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UN & CoE

January

17 January – In *Király and Dömötör v. Hungary* (No. 10851/13), the European Court of Human Rights (ECtHR) holds that shortcomings of an investigation into an anti-Roma demonstration amounted to a violation of the right to respect for private and family life (Article 8 of the ECHR)

25 January – PACE adopts Resolution 2144 (2017) on ending cyber discrimination and online hate

31 January – UN Committee on Convention on the Elimination of All Forms of Racial Discrimination (CERD) publishes concluding observations on 15th to 17th periodic reports of Portugal

February

28 February – European Commission against Racism and Intolerance (ECRI) publishes its fifth monitoring report on Luxembourg and conclusions on the implementation of a number of priority recommendations made in its country reports on Germany and Belgium released in 2014

March

April

May

16 May – ECRI publishes its fifth monitoring report on Denmark and conclusions on the implementation of a number of priority recommendations made in its country reports on Bulgaria, Romania and the Slovak Republic released in 2014

16 May – CERD publishes concluding observations on the combined 20th to 22nd periodic reports of Bulgaria

June

2 June – CERD publishes concluding observations on the combined 23rd and 24th periodic reports of Cyprus

2 June – UN Human Rights Council adopts a report of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action

8 June – CERD publishes concluding observations on the 23rd periodic report of Finland

22 June – ECRI publishes its annual report 2016

28 June – In *Škorjanec v. Croatia* (No. 25536/14), the ECtHR reiterates that the national authorities' failure to carry out a thorough investigation into the link between the applicant's relationship with her partner, a man of Roma origin, and the racist motive for the attack on both of them, amounted to a violation of the procedural aspect of the prohibition of torture (Article 3 of the ECHR) in conjunction with the prohibition of discrimination (Article 14 of the ECHR)

July

22 July – No Hate Speech Movement Youth Campaign (NHSM) of the Council of Europe organises a Europe-wide Action Day in support of victims of hate crime

August

September

19 September – ECRI publishes its conclusions on the implementation of a number of priority recommendations made in its country report on Slovenia, Germany and Belgium released in 2014

October

9 October – UN Human Rights Council extends the mandate of the Working Group of Experts on People of African Descent for a further period of three years

31 October – In *M.F. v. Hungary* (No. 45855/12), the ECtHR holds that the Hungarian authorities failed to investigate the ill-treatment of a Roma man by the police, violating the prohibition of torture (Article 3 of the ECHR) in conjunction with the prohibition of discrimination (Article 14 of the ECHR)

November

December

EU

January

February

February – EU High Level Group on combating racism, xenophobia and other forms of intolerance publishes *'Hate crime training for law enforcement and criminal justice authorities: 10 guiding principles'*

March

April

6 April – In *Jyske Finans A/S v. Ligebehandlingsnævnet* (No. 668/15), the Court of Justice of the European Union (CJEU) clarifies in a preliminary ruling request regarding the interpretation of direct and indirect discrimination under the Racial Equality Directive, that a person's country of birth cannot, in itself, justify a general presumption that the person is a member of a given ethnic group, such as to establish the existence of a direct or inextricable link between those two concepts

May

June

1 June – European Commission releases the results of the second evaluation of the Code of Conduct on countering online hate speech

1 June – European Parliament (EP) adopts a resolution calling on all Member States and their institutions to apply the working definition of anti-Semitism of the International Holocaust Remembrance Alliance

July

August

September

28 September – European Commission adopts a communication on *'Illegal Content Online. Towards an enhanced responsibility of online platforms'*

October

November

December

December – EU High Level Group on combating racism, xenophobia and other forms of intolerance publishes key guiding principles on *'Ensuring justice, protection and support for victims of hate crime and hate speech: '10 key guiding principles''*

5 December – EU High Level Group on combating racism, xenophobia and other forms of intolerance endorses the key guiding principles on *'Improving the recording of hate crime by law enforcement authorities'*

4

Racism, xenophobia and related intolerance



Seventeen years after the adoption of the Racial Equality Directive and nine years after the adoption of the Framework Decision on Racism and Xenophobia, immigrants and minority ethnic groups continue to face widespread discrimination, harassment and discriminatory ethnic profiling across the EU, as the findings of FRA's second European Union Minorities and Discrimination Survey (EU-MIDIS II) show. The European Commission supported EU Member States' efforts to counter racism and hate crime through the EU High Level Group on combating racism, xenophobia and other forms of intolerance. It also continued to monitor closely the implementation of the Racial Equality Directive and of the Framework Decision. Although several EU Member States have been reviewing their anti-racism legislation, in 2017 only 14 of them had in place action plans and strategies aimed at combating racism and ethnic discrimination.

4.1. No progress in countering racism in the EU

Racism and intolerance ranged from everyday harassment to outright violence in 2017. In the **United Kingdom**, a man was charged with terrorism-related murder and attempted murder after driving a van into a crowd of Muslim worshippers, killing one person and injuring 11.¹ In the **Czech Republic**, a group of 20 football fans violently assaulted a West African man travelling in a tram because he was black.² In **Greece**, a group of masked teenagers used iron bars and knives to beat and stab two migrant workers in a field, while yelling racist insults. Police arrested the three teenagers.³

Refugees and asylum seekers continued to be violently attacked and harassed across the EU in 2017, but few EU Member States record or publish data on such hate crimes. **Finland** records data on attacks against accommodation centres for asylum seekers, while **Germany** also records and publishes data on attacks targeting refugees and asylum seekers themselves. In the first nine months of 2017, there were 243 attacks on refugee homes throughout the country, compared

with 873 attacks in the first nine months of 2016, data from the German Federal Criminal Police Office show.⁴ More than 3,500 attacks against refugees and asylum shelters were recorded in 2016, according to data made available by the German Federal Government in 2017 in response to a parliamentary question.⁵ A total of 2,545 attacks against individual refugees were reported in 2016. These attacks left 560 people injured, including 43 children.⁶

In 2017, FRA published the results of the second European Union Minorities and Discrimination Survey (EU-MIDIS II) on experiences of ethnic minorities and immigrants with discrimination and hate crime. Many of the respondents experienced racism in the form of discrimination incidents, harassment or hate crime, but few reported these to the authorities. Overall, the results show very little progress compared with eight years earlier, when the survey's first wave was conducted. Persisting harassment, discrimination and violence limit the ability of people with a minority background to fully enjoy their fundamental rights and freedoms, and undermine their equal participation in society. Lack of progress in preventing and countering racism indicates that laws and policies may inadequately protect the people they are meant to serve.

