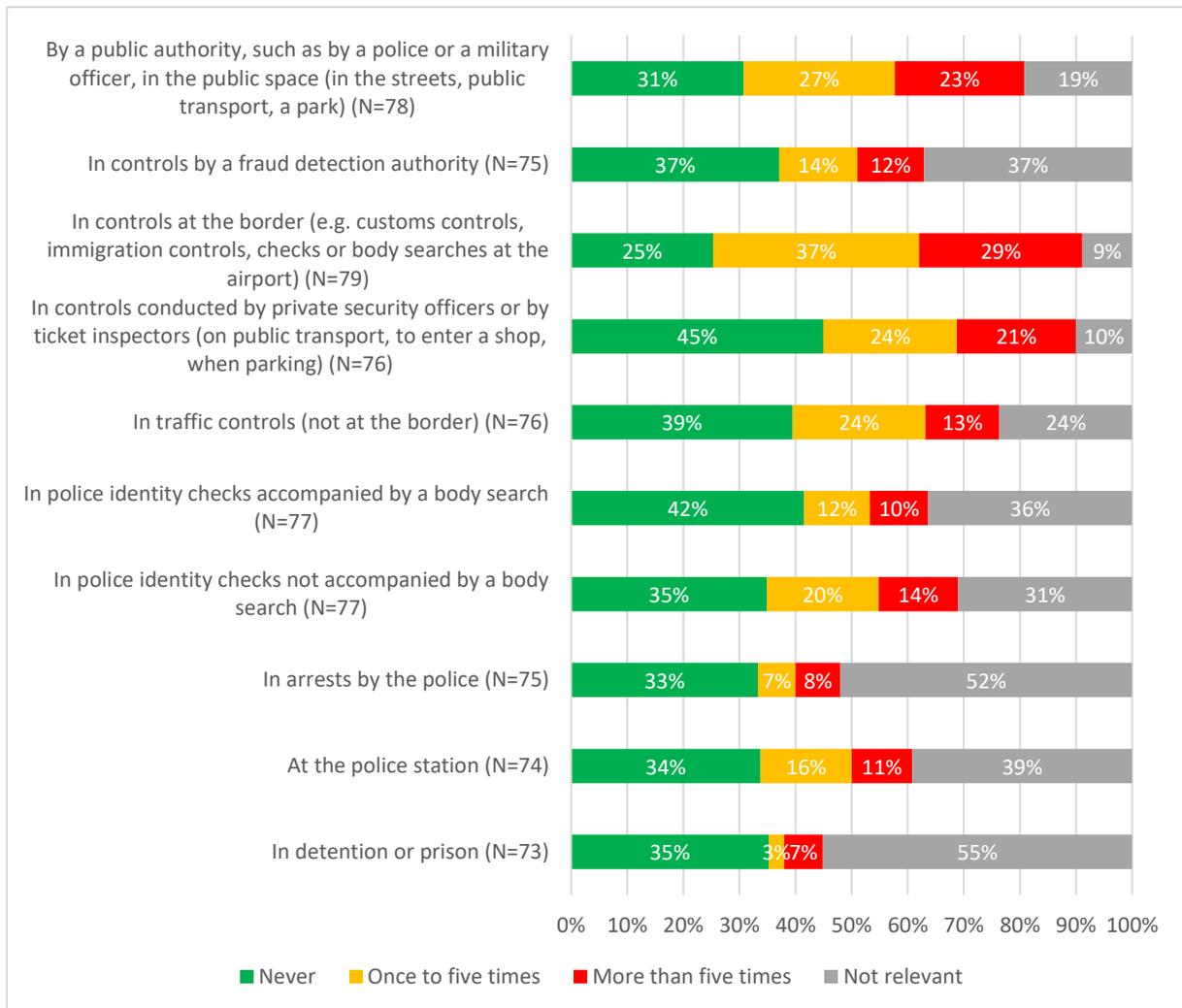


Regarding the *police or other control authorities*, 66% [44%] indicated they experienced discrimination during controls at the border, followed by controls conducted by a public authority in the public space (50% [37%]) and by private security officers or by ticket inspectors (45% [39%]).

37% [25%] reported discrimination in traffic controls (not at the border) and 34% [23%] in police identity checks not accompanied by a body search. Also, 27% [20%] experienced it at the police station and 26% [19%] in controls by a fraud detection authority.

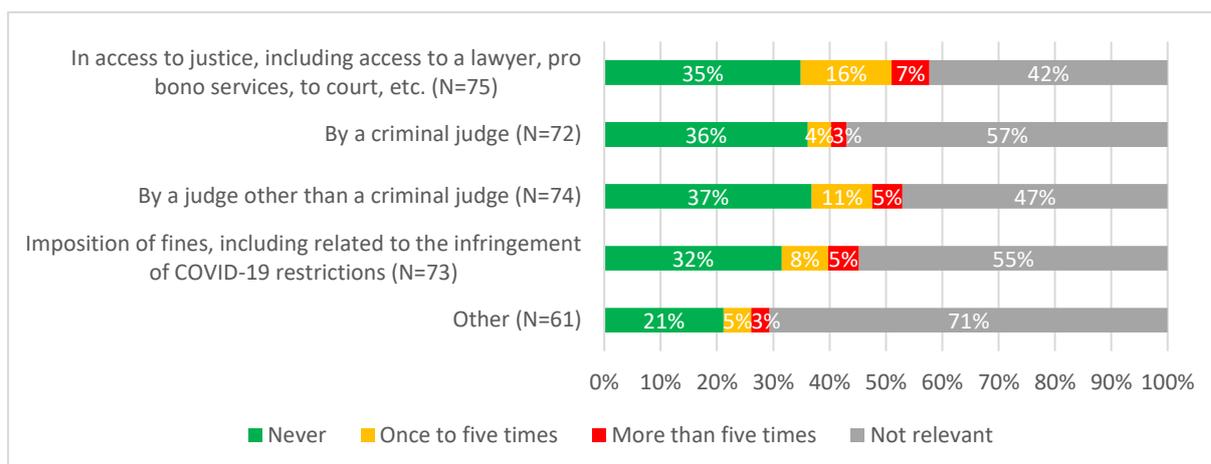
At least one case of racial/ethnic discrimination was counted in police identity checks accompanied by a body search by 22% [16%], in arrests by the police by 15% [12%], and in detention or prison by 10% [9%]. 25-45% [45-56%] reported to have never experienced discrimination in the above situations.

Figure 8: Situations involving the police or other control authorities



Concerning the *justice system*, 23% [20%] experienced discrimination at least once when accessing justice services. 16% [13%] did so by a judge other than a criminal judge, 13% [14%] during the imposition of fines, and 7% [8%] by a criminal judge. Among those that answered 'Other', one stakeholder from Germany mentioned a notary in the divorce procedure.

Figure 9: Justice system



4. Do you think that the use of an Artificial Intelligence ('AI') system¹³⁵⁶ caused or aggravated any of the situations in which you felt you have been discriminated against based on your racial or ethnic origin? (N=85)

Out of 85 [143] respondents, 17% [15%] indicated that Artificial Intelligence (AI) had caused or aggravated the discriminatory incidences, whereas 22% [26%] did not think that AI was used. 61% [59%] either did not know or had no prior experience with AI.

Some respondents specified the situation(s) where the use of AI caused or aggravated the situations in which they felt discriminated against. For instance, one citizen in Germany experienced it during a job search, whereas one citizen in Belgium did so when applying for a language course.

5. Did you perceive that structural discrimination¹³⁵⁷ caused or aggravated any of the situations in which you felt discriminated against based on your racial or ethnic origin? (N=85)

74% [65%] believed that structural discrimination had caused or aggravated their experience of discrimination, whereas 5% [13%] perceived this not being the case.

6. Do you consider that COVID-19 had a negative impact on your experience(s) with discrimination based your racial or ethnic origin? (N=85)

Out of 85 [143] respondents, 36% [29%] believed that COVID-19 had negatively impacted their experiences with discrimination, whereas 39% [45%] did not think so.

Five stakeholders highlighted that COVID-19 caused a considerable increase of anti-Asian, antisemitic, anti-black, and anti-gypsy sentiments within the EU. Another five respondents criticised the COVID-19 rules and regulations that were put in place by their respective government. Moreover, five EU citizens in Germany indicated a discriminatory management of the vaccination roll-out and other healthcare services. Another EU citizen in Germany experienced discrimination in their search for housing during the pandemic.

¹³⁵⁶ An Artificial Intelligence system is a software, used in a machine or computer, that can perform operations and tasks analogous to learning and decision making in humans.

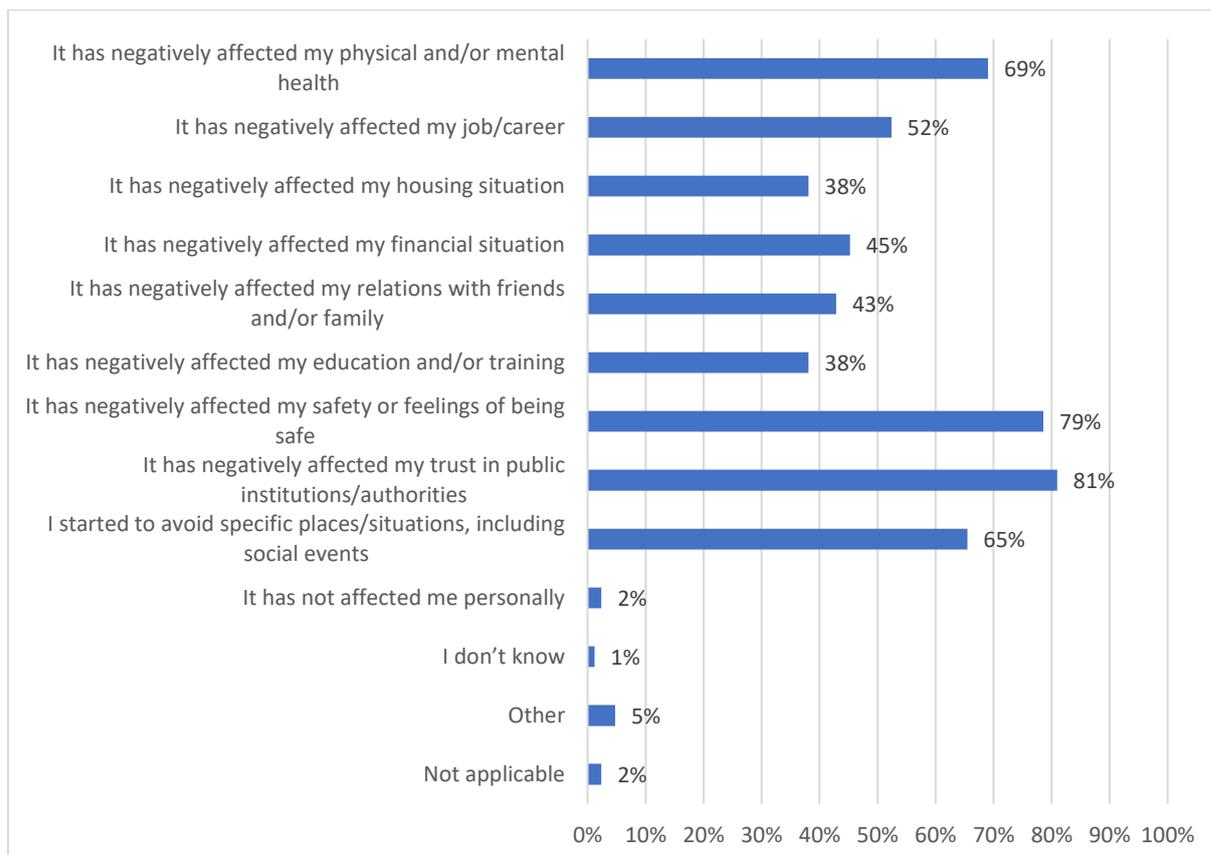
¹³⁵⁷ Structural discrimination results from rules or patterns of behaviour in institutions and other structures that, consciously or unconsciously, present obstacles in accessing the same rights and opportunities as others.

7. How has experiencing discrimination based on your racial or ethnic origin affected you? (N=84)

Out of 84 [142] respondents, 81% [70%] stated that discrimination had a negative impact on their trust in public institutions/authorities. This was followed by the safety or feelings of being safe by 79% [77%], physical and/or mental health by 69% [67%] and avoiding places/situations by 65% [65%].

From those that answered 'Other', one EU citizen pointed out that their trust in public media services had worsened.

Figure 10: Individual impacts



8. grounds than racial or ethnic origin? (N=81)

Regarding the risk of discrimination based on additional other grounds, out of 81 [137] respondents, 60% [52%] mentioned sex/gender and 36% [50%] cited religion/belief.

From those that answered 'Other', four stakeholders mentioned the difference in the way of living (including Roma). Three EU citizens from Germany highlighted the risk of discrimination for belonging to a different socio-economic class. Three other EU citizens indicated skin colour and language as grounds for discrimination. Finally, political views, obesity, and neurodiversity were also mentioned.

3.2 Opinions on the scope of legal protection against discrimination based on racial or ethnic origin

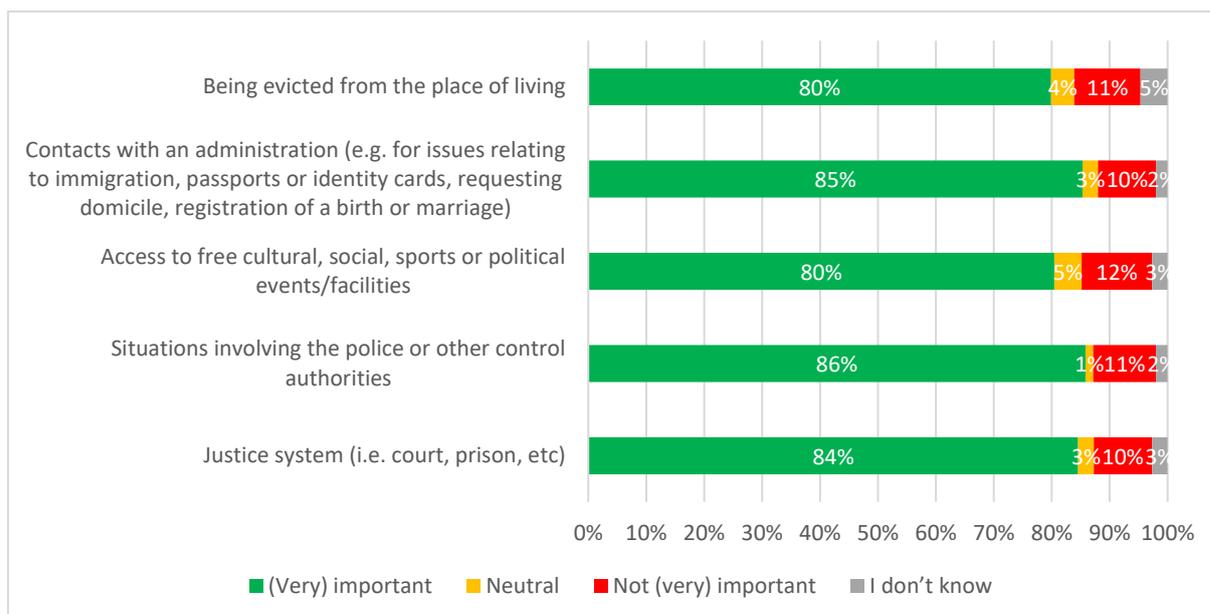
The existing legal protection, as offered by the Racial Equality Directive, covers the areas of employment and occupation, vocational training, education, social protection

including healthcare, social advantage, and access to and supply of goods and services available to the public, including housing.

9. In your opinion, how important would it be to provide for legal protection against discrimination on the grounds racial or ethnic origin in the situations below? (N=150)

Out of 150 [214] respondents, over 80% [58-65%] replied that it is (very) important to provide legal protection in the five situations referred to in the graph below.

Figure 11: Scope of legal protection



3.3 Opinions on how to improve protection against discrimination based on racial or ethnic origin

10. How important do you think it would be to put in place mechanisms that prevent discrimination based on racial or ethnic origin? (N=157)

Out of 157 [223] respondents, 85% [68%] believed that it is (very) important to put in place mechanisms to prevent discrimination, whereas 10% [22%] did not think so.

11. In your opinion, what should be done to adequately protect individuals and/or groups against discrimination based on racial or ethnic origin? What is missing from the current protection? Is there anything else you would like to tell us in relation to the protection against discrimination based on racial or ethnic origin? (N=104)

The following actions and topics were mentioned most frequently by the 104 [179] respondents:

- Stronger legal framework and the establishment of independent institutions to protect citizens and handle reported complaints – 28% [16%];
- Mandatory (cognitive bias) training for staff/police – 22% [13%];
- Reforms to education (e.g. increase awareness, include ethnicities in the curriculum) – 21% [12%];
- Reforms to laws and justice system – 19% [11%];

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- More effective punishments and sanctions against discrimination – 13% [7%];
- Application of an intersectionality approach – 13% [7%];
- Launching of campaigns to encourage action against discrimination – 13% [7%];
- More accountability and effort from (EU/national) governments and politics – 10% [6%];
- More data collection based on objective criteria – 10% [6%];
- Measures to address the deeply rooted structural discrimination in society – 9% [5%];
- More inclusive definitions (e.g. nationality) – 8% [4%];
- Quotas (e.g. in employment, politics, housing) – 7% [4%];
- Better monitoring/compliance of the existing rules – 6% [3%];
- National initiatives fostering social cohesion/inclusion – 5% [3%];
- Laws to prevent segregation in housing – 5% [3%];
- Anonymous CVs at job applications – 4% [2%].

Annex IV – Stakeholder consultation summary report

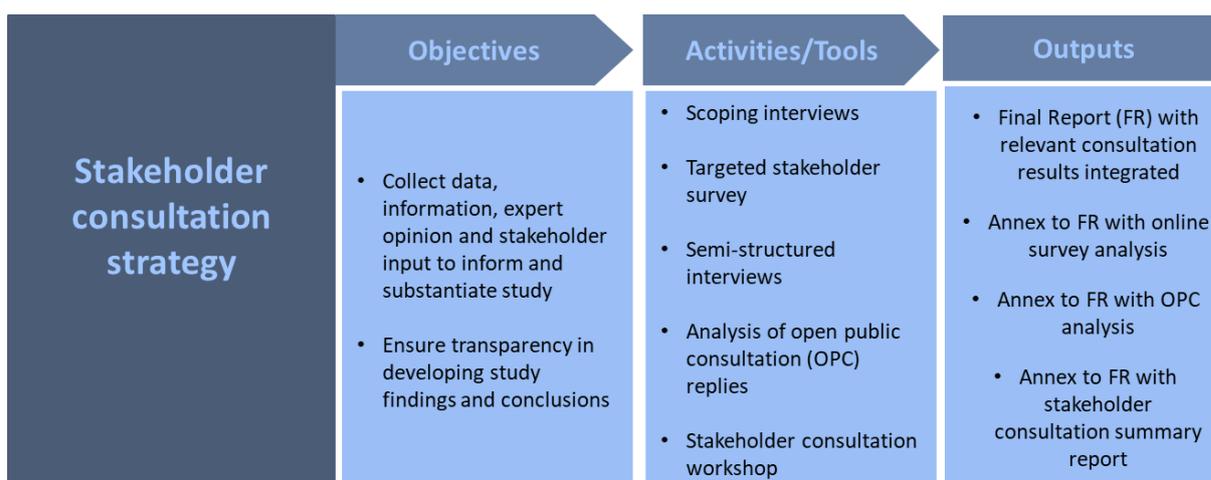
Stakeholder consultation strategy

While a lot of data and information was collected via desk research and literature review at EU and national levels, stakeholders were also targeted to fill in informational gaps (including at country level) as well as to collect reactions to and insights into the scale of the problems and challenges faced. Consultation activities also sought to gather stakeholder opinions on possible EU- and national-level actions that could tackle racial or ethnic discrimination in the material areas identified as falling outside the scope of the RED or in grey areas, as well as concerning any shortcomings in relation to the protection mechanisms of the RED.

The consultation activities comprised of scoping interviews, an online survey, a set of semi-structured interviews at EU- and national/local-levels, and a consultation workshop, alongside the analysis of an Open Public Consultation (OPC) survey launched by the European Commission.

The figure below provides an overview of our stakeholder consultation strategy, outlining all consultation activities undertaken under the project.

Figure 1: Stakeholder consultation strategy overview



Stakeholder mapping and selection for targeted consultation

For the **scoping interviews**, a **list of potential EU level organisations** was suggested by Milieu. This list was discussed with the European Commission at the Kick-off meeting and was subsequently approved.

For the **semi-structured interviews** and the **online survey**, a **list of EU- and international-level stakeholders** was prepared and submitted for consideration to the Commission. The list included suggestions for stakeholders to be interviewed and stakeholders to be invited to participate in the targeted survey either as respondents or as organisations further disseminating the survey to their members. The list consisted of relevant EU institutions, international organisations, European networks and associations of national organisations (e.g., police unions, police complaints authorities, equality bodies, national human rights institutions, cities against racism, judges and prosecutors, social partners, NGOs dealing with racial/ethnic discrimination or inclusion, etc.), European level organisations representing different minority communities, and research centres and foundations. The Commission approved this list on 24 January 2022.

The **stakeholder mapping at national-level** was undertaken by the national experts. They were requested to identify relevant national and local stakeholders that could potentially be contacted for consultation via interviews or the targeted survey in each Member State. The national experts were asked to populate a template prepared by Milieu by identifying relevant stakeholders and their contacts falling under the following categories:

- *Law enforcement and public officials:* e.g., internal control organ of the police; police of a city/municipality with high percentage of complaints regarding racial/ethnic discrimination or with large ethnic minorities; national police authority, national prosecution service, judge involved/specialised in racial/ethnic discrimination cases; administration of a city/municipality (larger urban areas or municipalities with large ethnic minorities); national asylum/immigration authority; and relevant ministries in the field;
- *NGOs and other representatives of minority groups with specific expertise on discrimination or social exclusion:* e.g., national or local NGO with specific expertise in racial/ethnic discrimination; organisations with expertise in defence of minority rights; NGO active in the field of exclusion and poverty; NGO active in the field of protection of refugees; organisations at local level working in defence of Roma, representatives of Muslim or Jewish communities or people of African descent;
- *Other stakeholders involved in the issue of racial/ethnic discrimination:* e.g., lawyers with specific expertise in racial/ethnic discrimination cases; bar association representatives; academics/research organisations and networks active in the field of racial/ethnic discrimination; any other stakeholders identified as particularly involved in the issue of racial/ethnic discrimination.

Based on the comprehensive stakeholder mapping done by the national experts, a **database of national- and local-level stakeholders** was compiled together by Milieu's Data Collection and Analysis Team. In addition to the categories above, further stakeholders (e.g., national equality bodies) were added (if not already listed by the national experts), upon recommendation of the European Commission and the scoping interview participants, as well as the list of stakeholders identified by Milieu at the proposal preparation phase (as presented in the Technical Proposal). The database was submitted to the Commission for consideration on 26 January, together with the following suggested **selection criteria for the national stakeholder interviews:**

- Coverage of expertise in the main areas that based on preliminary research activities seemed to fall outside the scope of the RED;
- Balanced geographical coverage, covering stakeholders from national-level, local-level, major cities, urban areas;
- Balanced representation of ethnic minority groups, e.g., groups representing Muslim, Jewish, Roma and Travellers communities, or people of African descent. The selection also took into consideration national characteristics, hence aimed to select representatives of the most relevant ethnic groups (e.g., sizeable group, or group whose members are typically targeted by discrimination) in the Member States concerned;
- Stakeholders with specific professional expertise, e.g., lawyers, academics;
- Expertise in protection mechanisms and implementation of existing legislation/policy.

The approach suggested by Milieu was approved by the Commission on 27 January 2022. Following this approval, in each Member State, three stakeholders were selected as potential interviewees. As a general rule, it was suggested to complete two interviews per Member State, with a note that the third preselected stakeholder could be interviewed, when necessary (e.g., due to the relevance of the stakeholder, or the national context, or if one of the other two selected stakeholders did not respond). For some Member States, back-up option(s) were also identified to replace the preselected stakeholders, in case of unavailability or lack of response.

The **selection of priority stakeholders for interviews at national-level** also took consideration of national specificities and priorities as well as of the need to obtain a comprehensive overview of the situation on the ground across the EU in all of the areas covered by the study. This meant that the stakeholders selected for interviews in a Member State were not necessarily the main organisations working on the topic of racial discrimination in general, but rather stakeholders with a more practical understanding of racial or ethnic discrimination in a specific area in that Member State. Other national stakeholders with a more general understanding of the situation in the Member State were targeted via the stakeholder survey or in other Member States. The **final list of priority stakeholders for national interviews** was approved by the Commission on 3 February 2022.

A **selection of national stakeholders for the targeted survey** was also made. For receiving a balanced input via the survey, the same types of stakeholders were targeted in each Member State (where not selected for interviews), namely: national police authorities, national prosecution services, ministries of justice, interior and social affairs, national equality bodies, national NGOs dealing with racial/ethnic discrimination or inclusion, national association/networks of minority communities, lawyers/bar associations, and academics/research organisations.

A **list of NGOs and local representatives of minority communities** that were not targeted by interviews or the survey was also compiled and submitted to the Commission with a view to inviting them to participate in the OPC organised by the Commission.

For the selection of participants to the **Consultation workshop**, a **list of potential invitees** and back-up options were presented by Milieu and discussed with the Commission on 12 April 2022. An updated list was approved by the Commission on 20 April 2022. Mainly those stakeholders were targeted who had already participated in one of the targeted consultations (online survey, semi-structured interviews or OPC), but further stakeholders were also added in order to ensure a balanced representation of EU- and national-level stakeholders, as well as of different types of stakeholders (EU or international institutions and bodies; EU or national level NGOs or networks; academics or individual experts; and national authorities, i.e., police, prosecution, ministries).

Description of consultation activities/tools and of the stakeholder groups reached

Scoping interviews

The aim of the scoping interviews was to gather information with the purpose of designing and fine-tuning all methodological tools used during the implementation of the Study. Scoping interviews were held with representatives of two organisations: the European Union Agency for Fundamental Rights ('FRA') and the European Commission against Racism and Intolerance ('ECRI').

Targeted online survey

The survey aimed to inform the analysis under the different tasks of the project. Therefore, the survey questionnaire intended to collect information and the views of stakeholders on the following aspects:

- Potential gaps in the material scope of the RED and the existence of data substantiating such gaps, as well as the main reasons why an area is particularly affected;
- Main socio-economic impact(s) of racial or ethnic discrimination at individual and society levels in the areas not covered by the RED;

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- Potential gaps or shortcomings in the protection mechanisms established by the RED and what is needed to enhance the protection mechanism against racial and ethnic discrimination;
- Good practices that would enhance the prevention of and protection against potential racial or ethnic discrimination;
- Measures necessary to address any gaps in protection against racial or ethnic discrimination.

The final questionnaire for the targeted online survey, including closed and open questions, was approved by the Commission on 2 February 2022.

The targeted online survey was launched on 3 February via EU Survey and closed on 8 March 2022.

The survey link was sent out to more than 40 European-level organisations/networks; and to around 360 national-level organisations, based on the stakeholder selection strategy described above under the sub-section '*Stakeholder mapping and selection for targeted consultation*'. Network organisations at EU- and national-levels were requested to disseminate the survey link further to their members, and, where applicable, to complete the survey themselves. Thus, in total the survey reached more stakeholders than the numbers presented above.

National NGOs and networks of minority communities were also informed about the OPC organised by the Commission and were recommended to complete the OPC and/or to disseminate it to their network/members in case they felt they did not have the expertise to participate in Milieu's online targeted survey.

The online targeted survey gathered a total of **68 responses across 26 different Member States and at EU-level**. In the table below, those Member States are listed in which the respondent organisations/experts are based. For EU-level organisations, the scope of their activities was considered and not the Member States where they are based. Otherwise, several stakeholders indicated that besides having experience with the topic of racial/ethnic discrimination in a certain Member State, they have experience also at EU-level. One organisation based in Portugal indicated having experience also in Spain. An EU-level organisation indicated that it has experience in all Member States, except for Poland.

