

# EQUALITY IN THE EU 20 YEARS ON FROM THE INITIAL IMPLEMENTATION OF THE EQUALITY DIRECTIVES

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[EU EQUALITY DIRECTIVES]

VIENNA, 30 APRIL 2021

OPINION OF THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

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Luxembourg: Publications Office of the European Union, 2022

Print	ISBN 978-92-9461-645-6	doi:10.2811/192594	TK-08-21-410-EN-C
PDF	ISBN 978-92-9461-644-9	doi:10.2811/41763	TK-08-21-410-EN-N

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## Abbreviations

<b>AI</b>	Artificial intelligence
<b>Charter</b>	Charter of Fundamental Rights of the European Union
<b>CJEU</b>	Court of Justice of the European Union
<b>COVID-19</b>	Coronavirus disease 2019
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>EDPB</b>	European Data Protection Board
<b>EDPS</b>	European Data Protection Supervisor
<b>Equinet</b>	European Network of Equality Bodies
<b>EU-27</b>	27 Member States of the EU
<b>EU-28</b>	28 Member States of the EU
<b>EU-MIDIS</b>	European Union Minorities and Discrimination Survey
<b>FRA</b>	European Union Agency for Fundamental Rights
<b>GDPR</b>	General Data Protection Regulation
<b>LGBTIQ</b>	Lesbian, gay, bisexual, trans, intersex and queer
<b>NEET</b>	Not in education, employment or training
<b>NGO</b>	Non-governmental organisation
<b>NHRI</b>	National human rights institution
<b>TFEU</b>	Treaty on the Functioning of the European Union

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# THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS,

Bearing in mind the Treaty on European Union, in particular Article 6 thereof,

Recalling the obligations set out in the Charter of Fundamental Rights of the European Union (the Charter),

In accordance with Council Regulation 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, in particular Article 2 with the objective of the agency “to provide the relevant institutions, bodies, offices and agencies of the Community and its EU Member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights”,

Having regard to Article 4 (1) (d) of Council Regulation 168/2007, with the task of the agency to “formulate and publish conclusions and opinions on specific thematic topics, for the Union institutions and the EU Member States when implementing Community law, either on its own initiative or at the request of the European Parliament, the Council or the Commission”,

Having regard to the European Commission’s 2014 and 2021 reports on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (‘Racial Equality Directive’) and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (‘Employment Equality Directive’),

Considering that according to Article 17 of the Racial Equality Directive, the Commission’s report “shall take into account, as appropriate, the views of the European Monitoring Centre on Racism and Xenophobia” as replaced by the European Union Agency for Fundamental Rights,

Building on evidence collected and analysed by the EU Agency for Fundamental Rights, including in its large-scale surveys, as well as in its thematic and annual reports,

Following up on earlier detailed input provided to the European Commission in this context,

SUBMITS THE FOLLOWING OPINION:

# KEY FINDINGS AND OPINIONS

Article 17 (1) of Directive 2000/43/EC (Racial Equality Directive) and Article 19 of Directive 2000/78/EC (Employment Equality Directive) mandate the European Commission to draw up every five years a report to the European Parliament and the Council on the application of these directives. Article 17 (2) of the Racial Equality Directive stipulates that the Commission's report must take into account, as appropriate, the views of the European Monitoring Centre on Racism and Xenophobia, now the European Union Agency for Fundamental Rights (FRA).

The opinions presented here complement, reinforce and, sometimes, reiterate previous opinions FRA has formulated in its extensive body of work to date on equality, non-discrimination and racism.<sup>1</sup> The opinions pertain to the state of equality in the EU – on different grounds and in different areas of life – up to the end of 2020.

Objective, reliable and comparable data documenting experiences of inequality and discrimination are an essential tool for evidence-based policymaking. This opinion draws on data generated through FRA's surveys and other evidence collected by the agency through its multidisciplinary research network, Franet, and in cooperation with the European Network of Equality Bodies (Equinet).

This opinion illustrates the extent and nature of lived experiences of inequality and discrimination across the EU. It does so with reference to the grounds of discrimination and areas of life covered by the racial and employment equality directives, as well as in relation to the grounds and areas covered by the proposed Equal Treatment Directive.<sup>2</sup>

The main sources of data referred to in this opinion include five FRA surveys that cover a range of protected grounds in EU law and areas of life in which discrimination can occur. FRA collects survey data directly from those who are affected by discrimination, and these data offer a unique insight into the absence of equivalent data in many EU Member States. Specifically, this opinion draws on data and evidence from the following sources (see the annex for more information on FRA surveys):

- ★ **EU-MIDIS II: Second European Union Minorities and Discrimination Survey** (2016)
- ★ **EU-MIDIS II: Being Black in the EU** (2018)
- ★ **EU-MIDIS II: Muslims – Selected findings** (2017)
- ★ **EU-MIDIS II: Roma – Selected findings** (2016)
- ★ **Second survey on discrimination and hate crime against Jews in the EU** (2018)
- ★ **EU LGBTI Survey II** (2019)
- ★ **Roma and Travellers Survey** (2019)
- ★ **Fundamental Rights Survey** (2019)
- ★ ad hoc data collection on experiences of discrimination in the area of employment and occupation on the grounds of disability and age
- ★ ad hoc data collection on the status and functioning of equality bodies, in cooperation with Equinet.

The opinion presents FRA evidence of experiences of discrimination on the grounds and areas of life covered by the racial and employment equality directives. It also presents evidence of experiences of discrimination that go beyond the grounds and areas of life covered by these two directives. This information is relevant to the protracted negotiations on the 2008 proposal for an Equal Treatment Directive, namely the proposed Council Directive on implementing the principle of equal treatment between persons, irrespective of religion or belief, disability, age or sexual orientation.<sup>3</sup>

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1 FRA (2021), 'Equality, non-discrimination and racism'

2 European Commission (2008), *Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*, COM(2008) 426 final, Brussels, 27 July 2008.

3 *Ibid.*

## Commonalities and differences between the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC)

### Commonalities

- Both directives give effect to the principle of equal treatment.
- They lay down frameworks to combat discrimination.
- The prohibition of discrimination encompasses direct discrimination, indirect discrimination, harassment and instructions to discriminate.
- They prohibit discrimination in employment and occupation.
- Differences in treatment based on genuine and determining occupational requirements are justified.
- They contain equivalent provisions regarding positive action, defence of rights, burden of proof, victimisation, dissemination of information, social dialogue, dialogue with non-governmental organisations and sanctions.

### Differences

- The Racial Equality Directive prohibits discrimination on the grounds of racial or ethnic origin.
- The Employment Equality Directive prohibits discrimination on the grounds of religion or belief, disability, age or sexual orientation.
- The Racial Equality Directive prohibits discrimination with regard to social protection, including social security and healthcare; social advantages; education; and access to and supply of goods and services that are available to the public, including housing.
- The Employment Equality Directive covers only the area of employment and occupation.
- The Racial Equality Directive obliges Member States to designate bodies for the promotion of equal treatment. The Employment Equality Directive does not contain such an obligation.
- The Employment Equality Directive provides for reasonable accommodation for persons with disabilities.

**Section 4** of this opinion examines developments in the role of equality bodies in Member States. This examination responds to the European Commission's 2018 Recommendation on standards for equality bodies,<sup>4</sup> and to the potential proposal for legislation to strengthen equality bodies that was announced for 2022 in the EU anti-racism action plan 2020–2025.<sup>5</sup>

In these respects, this opinion complements the European Commission's 2021 report on the application of the Racial Equality Directive and the Employment Equality Directive,<sup>6</sup> and its accompanying Staff Working Document on equality bodies and the implementation of the Commission Recommendation on standards for equality bodies.<sup>7</sup>

The European Commission's report analyses difficulties Member States have with the interpretation of the provisions of both directives and includes clarifications from the Court of Justice of the European Union in this regard. In summary, the staff working document compares the situation of equality bodies with the measures proposed in the European Commission's Recommendation on standards for equality bodies.

The opinion does not analyse case law on discrimination, to avoid duplication with the European Commission's report on the application of the directives. FRA covers selected developments in case law in its annual Fundamental Rights Report,<sup>8</sup> and periodically updates information on cases and rulings in its database on anti-Muslim hatred.<sup>9</sup> The European Equality Law Review provides regular updates on legal and policy developments in the area of equality and non-discrimination.<sup>10</sup>

Finally, this opinion considers how equality data can be used as a tool to monitor the realisation of the principle of equal treatment in the EU and its Member States.

4 European Commission (2018), *Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies*, OJ 2018 L 167.

5 European Commission (2020), *A Union of equality – EU anti-racism action plan 2020–2025*, COM(2020) 565 final, Brussels, 18 September 2020.

6 European Commission (2021), *Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive')*, COM(2021) 139 final, Brussels, 19 March 2021.

7 European Commission (2021), *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD(2021) 63 final, Brussels, 19 March 2021.

8 FRA (2020), *Fundamental Rights Report 2020*, Luxembourg, Publications Office of the European Union (Publications Office). See also FRA (2020), *Fundamental Rights Report 2020 – Country research*.

9 FRA (2021), 'Database 2012–2019 on anti-Muslim hatred – Cases and rulings'.

10 European Equality Law Network (2021), 'Law reviews'.

## REALISING THE PRINCIPLE OF EQUAL TREATMENT IN COMPLIANCE WITH THE RACIAL EQUALITY DIRECTIVE AND THE EMPLOYMENT EQUALITY DIRECTIVE

Data and evidence collected by FRA consistently show that people across the EU regularly experience discrimination on the grounds and in the areas of life listed in the Racial Equality Directive and in the Employment Equality Directive. This is the case despite the directives having been in force since 2000.

This calls into question the effectiveness of the measures and institutional arrangements Member States have put in place to enforce non-discrimination legislation, including the rules they have laid down as regards the effectiveness, proportionality and dissuasiveness of sanctions in cases of discrimination (Article 15 of the Racial Equality Directive; Article 17 of the Employment Equality Directive). Further shortcomings in the application of the EU legal provisions on non-discrimination identified by legal practitioners relate to the sanctions applied across Member States, which currently “do not guarantee effective redress nor do they act as an effective deterrent”.<sup>11</sup>

The Racial Equality Directive prohibits direct and indirect discrimination on the grounds of racial or ethnic origin. Article 3 on the scope of the directive specifies that it applies to employment and occupation, vocational training, working conditions and membership of workers’ or employers’ organisations; social protection, including social security and healthcare; social advantages; education; and access to and supply of goods and services that are available to the public, including housing.

The Employment Equality Directive prohibits direct and indirect discrimination on the grounds of religion or belief, disability, age or sexual orientation. Article 3 on the scope of the directive specifies that it applies to the areas of employment and occupation, vocational training, working conditions and membership of workers’ or employers’ organisations.

**Concerning the Racial Equality Directive**, FRA survey data show the following.

- The prevalence of discrimination on the grounds of racial or ethnic origin remains consistently high, both over time and across different population groups in different Member States. For example, EU-MIDIS II data show that almost one out of four respondents (24 %) felt discriminated against in the 12 months preceding the survey in one or more areas of daily life in 2016 because of their ethnic or immigrant background. Data from EU-MIDIS I in 2007 show that almost one in three respondents (30 %) stated that they felt discriminated against because of their ethnicity (with respect to one or more areas of life) during the 12 months preceding the survey.<sup>12</sup> Improvements in the sampling methodology and the application of sample design weights for the analysis of EU-MIDIS II data restrict, to some extent, direct comparability between the two surveys. The findings nevertheless indicate little progress over time, as the rates remain high.



### FRA OPINION 1

In line with Article 5 of the Racial Equality Directive and Article 7 of the Employment Equality Directive – on what both directives refer to as positive action – EU Member States could introduce measures “to prevent or compensate for disadvantages linked to” the grounds of discrimination and areas of life listed in these directives, as evidenced by FRA research and national data sources.

