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UN & CoE

28 January – The Parliamentary Assembly of the Council of Europe (PACE) adopts a resolution on the terrorist attacks in Paris

29 January – PACE adopts a resolution on tackling intolerance and discrimination in Europe, with a special focus on Christians

January

20 February – Poland ratifies the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems

24 February – The European Commission against Racism and Intolerance (ECRI) publishes its fifth monitoring report on Greece and conclusions on the implementation of a number of priority recommendations made in its country reports on Italy, Latvia, and Luxembourg in 2012

February

18 March – The Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council of Europe (CoE) publishes its fourth opinion on Cyprus

March

20 April – The United Nations Human Rights Council (UNHRC) publishes the annual report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance

April

15 May – The UN Committee on the Elimination of Racial Discrimination (CERD) publishes concluding observations on Germany and Denmark

May

9 June – ECRI publishes its fifth monitoring reports on Hungary and Poland and conclusions on the implementation of a number of priority recommendations made in its country reports on Croatia, Denmark, and Sweden in 2012

10 June – CERD publishes concluding observations on France

26 June – PACE adopts a resolution on recognising and preventing neo-racism

June

9 July – ECRI publishes its annual report 2014

July

25 August – The UN publishes the Sweden report of the Working Group of Experts on People of African Descent, focusing on racism against Afro-Swedes

August

24 September – CERD publishes concluding observations on the Netherlands

25 September – CERD publishes concluding observations on the Czech Republic

September

13 October – ECRI publishes its fifth monitoring reports on Austria, the Czech Republic, and Estonia

15 October – In *Perinçek v. Switzerland* (No. 27510/08), the European Court of Human Rights (ECtHR) distinguishes the denial of genocide against the Armenian people from Holocaust denial and holds that the failure to prove that the applicant's conviction was supported by a pressing social need violated his right to freedom of expression under Article 10 of the ECHR

20 October – In *M'Bala M'Bala v. France* (No. 25239/13), the ECtHR rules that the highly negationist and antisemitic content of the applicant's performance is not protected by freedom of expression (Article 10)

20 October – In *Balázs v. Hungary* (No. 15529/12), the ECtHR holds that the Hungarian authorities failed to effectively investigate a racist attack against a Roma man in 2011, violating Article 14 read in conjunction with Article 3 of the ECHR

October

November

7–8 December – CERD adopts concluding observations on Lithuania

9 December – CERD adopts concluding observations on Slovenia

December

EU

11 January – Ministers for culture of all 28 European Union (EU) Member States issue a joint statement on freedom of expression

17 January – European Commission publishes a communication calling for the prevention of radicalisation and violent extremism

January

February

March

April

May

June

16 July – In *CHEZ Razpredelenie Bulgaria AD v. Komisia za zashtita ot diskriminatsia* (C-83/14), the Court of Justice of the EU (CJEU) for the first time applies the concept of 'discrimination based on association' under Directive 2000/43 and holds that the principle of equal treatment applies to persons who suffer a particular disadvantage or less favourable treatment due to association with a group

July

August

September

October

25 November – The European Parliament passes a resolution to fight radicalisation of young EU citizens

November

December

3

Racism, xenophobia and related intolerance



Expressions of racism and xenophobia, related intolerance, and hate crime all violate fundamental rights. In 2015, xenophobic sentiments came to the fore in several EU Member States, fuelled largely by the arrival of asylum seekers and immigrants in large numbers, as well as the terrorist attacks in Paris and Copenhagen and foiled plots in a number of Member States. Whereas many greeted the arrival of refugees with demonstrations of solidarity, there were also public protests and violent attacks. Overall, EU Member States and institutions maintained their efforts to counter hate crime, racism and ethnic discrimination, and also paid attention to preventing the expression of such phenomena, including through awareness raising activities.

3.1. Terrorist attacks and migration into the EU spark xenophobic reactions

Je suis Charlie... Refugees Welcome! – The year 2015 was marked by the aftermath of terrorist attacks in **France** and **Denmark** and reactions to the arrival of asylum seekers and immigrants in large numbers across the EU. These events had a profound impact on the Union and its Member States, and the effects on society are likely to be felt for years to come. As this chapter shows, EU institutions and Member States are faced with open and sometimes violent manifestations of racism, xenophobia and related intolerance, as well as hate crime, which implicate 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.

Whereas terrorist attacks in Paris and Copenhagen indiscriminately killed people from all walks of life, religions and nationalities, Jews were specifically targeted in January in Paris and in February in Copenhagen. This continued a trend of deadly antisemitic attacks, including those in Toulouse in March 2012 and in Brussels in May 2014. The common thread in these attacks relates to the identified perpetrators: young Muslim EU citizens with immigrant backgrounds, who

were radicalised at home and had returned from terrorist training camps; and men – some known to security services – travelling via the so-called Western Balkans refugee route.

Muslim populations in the EU faced intense scrutiny throughout the year – some because they were perceived as perpetrators or sympathisers of terrorist attacks, others because they were part of refugee flows seen as threatening safety and security in the European Union. Political rhetoric in some Member States focused on how religious and cultural differences between Muslims and the majority population could negatively affect social cohesion. Asylum seekers and immigrants – many of whom are Muslims – also became victims of racist and xenophobic incidents, ► including violent attacks (see also the [Focus section](#) of this report).

Although little evidence is available on the perpetrators of such incidents, it is worth noting that, according to Europol:

“Acts of violence by Islamic State have the potential to increase the number and intensity of extreme-right wing activities, both legal (e.g. demonstrations) and illegal (e.g. violent acts), in EU Member States. [...] Against the background of the current situation in Syria and Iraq it is likely that a number

of EU Member States will remain prone to experiencing further harassment, hate-filled rhetoric and unprovoked, opportunistic attacks towards Muslims and Muslim institutions by right-wing extremists.”¹

One concrete example is the case of Germany, where the parliament published data on the number of incidents targeting accommodation centres for asylum seekers. These data show a dramatic increase in such incidents – from 203 recorded in 2014 to 1,031 in 2015, as Table 3.1 shows. Between 2012 and 2014, most violent incidents “in connection with the accommodation of asylum seekers” (see Table 3.2) were attributed to perpetrators with a left-wing background (politically motivated criminality – left; *politisch motivierte Kriminalität – Links*). The tendency reversed in 2015, with perpetrators of violent incidents mainly identified as having a right-wing background (politically motivated criminality – right; *politisch motivierte Kriminalität – Rechts*).²

The recording system for politically motivated crimes in Germany is divided into various broad categories, such as ‘foreign/asylum’. The system also records four types of political motivations: right-wing, left-wing, foreign and others. Until 2014, crimes targeting asylum seeker accommodations were recorded under the broader category of ‘foreign/asylum’ – subtopic “in connection with the accommodation of asylum seekers”. Examples of crimes recorded under this category include attacks against the police or violations of assembly laws in the context of pro-refugee demonstrations organised by members of left-wing groups.

In 2014, a new sub-category was added to the classification system: politically motivated criminality – “right targeting asylum accommodations”. This category includes incidents targeting accommodation facilities as well as the people who reside in them. The focus on right-wing motivation in this category helps explain the increase in crimes attributed to perpetrators with a right-wing background, noted in Table 3.2.