Coordinated national-level responses (i.e., expressing the coordinated views of more than one stakeholders) were also submitted; for example, a Ministry from Belgium noted that they coordinated the replies of the different competent services, including the replies of the Federal Police.

Table 1: Responses by Member State and EU level to the online survey

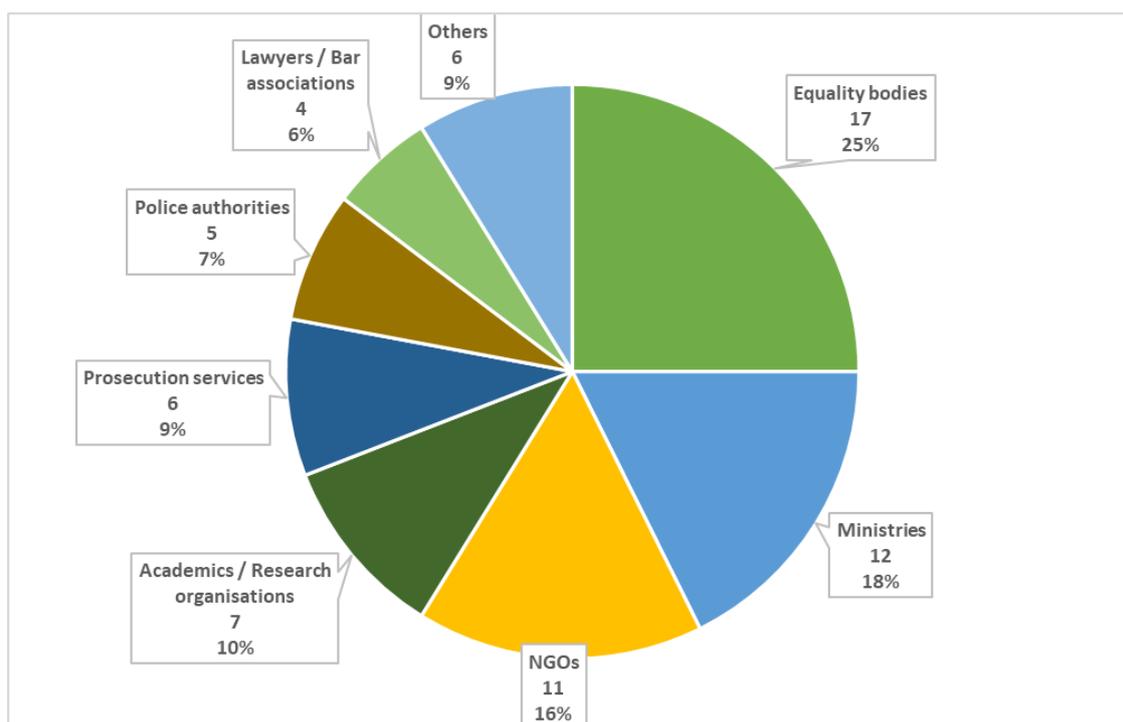
Member States	Number of responses
Austria	2
Belgium	2
Bulgaria	2
Croatia	1
Cyprus	2
Czechia	2

Member States	Number of responses
Denmark	0 ¹³⁵⁸
Estonia	2
Finland	3
France	1
Germany	1
Greece	3
Hungary	6
Ireland	2
Italy	3
Latvia	5
Lithuania	2
Luxembourg	2
Malta	1
Netherlands	1
Poland	2
Portugal	5
Romania	5
Slovakia	2
Slovenia	2
Spain	1
Sweden	4
EU level	4
Total	68

The largest group of respondents were representatives of equality bodies (17 in total, 25 %), followed by ministries, including ministries of justice, interior, social affairs, etc. (12 in total, 18 %), and NGOs, including NGOs active in the field of anti-discrimination and organisations representing minority communities (11 in total, 16%). Seven respondents were academic experts or representatives of research organisation (10 %), six were from prosecution services (9 %), five from police authorities (7 %), and four were lawyers/representatives of bar associations (6 %) (see Figure 2 below). In addition, there were other stakeholders which could not be included in any of the stakeholder types above. For the purpose of the survey analysis, these were merged together under 'Others', consisting of: one employers' organisation; a European network of public institutions fighting discrimination at national level; one independent policing authority; one national human rights institution; one state agency for refugees; and one trade union.

¹³⁵⁸ No responses have been received via the online survey from Denmark. After the closure of the survey, the Danish Equality body informed Milieu that, due to communication errors, they received the survey request late. As a mitigation measure, Milieu invited the Equality body to participate in an interview. The interview could not take place at the end, due to the workload of the Equality body.

Figure 2: Stakeholder types (N=68, respondents to online survey)



Semi-structured interviews

An **interview questionnaire** and instructions for national experts for conducting the national/local interviews was prepared by Milieu. The interview questionnaire template aimed at gathering information and views of the stakeholders about racial or ethnic discrimination occurring on the ground in the areas not covered by the RED or domestic legislation (including its causes and consequences, scale and socio-economic impact, measures recommended to address discrimination in these areas, good and 'bad' practices); implementation challenges of domestic non-discrimination legislation; challenges associated with situations of multiple and/or intersectional discrimination; shortcomings of protection mechanisms established by the RED, but also other protection mechanisms or initiatives in the Member States that go beyond the mechanisms set out in the RED.

The final draft of the interview questionnaire template was approved by the Commission on 31 January 2022.

The **semi-structured interviews** targeted European- and national/local-level stakeholders with the aim of acquiring a better understanding of potential gaps in the legal protection against discrimination on grounds of racial or ethnic origin.

The European-level interviews were conducted by Milieu's Data Collection and Analysis Team, while the national and local level interviews by Milieu's national experts, on the basis of instructions provided by Milieu. The interviews started on 4 February. The initial interview phase ended on 17 March. However, upon request of the European Commission, the team agreed to reach out to some additional national/local-level stakeholders representing law enforcement¹³⁵⁹. Most of the additional interviews were carried out by

¹³⁵⁹ A limited number of interviews could be undertaken with police authorities in the initial interview period (4 February – 17 March). This issue was discussed with the Commission in the Interim meeting. To ensure that the views of law enforcement authorities are better represented in the information obtained

Study to support the preparation of an EU initiative to address possible gaps in the legal protection against discrimination on grounds of racial or ethnic origin

the end of March; however, some interviews were postponed due to unavailability of the stakeholders, the last such interview being held in mid-May.

82 interviews were held in total. The tables below provide an overview of the European- and national/local-level interviews, broken down per stakeholder types and Member States (where applicable).

European level interviews

Ten European level interviews were carried out with the following stakeholder types:

Table 2: Number of European level stakeholders interviewed per stakeholder type

Type of actor	No. of stakeholders interviewed
Representatives of EU Institutions	5
Representatives of EU bodies	1
Representatives of International organisations	1
Independent experts	1
EU-level NGOs	1
Research networks	1
Total	10

National- and local-level interviews

72 interviews with national- and local-level stakeholders were carried. Table 3 below presents the number of interviews carried out per Member States, while Table 4 per stakeholder types:

Table 3: Number of national stakeholders interviewed per Member State

Member State	No. of stakeholders interviewed
Austria	2
Belgium	4
Bulgaria	4
Croatia	2
Cyprus	3
Czech Republic	2
Denmark	2
Estonia	2
Finland	5
France	2
Germany	2

through interviews, the Commission recommended Milieu to carry out more interviews with police authorities. To facilitate the process and to ensure that the additional interviews would not extend the project implementation period too much, the Commission provided Milieu with specific contacts from certain Member States.

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Member State	No. of stakeholders interviewed
Greece	3
Hungary	3
Ireland	2
Italy	3
Latvia	2
Lithuania	2
Luxembourg	1
Malta	1
Netherlands	6
Poland	3
Portugal	3
Romania	2
Slovakia	2
Slovenia	3
Spain	3
Sweden	3
Total	72

Table 4: Number of national stakeholders interviewed per stakeholder types

Type of stakeholders	No of stakeholders interviewed
Equality bodies / Ombudsmen	8
Local administration of city/municipality with large ethnic minority population, including municipal anti-discrimination facilities	8
Organisations representing/working with local minority communities (Muslims, Roma, Jews, Black, African and Afro-descendants, migrants)	8
National NGO with specific expertise in racial/ethnic discrimination	8
Academics/research organisations active in the field of racial / ethnic discrimination	8
Police authority (national/local) or control organs of the police	8
Lawyers with specific expertise in racial / ethnic discrimination	6
Ministries (Justice / Equality / Family and Integration / Social Affairs) and National Roma Contact Points within ministries	6
NGOs active in the field of exclusion and poverty	4
NGOs with expertise in defence of minority rights or protection of refugees	3
Prosecution service (national/regional)	2

Type of stakeholders	No of stakeholders interviewed
Independent experts in anti-discrimination	2
Independent judicial body dealing with anti-discrimination	1
Total	72

Interview requests were also sent out to selected judges; these however all decided not to contribute to the project. The judges contacted informed that they had limited knowledge of the topic, or not enough cases to report from their practice.

Consultation workshop

The aim of the Consultation workshop was to gather stakeholders' views on the possible **gaps** in the protection against racial or ethnic discrimination, as offered by the RED, and possible **recommendations** on how these gaps could be addressed. A Background paper including a summary of the Study's conclusions and recommendations was sent to the participants in advance of the workshop. The workshop was organised online on 17 May 2022, via Microsoft Teams, and consisted of plenary sessions and break-out rooms. During the first plenary session, the study's objectives, scope, and methodology, as well as its conclusions were presented and discussed. This was followed by two break-out rooms where the study's recommendations were presented and discussed, and the workshop was closed with a second plenary session where the main points of the discussions held in the break-out rooms were summarised, and the participants could provide additional comments and inputs. During the sessions, a polling tool was used to ensure the stakeholders' active participation and to record their answers to the closed and open questions. In addition, the participants were invited after each polling question to provide oral/written feedback to support their views.

Representatives of 36 organisations were invited to the workshop, out of which 29 persons from 21 organisations confirmed their participation. Due to last minutes cancellations or some of the invitees' unavailability, 23 persons from 18 organisations attended the workshop (excluding representatives of DG JUST Unit D1 and Milieu). The table below provides an overview of the organisations and representatives per types of stakeholders/actors:

Table 5: Number of organisations and representatives taking part in the Consultation workshop, per stakeholder/actor types

Type of stakeholder/actor	No. of organisations	Number of representatives
Representatives of EU Institutions	2	2
Representatives of EU bodies	2	3
Representatives of International organisations	1	1
European networks/umbrella organisations ¹³⁶⁰	2	3
NGOs	5	7 ¹³⁶¹
Academics / research networks	3	4
National police authority	1	1

¹³⁶⁰ A European level trade union organisation representing national and European trade union (con)federations, and a European network of public institutions fighting discrimination at national level.

¹³⁶¹ Including a lawyer.

Type of stakeholder/actor	No. of organisations	Number of representatives
National prosecution authority	1	1
National ministry	1	1
Total	18	23

Participants/invitees also had the opportunity to send written contributions after the workshop. **Two written contributions** were received from stakeholders who could not attend the workshop.

Open Public Consultation (OPC)

The Commission launched the OPC via EU Survey¹³⁶² on 17 January 2022 and was open until 11 April 2022. The survey included both open and closed questions to allow respondents to provide personalised and detailed answers. The OPC gathered **231 responses** and **18 additional written contributions** (attached to OPC responses) from 45 different countries, including 20 EU Member States¹³⁶³. A large number of respondents were EU citizens (71%, 165 respondents), followed by non-governmental organisations NGOs (13%, 31 respondents), and non-EU citizens with (4%, 10 respondents). The rest of the respondents (12%) included public authorities, company/business organisations, academic/research organisations, consumer organisations, trade unions, and others. A potential, predominantly French campaign expressing rhetoric on anti-white racism was identified, representing a total of 69 responses (30% of the total), of which 64 respondents (93%) were EU citizens. This was taken into consideration when analysing the OPC results.

Challenges, limitations and mitigation measures during the data collection via stakeholder consultation

Two weeks after the launching of the **online survey**, the response rate was still very low. To overcome this challenge, Milieu sent reminders to the stakeholders contacted, and requested support from European networks to contact their members directly to encourage a response and to underline the importance of the study. This resulted in an increase of the response rate to a satisfactory number of 68 responses, allowing for the analysis of information and views of different stakeholders across Member States regarding potential gaps in the material scope of the RED and in the protection mechanisms established by this Directive. The survey received 68 responses in total but coordinated answers at Member States' level were also submitted. Furthermore, several stakeholders responded via email indicating a lack of or limited competence/experience, or lack of data due to domestic legislation constraints (e.g., data collection based on racial or ethnic origin not being possible) as a reason for not participating in the survey. The online survey gathered responses from all the Member States, except for Denmark. After the closure of the survey, the Danish Equality body contacted Milieu, saying that due to a communication error, they received the survey request late. As a mitigation measure, Milieu invited the Equality body to participate in an interview, which however did not take place at the end, due to the unavailability of the Danish Equality body's staff.

¹³⁶² The OPC survey was made available to the general public via the EU's 'Have your say' portal in all EU languages, at the following link: [Addressing possible gaps in the Racial Equality Directive \(europa.eu\)](https://european-council.europa.eu/media/en/press-operations/infographic-116396.attachments).

¹³⁶³ Within the EU-27, there were no contributions from Bulgaria, Cyprus, Estonia, Finland, Latvia, Lithuania, and Romania.

Due to the short timing of the project, the **interview phase** was set to have a duration of four weeks (until 28 February). While many national-level interviews could be carried out in this timeframe, others could be scheduled only in the period of between 1-17 March. The interviewees invoked health issues due to the Coronavirus pandemic or increased workload due to the Ukrainian refugee crisis or involvement in other projects/assignments. Furthermore, only a limited number of interviews could be carried out with police authorities. To ensure that the views of law enforcement authorities are better represented in the information obtained through interviews, Milieu carried out additional interviews with specific contact persons of police authorities recommended by the Commission or police authorities previously contacted by Milieu. Additional interviews were also carried out in Estonia and Germany (not with police representatives), where only one interview per country could be held in the initial interview period.

On the day of the **Consultation workshop**, several invitees cancelled their participation or did not attend the workshop. Out of those who attended the first plenary session, several also left before or during the break-out rooms due to conflicting obligations or technical reasons. This resulted in less participants attending the break-out rooms and the last plenary session, with mainly NGOs, academics, European networks or European/international institutions/bodies voicing their opinions. To mitigate this challenge and thus to ensure a better balance of views, Milieu sent a follow-up email, inviting stakeholders to submit their written contributions.

Analysis of the stakeholder consultations' results and their inclusion in the Study

The information collected via the different stakeholder consultations were processed via different tools (e.g., Excel, tables, charts/figures, Word descriptions). The questions of the online survey and the OPC were analysed and presented in separate documents (see Annexes II and III). Relevant results from these as well as from the semi-structured interviews and the workshop were included in the analyses prepared under Sections 2-5 in the Final Report. Where applicable, a comparison of the different stakeholder consultations' results was also included in the analyses (e.g., when stakeholders consulted via these tools/activities confirmed similar findings).

Annex V - Data on police stops

Figure 1: Stopped by police in the past 5 years (%)

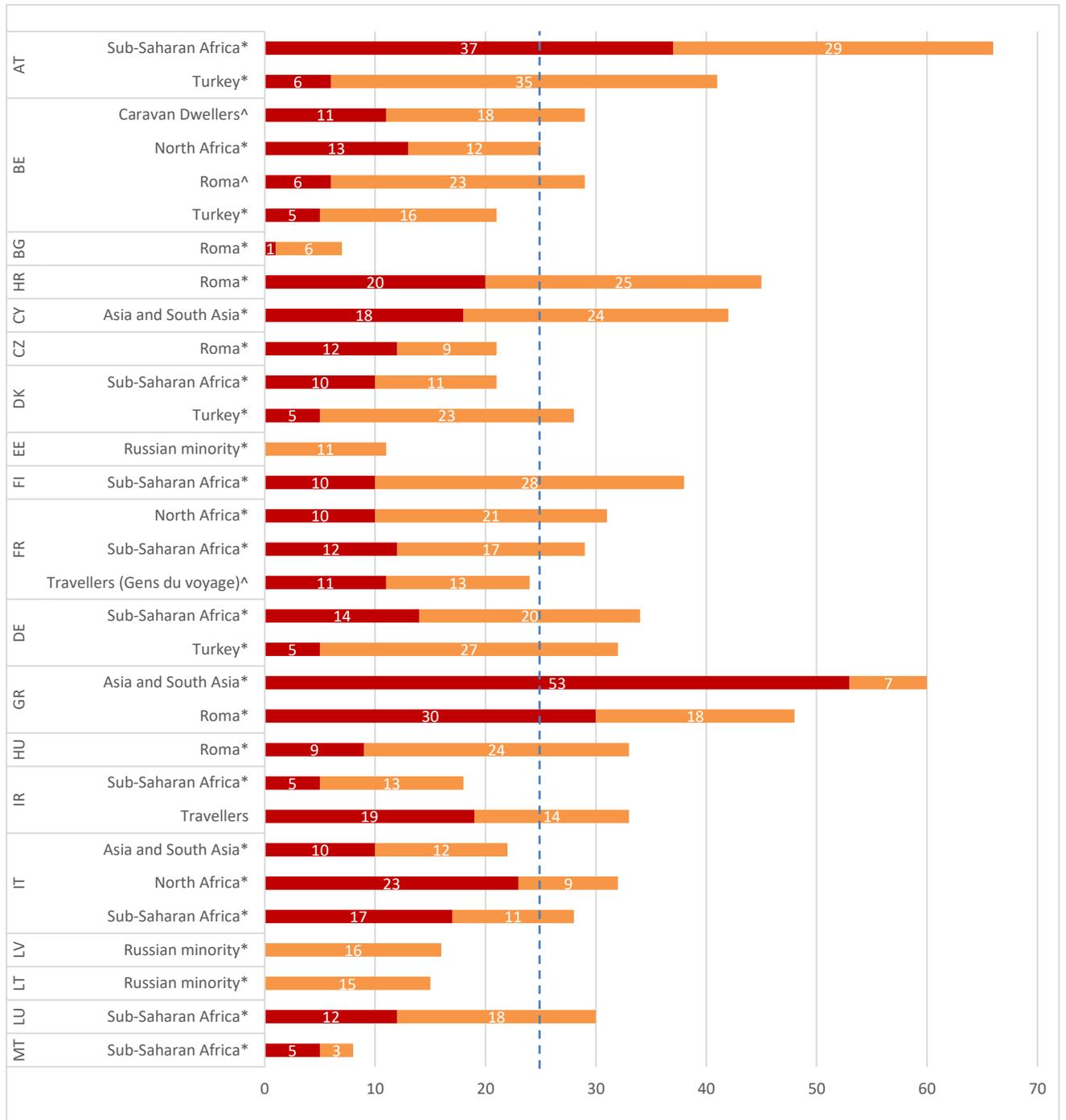
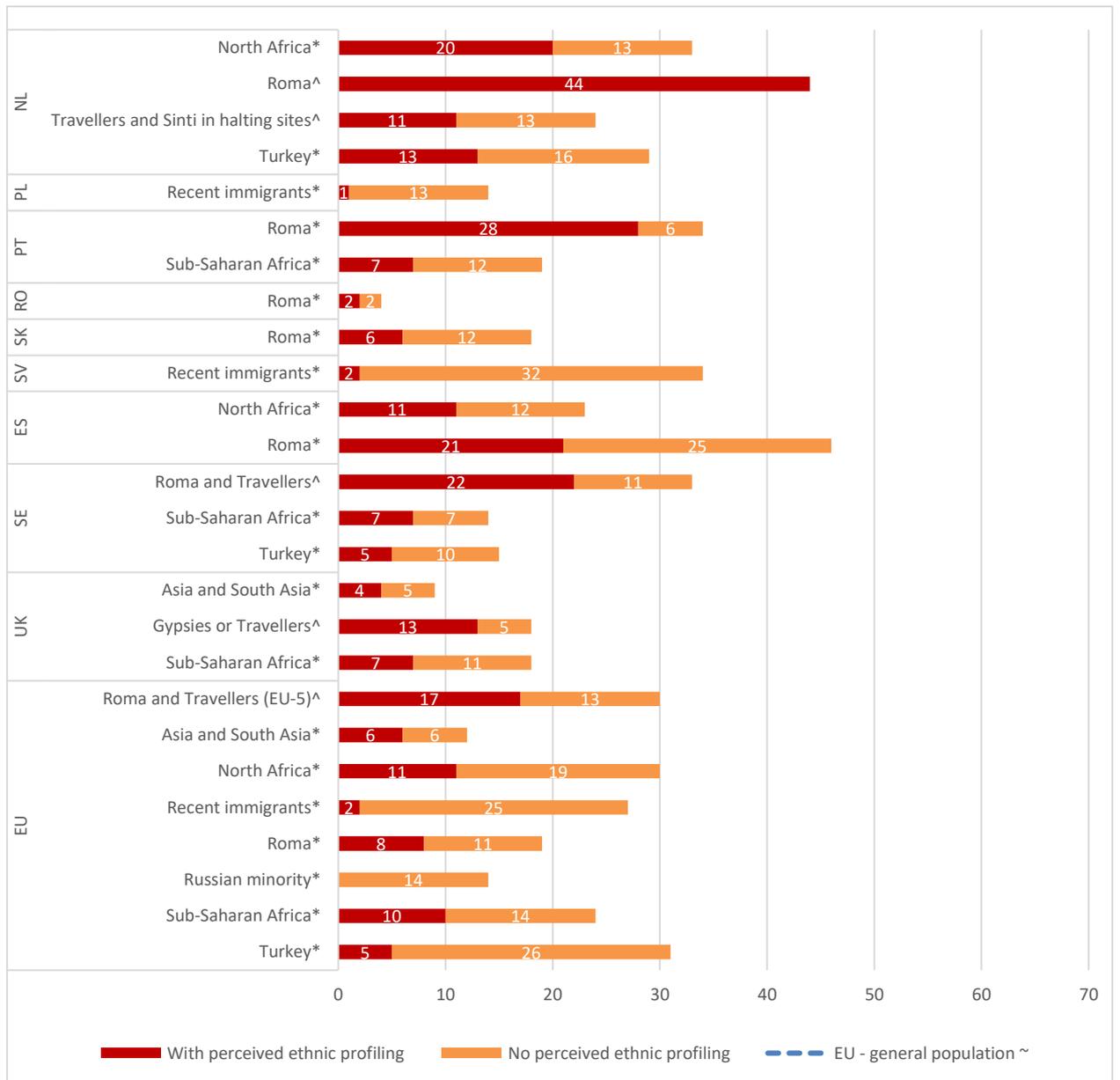


Figure 1: (continued)



ANNEX VI - EU instruments containing non-discrimination provisions

Non-discrimination and gender equality

- Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>
- Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078>
- Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32004L0113>
- Directive 2006/54/EC of the European Parliament and the Council of 5 July 2006 on the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast): <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0054>
- Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010L0041>
- Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31979L0007>
- Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation {SEC(2008) 2180} {SEC(2008) 2181}: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52008PC0426>
- Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOC_2021_093_R_0001

Free movement, visas and border management

- Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code): <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0399>
- Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), consolidated text: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A02009R0810-20200202>
- Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32011R0492>
- Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003L0109>
- Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0038>
- Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the

context of freedom of movement for workers: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32014L0054>

Passenger rights

- Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:055:0001:0012:EN:PDF>
- Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1107&from=EN>
- Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32010R1177>
- Regulation (EU) 2021/782 of the European Parliament and of the Council of 29 April 2021 on rail passengers' rights and obligations (recast): <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0782>

Procedural criminal law

- Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings: <https://eur-lex.europa.eu/eli/dir/2010/64/oj>
- Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012L0013>
- Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0048>
- Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0343>
- Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0800>
- Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L1919>
- Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013H1224\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013H1224(02)&from=EN)
- Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029>
- Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States:

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<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02002F0584-20090328>

- Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0041>

Hate speech and hate crime; incitement to hatred on grounds of race

- Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32008F0913>
- Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'): <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32000L0031>

Audiovisual media services

- Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive): <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32010L0013>

Data protection/right to privacy

- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation): <https://eur-lex.europa.eu/eli/reg/2016/679/oj>
- Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1552577087456&uri=CELEX:32018R1725>
- Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0817&from=EN>
- Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration and amending Regulations (EU) 2018/1726, (EU) 2018/1862 and (EU) 2019/816: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32019R0818>
- Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016L0680>
- Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime: <https://eur-lex.europa.eu/eli/dir/2016/681/oj>

Artificial intelligence

- Proposal for a Regulation laying down harmonised rules on artificial intelligence (Artificial Intelligence Act), and amending certain Union legislative acts, COM(2021) 206 final: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021PC0206&from=EN>

International protection

- Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast): <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095>
- Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32013L0032>
- Proposal for a Regulation on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, COM/2016/0466 final - 2016/0223 (COD): <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0466>

Company law

- Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (as amended by Directives 2014/95/EU, 2014/102/EU and (EU) 2021/2101), consolidated text: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013L0034-20211221>
- Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, COM/2021/189 final: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0189>
- Proposal for a Directive of the European Parliament and of the Council on corporate sustainability due diligence: https://ec.europa.eu/info/sites/default/files/1_1_183885_prop_dir_susta_en.pdf

Financial services

- Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0092>
- Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32015L2366>

Annex VII – EU Law Overview Table

The EU instruments listed in Annex VI were screened for shortlisting based on two selection criteria: (i) their direct or indirect relevance to racial or ethnic discrimination; and (ii) their relevance to areas falling outside the material scope of the RED as identified in Section 2 of the Task 1 Report. Those instruments satisfying both selection criteria were shortlisted and the relevant provisions are mapped out in the **EU Overview Table** below. The shortlisted instruments (Column I) are **grouped together by area** and the relevant provisions are reproduced in Column II. Column III further specifies the area of relevance and provides notes.

In order to determine **whether gaps in protection against potential racial or discrimination in areas outside the scope of the RED might be covered by other EU instruments**, the study focuses on legally binding measures that are in force. Nevertheless, proposed Regulations and Directives are also taken into account. Similarly, it is noted that sometimes references to non-discrimination were only identified in the Recitals of a Regulation or Directive – while these are not legally binding, they have an important interpretative value. Finally, the EU Overview Table also includes Recommendations (shaded in grey) – while these are not legally binding, they have political weight.

While some of the instruments (shaded in blue) contained in the EU Overview Table met the selection criteria in general terms, they were not included in the analysis under Sections 2.1 and 2.4 of the Final Report because they could not be directly linked to the specificities of the issues identified within the specific areas.

I. EU legislative instrument	II. Relevant provisions	III. Specificities of areas or relevance/ notes
A. Exercise of public authority by law enforcement and judicial authorities		
1 Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code): https://eur-lex.europa.eu/legal-	Article 2 – Definitions '10. 'border control' means the activity carried out at a border, in accordance with and for the purposes of this Regulation, in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration, consisting of border checks and border surveillance; 11. 'border checks' means the checks carried out at border crossing points, to ensure that persons, including their means of transport and the objects in their possession, may be authorised to enter the territory of the Member States or authorised to leave it; [...] 14. 'border guard' means any public official assigned, in accordance with national law, to a	Law enforcement - border checks Specific prohibition of racial or ethnic discrimination by border guards when carrying out border checks.