EU Member States could identify such disadvantages and trends in discrimination through the systematic data collection and analysis of the lived experiences and socio-economic conditions of members of population groups at risk of discrimination, as outlined in FRA Opinion No. 6 on equality data.

In line with Article 15 of the Racial Equality Directive and Article 17 of the Employment Equality Directive, EU Member States should step up efforts to improve the effectiveness of measures and institutional arrangements they have in place to enforce anti-discrimination legislation, and ensure that “sanctions applicable to infringements of the national provisions adopted pursuant to” the directives are “effective, proportionate and dissuasive”.

<sup>11</sup> Equinet (2020), *Future of equality legislation in Europe – Synthesis report of the online roundtable*, Brussels, Equinet Secretariat.

<sup>12</sup> FRA (2017), *EU-MIDIS II – Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, p. 13; FRA (2010), *European Union Minorities and Discrimination Survey – Main results report*, Publications Office, p. 36.

- FRA survey data show that people with ethnic minority or immigrant backgrounds (including Roma and Travellers, Muslims, Jews and people of African descent) regularly experience high levels of discrimination based on their ethnic or racial origin (as well as their religion or belief) in different areas of life. For example, in the five years preceding the respective survey, 41 % of Roma, 45 % of persons with a North African background, 39 % of sub-Saharan Africans,<sup>13</sup> 60 % of Roma and Travellers<sup>14</sup> and 25 % of Jews<sup>15</sup> felt discriminated against because of their ethnic or immigrant background.
- People describe discrimination as a recurring experience: although some people experience discrimination daily, the average number of experiences of discrimination stands at 4.6 incidents per year.<sup>16</sup>
- The prevalence of discrimination based on racial or ethnic origin varies greatly not only across Member States but also between the different groups surveyed in a single country. For example, Roma and Travellers, people of African descent, and immigrants and descendants of immigrants from North Africa experience higher levels of discrimination than other groups surveyed in the same country.<sup>17</sup>
- Visible signs of difference – such as skin colour, physical appearance, or wearing traditional or religious clothing (e.g. headscarves) in public spaces – trigger high levels of unequal treatment for people of African descent, Roma and Muslim women across the EU.<sup>18</sup>
- Although Roma respondents and people of African descent mostly noted encountering discrimination based on their physical appearance, immigrants and descendants of immigrants from North Africa and Turkey mainly indicated experiencing discrimination based on their first or last names.<sup>19</sup> A respondent’s name was the main reason for discrimination in access to housing and second in importance in all other areas of life covered by the survey.
- Experiences of discrimination vary across age groups and generations, with descendants of immigrants with a North African background, for example, indicating that they experience higher rates of ethnic and religious discrimination than first-generation immigrants.<sup>20</sup> This finding may reflect a number of factors, including increased awareness of equality and rights among later generations, and/or the impact of different legal status – and resultant rights – enjoyed by descendants of immigrants, and – conversely – a lower expectation of equal treatment among first-generation immigrants. However, these findings warrant further exploration.
- On average, there are no substantial differences between women’s and men’s experiences of discrimination based on ethnic or immigrant background. There are, however, substantial gender differences within and across target groups in some Member States.<sup>21</sup>

<sup>13</sup> FRA (2017), *EU-MIDIS II – Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office.

<sup>14</sup> FRA (2020), *Roma and Travellers in six countries – Roma and Travellers Survey*, Luxembourg, Publications Office; FRA (2017), *EU-MIDIS II – Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office.

<sup>15</sup> FRA (2018), *Experiences and perceptions of antisemitism – Second survey on discrimination and hate crime against Jews in the EU*, Luxembourg, Publications Office, p. 60. The second antisemitism survey provides only the 12-month discrimination rate.

<sup>16</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, p. 14.

<sup>17</sup> *Ibid.*, pp. 29–32.

<sup>18</sup> *Ibid.*, p. 32.

<sup>19</sup> *Ibid.*, p. 36.

<sup>20</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, p. 30. FRA (2017), *Second European Union Minorities and Discrimination Survey: Muslims – Selected findings*, Luxembourg, Publications Office, p. 24.

<sup>21</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office.

- Most respondents experience racial discrimination at work or when looking for work, particularly Roma and respondents with a North African background. North and sub-Saharan Africans often experience discrimination at work.<sup>22</sup>
- Other areas of life with particularly high rates of experienced discrimination are access to housing and accessing other public or private services, such as public administration, public transport, shops, restaurants or bars.<sup>23</sup>

**Concerning the Employment Equality Directive**, FRA survey data and ad hoc data FRA collected on experiences of discrimination in employment and occupation on the grounds of disability and age for the purposes of this opinion show the following.

- Little progress has been achieved on the ground since the European Commission published its report on the application of the directive in 2014:<sup>24</sup> the prevalence of discrimination in employment on the grounds of religion or belief, disability, age and sexual orientation in most EU Member States has remained high.
- The share of people in 2019 identifying as lesbian, gay, bisexual and trans (LGBT) who felt discriminated against when looking for work (11 %) is about the same as the share in 2012 (13 %). The same is true of the proportion of LGBT people who felt discriminated against at work (21 % in 2019 versus 19 % in 2012).<sup>25</sup> People who identify as trans are included in these figures for purposes of comparison between the two surveys.
- People with ethnic minority, religious or immigrant backgrounds regularly experience discrimination on the grounds of religion or belief in employment, and to a higher degree than the general population.
- The prevalence of discrimination on the grounds of religion or belief in employment is relatively high for people with ethnic minority or immigrant backgrounds (five-year rate: 12 %), and members of religious minorities such as Muslims (five-year rate: 17 %) and Jews (12-month rate: 16 %).<sup>26</sup>
- Only 1 % of respondents from the general population felt discriminated against in employment because of their religion or belief in the five years preceding the survey, as data from the Fundamental Rights Survey show. However, 15 % of respondents in the same survey who self-identify as Muslim say they felt discriminated against in employment because of their religion or belief in the five years before the survey.
- Muslim women mention ‘the way they dress’ (wearing a headscarf/turban) as the main reason for experiencing discrimination in employment.<sup>27</sup>

<sup>22</sup> *Ibid.*, p. 34 and p. 38.

<sup>23</sup> FRA (2020), *Roma and Travellers in six countries – Roma and Travellers Survey*, Luxembourg, Publications Office. FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office.

<sup>24</sup> European Commission (2014), *Report from the Commission to the European Parliament and the Council – Joint report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (‘Racial Equality Directive’) and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (‘Employment Equality Directive’)*, COM(2014) 2 final, Brussels, 17 January 2014.

<sup>25</sup> FRA (2020), *EU-LGBTI II – A long way to go for LGBTI equality*, Luxembourg, Publications Office, p. 10.

<sup>26</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office; FRA (2018), *Experiences and perceptions of antisemitism – Second survey on discrimination and hate crime against Jews in the EU*, Luxembourg, Publications Office.

<sup>27</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey: Muslims – Selected Findings*, Luxembourg, Publications Office, p. 24.

- Concerning disability, data from the Fundamental Rights Survey show that discrimination in employment increases with the degree of limitation in daily activities. Persons with severe limitations are more likely to experience discrimination than those without severe limitations and those without any limitations in daily activities. Note that the Fundamental Rights Survey addressed issues pertaining to discrimination on the grounds of disability through the questions of the Minimum European Health Module, developed by Eurostat to collect data on self-perceived health. The module includes the following question: “For at least the past six months, to what extent have you been limited because of a health problem in activities people usually do? Would you say you have been ... [Answer categories: ‘Severely limited’; ‘Limited but not severely’; ‘Not limited at all’; ‘Prefer not to say’; ‘Don’t know’]”. According to Eurostat, this question can be used as a measure of long-standing limitations related to physical or mental health problems, illness or disability.<sup>28</sup>
- Persons with disabilities regularly experience discrimination at work, and more so when looking for work, as data collected for the purposes of this opinion show. FRA collected these data through Franet. Such data were available only in a limited number of EU Member States.<sup>29</sup>
- Women with disabilities are more likely than men with disabilities to experience discrimination on the grounds of disability in employment.
- Findings from the Fundamental Rights Survey show relatively high rates of age discrimination in employment for the general population (five-year rate: 15 %), with substantial differences between countries.
- Data from the Fundamental Rights Survey show that twice as many people say they experience discrimination in employment because they are ‘too old’ as those who are ‘too young’ (10 % versus 6 %).
- There is a high prevalence of experiences of age discrimination in employment for older people, as data collected for the purposes of this opinion show.
  - ★ The prevalence tends to increase with the respondent’s age and is particularly high for those aged 50 years and above. These data were available only in a limited number of EU Member States.<sup>30</sup>
  - ★ The prevalence of experiences of age discrimination is higher when looking for work than at work.
  - ★ Women tend to experience age discrimination in employment more often than men.
- Data from the Fundamental Rights Survey also show that the five-year prevalence of discrimination in employment on any ground is almost twice as high for those who self-identify as lesbian, gay and bisexual (LGB) or ‘other’ (41 %) than for those who self-identify as heterosexual (22 %).<sup>31</sup>
- LGB persons experience higher discrimination rates at work than when looking for work, with no substantial differences between lesbians, gay men and bisexual people.<sup>32</sup>
- Age discrimination in employment for LGB people increases with age and is particularly high for those aged 55 years and above.<sup>33</sup>

<sup>28</sup> See Eurostat (2013), *European Health Interview Survey (EHIS wave 2) – Methodological manual*, Luxembourg, Publications Office, pp. 16–17.

<sup>29</sup> For detailed references, see [Section 1.2.2](#).

<sup>30</sup> For detailed references, see [Section 1.2.3](#).

<sup>31</sup> FRA (2020), *What do fundamental rights mean for people in the EU? Fundamental Rights Survey*, Luxembourg, Publications Office.

<sup>32</sup> FRA (2020), *EU-LGBTI II – A long way to go for LGBTI equality*, Luxembourg, Publications Office, p. 31.

<sup>33</sup> FRA (2020), *EU-LGBTI II – A long way to go for LGBTI equality*, Luxembourg, Publications Office; FRA (2020), *What do fundamental rights mean for people in the EU? Fundamental Rights Survey*, Luxembourg, Publications Office.

## TAKING ACCOUNT OF UNEVEN PROTECTION AGAINST DISCRIMINATION IN EU LEGAL PROVISIONS

Article 10 of the Treaty on the Functioning of the European Union (TFEU) states that, “in defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.

Article 19 of the TFEU further specifies that “the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.

Article 21 of the Charter prohibits “any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation”. Article 21 also prohibits any discrimination on the grounds of nationality “within the scope of application of the Treaties and without prejudice to any of their specific provisions”. The Charter is binding on EU institutions in all their actions and on Member States when they implement EU law. According to Article 51 (1), the provisions of the Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to Member States only when they are implementing Union law.

In addition, the EU signed and ratified the United Nations Convention on the Rights of Persons with Disabilities, which includes non-discrimination as a principle of the convention (Article 3), with Article 5 further prohibiting all discrimination against persons with disabilities.

Despite these provisions, the EU legal framework on equality continues to be marked by gaps in the promotion of equal treatment. The applicable secondary Union law – that is, the racial, employment and gender equality directives<sup>34</sup> – has gaps in its protection and leads to an artificial hierarchy of grounds, which limits the breadth and the scope of EU-level protection against discrimination. In contrast to the grounds of sex and racial or ethnic origin, which are extensively protected in EU legal provisions, the grounds of religion or belief, disability, age and sexual orientation are not protected to the same degree.

In addition, protection against discrimination is inconsistent across Member States, although most have adopted legislation that goes beyond the minimum standards introduced by the racial, employment and gender equality directives. By covering additional grounds and areas of life in national legislation, most Member States recognise the need to protect people from discrimination beyond the existing EU legal framework on equality.