Such incidents occurred against a backdrop of persisting racist and xenophobic attitudes and rhetoric, which some opinion leaders and EU politicians embrace, normalising such discourse. A Bloomberg analysis of 30 years of election results across 22 European countries reveals that 'populist far-right parties' won, on average, 16 % of the overall vote in the most recent parliamentary elections in each country, up from 5 % in 1997.⁷ In Austria, for example, a coalition was formed with the Freedom Party of Austria (FPÖ) in government, prompting the European Jewish Congress to express, in December 2017, grave concerns about the coalition's impact on minorities.⁸ Overall, these election results throughout Europe foster a social climate that provides fertile ground for racism, discrimination and hate crime.

4.1.1. EU and Member States respond to persisting hate crime and hate speech

People with ethnic or immigrant minority backgrounds in the EU face harassment and violence – both online and offline – evidence from EU-MIDIS II demonstrates. In the 12 months preceding the survey, one in four respondents (24 %) experienced at least one form of hate-motivated harassment, and 3 % experienced a hate-motivated physical attack. Harassment is defined as a range of actions that the respondent found 'offensive' or 'threatening', namely offensive or threatening comments in person; threats of violence in person; offensive gestures or inappropriate staring; offensive or threatening emails or text messages (SMS); and offensive comments made about them online. Second-generation immigrants experience more hate-motivated harassment than do first-generation immigrants (32 % vs 21 %). Second-generation immigrants are also more likely to experience recurrent incidents. Half of them experienced at least six incidents of hate-motivated harassment in the 12 months preceding the survey. Overall, the survey respondents identified perpetrators as being from the majority population in 71 % of cases of hate-motivated harassment and 64 % of cases of violence.

The findings also show that as many as 90 % of incidents of hate-motivated harassment and 72 % of incidents of hate-motivated violence are never reported. Since 2008, the Framework Decision on Racism and Xenophobia has criminalised certain forms of racist and xenophobic hate speech and hate crime. As reported in last year's Fundamental Rights Report, the European Commission – having acquired, in December 2014, the power to review Member States' compliance with Framework Decisions under the supervision of the CJEU – initiated formal inquiries with

Member States that still had major gaps in transposing the Framework Decision on Racism and Xenophobia into national law. The Commission intended to launch infringement procedures where necessary. This prompted notable legislative developments in a number of Member States in 2017.

For example, **Italy** adopted legislation that increases the penalty for intentionally denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes. The law also introduces administrative responsibility for companies that engage in racist and xenophobic conduct.⁹ Likewise, **Portugal** amended its Penal Code to punish – with imprisonment ranging between six months and five years – anybody who establishes an organisation or develops or encourages propaganda activities inciting discrimination, hatred or violence against a person or group of persons because of their race, colour, ethnic or national origin, ancestry, religion, sex, gender, sexual orientation, and physical or intellectual disability.¹⁰

Relevant legislative developments regarding hate crime and hate speech also occurred in other Member States. **Cyprus** amended its Criminal Code by empowering the national courts to take into account as an aggravating factor the motivation of prejudice on the grounds of race, colour, national or ethnic origin, religious or other beliefs, 'genealogical origin', sexual orientation or gender equality.¹¹ Similarly, **Latvia** amended its legislation to prohibit associations and foundations from propagating openly Nazi, fascist or communist ideology and conducting activities aimed at inciting national, ethnic, racial and religious hatred or enmity.¹²

France adopted a law generalising aggravating sanctions in cases of racism, homophobia and sexism to all crimes and offences punished by imprisonment.¹³ The **German Bundestag** passed a law requiring operators of social media networks to fight and remove unlawful content from their platforms.¹⁴ Manifestly unlawful content must be taken down or blocked within 24 hours after receipt of a complaint. Other criminal content must generally be taken down or blocked within 7 days of receiving a complaint. Social networks that fail to set up a complaints management system or do not set one up properly are committing a regulatory offence. This is punishable with a fine of up to € 50 million. Critics of the law point out that it enables unjustified censorship, leading to violations of freedom of expression by private companies without granting the possibility of redress; they also fear that it will serve as a precedent for other countries to follow.¹⁵ Social networks, such as Facebook, also expressed their concern about the law's effect on freedom of expression. They also emphasised that the transition period for putting into place new mechanisms is too short, that the law is not precise enough, and that the penalties are disproportionate, harming especially smaller companies.¹⁶



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The European Commission has put in place a range of policy measures to support the implementation of the Framework Decision on Racism and Xenophobia and of the Victims' Rights Directive. Among these, the EU High Level Group on combating racism, xenophobia and other forms of intolerance has published two sets of key guiding principles¹⁷ – on hate crime training and on supporting victims of hate crime – to provide information about the work of national authorities and practitioners in these two key areas. For more information on the ► Victims' Rights Directive, see [Chapter 9](#).

Antisemitism manifests itself in many forms, FRA's annual overview of the available data shows.¹⁸ Even events that not everyone deems antisemitic¹⁹ can create major concerns, fears and worries within Jewish communities. Hungary's largest Jewish organisation, Mazsihisz, called on the prime minister to stop a government campaign against a Hungarian-born Jewish émigré, adding that the "poisonous messages harm the whole of Hungary".²⁰ In June, the European Parliament approved a resolution on antisemitism, calling on politicians to oppose antisemitic statements, and urging Member States to appoint a national coordinator to combat antisemitism.²¹ The European Parliament also called on Member States and the EU institutions and agencies to adopt and apply the International Holocaust Remembrance Alliance's (IHRA's) working definition of antisemitism.

FRA ACTIVITY

Improving hate crime recording and data collection in Member States

In 2016, the European Commission invited FRA to become a permanent member of the EU High Level Group on combating racism, xenophobia and other forms of intolerance. FRA coordinates the Subgroup on improving recording and collecting data on hate crime. In December 2017, the High Level Group endorsed key guiding principles on improving the recording of hate crime by law enforcement authorities, which the Subgroup had developed. Three of these guiding principles concern organisational and structural aspects of police work, and two relate to operational and everyday police work. The principles are tested and implemented through national workshops that FRA and the Office for Democratic Institutions and Human Rights (ODIHR) facilitate jointly. These workshops aim to raise awareness of the need to properly record hate crimes; to identify gaps in existing hate crime recording and data collection frameworks; and to identify practical steps to improve these frameworks.

Source: European Commission (2017), *Improving the recording of hate crime by law enforcement authorities: key guiding principles*, Brussels, December 2017. For more information, see FRA's [web page on the Subgroup](#).