I. EU legislative instrument	II. Relevant provisions	III. Specificities of areas or relevance/ notes
<p>con- tent/EN/TXT/?uri=cele x%3A32016R0399</p>	<p>border crossing point or along the border or the immediate vicinity of that border who carries out, in accordance with this Regulation and national law, border control tasks;'</p> <p>Article 7 – Conduct of border checks</p> <p>'1. Border guards shall, in the performance of their duties, fully respect human dignity, in particular in cases involving vulnerable persons.</p> <p>Any measures taken in the performance of their duties shall be proportionate to the objectives pursued by such measures.</p> <p>2. While carrying out border checks, border guards shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.'</p>	
<p>2 Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime: https://eur-lex.europa.eu/eli/dir/2016/681/oj</p>	<p>Recital 15</p> <p>'A list of the PNR data to be obtained by a PIU should be drawn up with the objective of reflecting the legitimate requirements of public authorities to prevent, detect, investigate and prosecute terrorist offences or serious crime, thereby improving internal security within the Union as well as protecting the fundamental rights, in particular privacy and the protection of personal data. To that end, high standards should be applied in accordance with the Charter of Fundamental Rights of the European Union (the 'Charter'), the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data ('Convention No 108'), and the European Convention for the Protection of Human Rights and Fundamental Freedoms (the 'ECHR'). Such a list should not be based on a person's race or ethnic origin, religion or belief, political or any other opinion, trade union membership, health, sexual life or sexual orientation. The PNR data should only contain details of passengers' reservations and travel itineraries that enable competent authorities to identify air passengers representing a threat to internal security.'</p> <p>Recital 20</p> <p>'Taking fully into consideration the right to the protection of personal data and the right to non-discrimination, no decision that produces an adverse legal effect on a person or significantly affects that person should be taken only by reason of the automated processing of PNR data. Moreover, in respect of Articles 8 and 21 of the Charter, no such decision should discriminate on any grounds such as a person's sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or</p>	<p>Law enforcement – prevention, detection, investigation and prosecution of terrorist offences and serious crime – automated processing of PNR data</p> <p>Assessment of passengers prior to their arrival in or departure from a Member States against pre-determined criteria must be carried out in a non-discriminatory manner. The criteria must not be based on a person's race or ethnic origin (Article 6).</p> <p>Specific prohibition for competent authorities to take any decision that produces an adverse legal effect on a person or significantly affects a person only by reason of the automated processing of PNR data. Such</p>

I. EU legislative instrument	II. Relevant provisions	III. Specificities of areas or relevance/ notes
	<p>any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. The Commission should also take those principles into account when reviewing the application of this Directive.'</p> <p>Recital 36</p> <p>'This Directive respects the fundamental rights and the principles of the Charter, in particular the right to the protection of personal data, the right to privacy and the right to non-discrimination as protected by Articles 8, 7 and 21 thereof; it should therefore be implemented accordingly. This Directive is compatible with data protection principles and its provisions are in line with Framework Decision 2008/977/JHA. Furthermore, to comply with the proportionality principle, on specific issues this Directive provides for stricter rules on data protection than Framework Decision 2008/977/JHA.'</p> <p>Article 6(2)(a), (3) and (4) – Processing of PNR data</p> <p>'2. The PIU shall process PNR data only for the following purposes:</p> <p>(a) carrying out an assessment of passengers prior to their scheduled arrival in or departure from the Member State to identify persons who require further examination by the competent authorities referred to in Article 7, and, where relevant, by Europol in accordance with Article 10, in view of the fact that such persons may be involved in a terrorist offence or serious crime;'</p> <p>[...]</p> <p>3. When carrying out the assessment referred to in point (a) of paragraph 2, the PIU may:</p> <p>[...]</p> <p>(b) process PNR data against pre-determined criteria.</p> <p>4. Any assessment of passengers prior to their scheduled arrival in or departure from the Member State carried out under point (b) of paragraph 3 against pre-determined criteria shall be carried out in a non-discriminatory manner. Those pre-determined criteria must be targeted, proportionate and specific. Member States shall ensure that those criteria are set and regularly reviewed by the PIU in cooperation with the competent authorities referred to in Article 7. The criteria shall in no circumstances be based on a person's race or ethnic origin, political opinions, religion or philosophical beliefs,</p>	<p>decisions must not be taken on the basis of a person's race or ethnic origin (Article 7(6)).</p> <p>Specific requirement for Member States to prohibit processing of PNR data that reveal a person's race or ethnic origin. If such data is received by the PIU it must be deleted immediately (Article 13(4)).</p>

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	<p>trade union membership, health, sexual life or sexual orientation.'</p> <p>Article 7(6) – Competent authorities</p> <p>'The competent authorities shall not take any decision that produces an adverse legal effect on a person or significantly affects a person only by reason of the automated processing of PNR data. Such decisions shall not be taken on the basis of a person's race or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, health, sexual life or sexual orientation.'</p> <p>Article 13(4) – Protection of personal data</p> <p>'Member States shall prohibit the processing of PNR data revealing a person's race or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, health, sexual life or sexual orientation. In the event that PNR data revealing such information are received by the PIU, they shall be deleted immediately.'</p>	
<p>3</p> <p>Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data:</p>	<p>Recital 37</p> <p>'Personal data which are, by their nature, particularly sensitive in relation to fundamental rights and freedoms merit specific protection as the context of their processing could create significant risks to the fundamental rights and freedoms. Those personal data should include personal data revealing racial or ethnic origin, whereby the use of the term 'racial origin' in this Directive does not imply an acceptance by the Union of theories which attempt to determine the existence of separate human races. Such personal data should not be processed, unless processing is subject to appropriate safeguards for the rights and freedoms of the data subject laid down by law and is allowed in cases authorised by law; where not already authorised by such a law, the processing is necessary to protect the vital interests of the data subject or of another person; or the processing relates to data which are manifestly made public by the data subject. Appropriate safeguards for the rights and freedoms of the data subject could include the possibility to collect those data only in connection with other data on the natural person concerned, the possibility to secure the data collected adequately, stricter rules on the access of staff of the competent authority to the data and the prohibition of transmission of those data. The processing of such data should also be allowed by law where the data subject has explicitly agreed to the processing that is particularly intrusive to him or her. However, the consent of</p>	<p>Law enforcement - prevention, investigation and prosecution of criminal offences – profiling</p> <p>Specific prohibition of profiling that results in racial or ethnic discrimination on the basis of processing of personal data revealing racial or ethnic origin.</p> <p>Personal data revealing racial or ethnic origin qualify as sensitive data.</p>

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<p>https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=cele:x%3A32016L0680</p>	<p>the data subject should not provide in itself a legal ground for processing such sensitive personal data by competent authorities.'</p> <p>Recital 38</p> <p>'The data subject should have the right not to be subject to a decision evaluating personal aspects relating to him or her which is based solely on automated processing and which produces adverse legal effects concerning, or significantly affects, him or her. In any case, such processing should be subject to suitable safeguards, including the provision of specific information to the data subject and the right to obtain human intervention, in particular to express his or her point of view, to obtain an explanation of the decision reached after such assessment or to challenge the decision. Profiling that results in discrimination against natural persons on the basis of personal data which are by their nature particularly sensitive in relation to fundamental rights and freedoms should be prohibited under the conditions laid down in Articles 21 and 52 of the Charter.'</p> <p>Recital 51</p> <p>'The risk to the rights and freedoms of natural persons, of varying likelihood and severity, may result from data processing which could lead to physical, material or non-material damage, in particular: where the processing may give rise to discrimination, identity theft or fraud, financial loss, damage to the reputation, loss of confidentiality of data protected by professional secrecy, unauthorised reversal of pseudonymisation or any other significant economic or social disadvantage; where data subjects might be deprived of their rights and freedoms or from exercising control over their personal data; where personal data are processed which reveal racial or ethnic origin, political opinions, religion or philosophical beliefs or trade union membership; where genetic data or biometric data are processed in order to uniquely identify a person or where data concerning health or data concerning sex life and sexual orientation or criminal convictions and offences or related security measures are processed; where personal aspects are evaluated, in particular analysing and predicting aspects concerning performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, in order to create or use personal profiles; where personal data of vulnerable natural persons, in particular children, are processed; or where processing involves a large amount of personal data and affects a large number of data subjects.'</p> <p>Article 3 – Definitions</p>	

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	<p>‘(4) ‘profiling’ means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;’</p> <p>Article 10 – Special categories or personal data</p> <p>‘Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation shall be allowed only where strictly necessary, subject to appropriate safeguards for the rights and freedoms of the data subject, and only:</p> <p>(a) where authorised by Union or Member State law; (b) to protect the vital interests of the data subject or of another natural person; or (c) where such processing relates to data which are manifestly made public by the data subject.’</p> <p>Article 11 – Automated individual decision-making</p> <p>‘1. Member States shall provide for a decision based solely on automated processing, including profiling, which produces an adverse legal effect concerning the data subject or significantly affects him or her, to be prohibited unless authorised by Union or Member State law to which the controller is subject and which provides appropriate safeguards for the rights and freedoms of the data subject, at least the right to obtain human intervention on the part of the controller.</p> <p>2. Decisions referred to in paragraph 1 of this Article shall not be based on special categories of personal data referred to in Article 10, unless suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.</p> <p>3. Profiling that results in discrimination against natural persons on the basis of special categories of personal data referred to in Article 10 shall be prohibited, in accordance with Union law.’</p>	
4	Regulation (EU)	Recital 39
		Law enforcement - border

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<p>2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0817&from=EN</p>	<p>The MID [multiple-identity detector] should create and store links between data in the different EU information systems in order to detect multiple identities, with the dual purpose of facilitating identity checks for <i>bona fide</i> travellers and combating identity fraud. The MID should only contain links between data on individuals present in more than one EU information system. The linked data should be strictly limited to the data necessary to verify that a person is recorded in a justified or unjustified manner under different identities in different systems, or to clarify that two persons having similar identity data may not be the same person. Data processing through the ESP and the shared BMS in order to link individual files across different systems should be kept to an absolute minimum and therefore limited to multiple-identity detection, to be conducted at the time new data are added in one of the systems which has data stored in the CIR or added in SIS. The MID should include safeguards against potential discrimination and unfavourable decisions for persons with multiple lawful identities.</p> <p>Article 5 – Non-discrimination and fundamental rights</p> <p>Processing of personal data for the purposes of this Regulation shall not result in discrimination against persons on any grounds such as gender, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. It shall fully respect human dignity and integrity and fundamental rights, including the right to respect for one's private life and to the protection of personal data. Particular attention shall be paid to children, the elderly, persons with a disability and persons in need of international protection. The best interests of the child shall be a primary consideration.</p>	<p>checks; visa policy; prevention, detection, investigation and prosecution of terrorist offences and serious crime; safeguarding public security</p> <p>Specific prohibition of discrimination on several grounds including race, colour, ethnic or social origin when processing personal data for the purposes of the Regulation including border checks at external borders, the implementation of visa policy and the prevention, detection and investigation of terrorist offences and of other serious criminal offences (Article 5).</p>
<p>5 Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of</p>	<p>Recital 39</p> <p>The MID [multiple-identity detector] should create and store links between data in the different EU information systems in order to detect multiple identities, with the dual purpose of facilitating identity checks for <i>bona fide</i> travellers and combating identity fraud. The MID should only contain links between data on individuals present in more than one EU information system. The linked data should be strictly limited to the data necessary to verify that a person is recorded in a justified or unjustified manner under different identities in different systems, or to clarify that two persons having similar identity data may not be the same person. Data processing through the ESP and the shared BMS in order to link individual files</p>	<p>Law enforcement - border checks; visa policy; prevention, detection, investigation and prosecution of terrorist offences and serious crime; safeguarding public security</p> <p>Specific prohibition of discrimi-</p>

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	<p>across different systems should be kept to an absolute minimum and therefore limited to multiple-identity detection, to be conducted at the time new data are added in one of the systems which has data stored in the CIR or added in SIS. The MID should include safeguards against potential discrimination and unfavourable decisions for persons with multiple lawful identities.</p> <p>Article 5 – Non-discrimination and fundamental rights</p> <p>Processing of personal data for the purposes of this Regulation shall not result in discrimination against persons on any grounds such as gender, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. It shall fully respect human dignity and integrity and fundamental rights, including the right to respect for one's private life and to the protection of personal data. Particular attention shall be paid to children, the elderly, persons with a disability and persons in need of international protection. The best interests of the child shall be a primary consideration.</p>	<p>nation on several grounds including race, colour, ethnic or social origin when processing personal data for the purposes of the Regulation including border checks at external borders, the implementation of visa policy and the prevention, detection and investigation of terrorist offences and of other serious criminal offences (Article 5).</p>
<p>6 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02002F0584-20090328</p>	<p>Recital 12</p> <p>'This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.</p> <p>This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.'</p> <p>Article 2(2) – Scope of the European Arrest Warrant</p> <p>'The following offences, if they are punishable in the issuing Member State by a custodial</p>	<p>Law enforcement or judicial authorities (surrender under European arrest warrant)</p> <p>Recital 12 specifies that nothing in the Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the arrest warrant has been issued for the purpose of prosecuting or punishing a person on specific grounds including race, and ethnic origin.</p>

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	<p>sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:</p> <p>[...]</p> <p>- racism and xenophobia,</p> <p>[...]</p>	<p>Racism and xenophobia are listed as offences that give rise to surrender pursuant to a European arrest warrant (Article 2(2)).</p>
7	<p>Recital 39</p> <p>'This Directive respects the fundamental rights and observes the principles recognised by Article 6 of the TEU and in the Charter, notably Title VI thereof, by international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member States' constitutions in their respective fields of application. Nothing in this Directive may be interpreted as prohibiting refusal to execute an EIO when there are reasons to believe, on the basis of objective elements, that the EIO has been issued for the purpose of prosecuting or punishing a person on account of his or her sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions, or that the person's position may be prejudiced for any of these reasons.'</p>	<p>Law enforcement or judicial authorities (execution of European Investigation Order)</p> <p>Recital 39 specifies that nothing in the Directive may be interpreted as prohibiting refusal to execute an EIO when there are reasons to believe, on the basis of objective elements, that the EIO has been issued for the purpose of prosecuting or punishing a person on account of his or her racial or ethnic origin.</p>
8	<p>Recital 7</p> <p>'In this Framework Decision 'descent' should be understood as referring mainly to persons or groups of persons who descend from persons who could be identified by certain characteristics (such as race or colour), but not necessarily all of these characteristics still exist. In spite of that, because of their descent, such persons or groups of persons may be subject to hatred or violence.'</p> <p>Recital 9</p> <p>'Hatred' should be understood as referring to hatred based on race, colour, religion, descent or national or ethnic origin.</p>	<p>Law enforcement and other public authorities (where potential racial or ethnic discrimination could be intertwined with hate crime)</p> <p>Relevant to the extent that potential racial or ethnic discrimination could be intertwined with hate speech and hate crime.</p>

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<p>ropa.eu/legal-content/en/TXT/?uri=CELEX%3A32008F0913</p>	<p>Recital 10</p> <p>'This Framework Decision does not prevent a Member State from adopting provisions in national law which extend Article 1(1)(c) and (d) to crimes directed against a group of persons defined by other criteria than race, colour, religion, descent or national or ethnic origin, such as social status or political convictions.'</p> <p>Article 1 – Offences concerning racism and xenophobia</p> <p>1. Each Member State shall take the measures necessary to ensure that the following intentional conduct is punishable:</p> <p>(a) publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin;</p> <p>(b) the commission of an act referred to in point (a) by public dissemination or distribution of tracts, pictures or other material;</p> <p>(c) publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group;</p> <p>(d) publicly condoning, denying or grossly trivialising the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group.</p> <p>2. For the purpose of paragraph 1, Member States may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting.</p> <p>3. For the purpose of paragraph 1, the reference to religion is intended to cover, at least, conduct which is a pretext for directing acts against a group of persons or a member of such a group defined by reference to race, colour, descent, or national</p>	<p>Criminalisation of misconduct by public authorities where this amounts to hate crime or hate speech.</p> <p>Harmonises Member States' criminal provisions regarding racist or xenophobic hate speech and hate crime. Acts of misconduct and/or brutality by public authorities consisting of racist hate crime or hate speech are covered by EU law.</p>

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	<p>or ethnic origin.</p> <p>4. Any Member State may, on adoption of this Framework Decision or later, make a statement that it will make punishable the act of denying or grossly trivialising the crimes referred to in paragraph 1(c) and/or (d) only if the crimes referred to in these paragraphs have been established by a final decision of a national court of this Member State and/or an international court, or by a final decision of an international court only.'</p> <p>Article 2 – Instigation, aiding and abetting</p> <p>'1. Each Member State shall take the measures necessary to ensure that instigating the conduct referred to in Article 1(1)(c) and (d) is punishable.</p> <p>2. Each Member State shall take the measures necessary to ensure that aiding and abetting in the commission of the conduct referred to in Article 1 is punishable.'</p> <p>Article 4 – Racist and xenophobic motivation</p> <p>'For offences other than those referred to in Articles 1 and 2, Member States shall take the necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance, or, alternatively that such motivation may be taken into consideration by the courts in the determination of the penalties.'</p>	
B. Procedural rights		
<p>9 Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings: https://eur-lex.europa.eu/eli/dir/2010/64/oj</p>	<p>Article 8 – Non-regression</p> <p>'Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights of the European Union, other relevant provisions of international law or the law of any Member State which provides a higher level of protection.'</p>	<p>Procedural rights of suspects or accused persons (right to interpretation and translation)</p> <p>Does not contain specific references to non-discrimination or to racial or ethnic origin. Nevertheless, it provides safeguards to all suspects and accused persons and thus is relevant with respect to potential language/communication barriers faced by anyone in exercising procedural rights. Article 8</p>

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		<p>of the Directive on non-regression specifies that nothing in the Directive limits or derogates from any of the rights and procedural safeguards that are ensured under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the Charter of Fundamental Rights of the European Union (Charter), other relevant provisions of international law or the law of any Member State which provides a higher level of protection.</p>
<p>10 Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012L0013</p>	<p>Article 10 – Non-regression</p> <p>‘Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, other relevant provisions of international law or the law of any Member State which provides a higher level of protection.’</p>	<p>Procedural rights of suspects or accused persons (right to information)</p> <p>Does not contain specific references to non-discrimination or to racial or ethnic origin. Nevertheless, it provides safeguards to all suspects and accused persons. Article 10 of the Directive on non-regression specifies that nothing in the Directive limits or derogates from any of the rights and procedural safeguards that are ensured under the ECHR, the Charter, other relevant provisions of international law or the law of any Member State which</p>

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		provides a higher level of protection.
<p>11 Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celext%3A32013L0048</p>	<p>Article 14 – Non-regression</p> <p>‘Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law or the law of any Member State which provides a higher level of protection.’</p>	<p>Procedural rights of suspects or accused persons (right of access to a lawyer)</p> <p>Does not contain specific references to non-discrimination or to racial or ethnic origin. Nevertheless, it provides safeguards to all suspects and accused persons and thus is relevant with respect to the right of access to a lawyer generally. Article 14 of the Directive on non-regression specifies that nothing in the Directive limits or derogates from any of the rights and procedural safeguards that are ensured under the ECHR, the Charter, other relevant provisions of international law or the law of any Member State which provides a higher level of protection.</p>
<p>12 Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the</p>	<p>Article 14 – Non-regression</p> <p>‘Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law or the law of any Member State which provides a higher level of protection.’</p>	<p>Procedural rights of suspects or accused persons (presumption of innocence and right to be present at the trial)</p> <p>Does not contain specific references to non-discrimination or to racial or ethnic origin. Nevertheless, it provides safe-</p>

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<p>trial in criminal proceedings: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0343</p>		<p>guards to all suspects and accused persons and thus is relevant with respect to the presumption of innocence and the right to be present at the trial generally. Article 14 of the Directive on non-regression specifies that nothing in the Directive limits or derogates from any of the rights and procedural safeguards that are ensured under the ECHR, the Charter, other relevant provisions of international law or the law of any Member State which provides a higher level of protection.</p>
<p>13 Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0800</p>	<p>Recital 65 ‘Member States should respect and guarantee the rights set out in this Directive, without any discrimination based on any ground such as race, colour, sex, sexual orientation, language, religion, political or other opinion, nationality, ethnic or social origin, property, disability or birth.’</p> <p>Article 23 – Non-regression ‘Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law, in particular the UN Convention on the Rights of the Child, or the law of any Member State which provides a higher level of protection.’</p>	<p>Procedural rights of suspects or accused persons (children - (persons under 18 years of age; juvenile justice)</p> <p>Recital 65 states that Member States should respect and guarantee the Directive’s rights without any discrimination based on any ground including race, colour and ethnic or social origin.</p> <p>Article 23 of the Directive on non-regression specifies that nothing in the Directive limits or derogates from any of the rights and procedural safeguards that are ensured under</p>

I. EU legislative instrument	II. Relevant provisions	III. Specificities of areas or relevance/ notes
		<p>the ECHR, the Charter, the UN Convention on the Rights of the Child, other relevant provisions of international law or the law of any Member State which provides a higher level of protection.</p>
<p>14 Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L1919</p>	<p>Recital 29</p> <p>'This Directive should apply to suspects, accused persons and requested persons regardless of their legal status, citizenship or nationality. Member States should respect and guarantee the rights set out in this Directive, without any discrimination based on any ground such as race, colour, sex, sexual orientation, language, religion, political or other opinion, nationality, ethnic or social origin, property, disability or birth. This Directive upholds the fundamental rights and principles recognised by the Charter and by the ECHR, including the prohibition of torture and inhuman or degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, the integration of persons with disabilities, the right to an effective remedy and the right to a fair trial, the presumption of innocence, and the rights of the defence. This Directive should be implemented in accordance with those rights and principles.'</p> <p>Article 11 – Non-regression</p> <p>'Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law or the law of any Member State which provides a higher level of protection.'</p>	<p>Procedural rights of suspects or accused persons (right to legal aid – linked to right of access to a lawyer)</p> <p>Specific reference to prohibition of racial or ethnic discrimination in guaranteeing the right to legal aid to suspects, accused persons and requested persons.</p> <p>Recital 29 states that the Directive should apply to suspects, accused persons and requested persons regardless of their legal status, citizenship or nationality. Member States should respect and guarantee the rights set out in the Directive, without any discrimination based on any ground including race, colour, and ethnic or social origin.</p> <p>Article 11 of the Directive on non-regression specifies that nothing in the Directive limits or derogates from any of the</p>

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		rights and procedural safeguards that are ensured under the ECHR, the Charter, other relevant provisions of international law or the law of any Member State which provides a higher level of protection.
15 Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013H1224(02)&from=EN	Section 3, point 5 – Rights of vulnerable persons ‘Vulnerable persons should not be subject to any discrimination under national law in the exercise of the procedural rights referred to in this Recommendation.’	Procedural rights of suspects and accused persons (vulnerable persons (adults given that Directive (EU) 2016/800 was adopted with respect to children)) Recommendations are not legally binding.
16 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA: https://eur-lex.eu	Recital 9 ‘Crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin , genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health. In all contacts with a competent authority operating within the context of criminal proceedings, and any service coming into contact with victims, such as victim support or restorative justice services, the personal situation and immediate needs, age, gender, possible disability and maturity of victims of crime should be taken into account while fully respecting their physical, mental and moral integrity. Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate	Victims’ rights Recital 9 states that victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground including race, colour, ethnic or social origin. Specific requirement for victim support services, restorative justice services and any competent authority in criminal

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<p>ropa.eu/legal-content/EN/TXT/?uri=cele:x%3A32012L0029</p>	<p>support to facilitate their recovery and should be provided with sufficient access to justice.'</p> <p>Recital 56</p> <p>'Individual assessments should take into account the personal characteristics of the victim such as his or her age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender and previous experience of crime. They should also take into account the type or nature and the circumstances of the crime such as whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive, sexual violence, violence in a close relationship, whether the offender was in a position of control, whether the victim's residence is in a high crime or gang dominated area, or whether the victim's country of origin is not the Member State where the crime was committed.'</p> <p>Recital 61</p> <p>'Any officials involved in criminal proceedings who are likely to come into personal contact with victims should be able to access and receive appropriate initial and ongoing training, to a level appropriate to their contact with victims, so that they are able to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner. Persons who are likely to be involved in the individual assessment to identify victims' specific protection needs and to determine their need for special protection measures should receive specific training on how to carry out such an assessment. Member States should ensure such training for police services and court staff. Equally, training should be promoted for lawyers, prosecutors and judges and for practitioners who provide victim support or restorative justice services. This requirement should include training on the specific support services to which victims should be referred or specialist training where their work focuses on victims with specific needs and specific psychological training, as appropriate. Where relevant, such training should be gender sensitive. Member States' actions on training should be complemented by guidelines, recommendations and exchange of best practices in accordance with the Budapest roadmap.'</p> <p>Recital 63</p> <p>'In order to encourage and facilitate reporting of crimes and to allow victims to break the cycle of repeat victimisation, it is essential that reliable support services are available to victims and that competent authorities are prepared to respond to victims' reports in a respectful, sensitive, professional and non-discriminatory manner. This could increase victims'</p>	<p>proceedings to treat victims in a non-discriminatory manner (Article 1(1)). Treatment of victims in a non-discriminatory manner is also mentioned as part of the training of these bodies (Article 25(5)).</p> <p>Specific requirement for ethnicity and race to be taken into account when carrying out individual assessments of victims and to pay particular attention to victims who have suffered a crime committed with bias or discriminatory motive. Individual assessments serve to identify specific protection needs of victims (Article 22(3)).</p>

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	<p>confidence in the criminal justice systems of Member States and reduce the number of unreported crimes. Practitioners who are likely to receive complaints from victims with regard to criminal offences should be appropriately trained to facilitate reporting of crimes, and measures should be put in place to enable third-party reporting, including by civil society organisations. It should be possible to make use of communication technology, such as e-mail, video recordings or online electronic forms for making complaints.'</p> <p>Article 1(1) – Objectives</p> <p>'Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.'</p> <p>Article 22(3) - Individual assessment of victims to identify specific protection needs</p> <p>'In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organized crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.'</p> <p>Article 25(5) – Training of practitioners</p> <p>'In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training shall aim to enable the practitioner to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.'</p>		
c. Contacts with the public administration other than law enforcement and judicial authorities			
17	Regulation (EC) No 810/2009 of the	Article 39 – Conduct of staff	Exercise of public authority

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<p>European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), consolidated text: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=cele:x%3A02009R0810-20200202</p>	<p>‘1. Member States’ consulates shall ensure that applicants are received courteously.</p> <p>2. Consular and central authorities’ staff shall, in the performance of their duties, fully respect human dignity. Any measures taken shall be proportionate to the objectives pursued by such measures.</p> <p>3. While performing their tasks, consular and central authorities’ staff shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.’</p> <p>Annex X – List of minimum requirements to be included in the legal instrument in the case of cooperation with external service providers</p> <p>‘C. In relation to the performance of its activities, the external service provider shall, with regard to the conduct of staff:</p> <p>[...]</p> <p>(b) ensure that its staff in the performance of their duties:</p> <ul style="list-style-type: none"> - receive applicants courteously, - respect the human dignity and integrity of applicants, do not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, and - respect the rules of confidentiality; those rules shall also apply once members of staff have left their job or after suspension or termination of the legal instrument;’ 	<p>– consular and central authorities; staff of external service providers (visas)</p> <p>Specific prohibition of racial or ethnic discrimination by consular or central authorities when performing their duties (Article 39(3)).</p> <p>Specific prohibition of racial or ethnic discrimination by staff of external service providers when performing their duties (Annex XC(b)).</p> <p>This is relevant only to the extent that it is not already covered by ‘access to and supply of services available to the public’ under the RED.</p>
D. Tax matters		
<p>18 Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union: https://eur-lex.europa.eu/legal-</p>	<p>Recital 2</p> <p>‘Freedom of movement for workers should be secured within the Union. The attainment of this objective entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment, as well as the right of such workers to move freely within the Union in order to pursue activities as employed persons subject to any limitations justified on grounds of public policy, public security or public health.’</p> <p>Recital 5</p>	<p>Tax advantages (free movement of workers)</p> <p>Relevant where potential racial or ethnic discrimination can be linked to nationality; multiple/intersectional discrimination.</p> <p>Prohibition of discrimination on</p>