However, despite calls by the European Parliament and the efforts of the European Commission, the Commission’s 2008 proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation – the Equal Treatment Directive – remains blocked in the Council, where it needs to be adopted unanimously. Although 14 Member States fully endorse the proposal, an unspecified number of Member States remain opposed to it.<sup>35</sup>

### FRA OPINION 2

The EU legislator and Member States should strive to ensure comparable, consistent and high levels of protection against discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in different areas of life. In doing so, Member States could draw inspiration from strategies and action plans of the European Commission that set out to achieve a Union of equality. These include the EU anti-racism action plan 2020–2025; the EU Roma strategic framework for equality, inclusion and participation 2020–2030; the LGBTIQ [lesbian, gay, bisexual, trans, intersex and queer] equality strategy 2020–2025; the strategy for the rights of persons with disabilities 2021–2030; the Action plan on integration and inclusion 2021–2027; and, the EU gender equality strategy 2020–2025.

The EU and its Member States should continue exploring all possible options to unblock the negotiations on the proposed Equal Treatment Directive. Adopting the directive without further delay would remove the artificial hierarchy of grounds that has installed itself in the Union, ensuring that the EU and its Member States provide comprehensive and consistent protection against discrimination on the grounds of religion or belief, disability, age or sexual orientation in key areas of life currently not covered by EU secondary legislation.

The EU legislator should consider broadening the concept of discrimination to include intersectional discrimination in existing and new legislation in the area of equality and non-discrimination. This would enable the EU and Member States to reinforce legal protection against intersectional discrimination, in particular for women who face discrimination based on the combination of different grounds of discrimination.

34 Directive 2010/41/EU of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, OJ 2010 L 180; Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ 2006 L 204; Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ 2004 L 373.

35 Council of the European Union (2020), *Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation – Information from the Presidency on responses to its questionnaire*, Brussels, 4 November 2020.

FRA survey data show that, for example, many Roma, Travellers, Muslims, Jews, and immigrants and their descendants cannot say with certainty whether they experience discrimination on the grounds of race and ethnicity or on the grounds of religion or belief. Data also consistently show that many people across the EU experience multiple and intersectional discrimination, based on varied combinations of grounds.

Intersectional discrimination describes a situation in which several grounds operate and interact with each other at the same time in such a way that they are inseparable and produce specific types of discrimination. Practitioners in the field recognise, however, that addressing discrimination from the perspective of a single ground fails to capture the diversity of how people experience discrimination in their daily lives. However, intersectional discrimination is not protected under EU law, and only a few Member States have adopted legal provisions that pertain to either multiple or intersectional discrimination.

There is also concern that phenomena of systemic or structural discrimination affect equal treatment. The Council Recommendation on Roma equality, inclusion and participation defines systemic or structural discrimination “as being evident in the inequalities that result from legislation, policy and practice, not by intent but resulting from a range of institutional factors in the elaboration, implementation and review of legislation, policy and practice”.<sup>36</sup>

Data collected by FRA reveal evidence of structural discrimination across Member States, as illustrated by the findings on Roma and people of African descent in EU-MIDIS II and the Roma and Travellers Survey. These results indicate that people who experience some of the highest rates of discrimination also tend to face high and above average rates of material deprivation.

- A substantial proportion of Roma respondents and their children (80 %) live with an income below the at-risk-of-poverty thresholds of their respective countries; every fourth Roma (27 %) and every third Roma child (30 %) live in a household that faced hunger at least once in the month preceding EU-MIDIS II; one in three Roma live in housing without tap water, and one in 10 live in housing without electricity. When asked if the total household income is sufficient to make ends meet, 92 % of Roma surveyed indicate that they face some difficulties in this regard, with 45 % facing ‘great difficulties’.<sup>37</sup>
- In stark contrast to the general population, every fourth Roma and Traveller child (23 %) across the six countries covered by FRA’s Roma and Travellers Survey lives in a household affected by severe material deprivation. This means that household members cannot afford basic items, such as healthy food or heating, or are in arrears with paying the rent and cannot afford a week of holiday in a year.<sup>38</sup>
- More than one in two (55 %) respondents of African descent have a household income below the at-risk-of-poverty threshold after social transfers in the country where they live. Their at-risk-of-poverty rate is high for second-generation respondents (48 %) and respondents who are citizens (49 %), and is higher than that of the general population. One in two respondents of African descent reported living in overcrowded housing (45 %), compared with 17 % of the general population in the then 28 Member States of the EU. One in 10 (12 %) of these respondents experience housing deprivation, which includes living in a dwelling without a bath and a toilet or in a dwelling that is too dark, has rot in the walls or windows, or has a leaking roof.<sup>39</sup>

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<sup>36</sup> Council of the European Union (2021), *Council Recommendation on Roma equality, inclusion and participation*, Brussels, 2 March 2021, p. 20.

<sup>37</sup> FRA (2016) *Second European Union Minorities and Discrimination Survey Roma – Selected findings*, Luxembourg, Publications Office.

<sup>38</sup> FRA (2020), *Roma and Travellers in six countries – Roma and Travellers Survey*, Luxembourg, Publications Office.

<sup>39</sup> FRA (2018), *Being Black in the EU*, Luxembourg, Publications Office.

## RECOGNISING POTENTIAL NEW MEANS OF DISCRIMINATION

The past few years have seen an exponential increase in the use of algorithms and artificial intelligence (AI) for decision-making in a variety of societal areas. FRA, among other actors, has shown that the use of algorithms and AI can have a major impact on the principle of equal treatment and non-discrimination. This was also highlighted by the EU High Level Expert Group on AI.

However, knowledge of the potential for discrimination when using algorithms and AI varies considerably among users, with many being unaware of how such systems can lead to and perpetuate or even reinforce discrimination, in particular indirect discrimination. Such discrimination occurs when an apparently neutral rule disadvantages a person or a group sharing the same characteristics compared with other persons, as noted in the racial and employment equality directives. FRA evidence – based on the agency’s published research on AI – shows that developers, and public and private sector users of AI, often do not assess in detail, if at all, whether or not the automated systems they operate are discriminatory.

Acknowledging the important challenge of using AI in a non-discriminatory manner and to increase, not reduce, equality, international organisations, the EU and Member States are variously active in relation to policymaking and drafting legislation on AI, which should also address the need for non-discrimination. In its *White Paper on artificial intelligence – A European approach to excellence and trust*,<sup>40</sup> which outlines plans for a possible legislative proposal, the European Commission underlined that AI entails several risks, including discrimination based on different protected grounds. This was also highlighted in the **EU anti-racism action plan 2020–2025**.

These initiatives and concerns highlight the risk of discrimination when using AI in various areas of life and the need for further regulation. The potential wide uptake of AI may lead to discrimination in areas of life and on grounds that go beyond those covered in existing EU secondary law on anti-discrimination.



### FRA OPINION 3

The EU and its Member States should assess in detail the impact of the increased reliance on algorithms and AI in decision-making on equal treatment and non-discrimination and introduce relevant fundamental rights safeguards to limit this impact. This would contribute to alleviating risks related to potential discriminatory biases being built into algorithms and AI used in decision-making.

In this respect, the EU should also consider funding targeted research on discrimination by means of AI and algorithms.

<sup>40</sup> European Commission (2020), *White Paper on Artificial Intelligence: a European approach to excellence and trust*.

## NON-REPORTING OF DISCRIMINATION AND LACK OF RIGHTS AWARENESS

### FRA OPINION 4

The European Commission and EU Member States should consider developing specific guiding principles on encouraging reporting of discrimination to equality bodies under the activities of the High Level Group on Non-discrimination, Equality and Diversity, and in close cooperation with Equinet, equality bodies and relevant civil society organisations.

With respect to encouraging reporting, the EU and Member States should consider transferring lessons learned from activities facilitated by FRA on encouraging reporting of hate crime under the EU High Level Group on combating racism, xenophobia and other forms of intolerance to the context of encouraging discrimination reporting to equality bodies. The key guiding principles on encouraging reporting of hate crime, as endorsed by the High Level Group, could be adapted to the context of reporting discrimination to equality bodies, particularly as regards:

- setting up effective systems for referrals between equality bodies, the police and civil society organisations;
- providing accessible reporting channels, including third-party reporting;
- providing tailored outreach to people at risk of discrimination.

Member States should step up their efforts to ensure that equality bodies have the means necessary to raise awareness of their existence and remit, in particular among population groups at risk of discrimination as well as among the general population.

The European Commission and Member States should foster independent research with groups in the population most affected by discrimination to explore the various factors that may influence people's decision on whether or not to report to equality bodies.

EU Member States should strengthen efforts to raise awareness of anti-discrimination legislation and relevant redress mechanisms, in particular among all the population groups at risk of discrimination, in line with Article 10 of the Racial Equality Directive and Article 12 of the Employment Equality Directive.

EU Member States should step up efforts to use tools, such as public sector equality duties and equality impact assessments, to ensure implementation of the principle of equal treatment.

FRA survey data show that victims of discrimination tend not to report incidents they experience to any authority or body for a number of reasons, including not knowing where to turn to. This is the case despite the existence of equality bodies in all Member States, as required under Article 13 of the Racial Equality Directive, which also stipulates that such bodies should provide "independent assistance to victims of discrimination in pursuing their complaints about discrimination".<sup>41</sup>

Findings from FRA's surveys show significant levels of under-reporting of discrimination in general, with equality bodies across the EU receiving the fewer reports of discrimination than other places where complaints can be made. This indicates that existing processes and systems for reporting experiences of discrimination are often ineffective and do not always aid victims of discrimination in seeking redress and access to justice.

Specifically:

- findings from all FRA surveys show low rates of reporting of discriminatory incidents among all the population groups surveyed;<sup>42</sup>
- low rates of reporting are consistent over time, across countries and across the different population groups covered in the FRA surveys – the average reporting rates for the different population groups are:
  - ★ 12 % (2016 EU-MIDIS II)
  - ★ 23 % (2018 second antisemitism survey)
  - ★ 11 % (2019 EU LGBTI [Lesbian, Gay, Bisexual, Trans and Intersex] Survey II)
  - ★ 10 % (2019 Fundamental Rights Survey)
  - ★ 21 % (2019 Roma and Travellers Survey);
- as a result, incidents of discrimination remain largely invisible to institutions that have a legal obligation to assist victims of discrimination, including equality bodies;
- data from EU-MIDIS II in 2016 show that most complaints were made to an employer (36 %), with some 13 % of incidents reported to trade unions and staff committees, and another 17 % reported to the police when related to entering a night club or a bar;<sup>43</sup>

41 For more information on when equality bodies were established in EU Member States, see the 'European directory of equality bodies' maintained by Equinet.

42 FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office; FRA (2018), *Experiences and perceptions of antisemitism – Second survey on discrimination and hate crime against Jews in the EU*, Luxembourg, Publications Office; FRA (2020), *Roma and Travellers in six countries – Roma and Travellers Survey*, Luxembourg, Publications Office; FRA (2020), *EU-LGBTI II – A long way to go for LGBTI equality*, Luxembourg, Publications Office; FRA (2019), *Fundamental Rights Survey*.

43 FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, p. 22.

- only 4 % of all reports of discrimination were made to an equality body, a worryingly low figure;
- although overall reporting rates of discrimination are low, variations are apparent across Member States and groups surveyed – victims of discrimination with ethnic minority and immigrant backgrounds (including Roma and Travellers) residing in Finland, the Netherlands, Ireland, Sweden and Denmark (countries listed in numerical order) tend to report discriminatory incidents more often than respondents in other countries.<sup>44</sup>

Low or high numbers of reported incidents of discrimination in Member States do not necessarily reflect the prevalence or nature of discrimination in these Member States. Instead, the number of reported incidents can act as an indicator of people’s willingness to report discrimination, which is affected by levels of trust in institutions and by levels of awareness of equality law, equality rights and equality bodies.