Most of these crimes in 2015 consisted of “damage to property” (383), followed by “propaganda crimes” (206), “incitement to hatred” (109) and “arson” (95). Data from the Federal Criminal Police Office show that, in 2014, in 33 % of the cases, the suspects were known to the police for politically motivated crimes, with 31 % not known to the police. Up to the third quarter of 2015, 22 % of the suspects were known for politically motivated crimes, with 47 % not known to the police.

With data on perpetrators scarce, FRA’s first survey on discrimination against immigrants and minorities (EU-MIDIS), while published in 2009, remains the most comprehensive source of comparative data on the issue. The survey found that respondents perceived between 1 % and 13 % of perpetrators of crimes to be members of right-wing/racist gangs; between 12 % and 33 % as someone from the same ethnic group; between 12 % and 32 % as someone from another ethnic group; and between 32 % and 71 % as someone from the majority population.³

Table 3.1: Number of incidents ‘targeting asylum accommodations’ (cases with proven right-wing motivation or where right-wing motivation cannot be excluded) in Germany, 2014–2015

	Violent incidents	Total number of incidents
2014	29	199
2015	177	1,031

Source: Germany, Federal Ministry of the Interior

Table 3.2: Number of incidents ‘in connection with the accommodation of asylum seekers’ in Germany, 2012–2015

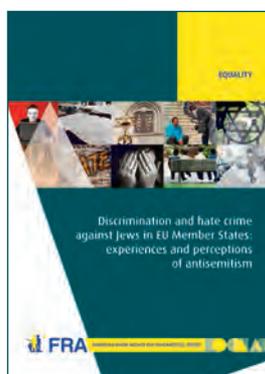
Year	Violent incidents	Total number of incidents
2012	21	62
2013	121	399
2014	188*	895*
2015 (up to 10 November)	140	1,610

Note: * Not comparable with previous years because of a change in the recording procedure

Source: German Bundestag (2015), German government’s response to inquiry from several members of German parliament (*Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Monika Lazar, Luise Amtsberg, Volker Beck (Köln), weiterer Abgeordneter und der Fraktion BÜNDNIS 90/DIE GRÜNEN – Drucksache 18/6513*)



Twenty-seven per cent of respondents to FRA's survey on discrimination and hate crime against Jews – published in 2013 – said that the perpetrator involved in the most serious incident of antisemitic harassment they had experienced over the previous five years was someone with a Muslim extremist view. By comparison, victims identified 22 % of perpetrators of such acts as holding a left-wing political view, 19 % as having a right-wing political view, and 7 % as holding an extremist Christian view.⁴



In other words, racist, xenophobic and antisemitic incidents involve a variety of offenders, including people stemming from the majority population and those with minority ethnic or religious backgrounds. This complex reality needs to be taken into account by actors devising strategies or measures to counter racism, xenophobia and related intolerance.

The January attacks in Paris prompted community leaders throughout the EU to express grave concerns over the safety of Jews and Muslims.⁶ Increased fear and feelings of insecurity among Muslim communities were reported in the majority of Member States, and Jewish communities reinforced existing security

measures, temporarily closing schools and appealing to the police for enhanced protection. Mosques began to receive police protection, as synagogues have for years. Spikes in incidents involving anti-Muslim sentiment were recorded after the January and November attacks in Paris. The French Ministry of the Interior recorded 134 anti-Muslim and racist incidents in January 2015 – 10 more than for all of 2014. In November 2015, the ministry recorded 74 anti-Muslim incidents.

Meanwhile, political rhetoric about asylum seekers in many Member States made reference to their Muslim religion and the risks this is perceived to pose to the values and traditions of the Union and its Member States. This theme continued throughout the summer, when issues of relocation, resettlement, and quotas for asylum seekers were being discussed. For instance, in July, **Estonia's** Minister for Social Protection expressed reluctance about accepting Muslim refugees, pointing out that, “[a]fter all, we are a country belonging to Christian culture.”⁷ The spokesperson of the **Czech** President argued that “refugees with a completely different cultural background would not be in a happy situation [in the Czech Republic].”⁸ In August, the spokesperson of the **Slovak** Interior Ministry stated, “We could take 800 Muslims but we do not have any mosques in Slovakia so how can Muslims be integrated if they are not going to like it here?”⁹ In September, the Interior Minister of **Cyprus** expressed a preference to host Orthodox Christian Syrian refugees, as they could more easily integrate into Cypriot society. That same

Promising practices

Educating children about racism

In **Spain**, as part of a project on ‘Training for the prevention and detection of racism, xenophobia and related forms of intolerance at schools: Migrants and ethnic minorities at school’,⁵ the Spanish Observatory against Racism and Xenophobia published the *Handbook for preventing and detecting racism, xenophobia and other forms of intolerance in schools*. The handbook targets professionals in the educational system.

For more information, see: Manual de apoyo para la prevención y detección del racismo, la xenofobia y otras formas de intolerancia en las aulas

Sweden has implemented several programmes that deal with racism at schools through training for personnel of pre-school, school and after-school programmes. It has also implemented training on past and current racism for all students in compulsory (age 6–15) and upper-secondary schools (age 16–18).

For more information, see: Awareness-raising measures in schools regarding xenophobia and related intolerance and Assignment to implement an educational programme on different forms of racism and intolerance in history and today

In **Greece**, a model academy was held during 2015 to promote democratic citizenship, human rights, and intercultural understanding in 13 school communities across the country. The project resulted from cooperation between the Council of Europe, the European Wergeland Centre, and the Greek Ministry of Education, Research and Religious Affairs; the Institute of Educational Policy also contributed to the effort.

For more information, see: European resource centre on education for intercultural understanding, human rights and democratic citizenship

Germany has implemented a programme that funds projects and initiatives that deal with racism and xenophobia and provide support for victims of racism and individuals who wish to exit racist and radical groups. The programme seeks to promote democracy in society by supporting initiatives that aim to prevent Islamist, left-wing, right-wing, and nationalist radicalization.

For more information, see: Demokratieförderung und Extremismusprävention

month, **Hungary's** prime minister commented that "those arriving have been raised in another religion, and represent a radically different culture. Most of them are not Christians, but Muslims. This is an important question, because Europe and European identity is rooted in Christianity."¹⁰

The 2015 Eurobarometer on discrimination was conducted between May and June 2015, surveying a representative sample of Europeans.¹¹ The results show that most people in the EU would be more at ease working with Christian, atheist, Jewish or Buddhist colleagues than with Muslims.¹² Results varied between Member States, but in some countries with very small proportions of Muslims, a significant proportion of respondents said that they would not feel comfortable working with them. For example, 27 % of respondents in the **Czech Republic**, where Muslims represent about 0.02 % of the population,¹³ expressed such discomfort, as did 37 % in Slovakia, where Muslims constitute about 0.09 % of the population.¹⁴

The year's terrorist attacks reinforced negative stereotyping of Islam and Muslims as a security threat, partly fuelled by concerns over so-called 'foreign fighters' returning to the EU. Few reliable data are available on this phenomenon (see [Table 3.3](#) for data on numbers of foreign fighters).¹⁵ Independent sources estimated that "between 5–10 per cent of the foreigner [fighters] have died, and that a further 10–30 per cent have left the conflict zone, returning home or being stuck in transit countries."¹⁶

Concerned about individuals who flee conflict and seek protection in the EU facing extensive scrutiny, the European Parliament spoke out against linking them with terrorism. In its resolution on preventing the radicalisation and recruitment of European citizens by terrorist organisations,¹⁷ it condemned "the use of stereotypes and xenophobic and racist discourse and practices by individuals and collective authorities which, directly or indirectly, link the terrorist attacks to the refugees who are currently fleeing their countries in search of a safer place, escaping from war and acts of violence which occur in their home countries on a daily basis".