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<p>con- tent/en/ALL/?uri=cele x%3A32011R0492</p>	<p>‘Such right should be enjoyed without discrimination by permanent, seasonal and frontier workers and by those who pursue their activities for the purpose of providing services.’</p> <p>Recital 6</p> <p>‘The right of freedom of movement, in order that it may be exercised, by objective standards, in freedom and dignity, requires that equality of treatment be ensured in fact and in law in respect of all matters relating to the actual pursuit of activities as employed persons and to eligibility for housing, and also that obstacles to the mobility of workers be eliminated, in particular as regards the conditions for the integration of the worker’s family into the host country.’</p> <p>Recital 7</p> <p>‘The principle of non-discrimination between workers in the Union means that all nationals of Member States have the same priority as regards employment as is enjoyed by national workers.’</p> <p>Article 2</p> <p>‘Any national of a Member State and any employer pursuing an activity in the territory of a Member State may exchange their applications for and offers of employment, and may conclude and perform contracts of employment in accordance with the provisions in force laid down by law, regulation or administrative action, without any discrimination resulting therefrom.’</p> <p>Article 6(1)</p> <p>‘The engagement and recruitment of a national of one Member State for a post in another Member State shall not depend on medical, vocational or other criteria which are discriminatory on grounds of nationality by comparison with those applied to nationals of the other Member State who wish to pursue the same activity.’</p> <p>Article 7</p> <p>‘1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.’</p>	<p>the ground of nationality and right to equal treatment (Articles 2, 6, 7, 8).</p> <p>Specific requirement for non-national workers to enjoy same social and tax advantages as national workers (Article 7(2)). Note: social advantages are covered by the RED.</p> <p>The relevance of this Regulation is limited to where potential racial or ethnic discrimination intersects with nationality. To the extent that potential discrimination occurs within the sphere of employment, occupation, social protection or social advantages, the RED also applies. On the interpretation of ‘social advantages’, see row 19 below.</p>

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	<p>2. He shall enjoy the same social and tax advantages as national workers.</p> <p>3. He shall also, by virtue of the same right and under the same conditions as national workers, have access to training in vocational schools and retraining centres.</p> <p>4. Any clause of a collective or individual agreement or of any other collective regulation concerning eligibility for employment, remuneration and other conditions of work or dismissal shall be null and void in so far as it lays down or authorizes discriminatory conditions in respect of workers who are nationals of the other Member States.'</p> <p>Article 8</p> <p>'A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy equality of treatment as regards membership of trade unions and the exercise of rights attaching thereto, including the right to vote and to be eligible for the administration or management posts of a trade union. He may be excluded from taking part in the management of bodies governed by public law and from holding an office governed by public law. Furthermore, he shall have the right of eligibility for workers' representative bodies in the undertaking.</p> <p>The first paragraph of this Article shall not affect laws or regulations in certain Member States which grant more extensive rights to workers coming from the other Member States.'</p>	
<p>19 Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents: https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003L0109</p>	<p>Recital 5</p> <p>'Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.'</p> <p>Recital 12</p> <p>'In order to constitute a genuine instrument for the integration of long-term residents into society in which they live, long-term residents should enjoy equality of treatment with citizens of the Member State in a wide range of economic and social matters, under the relevant conditions defined by this Directive.'</p> <p>Article 11 – Equal treatment</p> <p>'1. Long-term residents shall enjoy equal treatment with nationals as regards:</p>	<p>Tax benefits (third-country nationals who are long-term residents)</p> <p>Recital 5 states that Member States should give effect to the provisions of the Directive without discrimination on the basis of several grounds including race, colour, ethnic or social origin.</p> <p>Specific requirement for equal treatment of long-term residents with nationals including</p>

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	<p>(a) access to employment and self-employed activity, provided such activities do not entail even occasional involvement in the exercise of public authority, and conditions of employment and working conditions, including conditions regarding dismissal and remuneration;</p> <p>(b) education and vocational training, including study grants in accordance with national law;</p> <p>(c) recognition of professional diplomas, certificates and other qualifications, in accordance with the relevant national procedures;</p> <p>(d) social security, social assistance and social protection as defined by national law;</p> <p>(e) tax benefits;</p> <p>(f) access to goods and services and the supply of goods and services made available to the public and to procedures for obtaining housing;</p> <p>(g) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;</p> <p>(h) free access to the entire territory of the Member State concerned, within the limits provided for by the national legislation for reasons of security.</p> <p>2. With respect to the provisions of paragraph 1, points (b), (d), (e), (f) and (g), the Member State concerned may restrict equal treatment to cases where the registered or usual place of residence of the long-term resident, or that of family members for whom he/she claims benefits, lies within the territory of the Member State concerned.</p> <p>3. Member States may restrict equal treatment with nationals in the following cases:</p> <p>(a) Member States may retain restrictions to access to employment or self-employed activities in cases where, in accordance with existing national or Community legislation, these activities are reserved to nationals, EU or EEA citizens;</p> <p>(b) Member States may require proof of appropriate language proficiency for access to education and training. Access to university may be subject to the fulfilment of specific educational prerequisites.</p>	<p>in relation to tax benefits (Article 11(1)(e)).</p> <p>Other relevant considerations:</p> <ul style="list-style-type: none"> - the RED does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned (Article 3(2) of the RED); - wide interpretation of 'social advantages' by the CJEU. In <i>Even</i>, 'social advantages' were held to be all those 'which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and the extension of which to workers who are nationals of other Member States therefore seems suitable to facilitate their mobility within the

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	<p>4. Member States may limit equal treatment in respect of social assistance and social protection to core benefits.</p> <p>5. Member States may decide to grant access to additional benefits in the areas referred to in paragraph 1.</p> <p>Member States may also decide to grant equal treatment with regard to areas not covered in paragraph 1.</p> <p>Article 21(1) – Treatment granted in the second Member State</p> <p>‘1. As soon as they have received the residence permit provided for by Article 19 in the second Member State, long-term residents shall in that Member State enjoy equal treatment in the areas and under the conditions referred to in Article 11.’</p>	<p>Community’ (Case 207/78, <i>Criminal Proceedings against Even</i> [1979] ECR 2019, 31 May 1979, para. 22). Reiterated in <i>Maritnez Sala</i> (Case C-85/96, 12 May 1998, para. 25).</p>	
E. Access to Member State territory			
20	<p>Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents: https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003L0109</p>	<p>[See row 19 above]</p> <p>Article 11 – Equal treatment</p> <p>‘1. Long-term residents shall enjoy equal treatment with nationals as regards:</p> <p>(h) free access to the entire territory of the Member State concerned, within the limits provided for by the national legislation for reasons of security.</p>	<p>Access to entire territory of host Member State (third-country nationals who are long-term residents)</p> <p>Recital 5 states that Member States should give effect to the provisions of the Directive without discrimination on the basis of several grounds including race, colour, ethnic or social origin.</p> <p>Specific requirement for equal treatment of long-term residents with nationals including in relation to free access to the entire territory of the host Member State (Article 11(1)(h)).</p> <p>See notes in row 19 above.</p>

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F. Health promotion and disease prevention measures		
21	<p>Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOC_2021_093_R_000_1</p> <p>Recital 3</p> <p>‘The European Pillar of Social Rights expresses principles and rights which aim to support and increase social fairness, irrespective of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Universal measures complemented by targeted measures to protect and support groups at high risk of discrimination or social exclusion such as those set out in this Recommendation are key for the implementation of the Social Pillar principles. Delivering on the Pillar is a shared political commitment and responsibility. It should be implemented both at Union and at Member State level in line with the respective competences, taking due account of different socio-economic environments and the diversity of national systems, including the role of the social partners, while fully respecting the principles of subsidiarity and proportionality.’</p> <p>Recital 9</p> <p>‘In its conclusions of 8 December 2016 on ‘Accelerating the Process of Roma Integration’ the Council called on the Commission to carry out a mid-term evaluation of the EU framework for national Roma integration strategies for 2020 (‘in-depth evaluation’) and to propose, on that basis, a post-2020 initiative. While the in-depth evaluation undertaken acknowledges the added value of the framework, it notes that Roma people in Europe continue to face discrimination and social and economic exclusion.’</p> <p>Recital 10</p> <p>‘The in-depth evaluation and the conclusions drawn from it by the Council, the European Parliament and several Europe-wide and national civil society organisations show the need for a renewed and stronger commitment to Roma equality and inclusion. That commitment should ensure a specific focus on non-discrimination, including by tackling antigypsyism – a specific form of racism against Roma people – and focusing on the four socioeconomic inclusion areas of education, employment, health and housing. It should also reflect the needs of specific groups and the diversity of the Roma population; involve Roma in the design, implementation, monitoring and evaluation of Roma equality and inclusion strategies; improve target setting, data collection, monitoring and reporting; and make mainstream policies more sensitive to Roma equality and inclusion. When designing measures, special attention should be paid to the gender perspective.’</p>	<p>Health promotion and disease prevention measures (Roma; COVID-19 pandemic)</p> <p>Relevant where potential racial or ethnic discrimination concerns Roma.</p> <p>The Recommendation enhances EU Member States’ commitment to effectively fight discrimination against Roma people and to promote their inclusion in the areas of education, employment, health and housing. The Recommendation contains horizontal measures that could be relevant in areas outside the scope of the RED, such as potential discrimination in disease prevention measures and access to housing beyond the scope of the RED.</p> <p>The Recommendation also provides for the involvement of the bodies for the promotion of equal treatment; mobilisation of local and regional stakeholders and cooperation with civil society.</p> <p>Point 24, stating that National Recovery and Resilience plans should take into account</p>

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	<p>Recital 12</p> <p>'Following the 'EU framework for national Roma integration strategies up to 2020', on 7 October 2020 the Commission adopted a package comprising the proposal for this Recommendation and the Communication 'A Union of Equality: EU Roma strategic framework for equality, inclusion and participation' ('the Communication of 7 October 2020'). The Communication of 7 October 2020 sets EU-level objectives and, where relevant, targets and minimum commitments for all Member States, possibly complemented by additional national efforts and Union support depending on the national context and size of the Roma population. Recent data show that six out of ten Europeans still believe that discrimination against Roma people is widespread in their country, while more than six out of ten Europeans agree that society could benefit if the Roma were integrated better. The overarching objective of this Recommendation is to help promote equality and combat the exclusion of Roma, with their active involvement.'</p> <p>Recital 13</p> <p>'During the COVID-19 pandemic, excluded and disadvantaged Roma communities have been exposed to severe negative health and socioeconomic impacts, which risks further aggravating existing inequalities and the risk of poverty and social exclusion. This Recommendation advocates reducing structural inequalities faced by Roma by tackling, where relevant, limited access by Roma to clean water, sanitary infrastructure and healthcare services, including vaccination services, and the lack of facilities and digital skills that would enable Roma to actively participate in society, including in distance education, as well as by eliminating the high levels of economic precariousness, overcrowded households, segregated settlements or camps.'</p> <p>Recital 14</p> <p>'In the context of rising populism and racism within the Union, there is a need to focus on combating and preventing discrimination, including by tackling antigypsyism, which is a root cause of and exacerbates discrimination and exclusion. The EU anti-racism action plan 2020-2025 of 18 September 2020 therefore sets out a range of concrete</p>	<p>and promote the rights of and equal opportunities for all and foster the inclusion of disadvantaged groups, including Roma and other people with a minority racial or ethnic background is specifically cited here given its relevance in relation to the COVID-19 pandemic.</p> <p>Key Recitals and points from the Recommendation are cited in this row. Additional measures set out in the Recommendation could be relevant for subsequent tasks, such as Task 2 on protection mechanisms and Task 3 on possible good practices and/or pitfalls.</p> <p>Recommendations are not legally binding</p>

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	<p>actions to combat racism. Antigypsyism is an unusually prevalent form of racism, which has its origins in how mainstream society views and treats those considered as 'gypsies' in a process of historical 'othering', which builds on stereotypes and negative attitudes that may sometimes be unintentional or unconscious.</p> <p>Since 2005, the European Parliament has been using the term antigypsyism in its reports and resolutions of 28 April 2005, 15 April 2015, 25 October 2017 and 12 February 2019. Several international and civil society organisations have recognised the phenomenon, also known as anti-Roma racism, romaphobia and antiziganism. In its conclusions of 8 December 2016, the Council acknowledged the need to 'fight all forms of racism against Roma, sometimes referred to as anti-Gypsyism, as it is a root cause of their social exclusion and discrimination'. On 8 October 2020, the International Holocaust Remembrance Alliance (IHRA) adopted a non-legally binding definition of antigypsyism/anti-Roma discrimination.'</p> <p>Horizontal objectives: equality, inclusion and participation, points 2 to 4</p> <p>Member States should consolidate efforts to adopt and implement measures to promote equality and effectively prevent and combat discrimination, antigypsyism, and social and economic exclusion, as well as their root causes. Those efforts should include measures such as the following:</p> <p>(a) measures to effectively fight direct and indirect discrimination, including by tackling harassment, antigypsyism, stereotyping, anti-Roma rhetoric, hate speech, hate crime and violence against Roma, including incitement thereto, both online and offline, in particular in the context of the transposition, implementation and enforcement of Directive 2000/43/EC, Framework Decision 2008/913/JHA and Directive 2010/13/EU of the European Parliament and of the Council;</p> <p>(b) measures to develop and promote a comprehensive system of support for victims, in line with Directive 2012/29/EU, and to deliver assistance to Roma victims of hate crimes and discrimination;</p> <p>(c) measures to fight multiple and structural discrimination against Roma and, in particular, against Roma women, young Roma, Roma children, LGBTI Roma, elderly Roma, Roma with disabilities, stateless Roma and EU mobile Roma;</p> <p>(d) measures to raise awareness of the fact that efforts to combat discriminatory practices are interwoven with efforts to tackle antigypsyism and social and economic exclusion, as part</p>	

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	<p>of a common drive to promote the broader objective of equality;</p> <p>(e) measures to analyse and acknowledge the existence of antigypsyism and discrimination against Roma and raise awareness of those phenomena, the forms they take and their harmful consequences, through the media, school curricula and by other means, and for example by raising awareness among civil servants and other stakeholders of the need to identify and tackle them;</p> <p>(f) measures to promote multi-cultural awareness-raising activities and campaigns in schools;</p> <p>(g) measures to promote awareness of Roma cultures, language and history, including the memory of the Roma Holocaust and reconciliation processes in society, <i>inter alia</i> through action providing relevant training for teachers and designing appropriate school curricula, since this awareness is vital for reducing prejudice and antigypsyism as important causes of discrimination;</p> <p>(h) measures to foster positive narratives about Roma and Roma role models, and a better understanding of the challenges that Roma face, including by means of support for inter-community encounters and inter-cultural learning.</p> <p>3. Member States should combat the extremely high at-risk-of-poverty rate and material and social deprivation among the Roma population, in order to provide effective support for Roma equality, inclusion and participation. Where relevant, Member States should pursue an integrated approach which focuses on all relevant policy fields. Those efforts could be attained by means of measures such as the following:</p> <p>(a) measures to ensure adequate investment in human capital, infrastructure development and housing, as well as social cohesion policies, and to improve the targeting of such investment;</p> <p>(b) measures to ensure access to adequate social protection schemes, including both income support and in kind benefits and service provision, for disadvantaged Roma;</p> <p>(c) measures to combine income support with activation measures to promote labour market participation and with employment support, particularly for Roma women and EU mobile Roma and to provide information on the existing legal eligibility requirements to take up benefits accompanied by activation and enabling services;</p> <p>(d) measures to ensure that particular attention is devoted to preventing and combating child poverty, including by taking effective national measures that take account of the mechanisms</p>	

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	<p>that perpetuate multigenerational poverty and the need to support Roma children and their families in the interrelated fields of employment, social services, education and early childhood education and care, health, housing and access to essential services, nutrition, and access to leisure activities;</p> <p>(e) measures to support financial literacy for young adults and families, including better decision-making and planning skills as part of empowerment and financial inclusion measures.</p> <p>4. Member States should, as appropriate, step up meaningful participation by and consultation of Roma people, including women, children, young people, elderly people, and persons with disabilities, in order to provide effective support for Roma equality and non-discrimination. This should include measures such as the following:</p> <p>(a) measures to support active citizenship by promoting social, economic, political, cultural and civic participation, particularly for Roma women and young people;</p> <p>(b) measures to promote capacity building and leadership in Roma civil society to enable Roma people to participate in all stages of the policy cycle and public life in general;</p> <p>(c) measures to promote employment of Roma in public and private institutions in order to support diversity and expertise within the policy process and in order to provide role models;</p> <p>(d) measures to raise awareness of human rights and citizens' rights and responsibilities among the members of disadvantaged Roma communities;</p> <p>(e) measures to coordinate resources, networks and expertise across sectors to increase the involvement of young Roma people in decision-making processes and help amplify their leadership.</p> <p>Sectoral objectives, health and access to quality healthcare and social services - point 9</p> <p>'Member States should ensure effective equal access without barriers to quality healthcare and social services, especially for those groups that are most at risk or those living in marginalised or remote localities, where relevant by means of measures such as the following:</p> <p>(a) measures to promote and facilitate equal access for:</p> <p>(i) Roma women to quality medical check-ups, screening, prenatal and postnatal care, counselling and family planning, as well as sexual and reproductive</p>	

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	<p>healthcare, as generally provided by national healthcare services;</p> <p>(ii) Roma women to support services for victims of gender-based violence;</p> <p>(iii) Roma children to quality primary health care, including primary prevention programmes, such as vaccination;</p> <p>(iv) vulnerable Roma populations, such as elderly Roma people, Roma with disabilities, LGBTI Roma, EU mobile Roma, Roma who are third country nationals, and stateless Roma, to quality health care;</p> <p>(b) measures to raise awareness among Roma people of primary prevention measures, such as programmes for promoting a healthy lifestyle and for the prevention of substance abuse, and to improve access to mental health services, where relevant, through health mediation;</p> <p>(c) measures to prevent and combat discrimination against Roma people through awareness-raising concerning non-discriminatory access to health services and healthcare provision, and by training health practitioners, medical students and health mediators in methods for recognising and tackling discrimination and its root causes, including antigypsyism and unconscious bias;</p> <p>(d) measures to fight digital exclusion of all Roma people in access to healthcare services by means including bridging the digital skills divide in access to health information;</p> <p>(e) measures to prevent and eliminate segregation in the area of healthcare services;</p> <p>(f) measures to ensure recognition of and reparation for past injustices in the area of healthcare, including the forced, coercive and otherwise involuntary sterilisation of Roma women;</p> <p>(g) measures to promote equal access to medical studies for Roma people and encourage recruitment of Roma as health practitioners and mediators, particularly in regions with a significant Roma population;</p> <p>(h) measures to combat and prevent potential outbreaks of diseases in marginalised or remote localities;</p> <p>(i) measures to ensure access for Roma to community and family-based services for people</p>	

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	<p>with disabilities, elderly people and children deprived of parental care, for example, development services, social housing, day centres for people with disabilities and networks of foster parents;</p> <p>(j) measures to prevent institutionalisation and promote a shift from institutional to community, family-based care, by providing support for families in precarious situations, for example, advisory services and financial incentives, food aid distribution, assisted housing and development services;</p> <p>(k) measures to promote the exchange and transfer of best practices related to public health for Roma people, for example by using the public health framework of the Commission and the Member States in the Steering Group on Health Promotion, Disease Prevention and Management of Non-Communicable Diseases;</p> <p>(l) measures to promote research on and the prevention of diseases that are more prevalent among persons at risk of poverty.'</p> <p>Partnerships and institutional capacity, funding – point 34</p> <p>'National Recovery and Resilience plans should take into account and promote the rights of and equal opportunities for all and foster the inclusion of disadvantaged groups, including Roma and other people with a minority racial or ethnic background.'</p>	
G. Access to housing, potentially beyond the scope of the RED		
<p>22 Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOC_2021_093_R_000_1</p>	<p>[See row 21 above]</p> <p>Recital 13</p> <p>'During the COVID-19 pandemic, excluded and disadvantaged Roma communities have been exposed to severe negative health and socioeconomic impacts, which risks further aggravating existing inequalities and the risk of poverty and social exclusion. This Recommendation advocates reducing structural inequalities faced by Roma by tackling, where relevant, limited access by Roma to clean water, sanitary infrastructure and healthcare services, including vaccination services, and the lack of facilities and digital skills that would enable Roma to actively participate in society, including in distance education, as well as by eliminating the high levels of economic precariousness, overcrowded households, segregated settlements or camps.'</p>	<p>Residential segregation; forced evictions (Roma; COVID-19 pandemic)</p> <p>Relevant where potential racial or ethnic discrimination concerns Roma.</p> <p>See notes in row 21 above.</p> <p>Recommendations are not legally binding</p>

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	<p>Sectoral objectives, access to adequate desegregated housing and essential services - point 10</p> <p>Member States should ensure equal treatment of Roma people in access to adequate desegregated housing and essential services, including by means of measures such as the following:</p> <p>(a) measures to ensure access to essential services – such as tap water, safe and clean drinking water, adequate sanitation, waste collection and management services, environmental services, electricity, gas, transport, financial services and digital communications – and physical infrastructure, by safeguarding continuity of basic utility services, both under normal conditions and during pandemics, ecological catastrophes and other crises;</p> <p>(b) measures to monitor, prevent and combat any spatial segregation and promote desegregation by drawing up concrete plans to tackle housing issues with the involvement of local communities and affected Roma communities;</p> <p>(c) measures to support and strengthen the public authorities generally responsible for housing, essential services and environmental standards, as well as other relevant actors in those fields, for example by providing them with the necessary mandate and resources to map housing needs, monitor segregation and implement comprehensive regulatory or support measures where necessary;</p> <p>(d) measures to prevent forced evictions by promoting early warning and mediation, to organise support for people at risk of eviction and, when necessary, to provide adequate alternative housing, focusing particularly on families;</p> <p>(e) measures to improve the living conditions of Roma people, to prevent and to tackle the negative health impact of exposure to pollution and contamination;</p> <p>(f) measures to provide social support and access to mainstream services for homeless Roma people;</p> <p>(g) measures to ensure equal access to housing assistance and to take into account the specific needs of individuals and families;</p> <p>(h) measures to support integrated housing schemes targeting marginalised Roma people through measures such as combining micro-loans for building and maintaining housing with financial literacy and saving schemes, construction trainings and activation</p>	

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	<p>measures;</p> <p>(i) measures to support the construction and maintenance of halting sites for Travellers.'</p>	
<p>23 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast): https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095</p>	<p>Recital 17</p> <p>'With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party, including in particular those that prohibit discrimination.'</p> <p>Recital 45</p> <p>'Especially to avoid social hardship, it is appropriate to provide beneficiaries of international protection with adequate social welfare and means of subsistence, without discrimination in the context of social assistance. With regard to social assistance, the modalities and detail of the provision of core benefits to beneficiaries of subsidiary protection status should be determined by national law. The possibility of limiting such assistance to core benefits is to be understood as covering at least minimum income support, assistance in the case of illness, or pregnancy, and parental assistance, in so far as those benefits are granted to nationals under national law.'</p> <p>Article 32 – Access to accommodation</p> <p>'1. Member States shall ensure that beneficiaries of international protection have access to accommodation under equivalent conditions as other third-country nationals legally resident in their territories.</p> <p>2. While allowing for national practice of dispersal of beneficiaries of international protection, Member States shall endeavour to implement policies aimed at preventing discrimination of beneficiaries of international protection and at ensuring equal opportunities regarding access to accommodation.'</p>	<p>Access to accommodation (equal opportunities for beneficiaries of international protection, of the status of refugee or subsidiary protection)</p> <p>The Directive harmonises the criteria for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, of the status of refugee or subsidiary protection and the content of the protection granted.</p> <p>Acts of persecution within the meaning of Article 1(A) of the Geneva Convention can, inter alia, take the form of legal, administrative, police, and/or judicial measures which are in themselves discriminatory, or which are implemented in a discriminatory manner; prosecution or punishment which is disproportionate or discriminatory; denial of judicial redress resulting in a disproportionate or discriminatory punishment (Article 9(2)).</p> <p>Member States are required to implement policies aimed at preventing discrimination of</p>

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		beneficiaries of international protection and at ensuring equal opportunities regarding access to accommodation (Article 32).
24	<p>Recital 11</p> <p>'This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (the Charter). In particular this Regulation seeks to ensure full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members and to promote the application of the Charter's Articles relating to human dignity, respect for private and family life, freedom of expression and information, right to education, freedom to choose an occupation and right to engage in work, freedom to conduct a business, right to asylum, non-discrimination, rights of the child, social security and social assistance, health care, and should therefore be implemented accordingly.'</p> <p>Recital 12</p> <p>'With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by obligations under instruments of international law to which they are party, including in particular those that prohibit discrimination.'</p> <p>Recital 50</p> <p>'Equal treatment should be provided for beneficiaries of international protection with nationals of the Member State granting protection as regards social security.'</p> <p>Recital 51</p> <p>'In addition, especially to avoid social hardship, it is appropriate to provide beneficiaries of international protection with social assistance without discrimination. However, as regards beneficiaries of subsidiary protection, Member States should be given some flexibility, to limit such rights to core benefits, which is to be understood as covering at least minimum income support, assistance in the case of illness, or pregnancy, and parental assistance, in so far as those benefits are granted to nationals under national law. In order to facilitate their integration, Member States should be given the possibility to make the access to certain type of social assistances specified in national law, for both refugees and beneficiaries</p>	<p>Access to accommodation (equal opportunities for beneficiaries of international protection, of the status of refugee or subsidiary protection)</p> <p>Acts of persecution within the meaning of Article 1(A) of the Geneva Convention can, inter alia, take the form of legal, administrative, police, and/or judicial measures which are in themselves discriminatory, or which are implemented in a discriminatory manner; prosecution or punishment which is disproportionate or discriminatory; denial of judicial redress resulting in a disproportionate or discriminatory punishment (Article 9(2)).</p> <p>Specific requirement for beneficiaries of international protection to have access to accommodation under the same conditions as other third-country nationals legally resident in the Member States; specific requirement for dispersal practices to be carried out without</p>

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	<p>of subsidiary protection, conditional on the effective participation of the beneficiary of international protection in integration measures.'</p> <p>Article 37 - Access to accommodation</p> <p>'1. Beneficiaries of international protection shall have access to accommodation under conditions equivalent to those applicable to other third-country nationals legally resident in the territories of the Member States who are in a comparable situation.</p> <p>2. National dispersal practices of beneficiaries of international protection shall be carried out to the extent possible without discrimination of beneficiaries of international protection and shall ensure equal opportunities regarding access to accommodation.'</p>	<p>discrimination and to ensure equal opportunities in access to accommodation (Article 37).</p>
H. Potentially all areas		
<p>25 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation): https://eur-lex.europa.eu/eli/req/2016/679/oj</p>	<p>Recital 51</p> <p>'Personal data which are, by their nature, particularly sensitive in relation to fundamental rights and freedoms merit specific protection as the context of their processing could create significant risks to the fundamental rights and freedoms. Those personal data should include personal data revealing racial or ethnic origin, whereby the use of the term 'racial origin' in this Regulation does not imply an acceptance by the Union of theories which attempt to determine the existence of separate human races. The processing of photographs should not systematically be considered to be processing of special categories of personal data as they are covered by the definition of biometric data only when processed through a specific technical means allowing the unique identification or authentication of a natural person. Such personal data should not be processed, unless processing is allowed in specific cases set out in this Regulation, taking into account that Member States law may lay down specific provisions on data protection in order to adapt the application of the rules of this Regulation for compliance with a legal obligation or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. In addition to the specific requirements for such processing, the general principles and other rules of this Regulation should apply, in particular as regards the conditions for lawful processing. Derogations from the general prohibition for processing such special categories of personal data should be explicitly provided, inter alia, where the data subject gives his or her explicit consent or in respect of specific needs in particular where the processing is carried out in the course of legitimate activities by cer-</p>	<p>Potentially all areas (with respect to profiling and automated decision-making)</p> <p>Lays down rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data.</p> <p>Personal data revealing racial or ethnic origin qualify as sensitive data.</p> <p>Specific prohibition on processing of personal data revealing racial or ethnic origin unless specific derogations apply (Article 9).</p> <p>Specific right for data subjects not to be subject to a decision based solely on automated processing, including profiling,</p>