High numbers of reported cases of discrimination can sometimes indicate that reporting systems are functioning, whereas low numbers potentially indicate the contrary. In addition, year-on-year variations in reporting rates do not necessarily indicate fluctuations in the prevalence of discrimination. Instead, they might reflect changes in the reporting systems, increased willingness and ability among victims and witnesses to report incidents, or improved capacity of the competent bodies to deal with such incidents accordingly.

FRA survey data show that the main reasons for non-reporting include the following.

- Across all FRA surveys, the main reason given for not reporting a discriminatory incident is the belief that nothing would happen or change as a result of reporting. This specific reason was mentioned by:
  - ★ 52 % of respondents in the second survey on antisemitism who did not report the last discriminatory incident;<sup>45</sup>
  - ★ 41 % of victims of discrimination in EU LGBTI Survey II;<sup>46</sup>
  - ★ 35 % of victims of discrimination with an ethnic minority or immigrant background in EU-MIDIS II;<sup>47</sup>
  - ★ more than 36 % of respondents from the general population in the Fundamental Rights Survey who did not report the last incident of discrimination they experienced.<sup>48</sup>
- Other frequently mentioned reasons for not reporting include the belief that discrimination is not easy to prove and that the incident might be too trivial or not worth reporting.

As illustrated by findings from FRA’s EU LGBTI Survey II, additional reasons given for not reporting incidents include:

- ★ that it is not worth reporting discrimination, as it happens all the time (33 %);
- ★ not wanting to reveal the fact that they identify as LGBTI (21 %);
- ★ not trusting the authorities (21 %);
- ★ being concerned that the incident will not be taken seriously (23 %);
- ★ not knowing how or where to report (15 %);
- ★ feeling hurt, traumatised and too stressed to actively deal with reporting (13 %).<sup>49</sup>

44 FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, p. 43; FRA (2020), *Roma and Travellers in six countries – Roma and Travellers Survey*, Luxembourg, Publications Office, p. 31.

45 FRA (2018), *Experiences and perceptions of antisemitism – Second survey on discrimination and hate crime against Jews in the EU*, Luxembourg, Publications Office, p. 59.

46 FRA (2020), *EU-LGBTI II – A long way to go for LGBTI equality*, Luxembourg, Publications Office, p. 37.

47 FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, p. 49.

48 FRA (2020), *What do fundamental rights mean for people in the EU? Fundamental Rights Survey 2019*, Luxembourg, Publications Office.

49 FRA (2020), *EU-LGBTI II – A long way to go for LGBTI equality*, Luxembourg, Publications Office, p. 37.

These findings point to varying degrees of effectiveness of existing laws, policies and bodies that aim to counteract discrimination and ensure equality for all in Member States. They also suggest varying levels of rights awareness among the different groups surveyed in the different countries. Indeed, FRA survey data show that, in contrast to findings for the general population, equality bodies remain largely unknown among population groups at risk of discrimination, such as ethnic minorities or immigrants. In addition, awareness of anti-discrimination legislation and possible redress mechanisms, including equality bodies, varies strongly across countries and groups surveyed.

- On average, the level of awareness of discrimination being unlawful among respondents in EU-MIDIS II is relatively high (67 %).<sup>50</sup>
- By contrast, the level of EU-MIDIS II respondents' awareness of any organisation that offers support or advice to victims of discrimination, including equality bodies, is very low: 71 % are not aware of any such organisation, whereas 62 % do not recognise the name of any equality body in their country.<sup>51</sup>
- The awareness of equality bodies among the general population is relatively high, compared with ethnic minorities or immigrants and their descendants. On average, in the 27 Member States of the EU (EU-27), three out of five respondents (61 %) in the Fundamental Rights Survey are aware of at least one equality body in their country – which includes the awareness of equality bodies that cover racial and ethnic origin and gender as grounds of discrimination. More than half (52 %) of all respondents are aware of an equality body that covers racial or ethnic origin as a ground of discrimination in their mandate.<sup>52</sup>
- However, this proportion is lower among those who are not citizens of the survey country (34 %) than among those who are citizens (53 %). Similarly, 45 % of respondents in the Fundamental Rights Survey who consider themselves to belong to an ethnic minority are aware of an equality body that covers racial or ethnic origin as a ground of discrimination, compared with 53 % of those who do not consider themselves belonging to an ethnic minority.<sup>53</sup>
- Data from the Fundamental Rights Survey further show that, in the EU-27, the general population's awareness of an equality body differs slightly by disability. More than half (55 %) of respondents who are severely limited in their daily activities indicate that they are aware of an equality body, followed by 57 % of respondents who are limited but not severely and 63 % of respondents who are not limited.
- Overall and across different FRA surveys, respondents' awareness of an equality body varies with their level of education – respondents with lower educational levels tend to be less aware of such institutions.
- Even if the knowledge of specific equality bodies is higher (for example in the case of the general population and LGBTI people),<sup>54</sup> this fact does not correlate with a substantially higher reporting rate.
- FRA data on equality bodies show that the bodies in Czechia, Denmark, Ireland, Latvia, Poland and Sweden are at the higher end in terms of staff and budget size relative to the countries' populations, and 50 % or more of respondents in FRA's EU-MIDIS II say they are aware of equality bodies in these countries (with a slightly lower level of awareness in Ireland and Sweden at around 40 %).

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50 FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, p. 55.

51 *Ibid.*, pp. 51–53.

52 FRA (2020), *What do fundamental rights mean for people in the EU? Fundamental Rights Survey*, Luxembourg, Publications Office.

53 *Ibid.*

54 FRA (2020), *What do fundamental rights mean for people in the EU? Fundamental Rights Survey 2019*, Luxembourg, Publications Office; FRA (2020), *EU LGBTI II – A long way to go for LGBTI equality*, Luxembourg, Publications Office, pp. 35–37.

- In comparison, FRA data show that equality bodies in Austria, Bulgaria, Germany, Greece, Hungary, Italy, Luxembourg, Malta, the Netherlands, Romania, Slovenia and Spain are at the lower end in terms of staff and budget size relative to the countries' populations, with 30 % or less of respondents in FRA's EU-MIDIS II being aware of the equality bodies in these countries.

Low levels of awareness of equality bodies undermine the important role they should play in providing assistance to victims of discrimination. The available evidence confirms a link between the resources allocated to equality bodies (staff and budget) and the awareness of these bodies among the population. This indicates that equality bodies that are legally and financially stronger are likely able to play a more effective role in increasing the level of rights awareness of both potential victims of discrimination and witnesses of such incidents. This would include their capacity to implement targeted measures to reach out to persons or groups most at risk of discrimination.

It is notable, however, that higher levels of awareness of equality bodies do not necessarily always correlate with higher levels of reporting to these bodies. This is the case even for some of the bodies that find themselves in the higher tier as regards the ratio of their human and financial resources to the size of population of the country where they are established.

The EU and its Member States initiated concrete efforts to encourage reporting to relevant bodies and authorities in the area of hate crime, which is one of the most severe forms of discrimination.<sup>55</sup> In March 2021, the EU High Level Group on combating racism, xenophobia and other forms of intolerance endorsed a set of key guiding principles to encourage victims to report hate crime to law enforcement authorities.<sup>56</sup> The Working Group on hate crime recording, data collection and encouraging reporting developed these principles, through activities facilitated by FRA.

Some aspects of the key guiding principles on encouraging the reporting of hate crime are relevant in the context of encouraging reporting of discrimination to equality bodies. This is the case despite the fact that the mandates of a few equality bodies explicitly cover hate crime, which is usually addressed under the provisions of criminal law.

Principles 5, 6, 8 and 9 are of particular interest in the context of encouraging reporting to equality bodies. These principles broadly relate to:

- ★ establishing structural and formalised cooperation between equality bodies, the police and civil society organisations, including effective systems for referrals;
- ★ setting up accessible channels of reporting for victims and witnesses, such as third-party reporting;
- ★ providing tailored outreach to individuals at risk of bias-motivated victimisation.

Victims of bias-motivated crime and harassment may reach out to equality bodies in relation to incidents that do not meet the threshold for being classified as a criminal offence. Formalised and effective referral protocols between the relevant authorities, depending on their competence for a particular case, constitute an important step for victims of discrimination towards seeking support, protection and redress. Such interinstitutional cooperation encompasses raising awareness of rights and leveraging the knowledge of equality bodies among the general population and those most at risk of discrimination.

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55 FRA (2012), *Making hate crime visible in the European Union: Acknowledging victims' rights*, Luxembourg, Publications Office.

56 European Commission, EU High Level Group on combating racism, xenophobia and other forms of intolerance, Working Group on hate crime recording, data collection and encouraging reporting (2021), *Key guiding principles on encouraging reporting of hate crime – The role of law enforcement and relevant authorities*, Luxembourg, Publications Office.

## DEVELOPMENTS IN THE ROLE OF EQUALITY BODIES

Effective implementation of existing legislation requires appropriate structures and mechanisms to enhance respect of the law, as well as trust in bodies involved in promoting equality. In this regard, it is crucial for equality bodies to be effective.

Article 13 of the Racial Equality Directive stipulates that “Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals’ rights.”

Under the terms of the directive, the competences of these equality bodies should include providing independent assistance to victims of discrimination in pursuing their complaints about discrimination; conducting independent surveys concerning discrimination; and publishing independent reports and making recommendations on any issue relating to such discrimination. The directive leaves Member States a broad margin to set up equality bodies according to their own institutional traditions and arrangements.

In 2018, the European Commission published a recommendation on standards for equality bodies identifying three areas in which Member States could implement measures to enable equality bodies to fully promote equal treatment and effectively perform the tasks assigned to them under EU law. These pertain to their mandate; their independence and effectiveness; and how they cooperate and coordinate with one another, public authorities and other organisations.

As the European Commission notes,<sup>57</sup> the role and status of equality bodies still differ considerably across Member States, with a great degree of diversity in their structure, the grounds of discrimination and areas of life covered by their mandates, their functions, their independence, and the human, financial and technical resources available to them. This lack of uniformity between equality bodies across Member States leads to gaps in protection against discrimination in the EU. This evidence of continued diversity of equality bodies – despite the European Commission Recommendation on standards for equality bodies, which aimed to address some of those gaps, having been adopted back in 2018 – confirms that there is room to harmonise the role and standing of equality bodies in the EU, and strengthen their mandates.

The European Commission further announced in the EU anti-racism action plan 2020–2025 that it will explore the possibility of proposing new legislation to strengthen equality bodies by 2022.

Equinet developed two sets of indicators that can assist the EU and its Member States in their efforts to strengthen equality bodies.

The set of indicators on mandates focuses on the grounds of discrimination and areas of life covered by equality bodies, their nature and extent of their competences with regard to providing independent assistance to victims of discrimination, their decision-making powers, their ability to conduct surveys and research, and their advisory function.

The set of indicators on independence focuses on the legal frameworks setting up equality bodies, their ability to perform their functions without interference, the budget and resources allocated to equality bodies, and appointment and accountability of the leadership of equality bodies.

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<sup>57</sup> European Commission (2021), *Commission Staff Working Document – Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD(2021) 63 final, Brussels, 19 March 2021.

The important role of equality bodies in giving effect to the principle of equal treatment is also evidenced in the roles assigned to equality bodies in various EU initiatives: the EU anti-racism action plan 2020–2025;<sup>58</sup> the EU strategy on victims’ rights;<sup>59</sup> the Council Recommendation on Roma equality, inclusion and participation;<sup>60</sup> the proposal for a Regulation laying down common provisions on EU funds for the period 2021–2027 (Common Provisions Regulation);<sup>61</sup> and the proposal for binding pay transparency measures.<sup>62</sup> Each of these assigns active roles to equality bodies that call for these bodies to allocate resources so that they can fulfil these tasks effectively and independently.

More specifically, the Common Provisions Regulation provides for the participation of equality bodies in the monitoring committees of EU-funded programmes. These committees will be responsible for examining whether or not the EU-funded programmes comply with the enabling conditions that are necessary for accessing and using EU funds throughout the programming period.