"While, quite rightly, security services around Europe have indeed been prioritising their work in dealing with the foreign fighters who are returned from Syria and Iraq, what the events in Paris [in January 2015] show is that there is also a threat, clearly, from sleeping networks, dormant networks, that suddenly can reawaken."

Rob Wainwright, Director General, Europol, *Oral evidence on counter-terrorism in Europe given to the Home Affairs Committee of the United Kingdom*, 13 January 2015

Table 3.3: Estimated number of foreign fighters from EU Member States in Syria and Iraq, by EU Member State

Member State	Foreign fighters in Syria and Iraq
AT*	150
BE**	440
DE**	700
DK*	150
ES*	100
FI*	70
FR**	1,550
IE*	30
IT*	80
NL*	250
SE**	300
UK**	700
Estimated EU total*	4,000

Sources: * Munich Security Conference (2015), *Munich Security Report 2015: Collapsing order, Reluctant Guardians?*, p. 38, for AT, DK, ES, FI, IE, IT, NL, and estimated EU total. Estimates based on data available up until December 2014.

** Lister, C., *Brookings Doha Center* (2015), *Returning foreign fighters: Criminalization or reintegration?*, *Foreign Policy at Brookings*, p. 2, for BE, DE, FR, SE and UK. Estimates based on data available up until April 2015.

The conclusions on the renewed Internal Security Strategy for the period 2015–2020 also demonstrate the increased emphasis on security at EU-level following the terrorist attacks of 2015.¹⁸ Adopted by the Council in June 2015, they focus on countering terrorism, radicalisation, recruitment, and financing related to terrorism. The strategy builds on the Commission's Communication on the European Agenda for Security¹⁹ of April 2015, which lists tackling terrorism and preventing radicalisation as one of three priorities.

As FRA highlighted in February 2015, any law enforcement and counter-radicalisation measures must be proportional and legitimate.²⁰ This can help limit potentially adverse effects of security measures on the rights of individuals and reduce the risk of alienating communities with measures that could be perceived as discriminatory. It would also help ensure the full compliance of security measures with fundamental rights – one of the declared principles of the European Agenda for Security. ([Section 3.2.1](#) further discusses discriminatory ethnic profiling.)

3.2. Countering hate crime effectively: full implementation of relevant EU *acquis* required

The European Commission already stressed in 2014 that the “full and correct legal transposition” of Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia “constitutes a first step towards effectively combating [these phenomena] by means of criminal law in a coherent manner across the EU”.²¹ In October 2015, the Commission’s first annual colloquium on fundamental rights focused on tolerance and respect through preventing and combating antisemitic and anti-Muslim hatred. In its conclusions, the Commission again emphasised that getting all Member States to effectively transpose and implement the framework decision remains a priority.²²

The European Commission acquired the power to oversee – under the CJEU’s judicial scrutiny – the transposition and implementation of framework decisions on 1 December 2014, following the end of a transitory period set by Protocol No 36 to the Lisbon Treaty. Since then, the Commission has held bilateral dialogues with Member States with a view to ensuring the full and correct transposition and implementation of Framework Decision 2008/913/JHA.

In the course of these bilateral exchanges, progress was reported in a number of Member States. Specifically, **Austria**,²³ **Cyprus**,²⁴ **Romania**²⁵ and **Spain**²⁶ all made relevant amendments to their criminal laws in 2015. However, in December, the European Commission began initiating formal inquiries regarding the instrument’s transposition and implementation in a number of Member States, with a view to launching infringement proceedings where necessary.

As part of the conclusions of its fundamental rights colloquium, and within its efforts to ensure that national rules on combating hate crime and hate speech are implemented on the ground, the European Commission announced its intention to turn the Experts Group on the Framework Decision on racism and xenophobia – in existence since 2010 – into a High Level Working Group on combating racism, xenophobia and other forms of intolerance. This working group will serve as a platform to facilitate the exchange of best practices, develop guidance for Member States, and step up cooperation with relevant actors, including civil society. The Working Party on hate crime coordinated by FRA contributes to these efforts, focusing on ways to improve the recording and reporting of hate crime. Building on this work, FRA will support the High

Level Working Group by collaborating with Member States on developing methodologies to improve the recording of hate crime.

In addition to the Framework Decision on racism and xenophobia – which obliges Member States to criminalise the most serious forms of hate crime and hate speech on grounds of race, colour, religion, descent, and national or ethnic origin – the Victims’ Rights Directive (2012/29/EU) provides the EU with a solid set of rules to protect victims of bias-motivated crime.

The Victims’ Rights Directive establishes minimum standards on the rights, support, and protection of crime victims. Although applicable to all victims of crime, it recognises the particular vulnerability of victims of hate crime and their right to be protected according to their specific needs. Article 25 is particularly relevant. It requires Member States to ensure that all officials likely to come into contact with victims, such as police officers and court staff, receive appropriate training to enable them to deal with victims in an impartial, respectful, and professional manner (see also **Chapter 7** for more information on the Victims’ Rights Directive).

In 2015, several Member States adopted strategies, campaigns, and initiatives aimed at encouraging people to report hate crime. Some Member States made changes to improve their recording systems. Other Member States provided law enforcement personnel and judicial authorities with specialised training related to hate crime. For example, in **Finland**²⁷ and **France**,²⁸ information campaigns were launched in cooperation with national human rights bodies and civil society organisations. Public authorities – such as the police in **Scotland (UK)**²⁹ and the Ministry of the Interior in **Spain**³⁰ – also launched such campaigns.

In **France**, the Public Defender of Rights – supported by the Inter-ministerial Delegation Against Racism and Antisemitism and about 40 other partners from private and public companies, NGOs, and local governments – launched a campaign to mobilise against racism, targeting victims and witnesses of racist incidents. In the **Czech Republic**,³¹ **Denmark**,³² **France**,³³ **Ireland**,³⁴ **Italy**,³⁵ **Luxembourg**,³⁶ the **Netherlands**,³⁷ **Spain**³⁸ and **Sweden**,³⁹ national public campaigns and/or information websites were launched on living together without prejudice, racism and xenophobia; on increasing the reporting of racist and discriminatory incidents; and on victim support. In **Germany**, an agreement was reached with social media companies. The agreement entails measures and practices for swiftly reviewing and removing illegal racist and xenophobic hate speech on social media platforms.⁴⁰

Professionals working in the field of access to justice for hate crime victims believe that the police and the

judiciary need to take hate crimes more seriously, data collected by FRA show.⁴¹

FRA interviewed police and other law enforcement officers, public prosecutors and judges from criminal courts, experts working for victim support services, and representatives of civil society organisations. The results indicate that professionals believe that many police officers and judicial staff do not fully understand what hate crime constitutes and often lack the commitment necessary to identify hate crimes and prosecute and sentence offenders.