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	<p>tain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms.’</p> <p>Recital 71</p> <p>‘The data subject should have the right not to be subject to a decision, which may include a measure, evaluating personal aspects relating to him or her which is based solely on automated processing and which produces legal effects concerning him or her or similarly significantly affects him or her, such as automatic refusal of an online credit application or e-recruiting practices without any human intervention. Such processing includes ‘profiling’ that consists of any form of automated processing of personal data evaluating the personal aspects relating to a natural person, in particular to analyse or predict aspects concerning the data subject's performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, where it produces legal effects concerning him or her or similarly significantly affects him or her. However, decision-making based on such processing, including profiling, should be allowed where expressly authorised by Union or Member State law to which the controller is subject, including for fraud and tax-evasion monitoring and prevention purposes conducted in accordance with the regulations, standards and recommendations of Union institutions or national oversight bodies and to ensure the security and reliability of a service provided by the controller, or necessary for the entering or performance of a contract between the data subject and a controller, or when the data subject has given his or her explicit consent. In any case, such processing should be subject to suitable safeguards, which should include specific information to the data subject and the right to obtain human intervention, to express his or her point of view, to obtain an explanation of the decision reached after such assessment and to challenge the decision. Such measure should not concern a child.</p> <p>In order to ensure fair and transparent processing in respect of the data subject, taking into account the specific circumstances and context in which the personal data are processed, the controller should use appropriate mathematical or statistical procedures for the profiling, implement technical and organisational measures appropriate to ensure, in particular, that factors which result in inaccuracies in personal data are corrected and the risk of errors is minimised, secure personal data in a manner that takes account of the potential risks involved for the interests and rights of the data subject and that prevents, inter alia, discriminatory effects on natural persons on the basis of racial or ethnic origin, political opinion, religion or beliefs, trade union membership, genetic or health status or sexual</p>	<p>which produces legal effects concerning him or her or similarly affects him or her. Certain derogations apply (Article 22).</p>

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	<p>orientation, or that result in measures having such an effect. Automated decision-making and profiling based on special categories of personal data should be allowed only under specific conditions.</p> <p>Recital 75</p> <p>'The risk to the rights and freedoms of natural persons, of varying likelihood and severity, may result from personal data processing which could lead to physical, material or non-material damage, in particular: where the processing may give rise to discrimination, identity theft or fraud, financial loss, damage to the reputation, loss of confidentiality of personal data protected by professional secrecy, unauthorised reversal of pseudonymisation, or any other significant economic or social disadvantage; where data subjects might be deprived of their rights and freedoms or prevented from exercising control over their personal data; where personal data are processed which reveal racial or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, and the processing of genetic data, data concerning health or data concerning sex life or criminal convictions and offences or related security measures; where personal aspects are evaluated, in particular analysing or predicting aspects concerning performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, in order to create or use personal profiles; where personal data of vulnerable natural persons, in particular of children, are processed; or where processing involves a large amount of personal data and affects a large number of data subjects.'</p> <p>Article 4 – Definitions</p> <p>'(4) 'profiling' means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;'</p> <p>Article 9 – Processing of special categories of personal data</p> <p>'1. Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.</p>	

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	<p>2. Paragraph 1 shall not apply if one of the following applies:</p> <p>(a) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject;</p> <p>(b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject;</p> <p>(c) processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;</p> <p>(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects;</p> <p>(e) processing relates to personal data which are manifestly made public by the data subject;</p> <p>(f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity;</p> <p>(g) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;</p> <p>(h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;</p> <p>(i) processing is necessary for reasons of public interest in the area of public health, such as</p>	

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	<p>protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy;</p> <p>(j) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.</p> <p>3. Personal data referred to in paragraph 1 may be processed for the purposes referred to in point (h) of paragraph 2 when those data are processed by or under the responsibility of a professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies or by another person also subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies.</p> <p>4. Member States may maintain or introduce further conditions, including limitations, with regard to the processing of genetic data, biometric data or data concerning health.'</p> <p>Article 22 – Automated individual decision-making, including profiling</p> <p>'1. The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.</p> <p>2. Paragraph 1 shall not apply if the decision:</p> <p>(a) is necessary for entering into, or performance of, a contract between the data subject and a data controller;</p> <p>(b) is authorised by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or</p> <p>(c) is based on the data subject's explicit consent.</p> <p>3. In the cases referred to in points (a) and (c) of paragraph 2, the data controller shall</p>	

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	<p>implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision.</p> <p>4. Decisions referred to in paragraph 2 shall not be based on special categories of personal data referred to in Article 9(1), unless point (a) or (g) of Article 9(2) applies and suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.'</p>	
<p>26 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1552577087456&uri=CELEX:32018R1725</p>	<p>Recital 29</p> <p>'Personal data which are, by their nature, particularly sensitive in relation to fundamental rights and freedoms merit specific protection, as the context of their processing could create significant risks to the fundamental rights and freedoms. Such personal data should not be processed unless the specific conditions set out in this Regulation are met. Those personal data should include personal data revealing racial or ethnic origin, whereby the use of the term 'racial origin' in this Regulation does not imply an acceptance by the Union of theories which attempt to determine the existence of separate human races. The processing of photographs should not systematically be considered to be processing of special categories of personal data as they are covered by the definition of biometric data only when processed through a specific technical means allowing the unique identification or authentication of a natural person. In addition to the specific requirements for processing of sensitive data, the general principles and other rules of this Regulation should apply, in particular as regards the conditions for lawful processing. Derogations from the general prohibition for processing such special categories of personal data should be explicitly provided, inter alia, where the data subject gives his or her explicit consent or in respect of specific needs, in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms.'</p> <p>Recital 43</p> <p>'The data subject should have the right not to be subject to a decision, which may include a measure, evaluating personal aspects relating to him or her which is based solely on automated processing and which produces legal effects concerning him or her or similarly significantly affects him or her, such as e-recruiting practices without any human intervention. Such processing includes 'profiling' that consists of any form</p>	<p>Potentially all areas (with respect to profiling and automated decision-making; applies to EU institutions, agencies and bodies)</p> <p>Lays down rules relating to the protection of natural persons with regard to the processing of personal data by the EU institutions and bodies and rules relating to the free movement of personal data between them or to recipients established in the EU.</p> <p>Personal data revealing racial or ethnic origin qualify as sensitive data.</p> <p>Specific prohibition on processing of personal data revealing racial or ethnic origin unless specific derogations apply (Article 10).</p> <p>Specific right for data subjects not to be subject to a decision</p>

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	<p>of automated processing of personal data evaluating the personal aspects relating to a natural person, in particular to analyse or predict aspects concerning the data subject's performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, where it produces legal effects concerning him or her or similarly significantly affects him or her.</p> <p>However, decision-making based on such processing, including profiling, should be allowed where expressly authorised by Union law. In any case, such processing should be subject to suitable safeguards, which should include specific information to the data subject and the right to obtain human intervention, to express his or her point of view, to obtain an explanation of the decision reached after such assessment and to challenge the decision. Such measure should not concern a child. In order to ensure fair and transparent processing in respect of the data subject, taking into account the specific circumstances and context in which the personal data are processed, the controller should use appropriate mathematical or statistical procedures for the profiling, implement technical and organisational measures appropriate to ensure, in particular, that factors which result in inaccuracies in personal data are corrected and the risk of errors is minimised, secure personal data in a manner that takes account of the potential risks involved for the interests and rights of the data subject and prevent, inter alia, discriminatory effects on natural persons on the basis of racial or ethnic origin, political opinion, religion or beliefs, trade union membership, genetic or health status or sexual orientation, or processing that results in measures having such an effect. Automated decision-making and profiling based on special categories of personal data should be allowed only under specific conditions.'</p> <p>Recital 46</p> <p>'The risk to the rights and freedoms of natural persons, of varying likelihood and severity, may result from personal data processing which could lead to physical, material or non-material damage, in particular: where the processing may give rise to discrimination, identity theft or fraud, financial loss, damage to the reputation, loss of confidentiality of personal data protected by professional secrecy, unauthorised reversal of pseudonymisation, or any other significant economic or social disadvantage; where data subjects might be deprived of their rights and freedoms or prevented from exercising control over their personal data; where personal data are processed which reveal racial or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, and the processing of genetic data, data concerning health or data concerning sex life or criminal convictions and offences or related security measures; where personal aspects are evaluated, in particular</p>	<p>based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly affects him or her. Certain derogations apply (Article 24).</p> <p>Processing of operational personal data revealing racial or ethnic origin, allowed only where strictly necessary for operational purposes, within the mandate of the Union body, of office or agency concerned and subject to appropriate safeguards for the rights and freedoms of the data subject. Discrimination against natural persons on the basis of such personal data is expressly prohibited (Article 76).</p> <p>Specific prohibition on decisions based solely on automated processing, including profiling, which produce adverse legal effects concerning data subjects or significantly affect them unless authorised by Union law to which the controller is subject and which provides appropriate safeguards for the rights and freedoms of the data subject, at least the right to obtain human intervention on the part of the controller (Article 77(1)). Such decisions must not be</p>

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	<p>analysing or predicting aspects concerning performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, in order to create or use personal profiles; where personal data of vulnerable natural persons, in particular of children, are processed; or where processing involves a large amount of personal data and affects a large number of data subjects.'</p> <p>Article 3 – Definitions</p> <p>'(2) 'operational personal data' means all personal data processed by Union bodies, offices or agencies when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three TFEU to meet the objectives and tasks laid down in the legal acts establishing those bodies, offices or agencies;</p> <p>[...]</p> <p>'(5) 'profiling' means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;'</p> <p>Article 10 – Processing of special categories of personal data</p> <p>'1. Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.</p> <p>2. Paragraph 1 shall not apply if one of the following applies:</p> <p>(a) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union law provides that the prohibition referred to in paragraph 1 may not be lifted by the data subject;</p> <p>(b) the processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law insofar as it is authorised by Union law providing for appropriate safeguards for the fundamental rights and the interests of the data subject;</p>	<p>based on the special categories of personal data referred to in Article 76 (including personal data revealing racial or ethnic origin) unless suitable measures to safeguard the data subject's rights, freedoms and legitimate interests are in place (Article 77(2)).</p> <p>Specific prohibition of profiling that results in discrimination against natural persons on the basis of special categories of personal data referred to in Article 76 (including data revealing racial or ethnic origin) in accordance with Union law (Article 77(3)).</p>

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	<p>(c) the processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving consent;</p> <p>(d) the processing is carried out in the course of its legitimate activities with appropriate safeguards by a non-profit-seeking body which constitutes an entity integrated in a Union institution or body and with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of this body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed outside that body without the consent of the data subjects;</p> <p>(e) the processing relates to personal data which are manifestly made public by the data subject;</p> <p>(f) the processing is necessary for the establishment, exercise or defence of legal claims or whenever the Court of Justice is acting in its judicial capacity;</p> <p>(g) the processing is necessary for reasons of substantial public interest, on the basis of Union law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;</p> <p>(h) the processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;</p> <p>(i) the processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of healthcare and of medicinal products or medical devices, on the basis of Union law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy; or</p> <p>(j) the processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes based on Union law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.</p>	

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	<p>3. Personal data referred to in paragraph 1 may be processed for the purposes referred to in point (h) of paragraph 2 when those data are processed by, or under the responsibility of, a professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies, or by another person also subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies.'</p> <p>Article 24 – Automated decision-making, including profiling</p> <p>'1. The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.</p> <p>2. Paragraph 1 shall not apply if the decision:</p> <p>(a) is necessary for entering into, or performance of, a contract between the data subject and the controller;</p> <p>(b) is authorised by Union law, which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or</p> <p>(c) is based on the data subject's explicit consent.</p> <p>3. In the cases referred to in points (a) and (c) of paragraph 2, the controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision.</p> <p>4. Decisions referred to in paragraph 2 of this Article shall not be based on special categories of personal data referred to in Article 10(1), unless point (a) or (g) of Article 10(2) applies and suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.'</p> <p>Article 76 – Processing of special categories of operational personal data</p> <p>'1. Processing of operational personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, operational personal data concerning health or concerning a natural person's sex life or sexual orientation shall be allowed only where strictly necessary for operational purposes,</p>	

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	<p>within the mandate of the Union body, office or agency concerned and subject to appropriate safeguards for the rights and freedoms of the data subject. Discrimination against natural persons on the basis of such personal data shall be prohibited.</p> <p>2. The data protection officer shall be informed without undue delay of recourse to this Article.'</p> <p>Article 77 – Automated individual decision-making, including profiling</p> <p>'1. A decision based solely on automated processing, including profiling, which produces an adverse legal effect concerning the data subject or significantly affects him or her shall be prohibited unless authorised by Union law to which the controller is subject and which provides appropriate safeguards for the rights and freedoms of the data subject, at least the right to obtain human intervention on the part of the controller.</p> <p>2. Decisions referred to in paragraph 1 of this Article shall not be based on the special categories of personal data referred to in Article 76 unless suitable measures to safeguard the data subject's rights, freedoms and legitimate interests are in place.</p> <p>3. Profiling that results in discrimination against natural persons on the basis of special categories of personal data referred to in Article 76 shall be prohibited, in accordance with Union law.'</p>	
27	<p>Proposal for a Regulation laying down harmonised rules on artificial intelligence (Artificial Intelligence Act), and amending certain Union legislative acts, COM(2021) 206 final: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021PC0206&from=EN</p> <p>Recital 13</p> <p>'In order to ensure a consistent and high level of protection of public interests as regards health, safety and fundamental rights, common normative standards for all high-risk AI systems should be established. Those standards should be consistent with the Charter of fundamental rights of the European Union (the Charter) and should be non-discriminatory and in line with the Union's international trade commitments.'</p> <p>Recital 15</p> <p>'Aside from the many beneficial uses of artificial intelligence, that technology can also be misused and provide novel and powerful tools for manipulative, exploitative and social control practices. Such practices are particularly harmful and should be prohibited because they contradict Union values of respect for human dignity, freedom, equality, democracy and the rule of law and Union fundamental rights, including the right to non-</p>	<p>Potentially all areas (where high-risk AI systems are used; some areas are already covered by the RED)</p> <p>Areas where high risk AI systems are used and not (fully) covered by RED, include: exercise of public authority by law enforcement or judicial authorities; migration, asylum and border control management.</p>

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	<p>discrimination, data protection and privacy and the rights of the child.’</p> <p>Recital 17</p> <p>‘AI systems providing social scoring of natural persons for general purpose by public authorities or on their behalf may lead to discriminatory outcomes and the exclusion of certain groups. They may violate the right to dignity and non-discrimination and the values of equality and justice. Such AI systems evaluate or classify the trustworthiness of natural persons based on their social behaviour in multiple contexts or known or predicted personal or personality characteristics. The social score obtained from such AI systems may lead to the detrimental or unfavourable treatment of natural persons or whole groups thereof in social contexts, which are unrelated to the context in which the data was originally generated or collected or to a detrimental treatment that is disproportionate or unjustified to the gravity of their social behaviour. Such AI systems should be therefore prohibited.’</p> <p>Recital 28</p> <p>‘AI systems could produce adverse outcomes to health and safety of persons, in particular when such systems operate as components of products. Consistently with the objectives of Union harmonisation legislation to facilitate the free movement of products in the internal market and to ensure that only safe and otherwise compliant products find their way into the market, it is important that the safety risks that may be generated by a product as a whole due to its digital components, including AI systems, are duly prevented and mitigated. For instance, increasingly autonomous robots, whether in the context of manufacturing or personal assistance and care should be able to safely operate and performs their functions in complex environments. Similarly, in the health sector where the stakes for life and health are particularly high, increasingly sophisticated diagnostics systems and systems supporting human decisions should be reliable and accurate. The extent of the adverse impact caused by the AI system on the fundamental rights protected by the Charter is of particular relevance when classifying an AI system as high-risk. Those rights include the right to human dignity, respect for private and family life, protection of personal data, freedom of expression and information, freedom of assembly and of association, and non-discrimination, consumer protection, workers’ rights, rights of persons with disabilities, right to an effective remedy and to a fair trial, right of defence and the presumption of innocence, right to good administration. In addition to those rights, it is important to highlight that children have specific rights as enshrined in Article 24 of the EU Charter and in the United Nations Convention on the Rights of the Child (further elaborated in the UNCRC General Comment No. 25 as regards the digital environment), both of which</p>	<p>Includes obligations for testing, risk management, documentation and human oversight throughout the AI systems’ lifecycle; proposes to subject high-risk AI systems to strict obligations. Those include AI technology used in: education, employment and vocational training, essential services, law enforcement, migration, asylum and border control management, administration of justice and democratic processes. The imposed obligations, once adopted, will contribute to minimizing the risk of algorithmic discrimination and protecting the right not to be discriminated against in accordance with EU law.</p> <p>The included obligations are also relevant for Task 2 on protection mechanisms.</p>

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	<p>require consideration of the children’s vulnerabilities and provision of such protection and care as necessary for their well-being. The fundamental right to a high level of environmental protection enshrined in the Charter and implemented in Union policies should also be considered when assessing the severity of the harm that an AI system can cause, including in relation to the health and safety of persons.’</p> <p>Recital 33</p> <p>‘Technical inaccuracies of AI systems intended for the remote biometric identification of natural persons can lead to biased results and entail discriminatory effects. This is particularly relevant when it comes to age, ethnicity, sex or disabilities. Therefore, ‘real-time’ and ‘post’ remote biometric identification systems should be classified as high-risk. In view of the risks that they pose, both types of remote biometric identification systems should be subject to specific requirements on logging capabilities and human oversight.’</p> <p>Recital 35</p> <p>‘AI systems used in education or vocational training, notably for determining access or assigning persons to educational and vocational training institutions or to evaluate persons on tests as part of or as a precondition for their education should be considered high-risk, since they may determine the educational and professional course of a person’s life and therefore affect their ability to secure their livelihood. When improperly designed and used, such systems may violate the right to education and training as well as the right not to be discriminated against and perpetuate historical patterns of discrimination.’</p> <p>Recital 36</p> <p>‘AI systems used in employment, workers management and access to self-employment, notably for the recruitment and selection of persons, for making decisions on promotion and termination and for task allocation, monitoring or evaluation of persons in work-related contractual relationships, should also be classified as high-risk, since those systems may appreciably impact future career prospects and livelihoods of these persons. Relevant work-related contractual relationships should involve employees and persons providing services through platforms as referred to in the Commission Work Programme 2021. Such persons should in principle not be considered users within the meaning of this Regulation. Throughout the recruitment process and in the evaluation, promotion, or retention of persons in</p>	

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	<p>work-related contractual relationships, such systems may perpetuate historical patterns of discrimination, for example against women, certain age groups, persons with disabilities, or persons of certain racial or ethnic origins or sexual orientation. AI systems used to monitor the performance and behaviour of these persons may also impact their rights to data protection and privacy.'</p> <p>Recital 37</p> <p>'Another area in which the use of AI systems deserves special consideration is the access to and enjoyment of certain essential private and public services and benefits necessary for people to fully participate in society or to improve one's standard of living. In particular, AI systems used to evaluate the credit score or creditworthiness of natural persons should be classified as high-risk AI systems, since they determine those persons' access to financial resources or essential services such as housing, electricity, and telecommunication services. AI systems used for this purpose may lead to discrimination of persons or groups and perpetuate historical patterns of discrimination, for example based on racial or ethnic origins, disabilities, age, sexual orientation, or create new forms of discriminatory impacts. Considering the very limited scale of the impact and the available alternatives on the market, it is appropriate to exempt AI systems for the purpose of creditworthiness assessment and credit scoring when put into service by small-scale providers for their own use. Natural persons applying for or receiving public assistance benefits and services from public authorities are typically dependent on those benefits and services and in a vulnerable position in relation to the responsible authorities. If AI systems are used for determining whether such benefits and services should be denied, reduced, revoked or reclaimed by authorities, they may have a significant impact on persons' livelihood and may infringe their fundamental rights, such as the right to social protection, non-discrimination, human dignity or an effective remedy. Those systems should therefore be classified as high-risk. Nonetheless, this Regulation should not hamper the development and use of innovative approaches in the public administration, which would stand to benefit from a wider use of compliant and safe AI systems, provided that those systems do not entail a high risk to legal and natural persons. Finally, AI systems used to dispatch or establish priority in the dispatching of emergency first response services should also be classified as high-risk since they make decisions in very critical situations for the life and health of persons and their property.'</p> <p>Recital 38</p> <p>'Actions by law enforcement authorities involving certain uses of AI systems are</p>	

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	<p>characterised by a significant degree of power imbalance and may lead to surveillance, arrest or deprivation of a natural person’s liberty as well as other adverse impacts on fundamental rights guaranteed in the Charter. In particular, if the AI system is not trained with high quality data, does not meet adequate requirements in terms of its accuracy or robustness, or is not properly designed and tested before being put on the market or otherwise put into service, it may single out people in a discriminatory or otherwise incorrect or unjust manner. Furthermore, the exercise of important procedural fundamental rights, such as the right to an effective remedy and to a fair trial as well as the right of defence and the presumption of innocence, could be hampered, in particular, where such AI systems are not sufficiently transparent, explainable and documented. It is therefore appropriate to classify as high-risk a number of AI systems intended to be used in the law enforcement context where accuracy, reliability and transparency is particularly important to avoid adverse impacts, retain public trust and ensure accountability and effective redress. In view of the nature of the activities in question and the risks relating thereto, those high-risk AI systems should include in particular AI systems intended to be used by law enforcement authorities for individual risk assessments, polygraphs and similar tools or to detect the emotional state of natural person, to detect ‘deep fakes’, for the evaluation of the reliability of evidence in criminal proceedings, for predicting the occurrence or reoccurrence of an actual or potential criminal offence based on profiling of natural persons, or assessing personality traits and characteristics or past criminal behaviour of natural persons or groups, for profiling in the course of detection, investigation or prosecution of criminal offences, as well as for crime analytics regarding natural persons. AI systems specifically intended to be used for administrative proceedings by tax and customs authorities should not be considered high-risk AI systems used by law enforcement authorities for the purposes of prevention, detection, investigation and prosecution of criminal offences.’</p> <p>Recital 39</p> <p>‘AI systems used in migration, asylum and border control management affect people who are often in particularly vulnerable position and who are dependent on the outcome of the actions of the competent public authorities. The accuracy, non-discriminatory nature and transparency of the AI systems used in those contexts are therefore particularly important to guarantee the respect of the fundamental rights of the affected persons, notably their rights to free movement, non-discrimination, protection of private life and personal data, international protection and good administration. It is therefore appropriate to classify as high-risk AI systems intended to be used</p>	

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	<p>by the competent public authorities charged with tasks in the fields of migration, asylum and border control management as polygraphs and similar tools or to detect the emotional state of a natural person; for assessing certain risks posed by natural persons entering the territory of a Member State or applying for visa or asylum; for verifying the authenticity of the relevant documents of natural persons; for assisting competent public authorities for the examination of applications for asylum, visa and residence permits and associated complaints with regard to the objective to establish the eligibility of the natural persons applying for a status. AI systems in the area of migration, asylum and border control management covered by this Regulation should comply with the relevant procedural requirements set by the Directive 2013/32/EU of the European Parliament and of the Council, the Regulation (EC) No 810/2009 of the European Parliament and of the Council and other relevant legislation.'</p> <p>Recital 44</p> <p>'High data quality is essential for the performance of many AI systems, especially when techniques involving the training of models are used, with a view to ensure that the high-risk AI system performs as intended and safely and it does not become the source of discrimination prohibited by Union law. High quality training, validation and testing data sets require the implementation of appropriate data governance and management practices. Training, validation and testing data sets should be sufficiently relevant, representative and free of errors and complete in view of the intended purpose of the system. They should also have the appropriate statistical properties, including as regards the persons or groups of persons on which the high-risk AI system is intended to be used. In particular, training, validation and testing data sets should take into account, to the extent required in the light of their intended purpose, the features, characteristics or elements that are particular to the specific geographical, behavioural or functional setting or context within which the AI system is intended to be used. In order to protect the right of others from the discrimination that might result from the bias in AI systems, the providers should be able to process also special categories of personal data, as a matter of substantial public interest, in order to ensure the bias monitoring, detection and correction in relation to high-risk AI systems.'</p> <p>Recital 45</p> <p>'For the development of high-risk AI systems, certain actors, such as providers, notified bodies and other relevant entities, such as digital innovation hubs, testing experimentation facilities and researchers, should be able to access and use high quality datasets within their</p>	

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	<p>respective fields of activities which are related to this Regulation. European common data spaces established by the Commission and the facilitation of data sharing between businesses and with government in the public interest will be instrumental to provide trustful, accountable and non-discriminatory access to high quality data for the training, validation and testing of AI systems. For example, in health, the European health data space will facilitate non-discriminatory access to health data and the training of artificial intelligence algorithms on those datasets, in a privacy-preserving, secure, timely, transparent and trustworthy manner, and with an appropriate institutional governance. Relevant competent authorities, including sectoral ones, providing or supporting the access to data may also support the provision of high-quality data for the training, validation and testing of AI systems.'</p> <p>Recital 47</p> <p>'To address the opacity that may make certain AI systems incomprehensible to or too complex for natural persons, a certain degree of transparency should be required for high-risk AI systems. Users should be able to interpret the system output and use it appropriately. High-risk AI systems should therefore be accompanied by relevant documentation and instructions of use and include concise and clear information, including in relation to possible risks to fundamental rights and discrimination, where appropriate.'</p> <p>Article 3 – Definitions</p> <p>'(35) 'biometric categorisation system' means an AI system for the purpose of assigning natural persons to specific categories, such as sex, age, hair colour, eye colour, tattoos, ethnic origin or sexual or political orientation, on the basis of their biometric data;'</p> <p>Article 6 – Classification rules for high-risk AI systems</p> <p>'1. Irrespective of whether an AI system is placed on the market or put into service independently from the products referred to in points (a) and (b), that AI system shall be considered high-risk where both of the following conditions are fulfilled:</p> <p>(a) the AI system is intended to be used as a safety component of a product, or is itself a product, covered by the Union harmonisation legislation listed in Annex II;</p> <p>(b) the product whose safety component is the AI system, or the AI system itself as a product, is required to undergo a third-party conformity assessment with a view to the placing on the market or putting into service of that product pursuant to the Union harmonisation legislation listed in Annex II.</p>	

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	<p>2. In addition to the high-risk AI systems referred to in paragraph 1, AI systems referred to in Annex III shall also be considered high risk.'</p> <p>Annex III – High-risk AI systems referred to in Article 6(2)</p> <p>'High-risk AI systems pursuant to Article 6(2) are the AI systems listed in any of the following areas:</p> <ol style="list-style-type: none"> 1. Biometric identification and categorisation of natural persons: <ol style="list-style-type: none"> (a) AI systems intended to be used for the 'real-time' and 'post' remote biometric identification of natural persons; 2. Management and operation of critical infrastructure: <ol style="list-style-type: none"> (a) AI systems intended to be used as safety components in the management and operation of road traffic and the supply of water, gas, heating and electricity. 3. Education and vocational training: <ol style="list-style-type: none"> (a) AI systems intended to be used for the purpose of determining access or assigning natural persons to educational and vocational training institutions; (b) AI systems intended to be used for the purpose of assessing students in educational and vocational training institutions and for assessing participants in tests commonly required for admission to educational institutions. 4. Employment, workers management and access to self-employment: <ol style="list-style-type: none"> (a) AI systems intended to be used for recruitment or selection of natural persons, notably for advertising vacancies, screening or filtering applications, evaluating candidates in the course of interviews or tests; (b) AI intended to be used for making decisions on promotion and termination of work-related contractual relationships, for task allocation and for monitoring and evaluating performance and behavior of persons in such relationships. 5. Access to and enjoyment of essential private services and public services and benefits: <ol style="list-style-type: none"> (a) AI systems intended to be used by public authorities or on behalf of public authorities to evaluate the eligibility of natural persons for public assistance benefits and services, as well 	