## ↑ FRA OPINION 5

EU Member States should ensure that equality bodies can effectively fulfil their tasks, as assigned by the Racial Equality Directive, and with respect to the roles provided for them in the EU anti-racism action plan; the EU strategy on victims’ rights; the Council Recommendation on Roma equality, inclusion and participation; the proposal for a Regulation laying down common provisions on EU funds for the period 2021–2027; and the proposal for binding pay transparency measures.

This entails ensuring that equality bodies are given sufficiently broad mandates and allocated adequate human, financial and technical resources to perform all their statutory tasks effectively and independently. The European Commission’s 2021 report on the application of the racial and employment equality directives also highlights this necessity.

When doing so, Member States should give due consideration to the European Commission’s Recommendation (EU) 2018/951 of June 2018 on standards for equality bodies. This includes enabling equality bodies to receive and handle complaints (including complaints by third parties) and assist victims of discrimination; publish independent reports and recommendations on any issues related to discrimination; collect data through independent surveys, which contributes to the evidence base for monitoring levels of discrimination; and promote awareness of the existence of equality bodies among the populations they were set up to serve.

Member States are encouraged to fully implement the measures included in the European Commission Recommendation on standards for equality bodies, to ensure that these bodies can fulfil their immense potential and promote equal treatment in practice.

In addition, the European Commission is encouraged to propose new legislation by 2022 to strengthen equality bodies, as outlined in the EU anti-racism action plan 2020–2025. The unequal protection against discrimination across the EU that results from the variety in the setup of equality bodies speaks in favour of such legislation, particularly when considering that equality is one of the founding values of the Union.

Considering the variety of legal traditions and systems in Member States, continuing an exchange of practices is encouraged to identify how measures implemented in one country – to strengthen equality bodies – could be transferred to another. Member States could request the assistance of the European Commission, FRA and Equinet to facilitate such exchanges of practices.

Member States are encouraged to apply the indicators developed by Equinet to measure compliance with standards for equality bodies and to adopt measures to strengthen these bodies accordingly.

The EU should ensure that Equinet is provided with the adequate human, technical and financial resources to enable it to further develop and ensure implementation of its sets of indicators, to assist the European Commission, Member States and equality bodies in monitoring the practical implementation of the Recommendation on standards for equality bodies. This would contribute to strengthening equality bodies.

58 European Commission (2020), *A Union of equality – EU anti-racism action plan 2020–2025*, COM(2020) 565 final, Brussels, 18 September 2020.

59 European Commission (2020), *EU strategy on victims’ rights (2020–2025)*, COM(2020) 258 final, Brussels, 24 June 2020.

60 Council of the European Union (2021), *Council Recommendation on Roma equality, inclusion and participation*, Brussels, 2 March 2021.

61 European Commission (2018), *Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument*, COM(2018) 375 final, Brussels, 29 May 2018.

62 European Commission (2021), *Proposal for a Directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms*, COM(2021) 93 final, Brussels, 4 March 2021.

## PROMOTING THE COLLECTION AND USE OF EQUALITY DATA, INCLUDING CORRECT APPLICATION OF THE GENERAL DATA PROTECTION REGULATION

According to the *European handbook on equality data*,<sup>63</sup> ‘equality data’ means any piece of information that is useful for the purposes of describing and analysing the state of equality. Such data are indispensable to informing an evidence-based assessment of the application of non-discrimination policies at EU and Member State levels, and to empowering population groups at risk of discrimination.

When collected regularly and systematically, such information is essential to helping Member States assess their compliance with human rights obligations. It also enables policymakers to monitor trends in outcomes of the application of legislation, policies and measures the EU and its Member States adopt to promote equal treatment. Against this background, the European Court of Auditors – in its 2016 special report **EU policy initiatives and financial support for Roma integration** – called on the European Commission to work with Member States to develop a common methodology and encourage Member States to collect statistical data on ethnicity.<sup>64</sup> In response, the European Commission and FRA cooperated with national Roma contact points in a working party that developed a framework of indicators on Roma equality, inclusion and participation and populated it with data. This work is ongoing.

To date, few Member States operate comprehensive systems or a coordinated approach to the collection and use of equality data, as noted in the *Guidelines on improving the collection and use of equality data*, which the European Commission’s High Level Group on Non-discrimination, Equality and Diversity endorsed in 2018.<sup>65</sup> A dedicated Subgroup on Equality Data, facilitated by FRA, developed these guidelines to offer concrete guidance on how to improve the collection and use of equality data at national level.

Some Member States have begun to implement these guidelines, which pertain to the institutional, structural and operational dimensions of the collection and use of equality data. **A compendium of promising practices**<sup>66</sup> and a diagnostic mapping tool complement the guidelines.

The Subgroup on Equality Data identified a number of challenges in the use and collection of equality data common to many Member States, including an imbalance in the grounds of discrimination and areas of life for which data are collected; a lack of consistency and coherence of definitions, classifications and categorisations, which affects the comparability of equality statistics across and within Member States; insufficient consultations with relevant stakeholders and affected groups when designing and implementing data collection; intermittent data collection that does not allow for an analysis of trends over time; and the inaccurate interpretation of data protection frameworks, as they relate to data on equality.

This lack of data means that the EU and Member States do not have the full picture when wanting to address the experiences of millions of people across the EU, characterised by discrimination on different grounds and in different areas of life. Moreover, the resulting paucity of relevant data prevents the EU and Member States from effectively monitoring the state of equality. Equality data can also help improve the assessment of potential discrimination and bias when algorithms and AI are increasingly used in decision-making.

The absence of robust and systematically collected equality data, combined with the very small number of discrimination cases brought to the attention of relevant authorities, competent bodies and courts, paints an incomplete picture of the reality of discrimination in the EU. As noted in guideline no. 1 on equality data, a national statistical office, equality

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63 European Commission (2016), *European handbook on equality data*, Luxembourg, Publications Office, p. 15.

64 European Court of Auditors (2016), *EU policy initiatives and financial support for Roma integration: Significant progress made over the last decade, but additional efforts needed on the ground*, Luxembourg, Publications Office.

65 European Commission, High Level Group on Non-discrimination, Equality and Diversity, Subgroup on Equality Data (2018), *Guidelines on improving the collection and use of equality data*, Brussels, European Commission.

66 FRA (2020), *‘Compendium of practices for equality data collection’*.

body or research institute could map “existing sources of equality data in Member States [...] and establish a baseline for a more systematic approach towards equality data collection”.<sup>67</sup>

To address the shortcomings identified through such a mapping, guideline no. 2 on equality data suggests that relevant authorities could set up an interinstitutional working group comprising, for example, “ministries, national statistical offices, equality bodies, national human rights institutions, research institutions and the scientific community, as well as other relevant actors and data providers such as representatives of relevant local authorities, the judiciary, the police, etc.”<sup>68</sup>

In its 2018 **guidance note to data collection and disaggregation for monitoring progress in achieving the goals of the 2030 Agenda for Sustainable Development**, the Office of the United Nations High Commissioner for Human Rights stresses the human rights principle of ‘doing no harm’.<sup>69</sup> As acknowledged in the Guidelines on improving the collection and use of equality data, ‘doing no harm’ means that no data collection activity should create or reinforce existing discrimination, bias or stereotypes and that the data collected should be used for the benefit of the groups they describe and society as a whole.<sup>70</sup>

## ↑ FRA OPINION 6

EU Member States should ensure the systematic collection of reliable, valid and comparable equality data, disaggregated by sex, racial and ethnic origin, religion or belief, disability, age or sexual orientation. Member States should collect these data through the means described below, based on the self-identification of those at risk of discrimination. Civil society organisations representative of these population groups should contribute to developing relevant definitions and indicators.

Member States should draw on the fullest possible range of sources of equality data, including, at the national level, alongside FRA data, population censuses; administrative registers; household and individual surveys; victimisation surveys; attitudinal surveys; complaints data and research from equality bodies; situation testing; diversity monitoring by employers and service providers; and data generated through qualitative research strategies, such as case studies, in-depth interviews and expert interviews.

Member States should reinforce regular and comprehensive collection of equality data through their national statistical institutes and other relevant government agencies.

This includes systematic compilation of equality statistics based on population and household censuses, administrative registers and official EU-wide surveys, such as the European Union Statistics on Income and Living Conditions, the Labour Force Survey and other representative surveys. To enable the monitoring of equality outcomes, such data sources should (i) cover under-represented groups at risk of discrimination and (ii) include information on experiences of discrimination on the grounds of sex, racial and ethnic origin, religion or belief, disability, age or sexual orientation.

To develop strategies to adequately capture situations in which different grounds of discrimination intersect or act in combination with one another – that is, multiple and intersectional discrimination – EU Member States should use a comprehensive set of equality data collection tools, including large-scale quantitative surveys covering different population groups and grounds of discrimination, alongside discrimination testing, which is an established method for generating objective evidence of discrimination.

Member States should step up efforts towards a coordinated approach to equality data collection and use such data as a basis for developing evidence-based policies to foster equality and non-discrimination.

In this regard, Member States should give due consideration to the Guidelines on improving the collection and use of equality data endorsed by the EU High Level Group on Non-discrimination, Equality and Diversity. Member States are encouraged to use the mapping tool and compendium of practices that complement these guidelines. EU institutions and bodies should consider applying these guidelines within their own structures.

In line with Guideline No. 2 in the Guidelines on improving the collection and use of equality data, Member States should consider enabling equality bodies to foster interinstitutional cooperation in the collection and use of equality data. This could be achieved through setting up structures (e.g. an interinstitutional working group) that enable systematic and long-term cooperation between relevant entities in any given country. Member States that mandate equality bodies with such a coordination function should ensure that these bodies are provided with the necessary capacity, expertise and resources.

67 European Commission, High Level Group on Non-discrimination, Equality and Diversity, Subgroup on Equality Data (2018), *Guidelines on improving the collection and use of equality data*, Brussels, European Commission, p. 9.

68 *Ibid.*, p. 10.

69 Office of the United Nations High Commissioner for Human Rights (2018), *A human rights-based approach to data – Leaving no one behind in the 2030 agenda for sustainable development*, New York, United Nations.

70 European Commission, High Level Group on Non-discrimination, Equality and Diversity, Subgroup on Equality Data (2018), *Guidelines on improving the collection and use of equality data*, Brussels, European Commission, p. 4.

## EQUALITY DATA COLLECTION UNDER THE GENERAL DATA PROTECTION REGULATION

### FRA OPINION 7

The GDPR allows for the collection and processing of special categories of personal data under certain conditions, including for statistical or research purposes (Article 9 (2) (a), (g) and (j)).

Data collectors and data processors in EU Member States should seek the advice of their national data protection authorities and further guidance from the European Data Protection Board (EDPB) and the EDPS about the safeguards that need to be applied when collecting and processing special categories of personal data, including for the purpose of scientific research (Article 9 (2) (j) of the GDPR). In doing so, they should take due consideration of the EDPS preliminary opinion on data protection and scientific research from 6 January 2020 and the upcoming EDPB guidance on data protection and scientific research.

All equality data collection and processing should be done in full compliance with the principles and safeguards set out under the GDPR.

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data – the General Data Protection Regulation (GDPR) – came into force on 25 May 2018. This has triggered reflections about how to legally collect and process special categories of personal data (Article 9 of the GDPR), such as those related to a person's racial or ethnic origin, health, religion or belief, or sexual orientation. For example, the *Guidelines on improving the collection and use of equality data* endorsed by the High Level Group on Non-discrimination, Equality and Diversity note that “data protection requirements are [sometimes] understood as prohibiting collection of personal data such as a person's ethnic origin, religion or sexual orientation”.<sup>71</sup> However, in line with Article 9 (2) (j) of the GDPR, processing of special categories of personal data are prohibited, **unless** “processing is necessary for [...] statistical purposes in accordance with Article 89 (1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject”.