Awareness-raising and specialised training for relevant staff can help address such a lack of understanding or commitment. This was provided in a number of Member States in 2015: in the **Czech Republic**, on victims of crime;⁴² in **Bulgaria**⁴³ and **Italy**,⁴⁴ on hate crime generally; on racist crime in **Bulgaria**,⁴⁵ **Cyprus**⁴⁶ and **France**;⁴⁷ and on recognising and dealing with cyber-hate in **Slovakia**.⁴⁸

Promising practice

Developing an EU model of good practice to tackle hate crime

The project *Good Practice Plus* is developing an EU model of good practice to tackle racial and religious hate crime and hate speech and to promote effective reporting systems on hate crime. It promotes measures to build the capacity of law enforcement officials, prosecutors and personnel of victim support services; awareness-raising programmes; and efforts to empower ethnic minority communities. The project aims to improve the position of hate crime victims, provide them with support, and ensure access to justice for victims of racism and hate speech. The project is a partnership between the Northern Ireland Council for Ethnic Minorities, the Police Service of Northern Ireland, Migrant Centre NI and Finland's Ministry of the Interior.

Seven other countries are formally engaged with the project: Belgium, the Czech Republic, Estonia, Greece, Ireland, Italy, and the Netherlands. The European Commission co-founded the project.

For more information, see: <http://goodpracticeplus.squarespace.com/>

In other Member States, such as **Romania**⁴⁹ and **Poland**,⁵⁰ representatives of the judiciary were trained in investigating hate crime cases; in **Denmark**, training focused on relevant sections of the criminal code.⁵¹ In **Germany**, the Federal Anti-Discrimination Agency published a legal opinion on the effective prosecution of hate crime,⁵² interpreting the terminology and existing legal provisions on hate crime in Germany and proposing relevant legislative amendments for

prosecuting hate crime. In **Spain**, a protocol for law enforcement agencies to counter hate crimes and discrimination entered into force in January 2015. This protocol contains guidelines on how to deal with victims to guarantee their protection and assistance and on how to deal with hate crimes committed on the internet and in sport.⁵³

Two multi-year strategic documents adopted by the government of **Slovakia** in 2015 address the issue of hate crime in the broader framework of countering racism and extremism.⁵⁴ In **France**, the plan to fight racism and antisemitism (2015–2017) contains 40 measures that aim to punish racist and/or antisemitic offences; protect victims; increase citizens' awareness through education and culture; fight hate speech on the internet; and mobilise society as a whole. Relevant European and national stakeholders will regularly assess the measures' implementation and adequacy.⁵⁵ Also in **France**, a framework partnership between the Ministry of Justice and the Holocaust Memorial will allow for citizenship training courses for racist or antisemitic offenders.⁵⁶ Following a recommendation issued by ECRI in its latest report, the **Greek** Ministry of Justice, Transparency and Human Rights set up the National Council against Racism and Intolerance; it will mainly plan the implementation of policies on preventing and combating racism and intolerance and monitor the application of anti-racism and intolerance legislation.⁵⁷

Better recognition of hate crime can also improve the recording of such crime. The classification of Member States based on official data collection mechanisms pertaining to hate crime did not change in 2015. This means that data are still not comparable between Member States and that large gaps in data collection remain across the EU.⁵⁸ Some Member States did, however, introduce changes that could lead to improved recording of hate crime. This is particularly the case in **Greece**,⁵⁹ **Hungary**⁶⁰ and **Portugal**,⁶¹ which instituted working groups on hate crime that represent various stakeholders. The working groups aim to develop a common approach to recording hate crime incidents among these stakeholders and to ensure more efficient information exchanges between them.

Other Member States provided for the registering of a broader range of bias motivations underlying hate crimes – such as racism in **Estonia**;⁶² anti-Muslim hatred in the **United Kingdom**,⁶³ and racism, homophobia, anti-Traveller prejudice, ageism, bias against people with disabilities, sectarianism, anti-Roma hatred, Islamophobia, antisemitism, transphobia, and gender prejudice in **Ireland**.⁶⁴ **Poland** introduced a system to flag hate crimes in the police database, which makes it possible to identify hate crimes regardless of an offence's legal qualification.⁶⁵

3.2.1. Courts confront racist and related crime

In *Balázs v. Hungary* (No. 15529/12), the ECtHR found that state authorities failed to effectively investigate a racist attack against a person of Roma origin. The court reiterated that offences against members of particularly vulnerable population groups require vigorous investigation and found – by six votes to one – a violation of Article 14 (prohibition of discrimination) read in conjunction with Article 3 (prohibition of torture, inhuman and degrading treatment) of the ECHR. It ordered **Hungary** to pay EUR 10,000 in damages to the applicant. Pursuant to Article 43(1) of the ECHR, the government of Hungary requested the judgement’s referral to the court’s Grand Chamber.

The ECtHR also issued a decision relating to hate speech. In *M’Bala M’Bala v. France* (No. 25239/13), it held that a comedian’s stand-up performance – which promoted hatred, antisemitism, and Holocaust denial – could not be regarded as entertainment, but instead was an expression of an ideology that runs counter to values of the ECHR, namely justice and peace. The court therefore ruled that the applicant’s performance was not entitled to the protection of Article 10 of the ECHR, which guarantees freedom of expression.⁶⁶

“When investigating violent incidents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Admittedly, proving racial motivation will often be extremely difficult in practice. The respondent State’s obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and not absolute. The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of a racially induced violence.”

ECtHR, *Balázs v. Hungary* (No. 15529/12), 20 October 2015

At national level, in a case concerning **France**,⁶⁷ the Court of Appeal of Cayenne reversed a 2014 judgment⁶⁸ regarding a member of the *Front National* movement.⁶⁹ **Austria**’s Supreme Court issued a landmark decision, holding that using the motive behind a crime of incitement as an aggravating circumstance in sentencing does not violate the prohibition of double jeopardy. The case involved an individual convicted of incitement to hatred against Jews and Israeli citizens under section 283 (2) of the Criminal Code. In the judgment, a stronger sentence had been applied because of the racist motive underlying the crime.⁷⁰

3.2.2. Targeting discriminatory attitudes among law enforcement to increase reporting of hate crime

FRA research shows that practitioners in the field of access to justice for hate crime victims believe that many people do not report hate crimes because they feel the police would not treat them sympathetically.⁷¹ They stress that it is necessary to increase victims’ trust in the police, with many emphasising that measures to tackle discriminatory attitudes among the police are essential. This is particularly relevant in the context of discriminatory ethnic profiling, an unlawful⁷² and inefficient practice that can undermine social cohesion because it makes people lose trust in law enforcement. Nevertheless, this practice persists in several EU Member States.