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	<p>as to grant, reduce, revoke, or reclaim such benefits and services;</p> <p>(b) AI systems intended to be used to evaluate the creditworthiness of natural persons or establish their credit score, with the exception of AI systems put into service by small scale providers for their own use;</p> <p>(c) AI systems intended to be used to dispatch, or to establish priority in the dispatching of emergency first response services, including by firefighters and medical aid.</p> <p>6. Law enforcement:</p> <p>(a) AI systems intended to be used by law enforcement authorities for making individual risk assessments of natural persons in order to assess the risk of a natural person for offending or reoffending or the risk for potential victims of criminal offences;</p> <p>(b) AI systems intended to be used by law enforcement authorities as polygraphs and similar tools or to detect the emotional state of a natural person;</p> <p>(c) AI systems intended to be used by law enforcement authorities to detect deep fakes as referred to in article 52(3);</p> <p>(d) AI systems intended to be used by law enforcement authorities for evaluation of the reliability of evidence in the course of investigation or prosecution of criminal offences;</p> <p>(e) AI systems intended to be used by law enforcement authorities for predicting the occurrence or reoccurrence of an actual or potential criminal offence based on profiling of natural persons as referred to in Article 3(4) of Directive (EU) 2016/680 or assessing personality traits and characteristics or past criminal behaviour of natural persons or groups;</p> <p>(f) AI systems intended to be used by law enforcement authorities for profiling of natural persons as referred to in Article 3(4) of Directive (EU) 2016/680 in the course of detection, investigation or prosecution of criminal offences;</p> <p>(g) AI systems intended to be used for crime analytics regarding natural persons, allowing law enforcement authorities to search complex related and unrelated large data sets available in different data sources or in different data formats in order to identify unknown patterns or discover hidden relationships in the data.</p> <p>7. Migration, asylum and border control management:</p>	

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	<p>(a) AI systems intended to be used by competent public authorities as polygraphs and similar tools or to detect the emotional state of a natural person;</p> <p>(b) AI systems intended to be used by competent public authorities to assess a risk, including a security risk, a risk of irregular immigration, or a health risk, posed by a natural person who intends to enter or has entered into the territory of a Member State;</p> <p>(c) AI systems intended to be used by competent public authorities for the verification of the authenticity of travel documents and supporting documentation of natural persons and detect non-authentic documents by checking their security features;</p> <p>(d) AI systems intended to assist competent public authorities for the examination of applications for asylum, visa and residence permits and associated complaints with regard to the eligibility of the natural persons applying for a status.</p> <p>8. Administration of justice and democratic processes:</p> <p>(a) AI systems intended to assist a judicial authority in researching and interpreting facts and the law and in applying the law to a concrete set of facts.'</p> <p>Annex IV – Technical Documentation referred to in Article 11(1)</p> <p>'The technical documentation referred to in Article 11(1) [the technical documentation of a high risk AI-systems must be drawn up before that system is placed on the market or put into service and must be kept up-to-date] shall contain at least the following information, as applicable to the relevant AI system:</p> <p>[...]</p> <p>2. A detailed description of the elements of the AI system and of the process for its development, including:</p> <p>[...]</p> <p>(g) the validation and testing procedures used, including information about the validation and testing data used and their main characteristics; metrics used to measure accuracy, robustness, cybersecurity and compliance with other relevant requirements set out in Title III, Chapter 2 as well as potentially discriminatory impacts; test logs and all test reports dated and signed by the responsible persons, including with regard to pre-determined changes as referred to under point (f).</p>	

I. EU legislative instrument	II. Relevant provisions	III. Specificities of areas or relevance/ notes
	<p>3. Detailed information about the monitoring, functioning and control of the AI system, in particular with regard to: its capabilities and limitations in performance, including the degrees of accuracy for specific persons or groups of persons on which the system is intended to be used and the overall expected level of accuracy in relation to its intended purpose; the foreseeable unintended outcomes and sources of risks to health and safety, fundamental rights and discrimination in view of the intended purpose of the AI system; the human oversight measures needed in accordance with Article 14, including the technical measures put in place to facilitate the interpretation of the outputs of AI systems by the users; specifications on input data, as appropriate;'</p>	
<p>29 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0038</p>	<p>Recital 20</p> <p>'In accordance with the prohibition of discrimination on grounds of nationality, all Union citizens and their family members residing in a Member State on the basis of this Directive should enjoy, in that Member State, equal treatment with nationals in areas covered by the Treaty, subject to such specific provisions as are expressly provided for in the Treaty and secondary law.'</p> <p>Recital 31</p> <p>'This Directive respects the fundamental rights and freedoms and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In accordance with the prohibition of discrimination contained in the Charter, Member States should implement this Directive without discrimination between the beneficiaries of this Directive on grounds such as sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinion, membership of an ethnic minority, property, birth, disability, age or sexual orientation'.</p> <p>Article 24 – Equal treatment</p> <p>'1. Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.</p> <p>2. By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where</p>	<p>Free movement and residence rights</p> <p>Recital 31 states that Member States should implement the Directive without discrimination between the beneficiaries on a number of grounds including race and ethnic or social origin.</p> <p>Prohibition of discrimination on grounds of nationality - specific requirement for equal treatment with nationals of the host Member State (Article 24).</p>

Study to support the preparation of an EU initiative to address possible gaps in the legal protection against discrimination on grounds of racial or ethnic origin

I. EU legislative instrument	II. Relevant provisions	III. Specificities of areas or relevance/ notes
	<p>appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.'</p>	

Annex VIII - Summary table of gaps in protection mechanisms

The Table below identifies any possible gaps in the protection mechanisms in the Racial Equality Directive, by comparing them with the possible protection mechanisms identified for this Study.

Identification of possible gaps in the protection mechanisms offered by the Racial Equality Directive

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
General mechanisms				
<ul style="list-style-type: none"> Adoption of national action plans 	<ul style="list-style-type: none"> EU Anti-Racism Action Plan 2020-2025 ECRI 5th report NL Information provided by national experts in AT, DE and FI 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> Not mentioned in the Racial Equality Directive. However, the Commission has adopted guiding principles in 2021 for the national action plans by Member States. Member States are invited to submit their own plans by 2022. EC will 	<ul style="list-style-type: none"> CLEAR GAP: adoption of national action plans not provided in RED. However, policy measures adopted by EC to incentivise adoption of national action plans. As not a legally binding requirement, follow-up on implementation will provide a first overview of progress made.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
			prepare a regular report on implementation (first report due in 2023).	
<ul style="list-style-type: none"> • Linking access to public funds and participation in public tenders to observance of equality standards 	<ul style="list-style-type: none"> • Information obtained from the Austrian Ministry of Justice via interview • ECCAR response to consultation • ECRI fifth report on Portugal 	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • Not mentioned in the RED, however, this seems to be partly covered by other EU law instruments such as Directive 2014/24 on public procurement and Directive 2014/25 on procurement by entities operating in the water, energy, transport 	<ul style="list-style-type: none"> • CLEAR GAP: conditioning access to public funds and participation to observance of equality standards is not provided in the RED. • The mentioned Directives contain non-discrimination provisions, however, only the equal and non-discriminatory treatment of tenderers is provided for in those instruments.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
			and postal services sectors which include anti-discrimination provisions.	
<ul style="list-style-type: none"> • Use of bodycams by the Police and requirement to show identification number 	<ul style="list-style-type: none"> • Information provided by national expert in FR • ECRI fifth report on France • Information obtained from a Belgian local administration 	<ul style="list-style-type: none"> • N/A 		<ul style="list-style-type: none"> • CLEAR GAP; no provision in the RED.
<ul style="list-style-type: none"> • Putting in place a specific monitoring for algorithmic systems 	<ul style="list-style-type: none"> • 2021 Algorithmic discrimination in Europe • ECRI study on artificial intelligence and algorithmic decision-making • 2022 EC Effectively enforcing the right to non-discrimination • Information provided by national expert in FI 	<ul style="list-style-type: none"> • N/A 		<ul style="list-style-type: none"> • CLEAR GAP: not provided for in the RED.
Protection mechanisms/measures ensuring a comprehensive, intersectional approach				
<ul style="list-style-type: none"> • Adoption of broad EU leg- 	<ul style="list-style-type: none"> • 2022 EC Effectively enforcing the right to non-discrimination 	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • The notion of intersectional discrimination has not been accepted by 	<ul style="list-style-type: none"> • CLEAR GAP: not provided for in the RED.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
<p>isolation covering different grounds</p>	<ul style="list-style-type: none"> • EC, Comparative analysis of non-discrimination law in Europe, 2017 • EC, A comparative analysis of non-discrimination law in Europe 2020 • EC, A comparative analysis of non-discrimination law in Europe 2021 • Information provided by national expert in FI • European Network of legal experts in gender equality and non-discrimination – Spain (2020), New Government and new comprehensive anti-discrimination Law, https://www.equalitylaw.eu/downloads/5065-spain-new-government-and-new-comprehensive-anti-discrimination-law-78-kb • Expanding the List of Protected Grounds within Anti-Discrimination Law in the EU, 2022 • Poverty as Misrecognition: What Role for Anti-discrimination Law in Europe?, 2020 		<p>the CJEU and may not be explicitly included in EU legislation.</p> <ul style="list-style-type: none"> • EU legislation is limited to the discrimination grounds listed in the Treaties. 	

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Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> ECCAR response to consultation 			
<ul style="list-style-type: none"> Multi-ground mandate national equality bodies (See below) 				
Specific protection mechanisms/measures to effectively and adequately implement the broad protections under the RED				
<i>Defense of rights</i>				
<ul style="list-style-type: none"> Alleviating the financial burden of proceedings 	<ul style="list-style-type: none"> 2021 EC Report on the application of the RED 2021 EU Legal experts report 'Beyond the RED' ECRI report on 10 years of combating racism in Europe 2022 EC Effectively enforcing the right to non-discrimination ECRI General Policy Recommendation n°7 Euractiv, Handbook on the Racial Equality Directive Information provided by national expert in BG, LU and RO 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> Alleviating the financial burden of proceedings can take different forms such as; the reduction of court fees for discrimination cases, the set up of funds providing victims of discrimination with advance coverage of legal costs, the absence of court fee in discrimination 	<ul style="list-style-type: none"> CLEAR GAP: alleviation of the financial burden is not provided for in the RED.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> • ECRI fifth report on Poland • Equinet, future of equality legislation in Europe • Equinet, Fighting Discrimination on the Ground of Race and Ethnic Origin • EC, How to present a discrimination claim: Handbook on seeking remedies under the EU Non-discrimination Directives • Information obtained from the Anti-discrimination bureau in Groningen via interview • Information obtained from the Human Rights Committee (Warsaw bar) via interview • Information obtained from a Slovenian legal expert via interview • Information obtained from the CERD via interview 		<p>cases, the provision of free legal aid for victims of discrimination...</p>	
<ul style="list-style-type: none"> • Reducing other barriers to access to Justice 	<ul style="list-style-type: none"> • Information provided by national expert in LU 	<ul style="list-style-type: none"> • Article 7 	<ul style="list-style-type: none"> • Directives can only set general objectives. 	<ul style="list-style-type: none"> • POTENTIAL GAP: the RED provides that Member States shall ensure that judicial or administrative procedures are available to all persons for the enforcement of obligations under the

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
<ul style="list-style-type: none"> e.g. translation, emergency procedures, time limits for bringing cases of discrimination, mediation... 	<ul style="list-style-type: none"> ECRI report on 10 years of combating racism in Europe ECRI General Policy Recommendation n°7 Information obtained from a lawyer in Bulgaria via interview ECCAR response to consultation 		<ul style="list-style-type: none"> Limited EU competence to act: procedural autonomy of MSs 	<p>Directive, however, there is no precision as to what this accessibility precisely entails.</p>
<ul style="list-style-type: none"> Introduction of specific equality tribunals with a broad mandate 	<ul style="list-style-type: none"> ECRI fifth report on Finland 	<ul style="list-style-type: none"> Article 7 	<ul style="list-style-type: none"> According to the national procedural autonomy, the EU may have limited competence on this issue. 	<ul style="list-style-type: none"> POTENTIAL GAP: The RED provides that Member States shall ensure that judicial or administrative procedures are available to all persons for the enforcement of obligations under the Directive, however, it does not establish equality tribunals nor determine the competences of such tribunals.
<ul style="list-style-type: none"> Enabling on-line reporting 	<ul style="list-style-type: none"> 2021 EC Report on the application of the RED Information provided by national experts in NL and FR 	<ul style="list-style-type: none"> Article 7 	<ul style="list-style-type: none"> Important to avoid parallel structures. Could be streamlined with the work by existing structures, such as 	<ul style="list-style-type: none"> CLEAR GAP: the RED provides that Member States shall ensure that judicial or administrative procedures are available to all persons for the enforcement of obligations under the Directive, however, enabling online report is not specifically provided for in the RED.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
			equality bodies.	
<ul style="list-style-type: none"> Improving accessibility of local authorities 	<ul style="list-style-type: none"> 2021 EC Report on the application of the RED ECRI General Policy Recommendation n°2 ECRI fifth report on the Netherlands Information obtained from the Antwerp Police via interview ECCAR response to consultation 	<ul style="list-style-type: none"> Article 7 		<ul style="list-style-type: none"> Not a gap in the strict sense but rather linked to the effectiveness of the implementation of the RED.
<ul style="list-style-type: none"> Having easily accessible dispute settlement bodies/extrajudicial proceedings 	<ul style="list-style-type: none"> 2021 EC Report on the application of the RED ECRI report on 10 years combating racism in Europe 2022 EC Effectively enforcing the right to non-discrimination ECRI statement June 2020 on racist police abuse, including racial profiling and systemic racism 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> The introduction of parallel structures to the competences of the equality bodies is not recommended. 	<ul style="list-style-type: none"> CLEAR GAP: the RED provides that Member States shall ensure that judicial or administrative procedures are available to all persons for the enforcement of obligations under the Directive, however, it does not provide for the introduction of extrajudicial proceedings or procedures by alternative dispute settlement bodies.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> • ECRI statement June 2020 on racist police abuse, including racial profiling and systemic racism • ECRI General Policy Recommendation n°7 • ECRI General Policy Recommendation n°2 • Information provided by national experts in BE, CY, PT, RO and SI • ECRI fifth report on Luxembourg • ECRI fourth report on Lithuania • Van Praet, S., Report on police selectivity, 2020. (BE) • Amnesty international, Police and Minority Groups – Short paper series no. 3 • ENAR, Policing radicalized groups • Information obtained from Amnesty International Slovenia via interview • Information obtained from the Vienna Forum for Democracy via interview 			

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> Information obtained from a lawyer from ICJ (Sweden) via interview Information obtained from a research institute (Belgium) via interview 			
<ul style="list-style-type: none"> Legal clinics 	<ul style="list-style-type: none"> 2021 EC Report on the application of the RED OHCHR 2018-2021 action plan 2022 EC Effectively enforcing the right to non-discrimination ECRI fifth report on Portugal Equinet, Fighting Discrimination on the Ground of Race and Ethnic Origin 	<ul style="list-style-type: none"> Article 7 	<ul style="list-style-type: none"> The introduction of parallel structures to the competences of the equality bodies is not recommended. 	<ul style="list-style-type: none"> CLEAR GAP: the RED provides that Member States shall ensure that judicial or administrative procedures are available to all persons for the enforcement of obligations under the Directive, however, it does not provide for the introduction of legal clinics giving legal advice and assistance to potential victims.
<ul style="list-style-type: none"> Legal standing for organisations other than equality bodies 	<ul style="list-style-type: none"> 2021 EC Report on the application of the RED 2021 EU legal experts report 'Beyond the RED' ECRI report on 10 years of combating racism in Europe 	<ul style="list-style-type: none"> Article 7 	<ul style="list-style-type: none"> Criteria for access to be set out in accordance with national law Requirement to have legitimate interest 	<ul style="list-style-type: none"> POTENTIAL GAP: The RED provides that Member States shall ensure that associations, organisations or other legal entities having a legitimate interest in ensuring that the provisions of the RED are complied with may engage in any judicial and/or admin-

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> • ECRI General Policy Recommendation n°7 • 2022 EC Effectively enforcing the right to non-discrimination • Information provided by national experts in DK, HU, IT, LU and RO • ECRI fifth report on Luxembourg • ECRI fifth report on Malta • ECRI fifth report on Poland • ECRI fifth report on Romania • ECRI fifth report on Croatia • Equinet, future of equality legislation in Europe • Equinet, assessing gaps in the Racial Equality Directive • Euractiv, handbook on the Racial Equality Directive • Open Society Foundation, the Racial Equality Directive, a shadow report 			<p>istrative procedure for the enforcement of the obligations under the RED.</p> <ul style="list-style-type: none"> • Although mechanisms of collective action, including actio popularis mechanisms, may be envisioned under the RED in order to allow 'defence of rights', they are not explicitly required • A narrow construction of "legitimate interest" would prevent ensuring access to all organisations acting on behalf of complainants in the Member States • Insufficient resources, independence and/or effectiveness of such organisations may put barriers to effective client litigation and strategic litigation cases on behalf or in support of complainant. • Effective, independent and sufficiently financed equality bodies could play a role in acting on behalf or in support of the complainant(s) and/or in strategic litigation

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> • Information obtained from the Human Rights Committee (Warsaw bar) via interview • Information obtained from the CERD via interview • Information obtained from the Commission via interview • Information obtained from Open Society Justice Initiative via interview • Information obtained from Street Lawyer Association (Hungary) via interview • Information obtained from the Irish Human Rights and Equality Commission via interview • ECCAR response to consultation 			
<ul style="list-style-type: none"> • Free admissibility of evidence including use of statistical data as evidence 	<ul style="list-style-type: none"> • 2022 EC Effectively enforcing the right to non-discrimination 	<ul style="list-style-type: none"> • Article 8 		<ul style="list-style-type: none"> • POTENTIAL GAP: the RED provides that the provision relating to the burden of proof does not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs. However, nothing is explicitly stated regarding

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
				<ul style="list-style-type: none"> which type of evidence shall be accepted before national courts in discrimination cases.
<ul style="list-style-type: none"> Ensure safe spaces where people can report discrimination 	<ul style="list-style-type: none"> Information obtained from the former anti-muslim hatred coordinator via interview EC Anti-racism action plan 2020-2025 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> The introduction of parallel structures to the competences of the equality bodies is not recommended. 	<ul style="list-style-type: none"> POTENTIAL GAP: the RED provides that Member States shall ensure that judicial or administrative procedures are available to all persons for the enforcement of obligations under the Directive.
Sanctions				
<ul style="list-style-type: none"> Compensation for material and immaterial damage 	<ul style="list-style-type: none"> Information provided by national expert in LT 	<ul style="list-style-type: none"> Article 15 		<ul style="list-style-type: none"> This is not a gap as the Case-law of the CJEU on effective judicial protection in equality law covers both material and immaterial damage.
<ul style="list-style-type: none"> Introducing wide range of sanctions e.g. refraining from action, publication of the wrongdoing, withdrawal of benefits, desegregation policies, 	<ul style="list-style-type: none"> 2021 EC Report on the application of the RED UN report on Promotion and protection of the human rights and fundamental freedoms of Africans 2022 EC Effectively enforcing the right to non-discrimination 	<ul style="list-style-type: none"> Article 15 	<ul style="list-style-type: none"> Directives have to set general objectives and cannot be too detailed. 	<ul style="list-style-type: none"> POTENTIAL GAP: the RED provides that Member States shall lay down effective, proportionate and dissuasive sanctions for infringement of the Directive's obligations. However, there is no further specification in the RED. Equality bodies could play a role by ensuring that the outcomes of their

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
<p>requirement of apology, criminal sanctions...</p>	<ul style="list-style-type: none"> • Open Society Foundation, the Racial Equality Directive, a shadow report • ECRI report on the Netherlands • Equinet, A perspective from the work of equality bodies • Equinet, assessing gaps in the Racial Equality Directive • Information obtained from the French equality body via interview • Information obtained from the Luxembourg Ministry of Family Affairs, Integration and the Greater Region via interview • Information obtained from the Human Rights Committee (Warsaw bar) via interview • Information obtained from Association Novo Dia (Portugal) via interview • ECCAR response to consultation 			<p>decisions (in case they have decision-making powers) include preventative and/or structural measures</p>
<p>Equality bodies</p>				

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
<ul style="list-style-type: none"> Broad mandate to allow equality bodies to better tackle multiple discrimination 	<ul style="list-style-type: none"> 2022 EC Effectively enforcing the right to non-discrimination ECRI fifth report on Finland ECRI fifth report on Italy European Network of legal experts in gender equality and non-discrimination (2018), Equality bodies making a difference, p. 7, Expanding the List of Protected Grounds within Anti-Discrimination Law in the EU, 2022 A comparative analysis of non-discrimination law in Europe 2020 	<ul style="list-style-type: none"> Article 13 	<ul style="list-style-type: none"> The 2018 Commission recommendation on standards for equality bodies recommends Member States to designate equality bodies to cover discrimination on the grounds of religion, disability, age or sexual orientation. An upcoming proposal on strengthening the position of equality bodies is to be adopted this year. 	<ul style="list-style-type: none"> POTENTIAL GAP: The RED provides that equal bodies shall be established for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. The RED specifies that these bodies may form part of agencies in charge of the defence of human rights or the safeguard of individuals' rights, however, there is no requirement for equality bodies to deal with multiple or intersectional discrimination. Some Member States have extended the mandate of their national equality bodies to cover multiple discrimination cases.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
<ul style="list-style-type: none"> Introduction of mediation procedures before equality bodies 	<ul style="list-style-type: none"> 2022 EC Effectively enforcing the right to non-discrimination 2021 EC Report on the application of the RED EC, How to present a discrimination claim: Handbook on seeking remedies under the EU Non-discrimination Directives UN (2021-2022), Campaign on addressing racism and promoting dignity for all, https://www.un.org/ombudsman/special-initiatives/dialogues-on-racism, last consulted 18 April 2022. 	<ul style="list-style-type: none"> Article 13 Criteria for access to be set out in accordance with national law Requirement to have legitimate interest 	<ul style="list-style-type: none"> The 2018 Commission recommendation on standards for equality bodies recommends Member States to take into consideration the fact that engaging in activities of mediation and conciliation is an aspect of providing independent assistance to victims An upcoming proposal on strengthening the position of equality bodies is to be adopted this year. 	<ul style="list-style-type: none"> POTENTIAL GAP: the RED provides that the competences of equality bodies include providing independent assistance to victims of discrimination in pursuing their complaints about discrimination. If interpreted broadly this could include playing a role as a mediator. Although mechanisms for mediation/conciliation may be envisioned under the RED in order to allow 'defence of rights', they are not explicitly required Equality bodies could play a role by being enabled to receive individual and collective complaints, by conducting mediation and/or conciliation, by litigating collective actio popularis cases, ...

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
<ul style="list-style-type: none"> • Providing locus standi for equality bodies 	<ul style="list-style-type: none"> • 2021 EC Report on the application of the RED • 2021 EU legal experts report 'Beyond the RED' • ECRI report on 10 years of combating racism in Europe • ECRI General Policy Recommendation n°7 • 2022 EC Effectively enforcing the right to non-discrimination • Information provided by national experts in DK, HU, IT, LU and RO • ECRI fifth report on Luxembourg • ECRI fifth report on Malta • ECRI fifth report on Poland • ECRI fifth report on Romania • ECRI fifth report on Croatia • Equinet, future of equality legislation in Europe 	<ul style="list-style-type: none"> • Article 13 	<ul style="list-style-type: none"> • The 2018 Commission recommendation on standards for equality bodies recommends Member States to take into consideration the fact that representing complainants in courts is an aspect of providing independent assistance to victims • An upcoming proposal on strengthening the position of equality bodies is to be adopted this year. 	<ul style="list-style-type: none"> • POTENTIAL GAP: the RED provides that the competences of equality bodies include providing independent assistance to victims of discrimination in pursuing their complaints about discrimination. This could include bringing cases before national courts.

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Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> • Equinet, assessing gaps in the Racial Equality Directive • Euractiv, handbook on the Racial Equality Directive • Open Society Foundation, the Racial Equality Directive, a shadow report • Information obtained from the Human Rights Committee (Warsaw bar) via interview • Information obtained from CERD via interview • Information obtained from Open Society Justice Initiative via interview • Information obtained from Street Lawyer Association (Hungary) via interview • Information obtained from the Irish Human Rights and Equality Commission via interview • ECCAR response to consultation 			

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
<ul style="list-style-type: none"> Establishing a specialised helpline 	<ul style="list-style-type: none"> Information provided by national expert in IT 	<ul style="list-style-type: none"> Article 13 	<ul style="list-style-type: none"> Directives set up general goals and shall not be too detailed. 	<ul style="list-style-type: none"> POTENTIAL GAP: the RED provides that the competences of equality bodies include providing independent assistance to victims of discrimination in pursuing their complaints about discrimination. This could include establishing a specialized helpline for victims of discrimination.
<ul style="list-style-type: none"> Introducing investigative powers for equality bodies including engagement in data collection 	<ul style="list-style-type: none"> 2022 EC Effectively enforcing the right to non-discrimination For an overview of the equality bodies in the EU countries which have an investigation competence: European network of legal experts in gender equality and non-discrimination (2018), Equality bodies making a difference, p. 71, https://ec.europa.eu/info/sites/info/files/equality_bodies_making_a_difference.pdf ECRI fifth report on Malta Information provided by national experts in HU and PT Information obtained from the French equality body via interview 	<ul style="list-style-type: none"> Article 13 	<ul style="list-style-type: none"> The 2018 Commission recommendation on standards for equality bodies highlights that Member States should make it possible for equality bodies to gather relevant evidence and information in accordance with national law. An upcoming proposal on strengthening the position of 	<ul style="list-style-type: none"> POTENTIAL GAP: the RED provides that the competences of equality bodies include providing independent assistance to victims of discrimination in pursuing their complaints about discrimination. This could include investigative powers.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> Information obtained from the Maltese equality body via interview Information obtained from the Hungarian minority ombudsman via interview ECCA response to consultation 		<p>equality bodies is to be adopted this year.</p>	
<ul style="list-style-type: none"> Introducing decision-making and sanctioning powers for equality bodies 	<ul style="list-style-type: none"> 2022 EC Effectively enforcing the right to non-discrimination ECRI report on 10 years of combating racism in Europe ECRI General Policy Recommendation n°2 ECRI fifth report on Luxembourg ECRI fifth report on Portugal Information provided by national expert in HU Information obtained from a Slovenian legal expert via interview Information obtained from the Antidiscrimination bureau of Groningen via interview 	<ul style="list-style-type: none"> Article 13 	<ul style="list-style-type: none"> The 2018 Commission recommendation on standards for equality bodies highlights that where equality bodies have the legal capacity to take binding decisions, Member States should also grant them the capacity to issue sanctions. Several Member States 	<ul style="list-style-type: none"> CLEAR GAP: the RED does not explicitly require Member States to grant decision-making and/or sanctioning powers to their equality bodies.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> Information obtained from the Maltese equality body via interview Information obtained from the Human Rights Committee (Warsaw bar) via interview ECCAR response to consultation 		<p>have introduced such powers for their equality body through national legislation</p> <ul style="list-style-type: none"> An upcoming proposal on strengthening the position of equality bodies is to be adopted this year. 	
<ul style="list-style-type: none"> Strengthening resources, competences, powers, independence of equality bodies 	<ul style="list-style-type: none"> UN report on Promotion and protection of the human rights and fundamental freedoms of Africans 2021 EU legal experts report 'Beyond the RED' ECRI report on 10 years of combating racism in Europe ECRI General Policy Recommendation n°7 Information provided by national experts in CZ, PR and RO 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> The 2018 Commission recommendation on standards for equality bodies highlights that Member State should ensure that each equality body is provided with the human, technical and fi- 	<ul style="list-style-type: none"> CLEAR GAP: the RED provides for the competences that Member States shall grant to equality bodies without precisising that they shall be granted sufficient resources to be able to carry on their activities.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> • ECRI fifth report on Luxembourg • ECRI fifth report on Malta • ECRI fifth report on Poland • ECRI fifth report on Portugal • ECRI fifth report on Romania • ECRI fifth report on Sweden • ECRI fifth report on Croatia • ECRI fifth report on Finland • ECRI fifth report on Italy • ECRI Sixth report on the Slovak Republic • Equinet, A perspective from the work of equality bodies • Equinet, assessing gaps in the Racial Equality Directive • Equinet, Fighting Discrimination on the Ground of Race and Ethnic Origin • FRA Report: Being Black in the EU, 2018 		<p>nancial resources, premises and infrastructure necessary to perform its tasks and exercise its powers effectively.</p>	

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> • FRA Report: Equality in the EU 20 years on from the initial implementation of the equality directives • Information obtained from the Ministry of family, affairs, integration and the greater region via interview • Information obtained from the Antidiscrimination bureau in Tumba via interview • Information obtained from the Antidiscrimination bureau in Groningen via interview • Information obtained from the Antidiscrimination bureau in Limburg via interview • Information obtained from an independent expert working for ECRI via interview • Information obtained from the Maltese equality body via interview • Information obtained from the Human Rights Committee (Warsaw bar) via interview 			

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> Information obtained from the Antidiscrimination bureau in Stockholm via interview Information obtained from the legal expert on Roma via interview Information obtained from the Finnish non-discrimination ombudsman via interview 			
<ul style="list-style-type: none"> Shift in the burden of proof before an equality body 	<ul style="list-style-type: none"> 2021 EC Report on the application of the RED ECRI report on 10 years of combating racism in Europe ECRI General Policy Recommendation n°7 Open Society Foundation, the Racial Equality Directive, a shadow report 2022 EC Effectively enforcing the right to non-discrimination ECRI fifth report on Poland ECRI fifth report on Portugal 	<ul style="list-style-type: none"> Article 8 		<ul style="list-style-type: none"> POTENTIAL GAP: the RED provides that Member States shall take necessary measure to ensure that it shall be for the respondent to prove that there has been no breach of equal treatment when discrimination cases are brought before a court or other competent authority. To that extent, in Member States where equality bodies are entitled to play a role of mediator or to pronounce sanctions, this provision of the RED could be interpreted as implying a shift in the burden of proof. CLEAR GAP: shift in the burden of proof in cases of indirect discrimination.