Member States can therefore collect and process equality data based on special categories of personal data for reasons of substantial public interest, statistical purposes and scientific or historical research purposes by ensuring that the data subject has given explicit consent to the processing of those personal data for one or more specified purposes (Article 9 (2) (a)).

In addition, recital 26 of the GDPR clarifies that the principles of data protection apply to special categories of personal data that concern an identified or identifiable natural person and should not apply to anonymous information or to personal data rendered anonymous in such a manner that the data

subject is not or no longer identifiable, such as data used for aggregate statistical purposes to identify and record trends in equality.

The European Data Protection Supervisor (EDPS) published a **preliminary opinion on data protection and scientific research** to provide legal certainty about the conditions under which processing of such data are allowed and what safeguards must be in place when collecting them. This opinion of the EDPS is relevant to data collectors and processors, which include research institutions, academia, government agencies at national and local levels, equality bodies, human rights institutions, EU agencies and bodies (including FRA) and civil society organisations.

<sup>71</sup> *Ibid.*, p. 7.

# Introduction

## THE EU EQUALITY FRAMEWORK

Article 10 of the Treaty on the Functioning of the European Union (TFEU) states that, “in defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.

Article 19 of the TFEU provides the basis for EU legislation to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Article 21 of the EU Charter of Fundamental Rights (the Charter) prohibits discrimination based on additional grounds, such as colour, social origin, genetic features, language, political or any other opinion, membership of a national minority, property and birth.

In this context, the EU applies a comprehensive legal framework for combating discrimination on the grounds of sex,<sup>72</sup> as well as on the grounds of racial or ethnic origin. This opinion does not specifically cover discrimination on the grounds of sex. This opinion complements the European Commission’s report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive) and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Employment Equality Directive).<sup>73</sup>

The Racial Equality Directive (**2000/43/EC**) implements the principle of equal treatment irrespective of racial or ethnic origin with a broad material scope, covering employment and occupation, social protection including social security and healthcare, social advantages, education, and access to and supply of goods and services available to the public including housing.

The Employment Equality Directive (**2000/78/EC**) protects against discrimination on the grounds of religion or belief, disability, age or sexual orientation only in the area of employment and occupation.

Both directives prohibit various forms of discrimination: direct and indirect discrimination, harassment, and instruction to discriminate. However, some of the protected characteristics set out in Article 19 of the TFEU (sex and racial or ethnic origin) enjoy more protection than others (religion or belief, age, disability and sexual orientation) resulting in an artificial hierarchy of protected grounds.

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72 Directive 2010/41/EU of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC; Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and service.

73 European Commission (2021), *Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive')*, COM(2021) 139 final, Brussels, 19 March 2021.

This is also the case with the grounds set out in the Charter, which have a much wider scope. To bridge the gap between the two directives, in 2008 the European Commission proposed a horizontal Equal Treatment Directive (COM(2008) 426).<sup>74</sup> Its adoption would result in extending protection against discrimination on the grounds of religion or belief, age, disability or sexual orientation to the areas of education, social protection and access to goods and services. After 13 years, the proposal has not attained unanimity and is still under negotiation in the Council of the European Union.

In 2020, the European Commission gave a new impetus to the equality agenda in the EU, including taking into account the coronavirus disease 2019 (COVID-19) pandemic, which has already exacerbated existing inequalities. Promoting a Union of equality, the European Commission has adopted several policy instruments: **the EU anti-racism action plan 2020–2025**; the **EU Roma strategic framework for equality, inclusion and participation 2020–2030**; the **LGBTIQ [lesbian, gay, bisexual, trans, intersex and queer] equality strategy 2020–2025**; the **action plan on integration and inclusion 2021–2027**; the **EU gender equality strategy 2020–2025**; the **European Pillar of Social Rights action plan**; and the **strategy for the rights of persons with disabilities 2021–2030**.

All these instruments recall the importance of mainstreaming equality in all policy areas, preventing discrimination, improving data collection and providing targeted measures for vulnerable groups. They also address intersectionality by calling for actions to tackle intersecting and multiple forms of discrimination. In the EU anti-racism action plan, the European Commission encourages Member States to “swiftly reach an agreement on the 2008 Commission proposal to implement equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation”.<sup>75</sup>

### **Equality data – an essential tool for effective assessment of the application of the equality directives**

Recital 15 of the Racial Equality Directive stipulates that “The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or practice. Such rules may provide in particular for indirect discrimination to be established by any means including on the basis of statistical evidence.” And although many Member States go beyond the scope of the two equality directives and provide even wider protection against discrimination under their national legislation, only a handful of Member States collect and use equality data for anti-discrimination purposes, such as assessing the effectiveness of current anti-discrimination laws and policies, establishing indirect discrimination, and guiding future policy and legal developments.<sup>76</sup>

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74 European Commission (2008), *Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*, COM(2008) 426 final, Brussels, 2 July 2008.

75 European Commission (2020), *A Union of equality – EU anti-racism action plan 2020–2025*, COM(2020) 565 final, Brussels, 18 September 2020, p. 6.

76 Al-Zubaidi, Y. (2020), ‘Some reflections on racial and ethnic statistics for anti-discrimination purposes in Europe’ in: *European equality law review*, Issue 2, Luxembourg, Publications Office, pp. 62–72.

Although the focus of this opinion is primarily on the application of the racial and employment equality directives, the analysis and conclusions summarised here go beyond the scope of the directives. In doing so, the opinion highlights the uneven protection against discrimination that is evident in existing EU equality law.

This opinion builds on the evidence the European Union Agency for Fundamental Rights (FRA) provided to the European Commission for its report on the application of the equality directives; the report summarises key findings from FRA surveys on experiences of discrimination of persons belonging to different minority groups on the grounds of racial or ethnic origin, age, disability, religion or belief, or sexual orientation in those areas of life protected by the two equality directives, as well as persons belonging to the general population.

Surveys on experiences of discrimination are an important source of information for assessing the degree of application of the equality directives. However, as highlighted in the *Guidelines on improving the collection and use of equality data*,<sup>78</sup> a broader set of equality data sources could be taken into account when assessing the extent and nature of discrimination, including surveys, discrimination testing, administrative data, complaints data (and their outcomes), robust and reliable information from civil society organisations, data collected by employers and service providers, and other quantitative and qualitative research.

To complement the findings from its own surveys and broaden the available evidence on experiences of discrimination in employment, FRA collected, in 2020, through its research network, Franet, the main findings of surveys or studies on experiences of discrimination in employment on the grounds of disability and on the grounds of age published between 2014 and 2019 in their countries. Preference was given to the most comprehensive, methodologically robust

and up-to-date sources, to data based on quantitative surveys, and to surveys targeting specifically people with disabilities rather than the general population.

In addition, the opinion received information from equality bodies (in 25 EU Member States, as well as in Albania, Bosnia and Herzegovina, Kosovo (under UN Security Council Resolution 1244), and Moldova, Norway and the United Kingdom), by means of an online survey conducted in cooperation with the European Network of Equality Bodies (Equinet) at the end of 2020. The questionnaire asked about the status, functioning, budget and mandate of equality bodies, and the challenges equality bodies currently face.

## FRA surveys: filling gaps in the collection of EU-wide comparable equality data

A short description of all FRA surveys referenced in **Sections 1, 2, 3 and 4** is attached to this FRA opinion (**see Section 6**).

The data used in this report are extracted from the following FRA surveys: the Second European Union Minorities and Discrimination Survey (EU-MIDIS II) (2016), the second survey on discrimination and hate crime against Jews in the EU (2018), the Roma and Travellers Survey (2019), EU LGBTI [Lesbian, Gay, Bisexual, Trans and Intersex] Survey II (2019), and the Fundamental Rights Survey (2019).<sup>77</sup> In the body of this opinion, the year indicated for each survey reflects the period of data collection and not the year of publication of results; the years of the published survey reports are indicated in the footnotes in this report (with publication sometimes being in the year following data collection).

<sup>77</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office; FRA (2017), *Second European Union Minorities and Discrimination Survey: Muslims – Selected findings*, Luxembourg, Publications Office; FRA (2019), *Second European Union Minorities and Discrimination Survey: Being Black in the EU*, Luxembourg, Publications Office; FRA (2018), *Experiences and perceptions of antisemitism – Second survey on discrimination and hate crime against Jews in the EU*, Luxembourg, Publications Office; FRA (2020), *Roma and Travellers in six countries – Roma and Travellers Survey*, Luxembourg, Publications Office; FRA (2020), *EU-LGBTI II – A long way to go for LGBTI equality*, Luxembourg, Publications Office; FRA (2019), *Fundamental Rights Survey*.

<sup>78</sup> European Commission, High Level Group on Non-discrimination, Equality and Diversity Subgroup on Equality Data (2018), *Guidelines on improving the collection and use of equality data*, Brussels, European Commission, p. 14.

This FRA opinion examines experiences of discrimination on the grounds stipulated in the equality directives based on survey data. Although religion is not a ground of discrimination under the Racial Equality Directive, FRA research shows that experiences of discrimination on the grounds of religion are often intertwined with experiences of discrimination based on ethnic origin.<sup>79</sup> The Racial Equality Directive does not provide a definition of the concept ‘ethnic origin’. However, in the *CHEZ* case, the Court of Justice of the European Union (CJEU) stated that “the concept of ethnicity [...] has its origin in the idea of societal groups marked in particular by common nationality, **religious faith**, language, cultural and traditional origins and backgrounds”.<sup>80</sup> **Section 2.1** therefore includes data on experiences of discrimination on the grounds of religion. In addition, findings from FRA surveys in relation to discrimination based on religion in employment are included in **Section 2.2**. Data from EU LGBTI Survey II on discrimination on the grounds of sexual orientation are provided only for respondents who identify as lesbian, gay and bisexual (LGB), as the results for people who identify as trans and intersex as regards their experiences of discrimination were mostly on the grounds of gender identity and sex characteristics – grounds that are not covered by the Employment Equality Directive.

The data collection for all FRA surveys presented in this opinion took place when the United Kingdom was still an EU Member State. The EU aggregate results presented in this opinion have been calculated to reflect the situation during data collection and refer therefore to 28 Member States of the EU (EU-28), that is the current 27 Member States of the EU (EU-27) and the United Kingdom. When reference is made to the EU-27, this does not include the United Kingdom. Generally, the differences between the EU-28 and the EU-27 averages are negligible and vary between one and three percentage points. This opinion presents aggregated survey results for different groups, such as Roma, Jews, immigrants and descendants of immigrants, and people who identify as LGBTI, as well as the general population, without showing all relevant country-specific variations. For detailed findings at the level of the Member States, the interested reader is invited to look at the corresponding FRA survey reports and the accompanying interactive ‘survey data explorers’ on FRA’s website.<sup>81</sup>

The present opinion is structured as follows: Section 1 looks at key findings within the scope of both equality directives – specifically, key findings from FRA surveys within the scope of the Racial Equality Directive are presented in **Section 1.1**; **Section 1.2** summarises key survey results within the scope of the Employment Equality Directive; **Section 2** provides evidence that goes beyond the scope of the two equality directives and looks at the impact of the uneven protection against discrimination in the existing EU legal provisions; **Section 3** focuses on rights awareness and reporting of discrimination as common elements in both directives; **Section 4** looks at developments related to the role and standing of equality bodies. Finally, **Section 5** discusses the relevance of equality data to enabling a proper assessment of the application of equality legislation at different levels of governance.

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79 FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, pp. 23–24.

80 CJEU, C-83/14, *CHEZ Razpredelenie Bulgaria AD v. Komisia za zashtita ot diskriminatsia*, 16 July 2015, para. 46.

81 For more details on the differences between Member States, see FRA (2017) *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, and related publications. For data visualisations of FRA survey findings, see the *survey interactive data explorers*.