Alongside Roma and Muslims, people of African descent and black Europeans are particularly vulnerable to racist crime and discrimination, according to EU-MIDIS II. An estimated 15 million people of African descent and black Europeans live in Europe, many of whom have been living in Europe for several generations.²² Historical abuses and racism still profoundly affect their everyday lives, EU-MIDIS II and other evidence²³ show. EU-MIDIS II interviewed 5,803 persons with sub-Saharan African background and found that, on average, one in five respondents of this group (21 %) felt harassed because of their ethnic or immigrant background in the year preceding the survey. Many respondents with a sub-Saharan background who were victims of hate-motivated harassment were repeatedly harassed, as [Figure 4.1](#) shows. Nonetheless, three years after the launch of the United Nations International Decade for People of African Descent, only a few EU Member States have taken measures to ensure full participation and equal rights for people of African descent or marked the decade in any way.

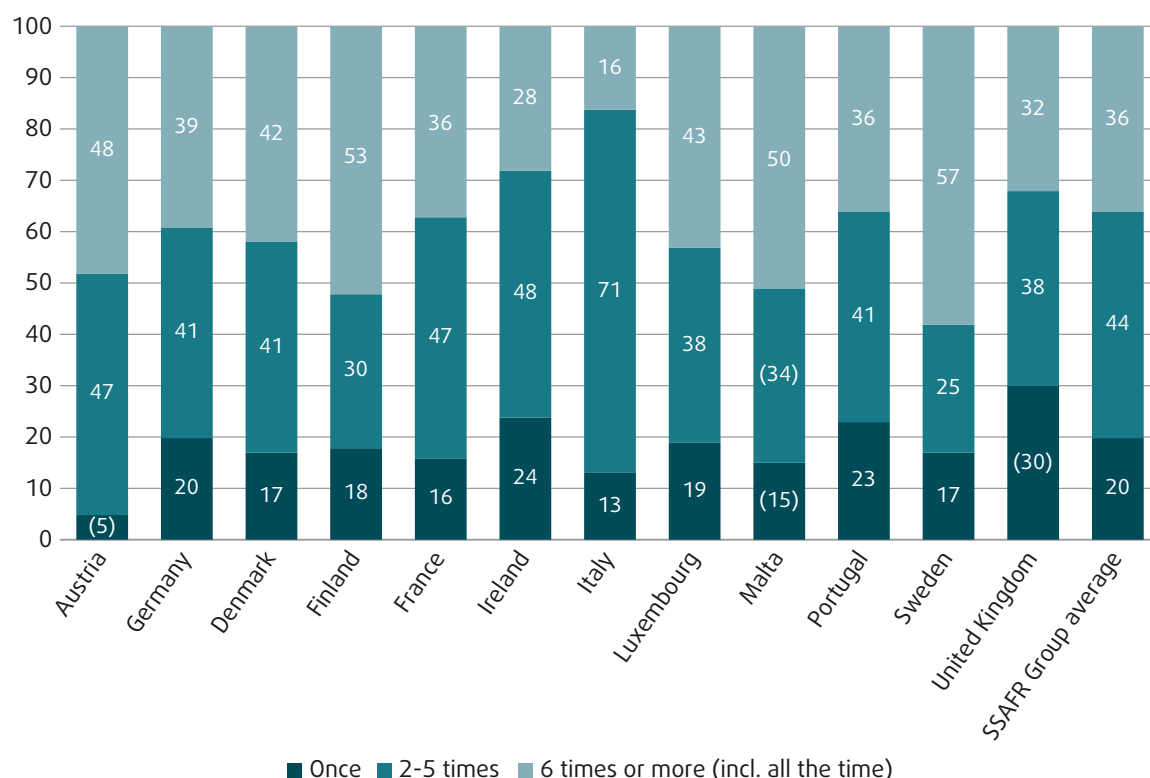
4.1.2. Tackling online hatred

Certain forms of xenophobic and racist speech are illegal in the EU, as outlined in the 2008 Framework Decision on Racism and Xenophobia. This includes online hate speech. Acknowledging the spread of such illegal content online, the European Commission under the motto 'What is illegal offline is also illegal online' adopted a communication entitled *Tackling Illegal Content Online: Towards an enhanced responsibility of online platforms* in September 2017.²⁴ The Communication lays down a set of guidelines and principles for online platforms to step up the fight against illegal content online in cooperation with national authorities, Member States and other relevant stakeholders. It complements other non-legislative measures, such as the Code of Conduct on Countering Illegal Hate Speech Online and the work of the EU Internet Forum as regards terrorist propaganda.

The second evaluation of the Code of Conduct on Countering Illegal Hate Speech Online took place in June 2017. It indicated that removal of hate speech had increased from 28 % to 59 % in some EU Member States over six months.²⁵ The speed of removals also improved: 51 % of the content was removed after 24 hours (as prescribed by the Code of Conduct), compared to 40 % six months earlier. The results on the implementation of the Code of Conduct were also taken into account for mid-term review of the implementation of the Digital Single Market Strategy.²⁶

The Commission's proposal for a revision of the Audiovisual Media Services Directive²⁷ contains provisions that would oblige social media platforms to set up a system to flag audiovisual material containing hate speech.

Figure 4.1: Number of times respondents with sub-Saharan African background experienced harassment due to ethnic or immigrant background in the past 12 months, by Member State (%)



Notes: Out of all respondents with sub-Saharan African background ($n = 5,803$); weighted results. Results based on a small number of responses are statistically less reliable. Results based on 20–49 unweighted observations in a group total or based on cells with fewer than 20 unweighted observations are noted in parentheses. SSAFR refers to immigrants and descendants of immigrants from sub-Saharan Africa. Question: “How many times have such incidents [that is, each of the five acts of harassment asked about in the survey] related to your ethnic or immigrant background happened in the past 12 months?”

Source: FRA, EU-MIDIS II 2016

Social media often amplify xenophobic and racist speech that publicly incites hatred and violence. For example, the Centre for the Analysis of Social Media, part of the UK-based cross-party think tank Demos, conducted research to measure the volume of messages on Twitter in a one-year period. It detected 143,920 derogatory and anti-Islamic tweets – this is about 393 a day. Over 47,000 different users sent them, and they range from directly insulting individuals to broader political statements.²⁸

4.1.3. Courts confront racist and related offenses

Several European Court of Human Rights (ECtHR) rulings adopted in 2017 concluded that Member States violated rights guaranteed by the European Convention on Human Rights (ECHR) by failing to efficiently investigate incidents potentially involving discriminatory and racist motives. At national level, various court decisions further clarified what kind

of acts and statements constitute incitement to hatred and insult.

In *Škorjanec v. Croatia*,²⁹ the ECtHR found that the failure of the investigating authorities to carry out a thorough assessment of the link between the applicant’s relationship with her partner, a man of Roma origin, and the racist motive for the attack on them amounted to a violation of the procedural aspect of Article 3 (prohibition of torture) in conjunction with Article 14 (prohibition of discrimination) of the ECHR. The court concluded that the prosecuting authorities’ focus on the fact that the applicant herself was not of Roma origin led them to ignore the connection between the racist motive for the attack and the applicant’s association with her partner. The court ordered **Croatia** to pay € 12,500 for the non-pecuniary damage. The Croatian authorities have undertaken measures to prevent similar violations and to execute this judgment by disseminating the judgment to the authorities competent for processing hate crimes,

and incorporating the judgment into the material for seminars on hate crimes aimed at judges, prosecutors, police officers and civil society organisations.