Study to support the preparation of an EU initiative to address possible gaps in the legal protection against discrimination on grounds of racial or ethnic origin

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> Equinet, assessing gaps in the Racial Equality Directive 			
Information and awareness raising				
Data collection				
<ul style="list-style-type: none"> Incentivising research aimed at identifying areas where racial/ethnic discrimination exists on the ground, including through mystery shopping 	<ul style="list-style-type: none"> 2021 EC Report on the application of the RED2022 EC Effectively enforcing the right to non-discrimination ECRI report on 10 years of combating racism in Europe ECRI fifth report on Poland Information provided by national expert in BE and HU 2021 EU legal experts report 'Beyond the RED' Euractiv, handbook on the Racial Equality Directive Proving Discrimination Cases - the Role of Situation Testing, Migration Policy Group and the Centre for Equal Rights 	<ul style="list-style-type: none"> Article 13 	<ul style="list-style-type: none"> Research may be envisioned under a broad construction of the provision of the tasks of equality bodies. 	<ul style="list-style-type: none"> CLEAR GAP: While such research may be envisioned under a broad construction of the provision of the tasks of equality bodies; the development of such research by actors other than equality bodies is however not provided for by the RED. There are no specific requirements regarding the collection and use of equality data in the RED.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> Equinet, Fighting Discrimination on the Ground of Race and Ethnic Origin 			
<ul style="list-style-type: none"> Introducing harmonized methodology to collect data in the EU e.g. including the engagement of various actors in data collection, collecting and publishing judgements and complaints, collecting equality data in population censuses, carrying on situation testing, general and targeted surveys... 	<ul style="list-style-type: none"> Equinet, assessing gaps in the Racial Equality Directive 2021 EC Report on the application of the RED FRA Report: Equality in the EU 20 years on from the initial implementation of the equality directives Information obtained from the former anti-muslim hatred coordinator via interview Information obtained from CEPOL via interview Information obtained from the French equality body via interview Information obtained from the Luxembourg Ministry of Family, Affairs, Integration and the Great Region via interview ECRI report on 10 years combatting racism in Europe 	<ul style="list-style-type: none"> Article 13 	<ul style="list-style-type: none"> Data collection may be envisioned under a broad construction of the provision of the tasks of equality bodies. National requirements may exist for collecting equality data. 	<ul style="list-style-type: none"> CLEAR GAP: The collection of data by equality bodies is not directly envisaged in the RED. There is no harmonised methodology to collect equality in the EU.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> • EC, How to put reasonable accommodation into practice – Guide of promising practices • ECRI Sixth report of Austria • Information provided by national experts in ES, FR, PT, PL • ECRI fifth study on France • ECRI fifth report on Poland • ECRI fifth report on Sweden • Equinet, why we need to reveal views on racism data collection in Europe • 2022 EC Effectively enforcing the right to non-discrimination • ECRI fifth report on Portugal • Open Society Foundation, the Racial Equality Directive, a shadow report • UN report on Promotion and protection of the human rights and fundamental freedoms of Africans 			

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> • ECRI General Policy Recommendation n°11 • EC Anti-racism action plan 2020-2025 • ECRI Conclusion on Denmark (2020) • ECRI Conclusion on Estonia (2018) • ECRI fifth report on Slovenia • ECRI fifth report on the Netherlands • Equinet, equality bodies countering ethnic profiling • ENAR, Policing radicalized groups • Amnesty international, Police and Minority Groups – Short paper series no. 3 • FRA Report: Being Black in the UE, 2018 • EC (High Level Group on Non-discrimination), Equality and Diversity), Guidelines on improving the collection and use of equality data 			

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> Information obtained from a Belgian municipal authority via interview Information obtained with a Swedish lawyer (ICJ) via interview 			
<ul style="list-style-type: none"> Evaluation of the impact and effectiveness of non-discrimination legislation 	<ul style="list-style-type: none"> 2021 EC Report on the application of the RED ECRI fifth report on France Amnesty international Europe: A Human Rights Guide for researching racial and religious discrimination in counter-terrorism 	<ul style="list-style-type: none"> Article 13 	<ul style="list-style-type: none"> Equality impact assessment requirement may exist at national level in some MSs. 	<ul style="list-style-type: none"> CLEAR GAP : evaluating the impact and effectiveness of the anti-discrimination law is not provided for in the RED.
<ul style="list-style-type: none"> Capacity building and cooperation to ensure robust, reliable, comprehensive, fit for purpose, relevant data 	<ul style="list-style-type: none"> EC (High Level Group on Non-discrimination), Equality and Diversity), Guidelines on improving the collection and use of equality data ECRI Sixth report on Germany 	<ul style="list-style-type: none"> Article 13 		<ul style="list-style-type: none"> POTENTIAL GAP: the RED does not provide for data collection, however such activity may be envisioned under a broader construction of the provision of the tasks of equality bodies (publishing independent reports on any issue relating to discrimination). The development of such research by actors other than equality bodies is however not covered by the RED.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
<ul style="list-style-type: none"> Collection of data on racial profiling by law enforcement and reporting on this issue as well as the ethnic origin of persons in contact with the criminal Justice system 	<ul style="list-style-type: none"> ECRI report on 10 years of combating racism in Europe Information obtained from the French equality body via interview Information obtained from the International Commission of Jurists (Sweden) via interview Information obtained from a Belgian research institute via interview UN report on Promotion and protection of the human rights and fundamental freedoms of Africans ECRI General Policy Recommendation n°11 EC Anti-racism action plan 2020-2025 ECRI Conclusion on Denmark (2020) ECRI Conclusion on Estonia (2018) ECRI fifth report on Slovenia 	<ul style="list-style-type: none"> Article 13 	<ul style="list-style-type: none"> Data collection may be envisioned under a broad construction of the provision of the tasks of equality bodies. National requirements may exist for collecting equality data. 	<ul style="list-style-type: none"> CLEAR GAP: the RED does not provide for data collection on racial profiling.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> • ECRI fifth report on the Netherlands • Equinet, equality bodies countering ethnic profiling • ENAR, Policing radicalized groups • Amnesty international, Police and Minority Groups – Short paper series no. 3 • FRA Report: Being Black in the UE, 2018 • FRA Report: Equality in the EU 20 years on from the initial implementation of the equality directives • Information obtained from Controle Alt Delete (Netherlands) via interview • Information obtained from the International Commission of Jurists (Sweden) via interview • Information obtained from association Novo Dia (Portugal) via interview 			

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> Information obtained from a Belgian research institute via interview 			
<ul style="list-style-type: none"> Ensuring a system at national level to identify data sources and data gaps e.g. ministerial or governmental department facilitation or coordinating national mapping, national data hub on equality and non-discrimination 	<ul style="list-style-type: none"> EC (High Level Group on Non-discrimination), Equality and Diversity), Guidelines on improving the collection and use of equality data Information provided by national expert in ES 	<ul style="list-style-type: none"> Article 13 	<ul style="list-style-type: none"> Data collection may be envisioned under a broad construction of the provision of the tasks of equality bodies. National requirements may exist for collecting equality data. 	<ul style="list-style-type: none"> CLEAR GAP: the RED does not provide for equality data collection
<ul style="list-style-type: none"> Regular analysis of the situation of vulnerable groups by using equality data including data obtained from 	<ul style="list-style-type: none"> 2021 EC Report on the application of the RED 2021 EU legal experts report 'Beyond the RED' Information provided by national expert in HU 	<ul style="list-style-type: none"> Article 13 	<ul style="list-style-type: none"> Data collection may be envisioned under a broad construction of the provision of the tasks of equality bodies. National 	<ul style="list-style-type: none"> CLEAR GAP: the RED does not provide for equality data collection

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
<p>situation testing</p>	<ul style="list-style-type: none"> • Euractiv, handbook on the Racial Equality Directive • Proving Discrimination Cases - the Role of Situation Testing, Migration Policy Group and the Centre for Equal Rights • Equinet, Fighting Discrimination on the Ground of Race and Ethnic Origin • Information obtained from a Swedish lawyer (ICJ) via interview • Information obtained from the Hungarian minority ombudsman via interview 		<p>requirements may exist for collecting equality data.</p>	
<ul style="list-style-type: none"> • Research focused on structural racial/ethnic discrimination and root causes 	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> • Article 13 	<ul style="list-style-type: none"> • Data collection may be envisioned under a broad construction of the provision of the tasks of equality bodies. National requirements may exist for 	<ul style="list-style-type: none"> • CLEAR GAP: the RED does not provide for equality data collection

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
			collecting equality data.	
Communication campaigns				
<ul style="list-style-type: none"> • Communication campaigns • e.g focused on preventing discrimination, on the promotion of inclusion and the negative impacts of discrimination, on data collection and census of Roma people... 	<ul style="list-style-type: none"> • OHCHR action plan 2018-2021 • Information provided by national experts in CZ and FR • FRA Report: Roma and Travellers Survey, 2019 	<ul style="list-style-type: none"> • Article 10 	<ul style="list-style-type: none"> • The RED requires that the provisions of the Directive are brought to the attention of the persons concerned by all appropriate means 	<ul style="list-style-type: none"> • POTENTIAL GAP: In a strict reading, the RED only requires bringing the provisions of the Directive to the attention of the persons concerned, but not to organise other promotion and/or preventative campaigns, for instance informing about the root causes of discrimination. • Equality bodies could play a role by organising (preventative) awareness-raising campaigns (going beyond those envisaged in article 10)
<ul style="list-style-type: none"> • Awareness raising activities and guidance on how to fill complaints, on the availability of free legal aid and interpretation facilities 	<ul style="list-style-type: none"> • ECRI report on 10 years of combating racism in Europe • Information obtained from the Vienna Forum for Democracy via interview 	<ul style="list-style-type: none"> • N/A 		<ul style="list-style-type: none"> • CLEAR GAP: the RED does not provide for the availability of free legal aid and translation facilities nor for the organisation of awareness-raising campaigns on the existence of such facilities

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
<ul style="list-style-type: none"> Supporting targeted communication activities 	<ul style="list-style-type: none"> 2021 EC Report on the application of the RED EC Anti-racism action plan 2020-2025 	<ul style="list-style-type: none"> Article 10 		<ul style="list-style-type: none"> POTENTIAL GAP: In a strict reading, the RED only requires bringing the provisions of the Directive to the attention of the persons concerned, but not to organise other promotion and/or preventative campaigns, for instance informing about the root causes of discrimination nor to provide support to communication campaigns organized by other entities.
<ul style="list-style-type: none"> Developing good practice guides for companies 	<ul style="list-style-type: none"> 2021 EC Report on the application of the RED European Commission (2020), 'How to put reasonable accommodation into practice – Guide of promising practices'. 	<ul style="list-style-type: none"> Article 10/13 		<ul style="list-style-type: none"> POTENTIAL GAP: In a strict reading, the RED only requires bringing the provisions of the Directive to the attention of the persons concerned, but not to organise other promotion and/or preventative campaigns. Furthermore, the competences of the equality bodies does not explicitly provide for the development of guidelines for private actors. However, under a broad interpretation of the competences of equality bodies (making recommendations on any issue relating to discrimination), the development of such guidelines could be provided for in the RED.
<ul style="list-style-type: none"> Organisation of conferences 	<ul style="list-style-type: none"> Ontario's 3-Year Anti-Racism Strategic Plan 	<ul style="list-style-type: none"> Article 10 		<ul style="list-style-type: none"> POTENTIAL GAP: In a strict reading, the RED only requires bringing the

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
by public bodies				provisions of the Directive to the attention of the persons concerned, but not to organise other promotion campaigns <ul style="list-style-type: none"> Equality bodies could play a role.
<ul style="list-style-type: none"> Developing policies, guidelines, awareness raising to combat discrimination caused by artificial intelligence 	<ul style="list-style-type: none"> 2022 EC Effectively enforcing the right to non-discrimination 2021 Algorithmic discrimination in Europe Equinet: regulating for an equal AI Information obtained from the Luxembourg Ministry of Family, Affairs, Integration and the Greater Region via interview 	<ul style="list-style-type: none"> Article 10 		<ul style="list-style-type: none"> POTENTIAL GAP: In a strict reading, the RED only requires bringing the provisions of the Directive to the attention of the persons concerned, but not to organise other promotion campaigns Equality bodies could play a role.
<ul style="list-style-type: none"> Communication and awareness raising activities on anti-discrimination legislation targeted at ethnic minorities, actors involved in the administration of 	<ul style="list-style-type: none"> 2021 EC Report on the application of the RED ECRI report on 10 years of combating racism in Europe Information provided by national experts in BE, FI, HR, LT, LU, LV, MT, NL, PT, RO, SE and SK ECRI fifth report on Portugal 	<ul style="list-style-type: none"> Article 10 	<ul style="list-style-type: none"> The RED requires that the provisions of the Directive are brought to the attention of the persons concerned by all appropriate means 	<ul style="list-style-type: none"> POTENTIAL GAP: In a strict reading, the RED only requires bringing the provisions of the Directive to the attention of the persons concerned, but not to organise other promotion campaigns Equality bodies could play a role by organising awareness-raising campaigns (going beyond those envisaged in article 10)

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
Justice and the general public	<ul style="list-style-type: none"> Equinet, Fighting Discrimination on the Ground of Race and Ethnic Origin EC (High Level Group on Non-discrimination), Equality and Diversity), Guidelines on improving the collection and use of equality data ECRI Sixth report of Belgium ECRI fifth report on Slovenia Equinet, future of equality legislation in Europe FRA Report: FRA Roma and Travellers Survey, 2019 Equinet, assessing gaps in the Racial Equality Directive 			
Training				
<ul style="list-style-type: none"> Racially sensitive training, e.g. health staff, teachers, police officers, judges, legal practitioners ... 	<ul style="list-style-type: none"> ECRI, Conclusions on Greece (2018) Equinet, equality bodies countering ethnic profiling Information provided by national experts in CZ, FR and PL 	<ul style="list-style-type: none"> N/A 		<ul style="list-style-type: none"> CLEAR GAP: Training is not provided for in the RED Equality bodies could play a role by providing training

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> • ECRI fifth report on Lithuania • FRA Report: Being Black in the EU, 2018 • EP, Scaling up Roma Inclusion Strategies: Truth, reconciliation and justice for addressing anti-gypsyism, 2019 • Ontario’s 3-Year Anti-Racism Strategic Plan 			
<ul style="list-style-type: none"> • Training for migrant and ethnic minority organisations on equality and non-discrimination legislation 	<ul style="list-style-type: none"> • Information provided by national expert in MT 	<ul style="list-style-type: none"> • N/A 		<ul style="list-style-type: none"> • CLEAR GAP : Training is not provided for in the RED
<ul style="list-style-type: none"> • Training on non-discrimination of public officials involved in public services 	<ul style="list-style-type: none"> • 2021 EC Report on the application of the RED • Commission Communication on Ensuring justice in the EU — a European judicial training strategy for 2021-2024 (COM(2020) 713 final) 	<ul style="list-style-type: none"> • N/A 		<ul style="list-style-type: none"> • CLEAR GAP : Training is not provided for in the RED

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> • ECRI report on 10 years of combating racism in Europe • Amnesty International’s observations to the United Nations Committee on the Elimination of Racial Discrimination’s Draft General Recommendation no. 36 • ECRI statement June 2020 on racist police abuse, including racial profiling and systemic racism • ECRI statement June 2020 on racist police abuse, including racial profiling and systemic racism • ECRI study on artificial intelligence and algorithmic decision - making • EC, How to put reasonable accommodation into practice – Guide of promising practices (for the Belgian and Hungarian example) • Information provided by national expert in FR, IT, LU, NL, PL and RO • ECRI fifth report on Luxembourg • ECRI fifth report on France 			

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> Equinet, equality bodies countering ethnic profiling Amnesty international, Police and Minority Groups – Short paper series no. 3 			
<ul style="list-style-type: none"> Educational programmes for schools and universities on non-discrimination 	<ul style="list-style-type: none"> OHCHR 2018-2021 action plan ECRI report on 10 years combating racism in Europe EC anti-racism action plan 2020-2025 ECRI Sixth report on Austria ECRI Sixth report on Germany Information provided by national experts in CY, FR, NL, PL and RO ECRI fifth report on Luxembourg ECRI fifth report on Portugal ECRI sixth report on Czech Republic 	<ul style="list-style-type: none"> N/A 		<ul style="list-style-type: none"> CLEAR GAP : the RED does not provide for educational programmes on non-discrimination The equality bodies could play a role in determining the content of the programmes

Advice

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
<ul style="list-style-type: none"> • Providing tailored advice to prevent (re)occurrences of discrimination 	<ul style="list-style-type: none"> • Information provided by national expert in NL • ECRI fifth report on Hungary 	<ul style="list-style-type: none"> • N/A 		<ul style="list-style-type: none"> • CLEAR GAP: Tailored advice is not provided for in the RED • Equality bodies could play a role by providing tailored advice
<ul style="list-style-type: none"> • Providing advice to victims of discrimination 	<ul style="list-style-type: none"> • ECRI fifth report on Hungary 	<ul style="list-style-type: none"> • N/A 		<ul style="list-style-type: none"> • CLEAR GAP : advice to victims of discrimination is not provided for in the RED • Equality bodies and/or authorized associations could play a role
<ul style="list-style-type: none"> • Providing guidance for prosecution offices in dealing with anti-discrimination cases 	<ul style="list-style-type: none"> • Circular of 4 April 2019 relating to the fight against discriminations, hate speech and hate crime 	<ul style="list-style-type: none"> • N/A 		<ul style="list-style-type: none"> • CLEAR GAP: advice/guidelines to actors of the judicial branch is not provided for in the RED. • Equality bodies could play a role in developing those guidelines.
<ul style="list-style-type: none"> • Assisting authorities in the preparation of equality plans 	<ul style="list-style-type: none"> • ECRI fifth report on Hungary 	<ul style="list-style-type: none"> • N/A 		<ul style="list-style-type: none"> • CLEAR GAP : assistance and advice to local authorities when establishing equality plans is not provided for in the RED • Equality bodies could play a rôle by assessing equality plans

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
Public speech				
<ul style="list-style-type: none"> Political, civic, religious leaders speaking out against intolerance, discriminatory stereotyping and instances of discriminatory statements 	<ul style="list-style-type: none"> EC anti-racism action plan 2020-2025 	<ul style="list-style-type: none"> N/A 		<ul style="list-style-type: none"> CLEAR GAP : public speech is not tackled in the RED.
<ul style="list-style-type: none"> Statements by equality bodies to acknowledge some issues 	<ul style="list-style-type: none"> Equinet, equality bodies countering ethnic profiling 	<ul style="list-style-type: none"> N/A 		<ul style="list-style-type: none"> CLEAR GAP : public speech is not tackled in the RED.
<ul style="list-style-type: none"> Ensuring independent and pluralistic media 	<ul style="list-style-type: none"> EC anti-racism action plan 2020-2025 	<ul style="list-style-type: none"> N/A 		<ul style="list-style-type: none"> CLEAR GAP : public speech is not tackled in the RED.
Dialogue and cooperation				
<ul style="list-style-type: none"> Social dialogue and dialogue with NGOs 	<ul style="list-style-type: none"> 	<ul style="list-style-type: none"> Article 11 and 12 	<ul style="list-style-type: none"> Social dialogue and a dialogue with NGOs is provided for in 	<ul style="list-style-type: none"> /

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
			the RED in a mandatory manner ('shall')	
<ul style="list-style-type: none"> Dialogue and collaboration between equality bodies 	<ul style="list-style-type: none"> ECRI report on 10 years combatting racism in Europe ECRI fifth report on France Equinet, A perspective from the work of equality bodies Equinet, equality bodies countering ethnic profiling Equinet, Fighting Discrimination on the Ground of Race and Ethnic Origin 	<ul style="list-style-type: none"> N/A 		<ul style="list-style-type: none"> CLEAR GAP: a dialogue and cooperation with equality bodies is not provided for under the RED. Equality bodies may play a role by putting in place processes to collaborate and coordinate with each other and with other public and also private actors including NGOs, as well as by consulting with civil society organisations
<ul style="list-style-type: none"> Conclusion of collective agreements, issuance of joint texts and guidelines between trade union and employers' associations 	<ul style="list-style-type: none"> 2021 EC Report on the application of the RED EC, How to put reasonable accommodation into practice – Guide of promising practices) 	<ul style="list-style-type: none"> Article 11 		

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
<ul style="list-style-type: none"> Dialogue with civil society organisations and social partners and the private sector 	<ul style="list-style-type: none"> 2021 EC Report on the application of the RED UN report on Promotion and protection of the human rights and fundamental freedoms of Africans ECRI report on 10 years combating racism in Europe EC Anti-racism action plan 2020-2025 EC, How to put reasonable accommodation into practice – Guide of promising practices (for the Hungarian and Belgian examples on people with disabilities) 2022 EC Effectively enforcing the right to non-discrimination Information provided by national experts in AT, BE, BU, CY, CZ, ES, HR and SK ECRI Sixth report on Austria ECRI Sixth report on Belgium ECRI Sixth report on Germany 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> Dialogue or negotiations on equality with civil society organisations, social partners, representatives of the government at both local and regional levels, enforcement authorities... 	<ul style="list-style-type: none"> POTENTIAL GAP : the RED provides for the promotion of social dialogue between social partners but does not explicitly mention civil society organisations. CLEAR GAP: the RED does not mention dialogue between representative of minority groups and public authorities (law enforcement, government...)

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> • ECRI fifth report on Luxembourg • ECRI fifth report on Latvia • ECRI fifth report on Lithuania • ECRI fifth report on Malta • ECRI fifth report on the Netherlands • ECR fifth report on Sweden • Amnesty international, Police and Minority Groups – Short paper series no. 3 • FRA Roma and Travellers Survey, 2019 • Ontario’s 3-Year Anti-Racism Strategic Plan • EP, Scaling up Roma Inclusion Strategies: Truth, reconciliation and justice for addressing antigypsyism, 2019 			
<ul style="list-style-type: none"> • Ensuring the collaboration between the actors active 	<ul style="list-style-type: none"> • Circular of 11 July 2007 on the fight against discriminations 			<ul style="list-style-type: none"> • CLEAR GAP: the RED does not provide for cooperation nor dialogue be-

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
<p>in the investigation and the sanctioning of discriminatory behaviour (police, public prosecution, justice system)</p>	<ul style="list-style-type: none"> • ECRI report on 10 years combating racism in Europe • UN report on Promotion and protection of the human rights and fundamental freedoms of Africans • Amnesty international, Police and Minority Groups – Short paper series no. 3 • ECRI statement June 2020 on racist police abuse, including racial profiling and systemic racism • ECRI statement June 2020 on racist police abuse, including racial profiling and systemic racism • ECRI fifth report on Romania • ECRI fifth report on Sweden • FRA Report: Being Black in the EU, 2018 			<p>tween actors involved in investigations and sanctioning of discriminatory behaviour.</p>
<ul style="list-style-type: none"> • Encouraging dialogue with minority groups (police, actors in the Justice system, equality 	<ul style="list-style-type: none"> • ECRI report on 10 years combating racism in Europe • UN report on Promotion and protection of the human rights and fundamental freedoms of Africans 	<ul style="list-style-type: none"> • N/A 		<ul style="list-style-type: none"> • CLEAR GAP : the RED does not provide for cooperation nor dialogue between law enforcement authorities and members of minority groups.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
bodies, local representatives...)	<ul style="list-style-type: none"> • Amnesty international, Police and Minority Groups – Short paper series no. 3 • ECRI statement June 2020 on racist police abuse, including racial profiling and systemic racism • ECRI statement June 2020 on racist police abuse, including racial profiling and systemic racism • ECRI fifth report on Romania • ECRI fifth report on Sweden • FRA Report: Being Black in the EU, 2018 • EC anti-discrimination action plan 2020-2025 			
<ul style="list-style-type: none"> • Integrating minorities in policy-making and reforms 	<ul style="list-style-type: none"> • ECRI report on 10 years combating racism in Europe • UN report on Promotion and protection of the human rights and fundamental freedoms of Africans • Amnesty international, Police and Minority Groups – Short paper series no. 3 	<ul style="list-style-type: none"> • N/A 		<ul style="list-style-type: none"> • CLEAR GAP: not provided for in the RED.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> • ECRI statement June 2020 on racist police abuse, including racial profiling and systemic racism • ECRI statement June 2020 on racist police abuse, including racial profiling and systemic racism • ECRI fifth report on Romania • ECRI fifth report on Sweden • FRA Report: Being Black in the EU, 2018 • Information obtained from the Antidiscrimination bureau of Tumba via interview • Information obtained from the Luxembourg Ministry of Family, Affairs, Integration and the Greater Region via interview 			
<ul style="list-style-type: none"> • Cooperation between equality bodies and data protection authorities to tackle 	<ul style="list-style-type: none"> • ECRI study on artificial intelligence and algorithmic decision - making 	<ul style="list-style-type: none"> • N/A 		<ul style="list-style-type: none"> • CLEAR GAP : the RED does not provide for the cooperation between the equality bodies and data protection authorities.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
artificial-intelligence driven discrimination				
<ul style="list-style-type: none"> Installing community policing 	<ul style="list-style-type: none"> Information obtained from a Belgian local administration via interview 	<ul style="list-style-type: none"> N/A 		<ul style="list-style-type: none"> CLEAR GAP : the RED does not provide for the creation of a police division at a local level to create partnership between the population and the police.
Equality duties				
<ul style="list-style-type: none"> Promoting equality as a duty for all public authorities 	<ul style="list-style-type: none"> 2021 Equinet Compendium of good practises on equality mainstreaming Equinet, assessing gaps in the Racial Equality Directive Irish Equality and Rights Alliance, 'Civil Society Guide to the public sector duty' Equinet, A perspective from the work of equality bodies FRA Report: Being Black in the EU, 2018 EC anti-racism action plan 2020-2025 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> Such a legal duty could be relevant to public authorities when acting as policy-makers, service and good providers and employers. 	<ul style="list-style-type: none"> CLEAR GAP : not provided in RED Equality bodies could play a role by being encouraged to promote equality duties