# 1

## REALISING THE PRINCIPLE OF EQUAL TREATMENT IN COMPLIANCE WITH THE RACIAL EQUALITY DIRECTIVE AND THE EMPLOYMENT EQUALITY DIRECTIVE

The results from different FRA surveys conducted within the scope of the Racial Equality Directive in the past six years show little progress since the last European Commission report on its application in 2014.<sup>82</sup> Since 2014, the prevalence of ethnic or racial discrimination in most EU Member States has remained high.

Specifically, in 2016, according to EU-MIDIS II, almost one out of four (24 %) survey respondents felt discriminated against in the 12 months preceding the survey in one or more areas of daily life because of their ethnic or immigrant background, whereas in 2007, according to EU-MIDIS I, almost one in three respondents (30 %) stated that they felt discriminated against because of their ethnicity (with respect to one or more areas of life) during the equivalent period.

Experiences of discrimination vary across age groups and generations. According to EU-MIDIS II reports – the *Main results report*<sup>83</sup> and the *Muslims – Selected findings report*<sup>84</sup> – descendants of immigrants are more likely to experience ethnic and religious discrimination than first-generation immigrants. This finding may also reflect a number of factors, including increased awareness of equality and rights among later generations, and/or the impact of different legal status – and resultant rights – enjoyed by descendants of immigrants, and – conversely – a lower expectation of equal treatment among first-generation immigrants. However, these findings warrant further exploration.

The results from different FRA surveys conducted within the scope of the Employment Equality Directive in the past six years also show little progress since the last Commission report on its application in 2014.<sup>85</sup> Since 2014, the prevalence of discrimination in employment on the grounds of religion or belief, disability, age or sexual orientation in most EU Member States has remained high. For example, the share of respondents identifying as lesbian, gay, bisexual and trans (LGBT) who felt discriminated against when looking for work in 2019 (11 %) is not substantially lower than in 2012 (13 %). The same is true for the proportion who felt discriminated against at work (21 % in 2019 versus 19 % in 2012).<sup>86</sup> People who identify as trans are included in these figures for comparative purposes between the two surveys.

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82 European Commission (2014), *Report from the Commission to the European Parliament and the Council. Joint report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive')*, COM(2014) 2 final, Brussels, 17 January 2014.

83 FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, p. 14.

84 FRA (2017), *Second European Union Minorities and Discrimination Survey: Muslims – Selected findings*, Luxembourg, Publications Office, p. 24.

85 European Commission (2014), *Report from the Commission to the European Parliament and the Council. Joint report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive')*, COM(2014) 2 final, Brussels, 17 January 2014.

86 FRA (2020), *EU-LGBTI II – A long way to go for LGBTI equality*, Luxembourg, Publications Office, p. 10.

A comparison between the 2012 and 2018 surveys on discrimination and hate crime against Jews in the EU shows a growing perception among respondents that antisemitism is a worsening problem in the country where they live.<sup>87</sup>

## 1.1. FINDINGS FROM FRA SURVEYS RELEVANT TO THE RACIAL EQUALITY DIRECTIVE

The following sections provide evidence of experiences of discrimination on the grounds of racial or ethnic origin relevant to the Racial Equality Directive. They draw on findings from FRA's 2016 EU-MIDIS II, the 2018 second survey on discrimination and hate crime against Jews, and the 2019 Roma and Travellers Survey.

### Notes:

- a The rates on discrimination experiences for the second survey on discrimination and hate crime against Jews in the EU are based on the ground 'because of being Jewish'.
- b The rates on discrimination experiences for the Roma and Travellers Survey are based on the ground 'because of being Roma/ Traveller'.
- c The rates for the EU-MIDIS II main results are based on data for all groups surveyed: Roma/Russian minority/immigrants and descendants of immigrants from sub-Saharan Africa/Turkey/North Africa/Asia and South Asia/recent immigrants. Question: "[H]ave you ever felt discriminated against for any of the following reasons? Skin colour, ethnic or immigrant background, and religion or religious belief".
- d N.A., not available for this period.

### 1.1.1 Prevalence of discrimination on the grounds of racial or ethnic origin as covered in FRA surveys (including skin colour, immigrant background and religion)

Table 1 shows the results from three FRA surveys concerning the level of discrimination based on ethnic or immigrant background, including discrimination based on skin colour and religion. Although not directly comparable because of the different methodologies applied (EU-MIDIS II and the Roma and Travellers Survey applied face-to-face interviewing, whereas the second antisemitism survey applied an online self-selection mode), these findings reveal that ethnic minorities (including Roma and Travellers, and Jews) and immigrants and descendants of immigrants from different countries of origin continue to face high rates of ethnic and racial discrimination in at least one area of life covered by the directive.

**TABLE 1: OVERALL PREVALENCE OF DISCRIMINATION ON THE GROUNDS OF RACIAL OR ETHNIC ORIGIN (INCLUDING SKIN COLOUR, ETHNIC OR IMMIGRANT BACKGROUND, AND RELIGION OR RELIGIOUS BELIEF) IN DIFFERENT AREAS OF LIFE IN 12 MONTHS AND FIVE YEARS BEFORE THE SURVEY, IN DIFFERENT FRA SURVEYS (%)**

Time frame	EU-MIDIS II (2016)					Second survey on discrimination and hate crime against Jews in the EU (2018) <sup>a</sup>	Roma and Travellers Survey (2019) <sup>b</sup>
	Main results (all groups, EU-28) <sup>c</sup>	Roma	Muslims	North Africans	Sub-Saharan Africans	Jews (in 12 countries)	Roma and Travellers (in 6 countries)
Past 12 months	24	26	25	31	24	25	45
Past 5 years	38	41	39	45	39	N.A. <sup>d</sup>	60

Sources: FRA, EU-MIDIS II 2016, second antisemitism survey 2018, Roma and Travellers Survey 2019.

<sup>87</sup> FRA (2018), *Experiences and perceptions of antisemitism – Second survey on discrimination and hate crime against Jews in the EU*, Luxembourg, Publications Office, p. 11.

FRA's EU-MIDIS II<sup>88</sup> collected information from 25,515 respondents with different ethnic minority and immigrant backgrounds across all EU Member States in 2016. It shows that a considerable proportion of respondents face high levels of discrimination because of their ethnic or immigrant background, as well as potentially related characteristics, such as skin colour and religion.

Four out of 10 respondents (38 %) to EU-MIDIS II felt discriminated against in the five years before the survey (if not indicated otherwise, the figures stated in this section correspond to discrimination experienced in the past five years) in one or more areas of life because of their ethnic or immigrant background (including skin colour and religion or religious belief)<sup>89</sup>. One out of four respondents (24 %) felt discriminated against in the 12 months preceding the survey (compared with 30 % in EU-MIDIS I, which was conducted in 2008).<sup>90</sup>

Among all the groups surveyed by EU-MIDIS II – and similar to the findings of EU-MIDIS I – respondents with a North African background (45 %), Roma respondents (41 %) and respondents with a sub-Saharan African background (39 %) continue to indicate the highest levels of discrimination based on their ethnic or immigrant background.<sup>91</sup>

Ten years after the first survey (EU-MIDIS I), a comparatively large proportion of EU-MIDIS II respondents describe discrimination as a recurring experience – those who have felt discriminated against indicate that this happens, on average, at least 4.6 times a year.<sup>92</sup> The frequency of discriminatory incidents per year varies across areas of life. However, respondents regularly feel discriminated against at work and when looking for work. Of the respondents who indicate having felt discriminated against at work because of their ethnic or immigrant background, 9 % say they experience it on a daily basis. Meanwhile, 13 % say they felt discriminated against more than 10 times in the 12 months preceding the survey.<sup>93</sup>

Besides ethnic origin or immigrant background, a respondent's skin colour and/or religion represent specific triggers of ethnic or racial discrimination. Over one fourth of respondents (27 %) to EU-MIDIS II with a sub-Saharan African background, and over one in 10 (12 %) respondents in EU-MIDIS II overall, identify their skin colour as the main reason for experiencing discrimination when looking for work, at work, in education or in housing.<sup>94</sup>

The results from EU-MIDIS II also point to an intersection of religion and ethnic origin; some 12 % of respondents said that they experienced discrimination on the grounds of their religion.<sup>95</sup> Almost three out of four (70 %) of them also felt discriminated against because of their ethnic origin or immigrant background.<sup>96</sup> Overall, reports of religious discrimination differ between first- and second-generation respondents: one out of five second-generation respondents (20 %) to EU-MIDIS II felt discriminated against because of their religion or religious beliefs, compared with one out of eight first-generation immigrants (12 %).<sup>97</sup> Moreover, second-generation Muslim respondents felt discriminated against based on ethnic origin or immigrant background or on the basis of religion or belief more often than first-generation Muslim respondents (ethnic origin: 30 % versus 25 % for second-generation respondents and first-generation respondents, respectively; religion: 22 % of second-generation respondents versus 15 % of first-generation respondents).<sup>98</sup> These results might reflect a number of factors, such as increased awareness of rights between generations, the changing legal status of different generations with an immigrant background, and an actual increase in experiences of discrimination.

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88 FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office.

89 *Ibid.*, p. 21.

90 *Ibid.*

91 *Ibid.*, p. 13.

92 *Ibid.*, p. 14.

93 *Ibid.*, p. 33.

94 *Ibid.*, p. 25.

95 *Ibid.*, p. 23.

96 *Ibid.*, pp. 23–24.

97 *Ibid.*, p. 14.

98 *Ibid.*, p. 24.

FRA's second survey on discrimination and hate crime against Jews, which collected data from 16,395 self-identified Jewish respondents in 12 Member States in 2018, shows that, in total, across all 12 countries surveyed, one fourth of the respondents (25 %) felt discriminated against in the 12 months before the survey based on the following grounds: religion or belief, ethnic origin or immigrant background, or skin colour. Overall, 21 % of respondents felt discriminated against based on religion or belief, 11 % felt discriminated against because of their ethnic origin, and 3 % felt discriminated against because of their skin colour.<sup>99</sup> One in 10 of all respondents (9 %) felt discriminated against on the basis of both ethnicity and religion.<sup>100</sup>

FRA's Roma and Travellers Survey, conducted in six countries (Belgium, France, Ireland, the Netherlands, Sweden and the United Kingdom), collected data from 4,659 Roma and Travellers in 2019. It shows that almost half of Roma and Travellers surveyed (45 %) felt discriminated against – because of being Roma or Traveller – in the year preceding the survey. On average, the proportion of Roma and Travellers who felt discriminated against is higher among younger respondents (52 % for those aged 16–24 years versus 47 % for those aged 25–44 years and 37 % for those aged 45 years and older).

These findings from FRA's surveys clearly show that experiences of ethnic and racial discrimination are widespread among ethnic minorities and among immigrants and descendants of immigrants.

### **1.1.2. Discrimination on the grounds of racial or ethnic origin in different areas of life as covered in FRA surveys**

This section looks at the prevalence of discrimination based on racial or ethnic origin in different domains of life as covered in FRA surveys and corresponding to some of the areas referred to in Article 3(1) of the Racial Equality Directive. These areas include conditions for access to employment, self-employment and occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion; access to all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; employment and working conditions, including dismissals and pay; membership of and involvement in an organisation of workers or employers, or any organisation whose members carry out a particular profession, including the benefits provided by such organisations; social protection, including social security and healthcare; social advantages; education; access to and supply of goods and services that are available to the public, including housing.

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<sup>99</sup> FRA (2018), *Experiences and perceptions of antisemitism – Second survey on discrimination and hate crime against Jews in the EU*, Luxembourg, Publications Office, p. 60.

<sup>100</sup> *Ibid.*

As Table 2 shows, respondents encounter the highest rate of ethnic or racial discrimination when looking for work or housing, and when using public or private services – such as administrative offices or public transport, or when accessing a shop, restaurant or bar.