Similarly, in *M.F. v. Hungary*³⁰ the ECtHR ruled in favour of a man of Roma origin who claimed that the police subjected him to ill-treatment and discriminatory practice after arresting him for a crime. The court established that the applicant's injuries were caused by his ill-treatment in police custody and that the authorities failed in their duty to effectively investigate the allegations of such ill-treatment, violating Article 3 (prohibition of torture) of the ECHR. In addition, the authorities failed to take all possible steps to investigate whether or not discrimination played a role in the alleged incident, hence violating Article 14 (prohibition of discrimination) of the ECHR, taken together with Article 3 (prohibition of torture) in its procedural aspect. The court ordered **Hungary** to pay € 10,000 for non-pecuniary damage and € 4,724 for costs and expenses.

In *Király and Dömötör v. Hungary*,³¹ the ECtHR concluded that shortcomings in an investigation of an anti-Roma demonstration amounted to a violation of Article 8 (right to respect for private and family life). The case concerned a protest that, although not violent per se, caused the applicants, Hungarian nationals of Roma origin, to suffer a well-founded fear of violence and humiliation. The court found that the investigating authorities' failure to prepare themselves for the event and interrogate more people after the protest, and the subsequent lack of a thorough law-enforcement procedure, allowed an openly racist demonstration to take place without legal consequences. The court concluded that the applicants' right to psychological integrity had not been protected, and ordered **Hungary** to pay € 7,500 to each of them for non-pecuniary damage.

In **Austria**, the Supreme Court found that asylum seekers also fall under the protection of the first sentence of § 283 (1) of the Criminal Code (*Strafgesetzbuch* (StGB)). The court deemed inaccurate Graz's High Regional Court's interpretation of this provision, which had concluded that asylum seekers could not form a 'defined group' in the sense of that law.³² In the case in question, a man had been indicted for incitement to hatred and violence after posting, on his Facebook page, a picture of two snipers lying in a trench with machine guns, including the caption 'The fastest asylum procedure in Germany ... rejects up to 1,400 requests per minute'. The court established that the provision in question does not require the group to be defined according to the existence or absence of one or multiple criteria for it to be protected. Rather, it also includes clearly defined subcategories, such as asylum seekers, that fulfil one of the listed criteria, e.g. nationality.

In **Bulgaria**, the Regional Court of Vratsa convicted one adult and three juveniles of a violent attack against a group of Roma.³³ The court found that the victims were attacked because of their Roma ethnic origin. The adult offender received a suspended sentence of three months' imprisonment, while the three juvenile offenders were sentenced to probation.

In **France**, an appeals court of Aix-en-Provence found that Jean-Marie Le Pen incited hatred and made racist statements at a public event in Nice in 2013. The court fined him € 5,000 for inciting hatred against Roma and ordered him to pay € 2,000 in damages to SOS Racisme, a civil party plaintiff, and € 1,000 to the League of Human Rights, a civil party in the first instance.³⁴

An **Italian** member of the European Parliament (MEP) was tried for incitement to racist hatred over discriminatory statements he made during a radio broadcast targeting the former Minister for Integration, an Italian citizen of African origin. The ordinary Court of Milan considered in its decision Article 10 of the ECHR (freedom of expression) and its limitations when a political debate is at stake and concluded that the MEP offended the former minister on the grounds of her African origin and skin colour. The MEP was fined € 1,000 and ordered to pay € 50,000 in compensation to the victim.³⁵

In **Lithuania**, the Supreme Court dismissed a defendant's cassation appeal, ruling that the right to hold beliefs and freedom of expression are not in conformity with public insult, incitement to hatred and discrimination, and incitement to violence against a group of people of a certain nationality.³⁶ The defendant was tried for having publicly written comments to various articles published on the news portal www.15.min.lt, which insulted persons and incited hatred, discrimination and violence against them based on their Russian nationality.

4.2. More efforts needed for correct implementation of the Racial Equality Directive

The Racial Equality Directive (2000/43/EC) represents a key legal measure for combating ethnic and racial discrimination, and its practical implementation is crucial for promoting equality. Despite its strong legal provisions, immigrants, descendants of immigrants, and minority ethnic groups continued to face widespread discrimination across the EU and in all areas of life, as the findings of EU-MIDIS II underscored.

The European Commission continued to closely monitor implementation of this directive in 2017, pursuing infringement proceedings against Member States found to be in breach of its provisions. In particular, the European Commission focused on education and housing. Cases of systematic discrimination against Roma on grounds of their ethnicity have been investigated. Infringement proceedings concerning discrimination against Roma children in education have been ongoing in the **Czech Republic, Hungary** and **Slovakia**.³⁷ For more information, see [Chapter 5](#) on Roma integration.

A number of Member States amended their legislation to incorporate provisions of the directive in 2017. **Hungary** amended its legislation in the field of education, guaranteeing that “the organisation of education on the basis of religious or other ideological conviction may not lead to unlawful segregation on the basis of race, colour, ethnicity or ethnic affiliation”.³⁸ Similarly, **Sweden** amended its legislation to state that employers and educational actors should take preventive and active measures to combat discrimination and promote equal rights and opportunities covering all seven discrimination grounds, including racial and ethnic discrimination.³⁹ **Portugal** also adopted legislation prohibiting discriminatory practices on ethnic and racial grounds in access to employment, education, housing and services.⁴⁰

In 2017, the CJEU’s judgment in *Jyske Finans A/S v. Ligebehandlingsnævnet* on a preliminary ruling request regarding the interpretation of direct and indirect discrimination on ethnic grounds under the Racial Equality Directive clarified that ethnic origin cannot be determined on the basis of a single criterion, such as a country of birth. On the contrary, ethnic origin is based on a number of factors, such as common nationality, religious faith, language, cultural and traditional origin, and background.⁴¹ The court concluded that the practice of requesting additional proof of identity for individuals born outside the EU or EFTA was neither directly nor indirectly connected with the ethnic origin of the person applying for a loan.

Formulating policies to effectively target ethnic discrimination requires reliable and comparable data, including data disaggregated by ethnicity. Surveys on experiences and perceptions of discrimination are a useful tool to inform policymakers about the prevalence and types of discriminatory practices experienced by ethnic and immigrant groups. See also [▶ Chapter 3](#) on equality and non-discrimination.