In **France**, the Paris Court of Appeal decided in favour of five out of 13 claimants who filed a complaint against police identity checks, claiming they were stopped and searched solely based on their skin colour and presumed ethnic origin. One of the successful claimants presented as evidence witness testimony showing that all the persons who were stopped and searched were young and of African or Arab origin. The court held that, according to international standards set by the International Convention on the Elimination of All Forms of Racial Discrimination and Article 13 of the ECHR, such a discriminatory practice in itself constitutes “serious misconduct”. The court ordered the state to pay damages of €1,500 to each successful claimant.⁷³ The French government appealed the decision in October. The unsuccessful claimants had already filed an appeal in cassation, so the government argued that, to achieve a strong precedent with the case, all claims should be reviewed by the Court of Cassation, including those that were successful.⁷⁴

In its report on **France**, the United Nations Committee on the Elimination of Racial Discrimination (CERD) called on the authorities to “establish sufficient guarantees to ensure that the practical application of anti-terrorism measures does not interfere with the exercise of Convention rights, particularly those relating to racial or ethnic profiling”.⁷⁵ In its report on the **Netherlands**, CERD called on the authorities to adopt the necessary measures to ensure that stop and search powers are not exercised in a discriminatory manner.⁷⁶ CERD also called on the **German** authorities to amend or repeal section 22 (1) of the Federal Police Act, which, for the purpose of controlling immigration, enables police to stop and question persons in railway stations, trains and airports; demand their identity documents; and

inspect objects in their possession.⁷⁷ Similarly, the Council of Europe Commissioner for Human Rights expressed concern regarding reports about “racial profiling practices among the German police”.⁷⁸

The **United Kingdom** is the only Member State that systematically collects and publishes data on police stops disaggregated by ethnicity. These data show that, in 2015, black people were more likely to be stopped and searched than any other ethnic group. In England and Wales as a whole, 48 % of those searched under section 60 of the Criminal Justice and Public Order Act 1994 in the year ending on 31 March 2014 were white; 29 % were black. In comparison, in the year ending on 31 March 2013, 41 % were white and 36 % were black.⁷⁹ Commenting in response to stop and search figures published by the UK police, the spokesperson of the Equality and Human Rights Commission (EHRC) stressed that “concerted efforts by the Commission and the police service have resulted in some valuable improvements but these figures show there is still a long way to go”.⁸⁰

Also in the **United Kingdom**, the College of Policing announced that it would be launching a new Stop and Search Pilot.⁸¹ The pilot will deliver training, designed by the College of Policing in partnership with the EHRC, to: improve the quality and recording of ‘reasonable grounds’; improve the quality of police/public encounters; and address the effects of unconscious bias, particularly of police officers towards persons of minority ethnic backgrounds when exercising their powers of stop and search. Approximately 1,320 officers across six forces have been selected to take part in the pilot. To test the effects of the training, half of the selected officers will receive the training and half will not. The results of the trial will be published, following peer review, in June 2016.

Meanwhile, ECRI recommended that the **Austrian** Ombudsman Board use its powers to investigate allegations of racial profiling and misconduct towards persons with migrant backgrounds by police officers.⁸² ECRI also called on the **Greek** authorities to instruct police officers to refrain from racial profiling during stop and search operations and to ensure a respectful tone and behaviour towards all persons stopped.⁸³ ECRI⁸⁴ and the UN special rapporteur on contemporary forms of racism⁸⁵ stressed that people of African origin are more frequently stopped and searched by the police than white people. Similarly, the UN Working Group on People of African Descent expressed concerns about racial profiling of Africans and black people in **Sweden**.⁸⁶

Several Member States took measures and initiatives to raise human rights awareness among law enforcement officials. Topics covered included legislation in force to counter racism and ethnic discrimination and policing diverse societies. The **Bulgarian** police, for

example, implemented measures against racism and xenophobia in compliance with the annual action plan of the Ministry of the Interior’s Permanent Commission on Human Rights and Police Ethics. The action plan for 2015 includes a separate section with measures on human rights in the context of an increased flow of immigrants and refugees, and measures against discrimination and hate crime.⁸⁷

The **Estonian** Academy of Security Sciences started providing training to the Border Guard Board and police officers in 2015. The training focused on multiculturalism, as well as on different habits and customs of people with different cultural backgrounds and origins. The training aims to build relations and partnerships with local communities and to use community policing measures to prevent radicalisation at its early stages.⁸⁸ In **Ireland**, Garda Ethnic Liaison Officers (ELOs) have been appointed to work with minority communities at local level throughout the country. These officers, combined with the Garda Racial Intercultural and Diversity Office (GRIDO), are intended to play a key role in liaising with minority groups and to work in partnership to encourage tolerance, respect and understanding within communities, with the aim of preventing hate crime and racist crime.⁸⁹

Similarly, in the **Czech Republic**, the police project ‘Introduction of police specialists for police work with the Roma minority in socially excluded areas’ aims to increase trust between the police and Roma living in socially isolated localities. This should aid conflict prevention and lead to more effective policing.⁹⁰

Promising practice

Police training on matters of discrimination and profiling

The Interfederal Centre for Equal Opportunities is the **Belgian** equality body. In collaboration with the Institute for Equality of Men and Women and the NGOs Çavaria and Transgender Infopoint, it organises training sessions designed for police officers on matters of discrimination and hate crime. In 2015, the centre trained 40 police officers in Flanders. Once trained, police officers become the reference persons in matters of hate crimes and discrimination within their police districts. In 2016, training sessions on combating racial profiling and hate crime will take place in police academies of the French-speaking community.

For more information, see: Belgische Kamer van volksvertegenwoordigers/Chambre des représentants de Belgique (2015), Schriftelijke vragen en antwoorden/Questions et réponses écrites

In a letter to the House of Representatives, the **Dutch** Minister of Security and Justice announced in

November that the police had laid down the final policy framework for diversity. Entitled *The power of difference*,⁹¹ it sets four goals: strengthening ties between the police and society; improving the way the police deals with discrimination in society; a more inclusive work culture; and a more diverse workforce.⁹²

3.3. Tackling discrimination by strengthening implementation of the Racial Equality Directive

The European Commission already indicated in 2014 that increasing awareness of existing protection and ensuring “better practical implementation and application” of the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC) were a major challenge.⁹³ The Commission continued to closely monitor the implementation of the Racial Equality Directive in 2015, initiating and continuing infringement proceedings against Member States found to be in breach of its provisions.

In April, the European Commission initiated proceedings against **Slovakia**, alleging discrimination against Roma children in the educational context, both in terms of legislation and practice. The allegations targeted both mainstream education and special education for children with mental disabilities, since disproportionately high numbers of Roma children are systematically misdiagnosed as mentally disabled and attend special schools and classes for children with mental disabilities.⁹⁴ In addition, the Council of the European Union called on Slovak authorities to “increase the participation of Roma children in mainstream education and in high-quality early childhood education”.⁹⁵ In June, the Slovak Republic adopted amendments to its Education Act to address issues in the legislation.

The European Commission pursued similar infringement proceedings with respect to the Race Equality Directive against the **Czech Republic** in 2014, also alleging discrimination against Roma children in educational legislation and practice because of the disproportionately high numbers of Roma children systematically misdiagnosed as mentally disabled and placed into special schools for children with learning difficulties.⁹⁶ In May 2015, the Council of the European Union called on the Czech Republic to “ensure adequate training for teachers, support poorly performing schools and take measures to increase participation among disadvantaged children, including Roma”.⁹⁷ The Czech Republic introduced changes to its Education Act to address issues in the legislation in March 2015. The amendment, which passed its first reading on 27 October, provides a number of support measures – including

an obligatory pre-school year from September 2016 onwards and a guarantee of kindergarten places for all three-year-old children by 2018.⁹⁸ In November, the European Commissioner for Justice, Consumers and Gender Equality voiced her appreciation for the steps undertaken by the Czech Ministry of Education in the field of inclusive education⁹⁹ (see Chapter 4 for further information on Roma issues).