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> • Equinet /Crowley N. (2016), Making Europe More Equal: A legal duty? • 2022 EC Effectively enforcing the right to non-discrimination • ECRI fifth report on Malta • ECRI fifth report on Poland • ECRI fifth report on Portugal • ECRI fifth report on the Netherlands • ECRI fifth report on Finland • ECRI fifth report on Croatia • Information provided by national experts in IE and LV • Ontario’s 3-Year Anti-Racism Strategic Plan 			
<ul style="list-style-type: none"> • Promoting equality as a duty for (certain) private actors 		<ul style="list-style-type: none"> • N/A 		<ul style="list-style-type: none"> • CLEAR GAP: not provided in RED • Equality bodies could play a role by being encouraged to promote equality duties

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
<ul style="list-style-type: none"> Duty of corporate social responsibility (prevent discrimination and respect non-discrimination) 	<ul style="list-style-type: none"> UN report on Promotion and protection of the human rights and fundamental freedoms of Africans 	<ul style="list-style-type: none"> 		<ul style="list-style-type: none"> CLEAR GAP: not provided in the RED.
<ul style="list-style-type: none"> Promoting equality as a duty for specialised bodies, other than the national equality body 	<ul style="list-style-type: none"> 2022 EC Effectively enforcing the right to non-discrimination Information provided by national expert in EE ECRI fifth report on Sweden 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> This equality duty could be imposed on a special Commission or a special Center. 	<ul style="list-style-type: none"> CLEAR GAP: not provided in RED.
<ul style="list-style-type: none"> Positive action e.g. quota systems to guarantee access of certain minorities to higher education, hiring of discriminated persons, supportive measures for disadvantaged groups... 	<ul style="list-style-type: none"> ECRI report on 10 years of combating racism in Europe ECRI Fifth report on Luxembourg ECRI fifth report on France ECRI fifth report on Poland ECRI fifth report on the Netherlands ECRI fifth report on Romania 	<ul style="list-style-type: none"> Article 5 	<ul style="list-style-type: none"> Imposing on Member States an obligation to introduce positive action would be sensitive. 	<ul style="list-style-type: none"> POTENTIAL GAP: the RED allows for positive action but does not oblige it.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"> • ECRI fifth report on Sweden • Information provided by national experts in RO and SK • Ontario’s 3-Year Anti-Racism Strategic Plan • Information obtained from association Novo Dia (Portugal) via interview • EC, How to put reasonable accommodation into practice – Guide of promising practices (for the Belgian example) • Amnesty international, Police and Minority Groups – Short paper series no. 3 • ECCAR response to the consultation 			
<ul style="list-style-type: none"> • Duty of equality evaluation and self-reflection • e.g. examination and evaluation of the im- 	<ul style="list-style-type: none"> • 2022 EC Effectively enforcing the right to non-discrimination2021 • EC Report on the application of the RED • ECRI fifth report on France 	<ul style="list-style-type: none"> • N/A 		<ul style="list-style-type: none"> • CLEAR GAP: not provided for in the RED.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
<p>pact and effectiveness of non-discrimination law</p>	<ul style="list-style-type: none"> Amnesty international Europe: A Human Rights Guide for researching racial and religious discrimination in counter-terrorism 			
<ul style="list-style-type: none"> Equality impact assessments e.g. to tackle discrimination caused by artificial intelligence, following the collection of equality data 	<ul style="list-style-type: none"> 2021 Equinet Compendium of good practises on equality mainstreaming Amnesty international Europe: A Human Rights Guide for researching racial and religious discrimination in counter-terrorism UN report on Promotion and protection of the human rights and fundamental freedoms of Africans ECRI report on 10 years combatting racism in Europe ECRI fifth report on France 2021 EC report on the application of the RED 	<ul style="list-style-type: none"> N/A 		<ul style="list-style-type: none"> CLEAR GAP: Conducting impact assessment is not provided for in the RED Equality bodies could play a role by being encouraged to promote equality duties including conducting impact assessments by public and/or private actors
<ul style="list-style-type: none"> Ensuring diversity in public sectors e.g. law enforcement, 	<ul style="list-style-type: none"> FRA Report: FRA Roma and Travellers Survey, 2019 EC, How to put reasonable accommodation into practice – Guide of 	<ul style="list-style-type: none"> Article 5 		<ul style="list-style-type: none"> POTENTIAL GAP: the RED provides for the possibility for Member States to adopt positive action but does not impose it.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
Justice system, equality bodies...	<p>promising practices (for the Belgian example)</p> <ul style="list-style-type: none"> Information provided by national expert in RO Amnesty international, Police and Minority Groups – Short paper series no. 3 Information obtained from the Antidiscrimination bureau in Limburg via interview Information obtained from the International Commission of Jurists (Sweden) via interview Information obtained from association Novo Dia (Portugal) via interview 			
Voluntary instruments of self-regulation				
<ul style="list-style-type: none"> Disciplinary measures for racial discriminations 	<ul style="list-style-type: none"> ECRI General Policy Recommendation n°12 ECRI fifth report on Poland ECRI fifth report on the Netherlands 			<ul style="list-style-type: none"> POTENTIAL GAP : the RED only provides for the promotion of social dialogue through codes of conduct, however, the inclusion of disciplinary sanctions in those codes is not explicitly foreseen.

Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
<ul style="list-style-type: none"> Code of conduct 	<ul style="list-style-type: none"> ECRI report on 10 years combating racism in Europe ECRI General Policy Recommendation n°14 Information provided by national expert in LU and PL 	<ul style="list-style-type: none"> Article 11 		<ul style="list-style-type: none"> Absence of gap, the RED provides for the adoption of code of conduct.
<ul style="list-style-type: none"> Code of self-regulation which may include complaint procedure 	<ul style="list-style-type: none"> ECRI report on 10 years combating racism in Europe ECRI fifth report on Romania Information provided by national expert in RO and SI 	<ul style="list-style-type: none"> N/A 		<ul style="list-style-type: none"> POTENTIAL GAP : the RED only provides for the promotion of social dialogue through codes of conduct.
<ul style="list-style-type: none"> Transparency obligations 	<ul style="list-style-type: none"> Algorithmic discrimination in Europe: Challenges and opportunities for gender equality and non-discrimination law Data Protection Working Party, 2017 Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679 Council of Europe Recommendation on the human rights impacts of algorithmic systems (2021) 	<ul style="list-style-type: none"> N/A 		<ul style="list-style-type: none"> CLEAR GAP: the RED does not provide for transparency obligations.

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Protection mechanisms to combat discrimination	Source	Protection mechanisms in Racial Equality Directive	Comments	Possible gaps, including in implementation
	<ul style="list-style-type: none"><li data-bbox="555 368 1008 424">• ELI Model Rules on AI and public administration (2022)			

Annex IX – Conclusions and recommendations for areas which are not considered as main ‘gaps’

1. Exercise of public authority by judicial authorities and authorities in charge of immigration enforcement

1.1 Conclusions

Judicial authorities

Available data indicate the occurrence, or at least the perceived occurrence, of racial or ethnic discrimination in the exercise of public authority by **judicial authorities**¹³⁶⁴. Existing sources¹³⁶⁵, while suggesting a much lower scale of possible discrimination than in the case of exercise of public authority by law enforcement authorities, indicate that certain racial or ethnic minorities could be subject to harsher penalties, be more often coerced, could be overrepresented in prisons and their procedural rights could be more often violated. However, more data seem to be needed to gain a better and more solid understanding of the root cause(s) of the issues.

The extent of protection provided by existing EU legislation (e.g., the six procedural rights Directives¹³⁶⁶) against these potentially discriminatory practices is curtailed to some extent by the legislation’s specific scope. In particular, Denmark opted-out of all of the procedural rights Directives and Ireland is not bound by: Directive 2013/48/EU on the right of access to a lawyer; Directive (EU) 2016/343 on the presumption of innocence; Directive (EU) 2016/800 on procedural safeguards for child suspects or accused persons; and Directive (EU) 2016/1919 on the right to legal aid. National anti-discrimination laws seem to cover most of the issues, but not all. Possible biased decision-making by judges for example is covered only to a limited extent by the anti-discrimination laws of the Member States.

Measures have already been taken to address some of the potential gaps. At Member State level, for example, training programmes on equality and non-discrimination are being organised for judges and prosecutors.

Immigration enforcement

Immigration enforcement is also an area where issues seem to occur, though to a lesser extent compared to issues linked to the exercise of public authority by the police.

¹³⁶⁴ This category could potentially capture law enforcement authorities as well. To the extent this is the case, the statement only concerns the authorities in charge of immigration enforcement.

¹³⁶⁵ This was confirmed among others by the targeted online survey as well as the OPC carried out as part of the current Study.

¹³⁶⁶ Directive 2012/13/EU on the right to information in criminal proceedings; Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings; Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty; Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings; Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings; Directive (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings. Links are available at: [Rights of suspects and accused | European Commission \(europa.eu\)](https://ec.europa.eu/justice/european-commission/eu-legislation/immigration-enforcement).

Potential issues seem to be manifesting in racial or ethnic profiling for example while carrying out border checks.

Insofar as racial or ethnic discrimination occurs in the conduct of border controls by border guards, the gap in protection under the RED appears to be addressed through the Schengen Borders Code¹³⁶⁷ that expressly prohibits border guards from discriminating against persons on several grounds, including racial or ethnic origin. Ireland, however, is not bound by the Schengen Borders Code. At national level, anti-discrimination laws of a few Member States apply to the conduct of border guards as well.

Moreover, both at the EU- and national-levels, measures (e.g., measures promoting fundamental rights in border guard training or establishing public complaint mechanisms to monitor the respect for fundamental rights by border guards) have been taken to improve the practical implementation of the non-discrimination rules.

1.2 Recommendations

The responses received to the different stakeholder consultation tools do not, as a general rule, differentiate between recommendations that concern the exercise of public authority by law enforcement authorities on the one hand, and judicial authorities on the other. Hence, the recommendations presented under *Section 5.2.1* are to a large extent relevant. Only some views refer specifically to **judicial authorities**.

These recommendations are **non-legislative** in nature and envisage:

- **Training:** reinforcement of training for judges¹³⁶⁸. It is recalled that judges can already benefit from several EU-level training opportunities (e.g., those organised by the EJTN or ERA¹³⁶⁹). Moreover, training opportunities are also available at the national-level. According to CERD, at the **national-level** educational and training programmes should appropriately address the '*respect for human rights, tolerance and friendship among racial or ethnic groups, as well as sensitisation to intercultural relations*¹³⁷⁰;
- **The development of indicators:** CERD also recommends for **states**, the development of indicators to better gauge the existence and extent of racial or ethnic discrimination in the functioning of the criminal justice system¹³⁷¹.

The sources consulted did not point to possible recommendations in relation to immigration authorities.

2. Exercise of public authority by bodies other than law enforcement and judicial authorities

2.1 Conclusions

¹³⁶⁷ [Regulation \(EU\) 2016/399 on a Union Code on the rules governing the movement of persons across borders \(Schengen Borders Code\), OJ L 77, 23.3.2016, pp. 1-52.](#)

¹³⁶⁸ One national-level stakeholder representing the category lawyers.

¹³⁶⁹ See for example upcoming training opportunity organised by ERA on 'Applying EU anti-discrimination law'. More information is available at: [Applying EU anti-discrimination law - EJTN Website](#).

¹³⁷⁰ CERD, '[General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system](#)', p. 4.

¹³⁷¹ CERD, '[General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system](#)', pp. 2-3.

The **RED does not necessarily cover** public sector interventions involving the exercise of public authority by **bodies** of public administration **beyond law enforcement and judicial authority**. EU competence is limited in these fields. Data suggest, however, that bureaucratic discrimination or perceived discrimination, manifests among others in unfavourable treatment, the use of excessive, complex requirements, verbal or physical harassment, constitutes an obstacle for equality.

Housing evictions, forced expulsions, residential segregation, including environmental racism are areas in which problems occur that may be linked to discrimination on racial or ethnic grounds.

The gap in protection from racial or ethnic discrimination in the area of contacts with public authorities other than law enforcement or judicial authorities is only **partially addressed by other EU instruments**. This could be explained by the fact that the EU's competence to act in this area is limited. The relevant EU instruments (e.g., the Visa Code¹³⁷², or Directive 2003/109/EC¹³⁷³) apply to very specific elements of public administration and the exercise of specific rights, hence the specific issues identified above partially remain unaddressed. Moreover, the level of national-level protection provided to address the specific issues identified varies depending on the Member State concerned. This in some Member States is coupled with implementation challenges hindering their effective use in practice.

2.2 Recommendations

The recommendations identified are mainly **non-legislative in nature**. This is explained by the limited legislative competence the EU has in connection with national public administration. In particular, in this area the EU seems to have supporting competences –if any competence at all–, entailing that the EU may only support, coordinate and supplement the actions of EU Member States, but it cannot legislate. Likewise, housing related matters and housing rights also fall under the primary responsibility of Member States. Whilst the EU has no direct competence to legislate in relation to housing, it could potentially adopt 'soft law' measures, such as guidelines or recommendations in this area.

The stakeholder inputs received also favour non-legislative actions:

- **Targeted survey:** Out of the 23 respondents, one argued that EU-level soft measures¹³⁷⁴ (exclusively) would offer sufficient solutions, five¹³⁷⁵ referred to the combination of EU-level soft and legislative measures, one¹³⁷⁶ argued for the combination of soft and legal measures at the national-level. Four¹³⁷⁷ were advocating for EU-level soft measures, combined with national-level legislation, and four¹³⁷⁸ for domestic soft measures combined with EU-level legislation. Overall, it means that more respondents see a need for soft measures than for legal measures (15 responses compare to 10).
- **Stakeholder interviews:** the national-level stakeholder **interviews** seem to suggest that more stakeholders are in favour of soft intervention, as opposed to

¹³⁷² [Regulation \(EC\) No 810/2009 establishing a Community Code on Visas, OJ L 243/1 15.9.2009.](#)

¹³⁷³ [Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Official Journal L 016, 23/01/2004 P. 0044 – 005.](#)

¹³⁷⁴ Representing the academia/research.

¹³⁷⁵ Representing three equality bodies, one NGO, and one representative of the academia/research.

¹³⁷⁶ Representing an NGO.

¹³⁷⁷ Representing two equality bodies and two NGOs.

¹³⁷⁸ Representing two equality bodies, two NGOS and one representative of the academia/research.

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legal measures (11¹³⁷⁹ responses compared to two). EU-level interviewees did not recommend relevant measures.

2.2.1 Non-legislative intervention

Based on the sources consulted and by taking into account the limited EU-level competences to act in relation to the activities of public administration, the non-legislative recommendations identified mainly suggest **possible national-level actions**. The recommendations aim to build on existing initiatives and hence suggest the reinforcement of actions in certain areas. A brief inventory of possible actions is provided in the box below.

Box 1: Overview of non-legislative actions

Overview of non-legislative actions that could be considered to tackle possible racial or ethnic discrimination in the exercise of public authority by bodies other than law enforcement and judicial authorities

- Training
- Diversity in recruitment
- Accountability/control/oversight
- Dialogue, cooperation and cooperation
- Positive action/equality duties
- Specific actions for housing evictions, expulsions and residential segregation

Training

The development of (or where exist, reinforcement of) training, on legislation, CJEU and EctHR case-law, diversity, the concept of structural racism and how public authorities could address racial or ethnic discrimination, seems to be necessary. Such training was recommended by five¹³⁸⁰ national-level interviewees for example. Literature also recommends diversity training as a possible solution to address discrimination¹³⁸¹. Training that includes role playing, case analyses or similar is reported as an effective type of training¹³⁸².

Diversity in recruitment

The importance of ensuring more diversity within the public administration was recommended as a measure, for example by one national-level interviewee¹³⁸³. According to this stakeholder¹³⁸⁴, quotas could be introduced to ensure the more balanced representation of racial or ethnic groups within the public administration. Literature also recommends, as one of the tools for diversity management, the employment of people with a diverse background, representing the demographic composition of the population¹³⁸⁵.

Accountability/control/oversight

It was also recommended to appoint specialised (racial) equality officers within public sector bodies. According to a national-level interviewee¹³⁸⁶, these specialised officers

¹³⁷⁹ Representing eight NGOs, two public authorities and a lawyer.

¹³⁸⁰ Representing four NGOs and one public authority.

¹³⁸¹ ECCAR (2017) '[Diversity management in the city administration](#)', p. 8.

¹³⁸² ECCAR (2017) '[Diversity management in the city administration](#)', p. 32.

¹³⁸³ Representing an NGO.

¹³⁸⁴ Representing an NGO.

¹³⁸⁵ ECCAR (2017) '[Diversity management in the city administration](#)', p. 8.

¹³⁸⁶ Representing an NGO.

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could also be involved in monitoring discrimination cases and reporting them to the head of the office.

Dialogue, cooperation and cooperation

The development of ways to reinforce the trust of local communities in the public authorities was also recommended. According to one stakeholder¹³⁸⁷, surveys could be organised to measure the level of trust. Literature suggests that workshops could be organised with local communities to, for example, discuss issues¹³⁸⁸.

Positive action/equality duties

Literature¹³⁸⁹ also recommends that Member States should be encouraged to promote equality in the day-to-day work of public authorities. In particular, literature recalls that public authorities should have the legal duty (**statutory equality duty**¹³⁹⁰) to promote equality in a proactive and systematic matter.

Housing evictions, expulsions and residential segregation

Specific recommendations could be identified for **housing evictions, expulsions and residential segregation**, which are areas that could potentially fall outside the scope of RED. The issues identified are legally and factually complex, for instance because (i) they may not always fit well the definition of discrimination which requires identifying a suitable comparator, (ii) 'housing' in the RED is only covered in as far as it concerns 'access to and supply of goods and services available to the public', and (iii) because an interplay of different problems and factors may be at stake, etc.

In connection **with housing eviction**, literature recommends:

- the development of **housing rights standards** to protect against evictions¹³⁹¹. As this might not be legally feasible at the EU-level, it could be recommended to develop such standards at the national-level;
- the development of **guidelines** to ensure that eviction orders of local authorities meet the necessary requirements of proportionality and legality was also recommended¹³⁹²;
- it was also recommended to promote and disseminate information on eviction-related housing rights, given the insufficient awareness and knowledge of lawyers, courts, NGOs of related matters. It was recalled that the case-law of the CJEU and the ECtHRs is not widely known amongst practitioners. Hence, it was also recommended to prepare a catalogue of relevant European case-law¹³⁹³.

¹³⁸⁷ Representing a lawyer.

¹³⁸⁸ ECCAR (2017) '[Diversity management in the city administration](#)', p. 22.

¹³⁸⁹ For example, [EU Anti-Racism Action Plan 2020-2025](#), p. 21.

¹³⁹⁰ Statutory duty is defined as follows in the EU anti-racism action plan 2020-2025: '*Statutory duties include preventive duties requiring organisations to establish systems and processes to prevent discrimination, institutional duties requiring organisations to establish systems and processes to promote equality for employees and service users, and mainstreaming duties requiring public authorities to have due regard to the need to promote equality in legislating, budgeting, regulating, and policy making*'.

¹³⁹¹ Human European Consultancy, School of Law, National University of Ireland Galway, FEANTSA, '[Pilot project - Promoting protection of the right to housing - Homelessness prevention in the context of evictions](#)', p. 192.

¹³⁹² ECRI (2019), '[ECRI report on Romania \(fifth monitoring cycle\)](#)', p. 28.

¹³⁹³ Human European Consultancy, School of Law, National University of Ireland Galway, FEANTSA, '[Pilot project - Promoting protection of the right to housing - Homelessness prevention in the context of evictions](#)', p. 195.

As regards **residential segregation**, reference could be made to recommendations mentioned in the Council Recommendation on Roma equality, inclusion and participation¹³⁹⁴. These recommendations are summarised in the box below.

Box 2: Recommendation on Roma equality in relation to access to desegregated housing

Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation

Point 10 states that Member States should ensure equal treatment of Roma people in access to adequate desegregated housing through a number of measures including, for example:

- 'measures to monitor, prevent and combat any spatial segregation and promote desegregation by drawing up concrete plans to tackle housing issues with the involvement of local communities and affected Roma communities';
- 'measures to prevent forced evictions by promoting early warning and mediation, to organise support for people at risk of eviction and, when necessary, to provide adequate alternative housing, focusing particularly on families';
- 'measures to improve the living conditions of Roma people, to prevent and to tackle the negative health impact of exposure to pollution and contamination'.

2.2.2 Legislative intervention

As mentioned above, most stakeholder consultation tools **recommend the adoption of non-legislative actions**. Only one, namely the **written contributions to the OPC**, seems to favour legislative intervention. Out of the five respondents to the **OPC** who in their **written contributions** accompanying their OPC responses were advocating for action to address discrimination in the exercise of public authority by bodies other than law enforcement and judicial authorities, four¹³⁹⁵ referred to the necessity of an EU-level legislative intervention.

It is recalled that in this material area, the EU does not seem to have a direct competence to legislate, hence the related recommendations suggested by stakeholders and literature should be understood as recommendations for national-level actions.

The related recommendations are:

- **Extension of coverage against racial or ethnic discrimination in the exercise of public authority by bodies other than law enforcement and judicial authorities:** Member States could consider the coverage of related forms of discrimination in their national rules.
- **Explicit prohibition against discriminatory housing evictions:** two OPC respondents¹³⁹⁶ also recommended the **explicit prohibition** against discriminatory housing evictions.
- **Review of existing regulatory framework at the national-level:** In connection with housing related issues, literature suggests the **thorough review** of existing national legislation with a view to remove provisions that could potentially result in direct/indirect discrimination¹³⁹⁷.

¹³⁹⁴ [Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation.](#)

¹³⁹⁵ Representing two NGOs and two public authorities.

¹³⁹⁶ Representing an NGO and a public authority.

¹³⁹⁷ Council of Europe (2012), '[Human rights of Roma and Travelers in Europe](#)', p.156.

3. In connection with the use of public spaces

3.1 Conclusions

Discrimination also seems to occur when racial or ethnic origin is seen as a **threat** or **raises suspicion** in public places. Such a prejudiced vision could lead to racial discrimination, including harassment, by ordinary citizens, public authorities or security officers. A possible manifestation of discrimination in connection with the use of public spaces is when citizens, because of their (perceived) ethnic or racial origin, are being specifically targeted by control or harassed in public transport.

EU legislation, arguably due to the lack of EU competence to act in this area, does not provide protection against discrimination in connection with the use of public spaces. At the national level, only a few Member States seem to provide protection against this form of discrimination.

3.2 Recommendations

The stakeholder consultation methods did not reveal any recommendations specific to the use of public spaces. Likewise, no literature focusing specifically on the matter could be identified.

4. In connection with other/grey areas

4.1 Conclusions

Whilst the data collected suggest that racial or ethnic discrimination mainly occurs in the exercise of public authority, more limited sources suggest that problems might also exist in other areas.

These 'other/grey areas' capture areas where (i) **problems exist**; however in the absence of guidance (e.g., from the CJEU) on concepts used in the RED it is **unclear** if the area **falls under the RED** (potential area of relevance is access to goods and services that are not advertised to the public, as well as access to and supply of free services); (ii) evidence suggests that a problem exists (in an area beyond the RED), but **data are largely insufficient** to conclude that **discrimination is the root cause** of the problem; (iii) **data are insufficiently clear or robust** to point at a clear and significant issue of discrimination.

Areas potentially falling under the latter two categories include the underrepresentation of racial or ethnic minorities in culture, sports or research and innovation; the limited democratic participation and representation of people with a racial or ethnic background; higher risk of homelessness for certain racial or ethnic groups; or benefitting less from health promotion and disease prevention.

4.2 Recommendations

A limited number of recommendations could be identified in relation to these 'other/grey areas'. The recommendations identified are **non-legislative** in nature. This is explained by the fact that in relation to some of the areas falling under the categories of

'other/grey areas' (e.g., culture, sport¹³⁹⁸), the EU's competence to act is limited. It has no power to pass laws, as such competence is reserved for the Member States. The EU, however, can support, coordinate or complete the actions of Member States.

Some other areas fall under shared competences, allowing the EU to act within the limitations of the Treaties, i.e., in connection with aspects specifically defined in the Treaties. In connection with public health for example, the EU can act for the aspects covered by Article 168¹³⁹⁹ of the TFEU. In connection with democratic participation, EU legislation is limited to ensuring the electoral rights of mobile EU citizens in municipal elections and European Parliament elections. The potential issues identified in relation to 'other/grey areas' do not seem to relate to these explicitly mentioned aspects of the Treaties.

It is recalled though that some rules set out in existing EU legislation, while not tailored to specific areas, such as sport, could address hostile attitudes towards certain minority groups. For example, EU legislation on hate crime and hate speech to a large extent covers certain forms of racism in sport towards certain minority groups.

The stakeholder consultations¹⁴⁰⁰ and the desk research carried out as part of the study also favour non-legislative actions.

The recommendations aim to build on existing initiatives and hence suggest the reinforcement of actions in certain areas. A brief inventory of possible actions is provided in the box below.

Box 3: Overview of non-legislative actions

Overview of non-legislative actions that could be considered to tackle possible racial or ethnic discrimination in relation to 'other/grey areas'

- Training
- Making full use of funding
- Best practice identification and exchange
- Equality data collection
- Clarification of the scope of the RED

Training

It was recommended to train those who are likely to discriminate on the ground of race or ethnicity in the areas not covered by the RED. This was, for example, recommended by two respondents¹⁴⁰¹ to the survey.

Making full use of funding

It is recommended by literature to make full use of the financial support offered by the Next Generation EU and the Technical Support Instrument for structural reforms to contribute to more equality in the health sector, in particular¹⁴⁰².

¹³⁹⁸ Moreover, it is recalled that access to paid cultural and paid services is covered by the RED.

¹³⁹⁹ These include for example the legal possibility to adopt 'incentive measures designed to protect and improve human health and in particular to combat the major cross-border health scourges, measures concerning monitoring, early warning of and combating serious cross-border threats to health, and measures which have as their direct objective the protection of public health regarding tobacco and the abuse of alcohol, excluding any harmonisation of the laws and regulations of the Member States'.

¹⁴⁰⁰ Out of the 16 respondents to the targeted survey, 10 (hence the majority) recommended the adoption of non-legislative measures.

¹⁴⁰¹ Representing two equality bodies.

¹⁴⁰² For example, [EU Anti-Racism Action Plan 2020-2025](#), p. 10.

Study to support the preparation of an EU initiative to address possible gaps in the legal protection against discrimination on grounds of racial or ethnic origin

Best practice identification and exchange

It is recommended to select best practices on the inclusion of racial or ethnic groups in health prevention strategies¹⁴⁰³.

Equality data collection

Especially in connection with areas where the evidence is not sufficiently robust to conclude that discrimination occurs, or that discrimination is the root cause of a specific problem, further data collection is necessary. The need for additional data was highlighted in connection with the democratic participation of minority groups in particular¹⁴⁰⁴. The importance of accurate and comparable data in assessing the scale and nature of discrimination and in designing appropriate responses is acknowledged by several sources¹⁴⁰⁵.

Clarification of the scope of the RED

Literature suggests that the scope of the RED, in particular in relation to 'access to and supply of services' is not sufficiently clearly defined. Further guidance might be necessary (e.g., from the CJEU) to interpret for example the notion of 'services'. The coverage of free services by the RED is one of the areas which might necessitate further interpretation¹⁴⁰⁶. To achieve that, national courts should use the mechanism of preliminary rulings.

¹⁴⁰³ For example in [EU Anti-Racism Action Plan 2020-2025](#), , p. 12.

¹⁴⁰⁴ [EU Anti-Racism Action Plan 2020-2025](#), , p. 22.

¹⁴⁰⁵ For example in [EU Anti-Racism Action Plan 2020-2025](#), , p. 15.

¹⁴⁰⁶ Equinet (2004), '[Combating discrimination in goods and services](#)', [Report of the fifth experts' meeting](#)', p. 7.

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