A considerable proportion of respondents believe they experienced discrimination because of their ethnic or immigrant background, EU-MIDIS II results show. In the five years before the survey, four out of 10 respondents

(38 %) felt discriminated against because of their ethnic or immigrant background in one or more areas of daily life. This happened more often when they were looking for work and when accessing public and private services, as [Figure 4.2](#) shows. Some 29 % of all respondents who looked for a job in the five years before the survey felt discriminated against on this basis; 12 % experienced this in the year preceding the survey.⁴² Among all groups surveyed, similarly to the findings of EU-MIDIS I, respondents with a North African background, Roma respondents and respondents with a sub-Saharan African background continued to indicate the highest levels of discrimination based on ethnic or immigrant background.⁴³

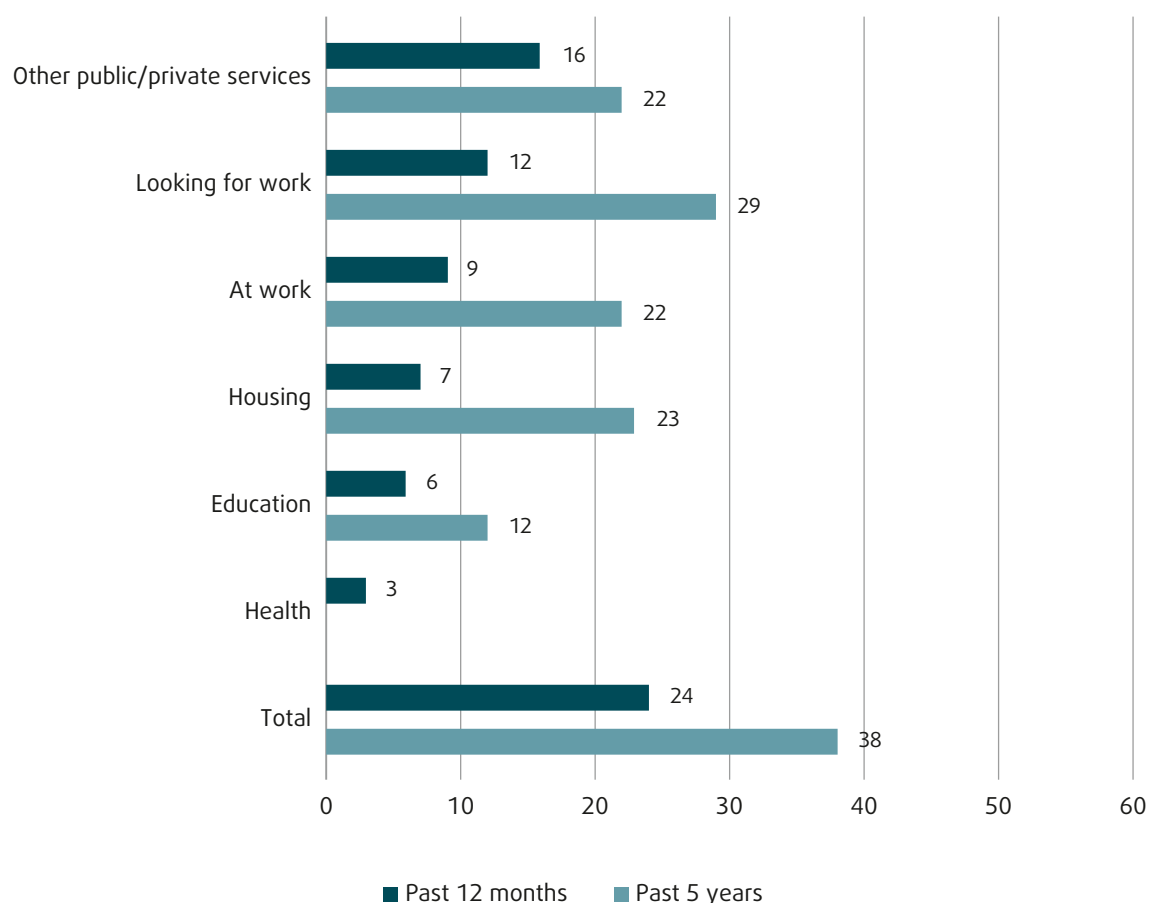
Regarding awareness of antidiscrimination legislation, a majority of EU-MIDIS II respondents (67 %) knew that discrimination based on skin colour, ethnic origin or religion is unlawful in their country. However, 71 % of respondents were not aware of any organisation that offers support or advice to discrimination victims and 62 % were not aware of any equality body. This could partly explain the low rates of reporting of discrimination among members of ethnic minorities.⁴⁴

4.2.1. Ethnic minorities face discrimination on multiple grounds

Members of ethnic minorities in the EU experience discrimination on more grounds than their ethnicity, such as their sex, religious beliefs or origins, evidence collected by FRA consistently shows.⁴⁵ More than one in three Muslim women who wear a headscarf or niqab in public experience harassment because of their ethnic or immigrant background (31 %), compared with under one quarter (23 %) of women who do not wear such clothing, EU-MIDIS II found.⁴⁶ While perpetrator(s) of both bias-motivated harassment and violence were mostly not known to the victim and did not have an ethnic minority background, about half (48 %) of Muslim women respondents identified someone from another ethnic minority group as perpetrator, compared with just over one in four (26 %) Muslim men.

Refugee and asylum-seeking women and girls are often victims of racist and gender-based violence and harassment, FRA’s research on challenges to women’s rights in the EU indicates.⁴⁷ In addition, they face particular barriers to accessing their social and economic rights regarding employment, housing, health, education, social protection and welfare. For more information on 2017 developments concerning measures addressing violence against women in [▶ general, see Chapter 9.](#)

Figure 4.2: Discrimination based on ethnic or immigrant background in different areas of life in 12 months and 5 years before the survey (%)



Notes: Out of all respondents at risk of discrimination based on ethnic or immigrant background in the particular domain (total n: 'in 5 years before the survey', n = 25,228; 'in 12 months before the survey', n = 25,403); weighted results, sorted by 12-month rate.

Domains of daily life summarised under 'other public or private services': public administration, restaurant or bar, public transport, shop.

Discrimination experiences in 'access to health care' were asked about only for the 12 months preceding the survey due to a routing mistake in the questionnaire.