The European Commission also very closely monitors the setting up of equality bodies in EU Member States. Pursuant to Article 13(2) of the Racial Equality Directive, these bodies should be able to provide independent assistance to victims of discrimination. In that respect, the Commission has launched infringement proceedings against **Slovenia** for failing to set up an independent equality body able to provide efficient assistance to victims of discrimination¹⁰⁰ and against **Belgium** for failing to set up at all political levels an equality body competent for gender matters. Meanwhile, the Commission discontinued infringement proceedings¹⁰¹ against **Finland** in May, following adoption of the new Non-Discrimination Act. The new law, which entered into force in early 2015, replaced the former equality body – the Ombudsman for Minorities – with the Non-Discrimination Ombudsman. The law entrusts the new equality body with relevant tasks in the field of employment, in compliance with Article 13 of the Racial Equality Directive.¹⁰²

Strengthening the powers of equality bodies contributes to more effective implementation of the Racial Equality Directive. A number of Member States took action in this regard. For example, in December, the **Danish** parliament amended the Act on the Board of Equal Treatment,¹⁰³ allowing the equality body (the Danish Institute of Human Rights) to bring cases before the Equality Board if they are of general public interest. In **Estonia**, the Office of the Gender Equality and Equal Treatment Commissioner amended its procedural rules to prioritise cases of victims who claim discrimination on grounds of racial, xenophobic or related intolerance.¹⁰⁴ **Finland’s** new Non-Discrimination Act also puts the Non-Discrimination Ombudsman in charge of a wider range of discrimination grounds, including age, origin, nationality, language, religion, belief, opinion, political activity, trade union activity, family relationships, state of health, disability, sexual orientation, and other personal characteristics.¹⁰⁵

The 2015 Eurobarometer on discrimination shows that 45 % of respondents say that they would know their rights should they fall victim to discrimination or harassment – an eight-point increase since 2012. Meanwhile, 47 % answered that they would not know their rights, one percentage point fewer than the previous year.¹⁰⁶

A number of equality bodies sought to raise awareness of anti-discrimination legislation by developing

information and guidance documents. In **Belgium**, in light of persisting ethnic discrimination in the housing sector, the Inter-federal Centre for Equal Opportunities released guidelines for landlords and industry professionals, listing the criteria to be used in tenant selection to comply with anti-discrimination legislation.¹⁰⁷ The **German** Federal Anti-Discrimination Agency published a guide to assist work councils and labour unions in dealing with ethnic discrimination and racism at work, providing legal and practical advice on how to combat and prevent ethnic and religious discrimination.¹⁰⁸ It also published a manual on legal discrimination protection that sets out the possible legal steps to be taken in discrimination cases. The manual provides legal guidance to lawyers, counsellors, advisers, and people who are victims of discrimination on various grounds, including race and ethnicity.¹⁰⁹ **Finland** adopted a non-discrimination planning guide for preventing employment discrimination on ethnic grounds in the private sector.¹¹⁰

Promising practice

Guidance on racial discrimination at the workplace

In August 2015, the Advisory, Conciliation and Arbitration Service (ACAS) – an independent statutory body in the **United Kingdom** – issued guidance on *Race discrimination: Key points for the workplace*. The guidance targets employers, managers, human resources personnel, and trade union representatives and provides them with tools to identify how race discrimination can occur in the workplace, how to deal with it, and how to reduce its occurrence. It covers recruitment, pay, terms and conditions of employment, promotion, training, and dismissal, and lays out the obligations under the Equality Act 2010. In 2016, ACAS intends to publish similar guidance for each of the nine protected characteristics under the Equality Act 2010.

For more information, see: ACAS (2015), Race discrimination: Key points for the workplace

The Racial Equality Directive requires Member States to provide effective, proportionate, and dissuasive sanctions in cases of infringement of the principles defined in the directive. In its 2014 report on the application of the equality directives, the European Commission raised concerns regarding “the availability of remedies in practice and whether sanctions that are imposed in concrete cases comply fully with the [directives’] requirements”, noting that “national courts appear to have a tendency to apply the lower scale of sanctions provided for by law and in terms of the level and amount of compensation awarded.”¹¹¹

This echoes FRA’s findings on access to justice in cases of discrimination, which show that “compensation

in discrimination cases is very often too low to be dissuasive” and that “generally the range of remedies available did not always reflect complainants’ aspirations”.¹¹² Research conducted by the European Network of Equality Bodies (Equinet) stresses the key role of equality bodies in making sure that sanctions and remedies in discrimination cases are effective, dissuasive, and proportional. The Equinet analysis shows that equality bodies are competent to issue sanctions and recommendations in several Member States, including **Belgium, Bulgaria, Cyprus, Denmark, Finland, France, Hungary, Latvia, Lithuania, Malta, Portugal** and **Romania**. The report also shows that the judiciary in some Member States could apply a wide set of sanctioning options, but that these remain unused or underused because judges lack knowledge or are reluctant to apply sanctions that are not common in their national legal systems. Equinet therefore calls on the equality bodies “to motivate judges to apply those sanctions, which are available in law, also in practice.”¹¹³

The European Commission’s report on the application of the equality directives also stressed that “legislation alone is not enough to ensure full equality” and that “appropriate policy action” is also needed.¹¹⁴ In this respect, a number of Member States adopted policies to support the effective implementation of the Racial Equality Directive in 2015.

In **Belgium**, the Minister for Equal Opportunities of the Wallonia-Brussels Federation adopted an Antidiscrimination Plan consisting of 53 anti-discriminatory measures.¹¹⁵ The plan aims to address discrimination in compulsory education, higher education, media and social networks, the youth sector, sport, the public sector, and in connection with equal opportunities. The **French** Minister for Labour presented a ‘Programme to combat discrimination in recruitment and employment’, which focuses on four themes: discrimination at the time of recruitment, discrimination in employment, awareness raising/training, and sharing good practices.¹¹⁶

The **Italian** Ministry of Labour and Social Policies adopted a National Plan against Racism, Xenophobia and Intolerance. It aims to monitor and support the implementation of the racial and employment equality directives by collecting data on labour discrimination, promoting diversity management policies, and taking measures to combat discrimination in the private sector.¹¹⁷

In **Lithuania**, the Inter-institutional Action Plan for the Promotion of Non-discrimination (2015–2020) aims to counter discrimination and promote respect. Its measures include public awareness-raising campaigns and training for various professional groups – such as employers and journalists – and disseminating

information about the activities of the Office of Equal Opportunities Ombudsman.¹¹⁸

Tackling ethnic discrimination is part of the **Maltese** framework document *Towards a National Migrant Integration Strategy 2015-2020*, which deals with integration of third-country nationals.¹¹⁹ In the **United Kingdom**, the Racial Equality Strategy 2015-2025 for Northern Ireland aims to tackle racial inequalities and open up opportunity for all, eradicate racism and hate crime, and promote good race relations and social cohesion.¹²⁰

3.3.1. Courts address ethnic and racial discrimination

EU and national case law in 2015 analysed key concepts of the Racial Equality Directive, including the principle of indirect discrimination by association and the distinction between direct and indirect discrimination.

The CJEU's landmark judgment in *CHEZ Razpredelenie Bulgaria AD v. Komisia za zashtita ot diskriminatsia* (C-83/14) clarified the interpretation of key concepts of the Racial Equality Directive.¹²¹ The case – the first CJEU decision on discrimination against the Roma – challenged the business practice of a Bulgarian electricity supply company. In neighbourhoods with a predominantly Roma population, the company installed electricity meters at a height of 6 metres, whereas it usually placed the meters at the more convenient height of 1.7 metres. The company justified this policy by citing the unusual amount of tampering that allegedly occurred in neighbourhoods with large Roma populations.

The claimant – a Bulgarian national of non-Roma origin – owned and operated a grocery store in a neighbourhood in which meters were installed at a height of 6 metres. Although not herself of Roma origin, the claimant brought a claim before the Bulgarian Anti-Discrimination Commission (*Komisia za zashtita ot diskriminatsia*, KZD), arguing that she too suffered discrimination because of this practice. The CJEU held that equal treatment also applies to individuals who, although not themselves a member of the ethnic group concerned, suffer – together with the former – a disadvantage on account of discrimination. The judgement is considered significant for a variety of reasons. Besides clarifying that the principle of associative discrimination also applies to indirect discrimination cases, it offers new perspectives on the interpretation of the Racial Equality Directive concerning, among others, the directive's personal scope of application, certain aspects of its material scope, and the distinction between direct and indirect discrimination.¹²²

In the **Czech Republic**, the Constitutional Court deemed improper the Regional Court of Prague's reasoning in

its acquittal of Kladno city authorities regarding the assignment of municipal flats to Roma in a socially isolated area. It directed the regional court to consider indirect discrimination.¹²³

In **Belgium**, the Brussels Court of Appeal found employment agencies guilty of using discriminatory references during recruitment procedures at the request of clients who did not wish to hire people of foreign origin.¹²⁴ The companies' staff set up on their internal computer systems separate lists for Belgians and for people of foreign origin. The Belgians were systematically encoded with the label "BBB" ("*Blanc, Bleu, Belge*"). The NGO SOS Racisme and the trade union FGTB claimed discrimination, arguing that the companies violated several provisions of the Racial Equality Directive as implemented in national law. The court found that, under Article 1384 of the Civil Code, the employment agencies were responsible for the acts of their staff, who had used the code BBB with a racial and ethnic connotation. The court concluded in regard to damages that "a purely symbolic compensation would not meet the requirements of an effective transposition of EU law into national law" and ordered the employment agencies to pay compensation of €25,000 to each claimant.

In May 2015, the Central London County Court held that JD Wetherspoon, one of the largest **UK** pub chains, discriminated against Irish Travellers by refusing to serve them at a London branch. The incident took place at a pub close to the location at which the annual Traveller Movement Conference was taking place. Some, but not all, of the group refused entry were Irish Travellers or of Roma origin. Nineteen claims of racial discrimination were brought against the pub chain in *Traveller Movement and others v. JD Wetherspoon*.¹²⁵ One of the claims was a group claim by the Traveller Movement, a charity that promotes the interests of Irish Travellers and Roma,¹²⁶ as it can be considered "a person" under the Equality Act 2010. The court found in favour of nine of the claims, including the group claim by the Traveller Movement. The successful claims included some by individuals who were not Irish Travellers and not of Roma origin, confirming that discrimination by association can also be justiciable. JD Wetherspoon was ordered to pay GBP 3,000 in damages to each of the claimants identified as having been a victim of racial and ethnic discrimination.

Also in the **United Kingdom**, in April 2015, the Wiltshire Police accepted a judgement of the Employment Tribunal, which found it had discriminated against and harassed an officer because of his ethnicity.¹²⁷ The police issued a statement saying that it would learn lessons from the tribunal's findings and urging people in the black and ethnic minority community not to be discouraged from joining the force.¹²⁸

3.4. More data needed to effectively counter ethnic discrimination

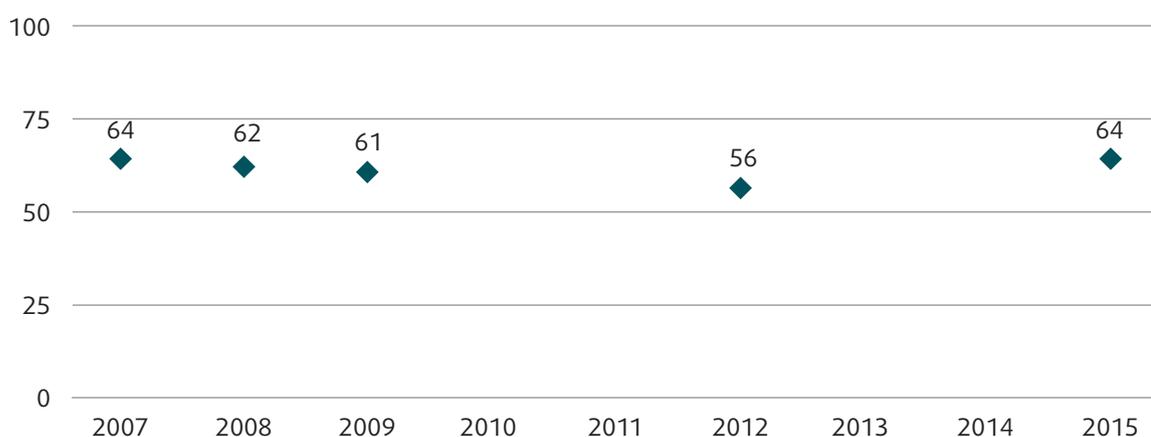
Surveys on experiences of discrimination, as well as on attitudes and opinions, are a useful tool to inform policymakers about the prevalence and types of discriminatory practices, prejudices, and stereotypes within the general population. Findings on changes over time can serve as an early warning system for policymakers. The Eurobarometer provides data concerning the general population’s perceptions of discrimination over the last eight years. Of the six grounds of discrimination covered in the surveys (ethnic origin, age, disability, sexual orientation, gender, and religion or belief), the majority of Europeans perceive discrimination on the ground of ethnic origin as the most widespread. (See ► Chapter 2 for more on the 2015 special Eurobarometer on discrimination.) As Figure 3.1 illustrates, almost two in three Europeans perceive ethnic discrimination as widespread in the EU.

Eurobarometer surveys are conducted on a sample of the general population and can therefore include only a very small number of respondents with a minority background. FRA’s European Union Minorities and

Discrimination (EU-MIDIS) and Roma surveys, on the other hand, are conducted on samples of respondents with different ethnic minority or immigrant backgrounds across the EU, and deal with experiences of discrimination, criminal victimisation, and rights awareness. By conducting similar surveys at national level, Member States could document the situation of their minority groups and assess the progress and impact of their policies on the ground.