Source: FRA, EU-MIDIS II 2016

Racism plays a significant role in how children and young people are treated, according to research on refugee children and young people by the United Nations Children's Fund (UNICEF) and the International Organization for Migration: over 80 % of refugee adolescents and young people from sub-Saharan Africa reported exploitation, compared with around 55 % of those originating from elsewhere.⁴⁸

Over 850 black, white, Asian, Arab, and mixed race gay men participated in a survey by the Fact Site in the UK, where they shared their thoughts on experiencing racism in the 'gay community'. The survey found that 80 % of black men, 79 % of Asian men, 75 % of South Asian men, 64 % of mixed race men, and most Arab men who responded had experienced some form of racism by other members of the 'gay community'.⁴⁹

Promising practice

'Be honest: we need a reality check on racism'

On the International Day for the Elimination of Racial Discrimination, the International Lesbian, Gay, Bisexual, Trans and Intersex Association – Europe (ILGA-Europe) launched a campaign to acknowledge that racism and ethnic discrimination exists both inside and outside the lesbian, gay, bisexual, trans and intersex (LGBTI) communities. ILGA-Europe called on LGBTI organisations to make sure that their doors are open to everyone in the LGBTI communities, of all races, ethnic backgrounds and identities.

For more information, see ILGA-Europe's website.

4.2.2. Promoting national action plans against racism, xenophobia and ethnic discrimination

The UN Durban Declaration and Programme of Action emphasises states' responsibility to combat racism, racial discrimination, xenophobia and related intolerance¹¹⁸ and calls upon states "to establish and implement without delay" national policies and action plans to combat these phenomena. The European Commission, in its joint report on the application of the Racial Equality and Employment Equality Directives, stressed that legislation alone is not enough to

ensure full equality and needs to be combined with appropriate policy action.⁵⁰ Nearly 16 years after the adoption of the UN Durban Declaration and Programme of Action, only 14 EU Member States had in place dedicated action plans against racism, racial/ethnic discrimination and related intolerance in 2017 (see [Table 4.1](#)). States that do not have such plans and policies in place could consider the practical guide of the Office of the UN High Commissioner for Human Rights to develop national action plans against racial discrimination.⁵¹

Table 4.1: EU Member States with action plans and strategies against racism, xenophobia and ethnic discrimination in place in 2017

EU Member State	Name of strategy or action plan in English	Period covered
BE	French-speaking community – Transversal Action Plan to Counter Xenophobia and Discrimination	2014–2019
CZ	Concept on the Fight against Extremism for 2017	2017
DE	National Action Plan to Fight Racism Federal Government Strategy to Prevent Extremism and Promote Democracy	2017 onwards 2016 onwards
ES	Comprehensive Strategy to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance	2011 onwards
FI	Action Plan against Hate Speech and Hate Crimes The National Action Plan on Fundamental and Human Rights	2017 onwards 2017–2019
FR	Mobilizing France against Racism and Anti-Semitism 2015–2017 Action Plan	2015–2017
HR	National Plan for Combating Discrimination Accompanying Action Plan	2017–2022 2017–2019
IT	The National Plan of Action against Racism, Xenophobia and Intolerance	2015–2018
LT	The Action Plan for Promotion of Non-discrimination	2017–2019
LV	Guidelines on National Identity, Civil Society and Integration Policy (2012–2018)	2012–2018
NL	National Antidiscrimination Action Programme	2016 onwards
SE	National Plan to Combat Racism, Similar Forms of Hostility and Hate Crime	November 2016 onwards
SK	Action Plan for Preventing and Elimination of Racism, Xenophobia, Antisemitism and Other Forms of Intolerance for the Years 2016–2018	2016–2018
UK – Scotland	Race Equality Framework for Scotland 2016–2030 Race Equality Action Plan	2016–2030 2017–2021
UK – Northern Ireland	Racial Equality Strategy 2015–2025	2015–2025
UK – Wales	Equality Objectives 2016–2020: Working towards a Fairer Wales	2016–2020

4.3. Stepping up efforts to counter discriminatory profiling

“Racial profiling shall mean: ‘The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities’.”

European Commission against Racism and Intolerance (ECRI) (2007), General Policy Recommendation No 11 on Combating Racism and Racial Discrimination in Policing, Doc. CRI (2007) 39, 29 June 2007, p. 4

When a decision to stop an individual is motivated solely or mainly by a person's race, ethnicity or religion, this constitutes discriminatory ethnic profiling. Such practices can alienate certain communities in the EU, and in turn contribute to inefficient policing, as disproportionate policing practices do not necessarily match higher crime detection rates. Discriminatory ethnic profiling is unlawful; it offends human dignity and can spur the deterioration of relations between different groups in society.

Nevertheless, such practices persisted in several EU Member States in 2017, as the findings of EU-MIDIS II and other national surveys reveal. A number of national courts' rulings, which confirmed that discriminatory ethnic profiling is unlawful, complement this evidence.

A relatively high proportion of the respondents who were stopped by the police in the five years before the survey believe that this was because of their immigrant or ethnic minority background, very valuable evidence from EU-MIDIS II shows. The survey interviews were conducted during a period that included major terrorist attacks in France and Belgium, which prompted an increase in police surveillance and identity checks. Overall, discriminatory police practices affect certain respondent groups more than others, the EU-MIDIS II results indicate, which is consistent with findings in EU-MIDIS I. On average, of those who have recently been stopped by the police, nearly every second (47 %) respondent with an Asian background, 41 % of those with a sub-Saharan background and 38 % of those with a North African background perceived the most recent stop as ethnic profiling. Similarly, nearly every second Roma respondent stopped (42 %) believed that this was because of their ethnic background. By contrast, this proportion is much lower (17 %) among the stopped respondents with a Turkish background⁵² (Figure 4.3).

In **France**, young men of Arab and African descent are 20 times more likely to be stopped and searched than any other male group, results of a national survey with more than 5,000 respondents reveal.⁵³ The *Commission Nationale Consultative des Droits de l'Homme* expressed concerns about increased

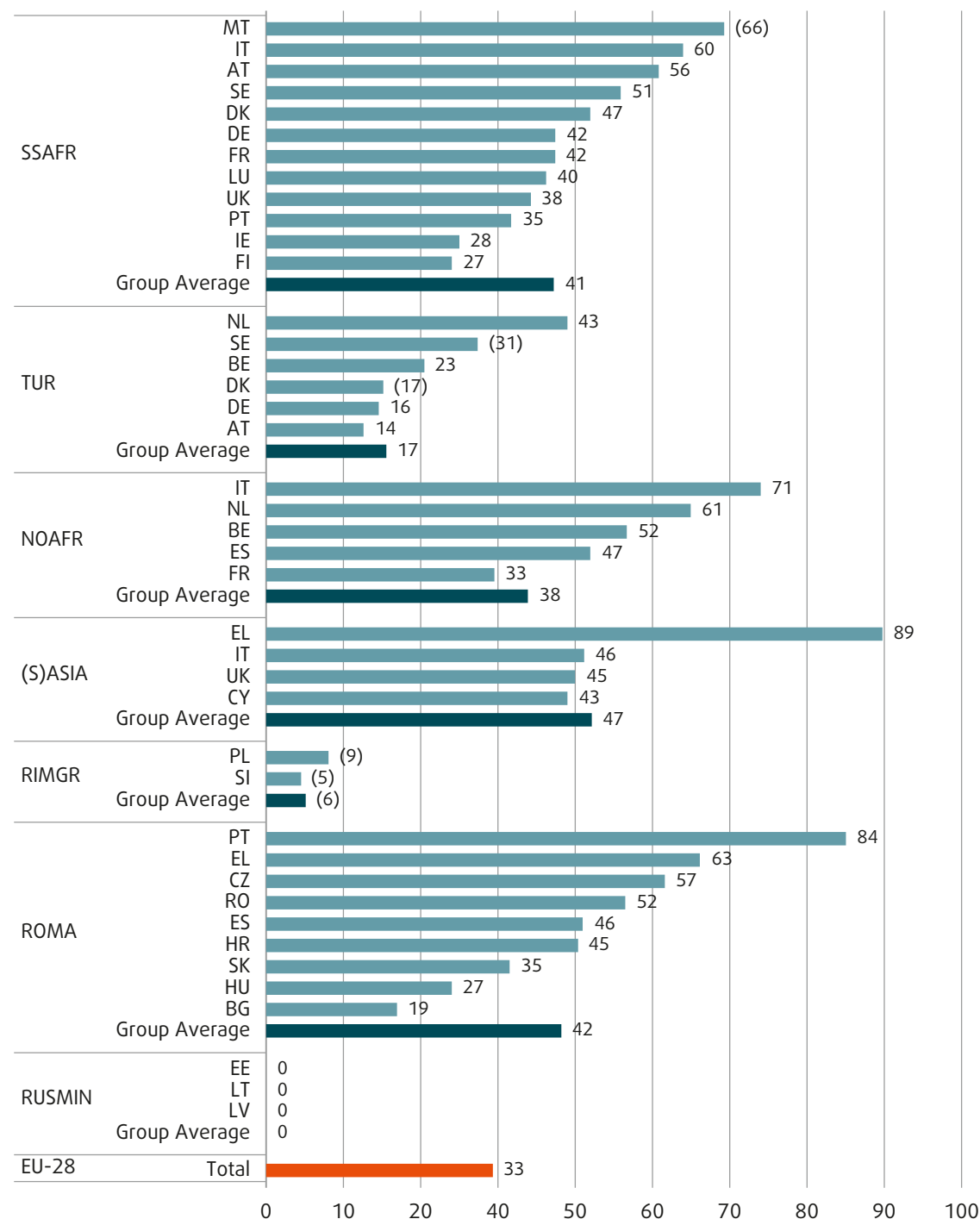
discriminatory profiling exercised by the police forces.⁵⁴ In the **United Kingdom**, people with ethnic minority backgrounds are three times more likely to be stopped and searched than white people, Home Office statistics show. This is particularly true for individuals who are black, who are over six times more likely to be stopped.⁵⁵

Still in the **United Kingdom**, based on a series of freedom of information requests sent to the Home Office, the Bureau of Investigative Journalism revealed that large numbers of British citizens are being caught up in immigration checks. Nearly one in five of those stopped between January 2012 and January 2017 were UK citizens, the figures showed. As a result, a number of lawyers and Members of Parliament have criticised the Home Office for using ethnic profiling.⁵⁶

A number of national court rulings issued in various Member States in 2017 found unlawful discriminatory ethnic profiling. For example, in **Germany**, the Administrative Court of Dresden reviewed claims by a man alleging that he was chosen for a police check at the train station in Erfurt based on his skin colour.⁵⁷ The defendants, two police officers, denied such claims and said that they based their decision to check the plaintiff on his suspicious behaviour. The court found that the two defendants could not sufficiently prove that the police check was based on lawful reasoning about suspicious activities by the plaintiff and that it was based on ethnic profiling, making it illegal.

In **Sweden**, the Svea Court of Appeal reviewed the claims of 11 persons of Roma origin who alleged that they were included in a Swedish police registry because of their Roma ethnic origin, as they were friends or relatives of three Roma families with a criminal record.⁵⁸ The court applied the burden of proof principle and asked the State to prove that there was another valid reason for including the persons in the registry. As the State could not prove this, the court concluded that ethnicity was the sole reason, which amounted to a violation of the Police Data Act and of Article 14 (prohibition of discrimination) of the ECHR in conjunction with Article 8 (right to respect for private and family life).

In **France**, the Constitutional Council assessed the conformity of the Code of Penal Procedure and the provisions of the Code of Entrance and Residence of Foreigners and of Asylum Law⁵⁹ with the Constitution. The Court of Cassation challenged the provisions, alleging that they could be interpreted to allow discriminatory identity checks based on physical characteristics and a constant and generalised use of police controls over time and space. Clarifying the proper interpretation of the provisions in question, the council rejected that claim.

Figure 4.3: Most recent police stop perceived as ethnic profiling among those stopped in five years before the survey, by EU Member State and target group (%)

Notes: Out of respondents who were stopped by the police in the five years before the survey (n = 6,787); weighted results. Results based on a small number of responses are statistically less reliable. Therefore, results based on 20 to 49 unweighted observations in a group total or based on cells with fewer than 20 unweighted observations are noted in parentheses. Results based on fewer than 20 unweighted observations in a group total are not published. Questions: "In the past five years in [COUNTRY] (or since you have been in [COUNTRY]), have you ever been stopped, searched or questioned by the police?"; "Do you think that THE LAST TIME you were stopped was because of your ethnic or immigrant background?"

Abbreviations for target groups refer to immigrants from [country/region] and their descendants: ASIA, Asia; NOAFR, North Africa; RIMGR, recent immigrants from non-EU countries; ROMA, Roma minority; RUSMIN, Russian minority; SASIA, South Asia; SSAFR, sub-Saharan Africa; TUR, Turkey.

Source: FRA, EU-MIDIS II 2016

All EU Member States are parties to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and are bound by its provisions. The UN Committee on the Elimination of all Forms of Racial Discrimination (CERD) underlined the need to address ethnic discriminatory profiling by law enforcement officers. In its concluding observations on **Bulgaria**,⁶⁰ **Cyprus**⁶¹ and **Finland**,⁶² it recommended that the respective authorities continue to conduct training programmes with law enforcement officers on the prevention of racial profiling and non-discrimination. CERD also raised concerns about the abusive acts of the police against members of ethnic minorities in **Portugal**.⁶³

Several countries implemented educational measures and initiatives aimed at raising human rights awareness among law enforcement officials. These included initiatives to counter racism and ethnic discrimination, and on policing diverse societies.