Formulating policies to effectively target ethnic discrimination requires reliable and comparable data, including data disaggregated by self-identified ethnicity. FRA’s opinion on the implementation of the equality directives shows that only a few Member States collect and publish disaggregated data on the number of cases on discrimination reported and taken to court.¹²⁹ The 2015 Eurobarometer on discrimination shows, however, that “a large majority of respondents expressed support for providing personal details on an anonymous basis [...] on their ethnicity (72%), if it would help combat discrimination in their country.”¹³⁰ This confirms FRA’s findings in EU-MIDIS I, which showed that 65 % of respondents said they would be willing to provide information about their ethnicity on an anonymous basis as part of a census if doing so could help combat discrimination.¹³¹

Figure 3.1 Perception of the extent of ethnic discrimination, average across the EU-28, 2007–2015 (%)



Notes: 2007: except for Bulgaria, Croatia and Romania
 2008, 2009 and 2012: except for Croatia
 2010, 2011, 2013 and 2014: no data available

Question: QC1.1 For each of the following types of discrimination, could you please tell me whether, in your opinion, it is very widespread, fairly widespread, fairly rare or very rare in (OUR COUNTRY)? Discrimination on the basis of...

Sources: European Commission, Special Eurobarometer 263 (2007), Special Eurobarometer 296 (2008), Special Eurobarometer 317 (2009), Special Eurobarometer 393 (2012), and Special Eurobarometer 437 (2015); and FRA.

EU-MIDIS II: assessing progress

In 2015, FRA launched the second wave of the European Union Minorities and Discrimination Survey (EU-MIDIS II) to assess progress made over time regarding the actual impact of EU and national anti-discrimination and equality legislation and policies on people's lives. EU-MIDIS II is conducted in all 28 EU Member States and aims to achieve a total sample size of 25,200 randomly selected respondents from different ethnic minority or immigrant backgrounds across the EU, covering experiences of discrimination, criminal victimisation, and rights awareness. In addition, it collects data on socio-economic conditions and issues related to social inclusion and participation. The survey's results will provide evidence to guide policymakers in developing more targeted legal and policy responses to address racism and hate crime, and can also support the advocacy work of civil society organisations. The first EU-MIDIS II results are expected in the second half of 2016; further outcomes, as well as data visualisation on the FRA webpage, will follow in 2017.

For more information, see: FRA (2015), *EU-MIDIS II: European Union minorities and discrimination survey*



FRA opinions

Looking at manifestations of racism and xenophobia, 2015 was marked by the aftermath of terrorist attacks attributed to the Islamic State, as well as by the arrival in greater numbers of asylum seekers and migrants from Muslim countries. Available evidence suggests that Member States that have seen the highest numbers of arrivals are the most likely to be faced with spikes in racist and xenophobic incidents, which will call for the attention of law enforcement agencies, criminal justice systems and policymakers. This is particularly relevant for the implementation of Article 1 of the EU Framework Decision on Racism and Xenophobia on measures Member States shall take to make intentional racist and xenophobic conduct punishable. Article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination also lays down this obligation, providing for the convention's State parties to declare an offence punishable by law for incitement to racial discrimination, as well as acts of violence against any race or group of persons.

FRA opinion

To address phenomena of racism and xenophobia, it is FRA's opinion that EU Member States should ensure that any case of alleged hate crime or hate speech is effectively investigated, prosecuted and tried in accordance with applicable national provisions and, where relevant, in compliance with the provisions of the Framework Decision on Racism and Xenophobia, European and international human rights obligations, as well as relevant ECtHR case law on hate speech.

Systematically collected and disaggregated data on incidents of ethnic discrimination, and hate crime and hate speech can contribute to better implementing the Racial Equality Directive and the Framework Decision on Racism and Xenophobia. Such data also allow the development of targeted policy responses to counter ethnic discrimination and hate crime. Case law of the European Court of Human Rights (ECtHR) and national courts from 2015 further demonstrates that such data can serve as evidence to prove ethnic discrimination and racist motivation, and hold perpetrators to account. Under Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, EU Member States have accepted the obligation to ensure effective protection of and remedy for victims. Persistent gaps, nevertheless, remain in how EU Member States record incidents of ethnic discrimination and racist crime.

FRA opinion

To develop effective legal and policy responses that are evidence based, it is FRA's opinion that EU Member States should make efforts to collect data on ethnic discrimination and hate crime in a way that renders them comparable between countries. FRA will continue working with Member States on improving reporting and recording of ethnic discrimination or hate crime incidents. Data collected should include different bias motivations, as well as other characteristics such as incidents' locations and anonymised information on victims and perpetrators. The effectiveness of such systems could be regularly reviewed and enhanced to improve victims' opportunities to seek redress. Aggregate statistical data, from the investigation to the sentencing stage of the criminal justice system, could be recorded and made publicly available.

Although the Framework Decision on Racism and Xenophobia and the Racial Equality Directive are in force in all EU Member States, members of minority groups as well as migrants and refugees faced racism and ethnic discrimination in 2015, namely in education, employment and access to services, including housing. Members of ethnic minority groups also faced discriminatory ethnic profiling in 2015, despite this practice running counter to the International Convention on the Elimination of All Forms of Racial Discrimination and being unlawful under the European Convention on Human Rights (Article 14), and the general principle of non-discrimination as interpreted in the ECtHR case law. Article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination also obliges EU Member States to ensure effective education to fight prejudices that lead to racial discrimination.

FRA opinion

To make efforts to tackle discrimination more effectively, it is FRA's opinion that EU Member States could, for instance, consider raising awareness and providing training opportunities to public officials and professionals, in particular law enforcement officials and criminal justice personnel, as well as teachers, healthcare staff and housing authority staff, employers and employment agencies. Such activities should ensure that they are well informed about anti-discrimination rights and legislation.

Evidence from 2015 shows that remedies are insufficiently available in practice and that sanctions in cases of discrimination and hate crime are often too weak to be effective and dissuasive. They thus fall short of the requirements of both the Racial Equality Directive and the Framework Decision on Racism and Xenophobia, as underpinned by Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination. Furthermore, in only a few Member States are equality bodies competent to issue sanctions and recommendations in cases of ethnic discrimination. How far complaint procedures fulfil their role of repairing damage done and acting as a deterrent for perpetrators depends on whether dispute settlement bodies are able to issue effective, proportionate and dissuasive sanctions.

FRA opinion

To improve access to justice, it is FRA's opinion that EU Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of national provisions transposing the Racial Equality Directive and the Framework Decision on Racism and Xenophobia. Member States could also consider broadening the mandate of equality bodies, which are currently not competent to act in a quasi-judicial capacity, by empowering them to issue binding decisions. Furthermore, equality bodies could monitor the enforcement of sanctions issued by courts and specialised tribunals.

Equality bodies in several EU Member States developed information and guidance documents in 2015 to raise awareness of legislation relevant to countering ethnic discrimination. Evidence shows that, despite the legal obligation to disseminate information under Article 10 of the Racial Equality Directive, public awareness remains too low for legislation addressing ethnic discrimination to be invoked often enough.

FRA opinion

To address the persisting low levels of awareness about equality bodies and relevant legislation, it is FRA's opinion that EU Member States could intensify awareness-raising activities about EU and national legislation tackling racism and ethnic discrimination. Such activities should involve statutory and non-statutory bodies such as equality bodies, national human rights institutions, non-governmental organisations (NGOs), trade unions, employers and other groups of professionals.



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