In **Romania**, the police continued to include special places for national minorities at admittance examinations for police schools and the Police Academy.⁶⁴ In **Sweden**, the police introduced a project aimed at hiring civilians from diverse ethnic backgrounds for 12 months to foster relations with different ethnic communities and encourage more applicants to the Swedish Police Academy.⁶⁵ In **Belgium**, the Ministry of Security, Interior and Justice included training on 'Discrimination, hate speech and hate crimes: circular 13/2013' in its new National Security Plan 2016–2019 to give a bigger role for reference officers responsible for discrimination and hate crime.⁶⁶ Furthermore, in an effort to ensure that all citizens are treated equally and to fight ethnic profiling, the police zone of Mechelen-Willebroek has been registering every identity check of civilians since May 2017.⁶⁷ In **Greece**, the Ombudsman provided training courses to police forces on how to tackle racist violence and combat discrimination.⁶⁸ In **Portugal**, the Inspectorate General of Home Affairs developed a manual of procedures aiming to improve police practices by preventing racial discrimination and defending human rights.⁶⁹ In **Spain**, the Ombudsman recommended the use of templates for police identity checks that provide information about the police officers and about the nationality and ethnic origin of the individuals stopped and searched.⁷⁰ The EU Agency for Law Enforcement Training offers

a variety of training courses, including online, on the topics of policing and fundamental rights.⁷¹

Promising practice

Providing guidelines for identity checks

The **Dutch** police adopted guidelines for police officers when conducting proactive checks. Proactive checks are checks that police officers carry out on selected persons without noticing (in advance) a violation of a rule or an offence. The guidelines state that proactive checks by the police can be done when there is an objective reason to stop and search a person. According to the guidelines, skin colour, ethnic origin or religion are not objective reasons, except in the case of a description of, for example, a wanted person. Instead, a person's behavior can provide an objective reason for stopping and searching a person.

The guidelines are designed to strengthen police officers' awareness during the decision process. They state that police officers – without being asked – have to explain to persons why they decided to check them. The guidelines also include a new definition of ethnic profiling, which is very similar to ECRI's definition.

Source: The Netherlands, Politie (2017), 'Guidelines on carrying out proactive checks' (Handelingskader proactief controleren), 27 October 2017.

Promoting inclusive police forces

In the **United Kingdom**, the College of Policing has been commissioned to develop a national programme to improve the recruitment, development, progression and retention of black and minority ethnic (BME) officers and staff. The programme aims, among other things, to support forces in improving recruitment, retention and progression of BME officers through the provision of advice; to design, deliver, test and evaluate positive action learning and development programmes; to collate and share effective practice on the recruitment, retention and progression of BME officers; and to undertake relevant research, evaluation and surveys to inform the support being provided to forces and to provide evidence to enable standards to be set.

Source: UK College of Policing (2017), BME Progression 2018 programme.

FRA opinions

Despite the policy initiatives undertaken within the framework of the EU High Level Group on combating racism, xenophobia and other forms of intolerance, racist and xenophobic hate crime and hate speech continue to profoundly affect the lives of millions of people in the EU. This is illustrated in findings from EU-MIDIS II and reported in FRA's regular overviews of migration-related fundamental rights concerns.

Article 1 of the Framework Decision on Racism and Xenophobia outlines measures that Member States shall take to punish intentional racist and xenophobic conduct. Article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) further obliges State parties to make incitement to racial discrimination, as well as acts of violence against any race or group of persons, offences punishable by law.

FRA opinion 4.1

EU Member States should ensure that any case of alleged hate crime, including hate speech, is effectively recorded, investigated, prosecuted and tried. This needs to be done in accordance with applicable national, EU, European and international law.

EU Member States should make further efforts to systematically record, collect and publish annually comparable data on hate crime to enable them to develop effective, evidence-based legal and policy responses to these phenomena. Any data should be collected in accordance with national legal frameworks and EU data protection legislation.

Despite the strong legal framework set by the Racial Equality Directive (2000/43/EC), EU-MIDIS II results and other evidence show that a considerable proportion of immigrants and minority ethnic groups face high levels of discrimination because of their ethnic or immigrant backgrounds, as well as potentially related characteristics, such as skin colour and religion. The results show little progress compared with eight years earlier, when the first EU-MIDIS survey was conducted; the proportions of those experiencing discrimination remain at levels that raise serious concern. They also reveal that most respondents are not aware of any organisation that offers support or advice to discrimination victims, and the majority are not aware of any equality body.

FRA opinion 4.2

EU Member States should ensure better practical implementation and application of the Racial Equality Directive. They should also raise awareness of anti-discrimination legislation and the relevant redress mechanisms, particularly among those most likely to be affected by discrimination, such as members of ethnic minorities. In particular, Member States should ensure that sanctions are sufficiently effective, proportionate and dissuasive, as required by the Racial Equality Directive.

In 2017, only 14 EU Member States had dedicated national action plans in place to fight racial discrimination, racism and xenophobia. The UN Durban Declaration and Programme of Action resulting from the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance assigns State parties primary responsibility to combat racism, racial discrimination, xenophobia and related intolerance. The EU High Level Group on combating racism, xenophobia and other forms of intolerance provides EU Member States with a forum for exchanging practices to secure the successful implementation of such action plans.

FRA opinion 4.3

EU Member States should develop dedicated national action plans to fight racism, racial discrimination, xenophobia and related intolerance. In this regard, Member States could draw on the practical guidance offered by the Office of the United Nations High Commissioner for Human Rights on how to develop such plans. In line with this guidance, such action plans would set goals and actions, assign responsible state bodies, set target dates, include performance indicators, and provide for monitoring and evaluation mechanisms. Implementing such plans would provide EU Member States with an effective means for ensuring that they meet their obligations under the Racial Equality Directive and the Framework Decision on Combating Racism and Xenophobia.

As reported in previous Fundamental Rights Reports, evidence from EU-MIDIS II shows that members of ethnic minority groups continue to face discriminatory profiling by the police. Such profiling can undermine trust in law enforcement among persons with ethnic

minority backgrounds, who may frequently find themselves stopped and searched for no reason other than their appearance. This practice contradicts the principles of the ICERD and other international standards, including those embodied in the European Convention on Human Rights and related jurisprudence of the ECtHR, as well as the EU Charter of Fundamental Rights and the Racial Equality Directive.

FRA opinion 4.4

EU Member States should end discriminatory forms of profiling. This could be achieved through providing systematic training on antidiscrimination legislation to law enforcement officers, as well as by enabling them to better understand unconscious bias and challenge stereotypes and prejudice. Such training could also raise awareness of the consequences of discrimination and of how to increase trust in the police among members of minority communities. In addition, to monitor discriminatory profiling practices, EU Member States could consider recording the use of stop-and-search powers. In particular, they could record the ethnicity of those subjected to stops – which currently happens in one Member State – in accordance with national legal frameworks and EU data protection legislation.

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