FRA data show substantial differences between the groups surveyed regarding the area of life in which they face discrimination the most. For example, when looking at the situation in the five years preceding the survey, Roma and Travellers feel particularly affected by discrimination when trying to find a job (on average, 40 % of respondents in 2016 EU-MIDIS II and 45 % of respondents in the 2019 Roma and Travellers Survey) or accommodation (41 % of respondents in 2016 EU-MIDIS II and 47 % of respondents in the 2019 Roma and Travellers Survey), and when using public or private services (28 % of respondents in 2016 EU-MIDIS II and 26 % of respondents in the 2019 Roma and Travellers Survey).

In EU-MIDIS II, respondents of African descent experienced high rates of discrimination, in the five years preceding the survey, at work (24 %), as well as when looking for work (25 %), accessing housing (21 %) and using public and private services (22 %). The reason most frequently mentioned by respondents for the most recent incident of discrimination when looking for work is their skin colour or physical appearance (50 %), followed by their first or last name (36 %) and their accent in speaking the country's language (18 %).<sup>101</sup> Discrimination in access to housing is mainly triggered by the first or last name (44 %), followed by skin colour or physical appearance (40 %) and citizenship (22 %).<sup>102</sup> However, more than eight in 10 (84 %) respondents with a sub-Saharan African background mention their skin colour as the main reason for the most recent incident of discrimination in access to housing.<sup>103</sup>

**TABLE 2: DISCRIMINATION BASED ON ETHNIC OR IMMIGRANT BACKGROUND (INCLUDING SKIN COLOUR, ETHNIC ORIGIN OR IMMIGRANT BACKGROUND, AND RELIGION OR RELIGIOUS BELIEF) IN DIFFERENT AREAS OF LIFE IN THE 12 MONTHS AND FIVE YEARS BEFORE THE SURVEY, IN DIFFERENT FRA SURVEYS (%)**

Area of life	Time frame	EU-MIDIS II (2016)				Second survey on discrimination and hate crime against Jews in the EU (2018)	Roma and Travellers survey (2019)
		Main results (all groups, EU- 28) <sup>a</sup>	Muslims	Roma	People of African descent	Jews (in 12 countries) <sup>b</sup>	Roma and Travellers (in 6 countries) <sup>c</sup>
When looking for work	Past 5 years	29	31	40	25	N.A. <sup>d</sup>	45
	Past 12 months	12	13	16	10	9	23
At work	Past 5 years	22	23	17	24	N.A.	26
	Past 12 months	9	9	5	9	8	11
When accessing housing	Past 5 years	23	22	41	21	N.A.	47
	Past 12 months	7	6	12	6	4	18
When using public or private services	Past 5 years	22	23	28	22	N.A.	26
	Past 12 months	16	17	19	15	N.A.	16
In education or when in contact with school personnel as a parent or a guardian	Past 5 years	12	13	14	9	N.A.	28
	Past 12 months	6	6	7	4	8	12
When accessing healthcare services	Past 5 years	N.A.	N.A.	N.A.	N.A.	N.A.	17
	Past 12 months	3	3	8	3	2	9

Sources: FRA, EU-MIDIS II 2016, second antisemitism survey 2018, Roma and Travellers Survey 2019.

<sup>101</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, p. 15.

<sup>102</sup> *Ibid.*, p. 41.

<sup>103</sup> *Ibid.*, p. 39.

Notes:

- a The rates for the EU-MIDIS II main results are based on data for all groups surveyed: Roma/ Russian minority/immigrants and descendants of immigrants from sub-Saharan Africa/Turkey/North Africa/Asia and South Asia/recent immigrants. The domains of daily life summarised under 'other public or private services' are public administration, restaurants or bars, public transport, and shops.
- b The rates on discrimination experiences for the second survey on discrimination and hate crime against Jews in the EU are based on the ground 'because of being Jewish'.
- c The rates on discrimination experiences for the Roma and Travellers Survey are based on the ground 'because of being Roma/Traveller'. The domain of daily life summarised under 'other public or private services' is 'when in contact with public administration'.
- d N.A., not available for this period.

When using public or private services – such as administrative offices or public transport, or when accessing a shop, restaurant or a bar – overall, 22 % of respondents in EU-MIDIS II felt discriminated against during the five years before the survey because of their ethnic or immigrant background; however, there are substantial differences between countries in this regard.<sup>104</sup>

The area in which respondents in FRA's second survey on discrimination and hate crime against Jews experienced discrimination the most in the 12 months before the survey because of being Jewish is when looking for work (9 %), closely followed by being at work (8 %).<sup>105</sup> Some 8 % of respondents who had been, or whose children had been, in education or training in the 12 months before the survey said that either they themselves or their children felt discriminated against because they are Jewish by the school staff or people responsible for the training.<sup>106</sup>

Similar to EU-MIDIS I, the EU-MIDIS II findings show that the highest five-year rate of discrimination based on ethnic or immigrant background is seen in the area of employment (when respondents are looking for work or in the workplace) and when accessing public or private services. Specifically, 29 % of all respondents who looked for a job and 22 % of those at work in the five years before the survey felt discriminated against on this basis.<sup>107</sup> In addition to Roma respondents (40 %), respondents with a North African background (35 %) or respondents who identify themselves as Muslims (31 %) seem particularly affected by discrimination in accessing jobs.

Muslim respondents most frequently experience discrimination at work and when looking for work. In total, 10 % of all Muslim respondents indicate having felt discriminated against at work daily because of their ethnic or immigrant background, and 17 % felt discriminated against more than 10 times in the 12 months preceding the survey.<sup>108</sup>

Table 3 provides information on the overall prevalence of experiences of discrimination on any ground in employment by combining the rates of the two sub-areas (looking for work and at work) from the three relevant FRA surveys.

In total, 62 % of Roma and Traveller respondents in the Roma and Travellers Survey felt discriminated against in the five years before the survey in the area of employment because of being Roma or Travellers, with the highest rates being found in Ireland (86 %), the Netherlands (78 %), and France and Sweden (both 66 %), and the lowest in Belgium (29 %).

On average, 11 % of respondents in the second survey on discrimination and hate crime against Jews in the EU felt discriminated against in employment because they are Jewish, in the 12 months before the survey.

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<sup>104</sup> *Ibid.*, pp. 34–35.

<sup>105</sup> FRA (2018), *Experiences and perceptions of antisemitism – Second survey on discrimination and hate crime against Jews in the EU*, Luxembourg, Publications Office, p. 61.

<sup>106</sup> *Ibid.*, p. 62.

<sup>107</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, pp. 14–15.

<sup>108</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey: Muslims – Selected findings*, Luxembourg, Publications Office, p. 33.

For respondents in FRA's EU-MIDIS II, discrimination in employment in the five years before the survey occurs the most on the ground of ethnic origin (21 %), followed by religion (12 %), skin colour (11 %), age (7 %), gender (3 %) and disability (1 %). Discrimination in employment in the past five years is the area in which respondents from sub-Saharan Africa in Luxembourg experience discrimination the most (61 %), followed by respondents with a North African background in the Netherlands (55 %) and Roma respondents in Czechia (53 %). However, as EU-MIDIS II did not set out to capture experiences of persons with disabilities explicitly, only a relatively few persons with disabilities would have been captured through the survey's sampling approach. This is one reason why disability is not flagged in a survey focusing on the experiences of ethnic minorities and immigrants.

Among all groups surveyed in EU-MIDIS II, Roma respondents in Portugal indicate the highest 12-month discrimination rates when looking for work, with almost every second person (47 %) who looked for work in the 12 months preceding the survey having felt discriminated against because of their ethnic origin. Roma respondents in Croatia and Czechia also experience high levels of discrimination when looking for a job (29 % and 28 %, respectively). A comparison of the discrimination rates that Roma experience when looking for work and in the workplace reveals that Roma face high levels of discrimination when trying to enter the labour market. However, once they have a job, their experiences with discrimination do not substantially differ from those of respondents from other target groups, and do not substantially differ across the countries in which they were surveyed.<sup>109</sup>

**TABLE 3: DISCRIMINATION BASED ON ANY GROUND AGAINST PERSONS WITH ETHNIC MINORITY OR IMMIGRANT BACKGROUNDS IN EMPLOYMENT IN THE 12 MONTHS AND FIVE YEARS BEFORE THE SURVEY, IN DIFFERENT FRA SURVEYS (%)**

Survey	Group	Discrimination based on any ground in employment	
		Past 5 years	Past 12 months
EU MIDIS II (2016)	Main results (all groups, EU-28) <sup>a</sup>	35	14
	Roma	36	13
	Muslims	36	14
	North Africans	46	18
	Sub-Saharan Africans	36	13
Second survey on discrimination and hate crime against Jews in the EU (2018) <sup>b</sup>	Jews	N.A. <sup>c</sup>	11
Roma and Travellers survey (2019) <sup>d</sup>	Roma and Travellers (in 6 countries)	62	36

Sources: FRA, EU-MIDIS II 2016, second antisemitism survey 2018, Roma and Travellers Survey 2019.

Notes:

- a The rates for the EU-MIDIS II main results are based on data for all groups surveyed: Roma/Russian minority/immigrants and descendants of immigrants from sub-Saharan Africa/Turkey/North Africa/Asia and South Asia/recent immigrants.
- b The rates on discrimination experiences for the second survey on discrimination and hate crime against Jews in the EU are based on the ground 'because of being Jewish'.
- c N.A., not available for this period.
- d The rates on discrimination experiences for the Roma and Travellers Survey are based on the ground 'because of being Roma/Traveller'.

<sup>109</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, p. 36.

## 1.2. FINDINGS FROM FRA SURVEYS AND NATIONAL DATA COLLECTED THROUGH FRANET WITHIN THE SCOPE OF THE EMPLOYMENT EQUALITY DIRECTIVE

The following sections provide evidence of experiences of discrimination on the grounds of religion or belief, age, disability or sexual orientation, within the scope of the Employment Equality Directive. According to Article 3 (1) of the directive, its scope covers conditions for access to employment, self-employment or occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion; access to all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; employment and working conditions, including dismissals and pay; and membership of and involvement in an organisation of workers or employers, or any organisation whose members carry out a particular profession, including the benefits provided by such organisations.

The evidence presented in this section draws on findings from FRA's 2016 EU-MIDIS II, 2018 second survey on discrimination and hate crime against Jews in the EU, 2019 EU LGBTI Survey II and 2019 Fundamental Rights Survey, as well as data collected through the agency's Franet network in all Member States.

### 1.2.1. Discrimination in employment on the grounds of religion or belief

On average, 1 % of respondents in the Fundamental Rights Survey<sup>110</sup> – which is on the general population – felt discriminated against in employment in the five years preceding the survey because of their religion or belief. At the same time, the results for respondents who self-identify as Muslim show that 15 % felt discriminated against in employment because of their religion or belief in the five years before the survey.

Almost one out of eight (12 %) respondents in EU-MIDIS II felt discriminated against in employment in the five years preceding the survey because of their religion (Table 4). Overall, respondents with a North African background report the highest rates of religious discrimination in employment (20 %), followed by respondents with a Turkish background (15 %) and respondents with a South Asian background (10 %).

Looking at the findings of EU-MIDIS II for respondents who identify themselves as Muslim, when asked about their religion in the survey, the prevalence of religious discrimination in employment in the five years before the survey was 17 %. Selected findings from the EU-MIDIS II report on Muslims show that the highest five-year prevalence of religious discrimination (in four areas of life, including looking for work and at work) is found for Muslim respondents with a North African background in Italy and the Netherlands (31 % in both countries), followed by respondents from Turkey in the Netherlands (28 %) and sub-Saharan Africans in Denmark (27 %).<sup>111</sup>

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<sup>110</sup> FRA (2020), *What do fundamental rights mean for people in the EU? Fundamental Rights Survey*, Luxembourg, Publications Office.

<sup>111</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey: Muslims – Selected Findings*, Luxembourg, Publications Office, p. 27.

**TABLE 4: DISCRIMINATION ON THE GROUNDS OF RELIGION OR BELIEF IN EMPLOYMENT IN THE 12 MONTHS AND FIVE YEARS BEFORE THE SURVEY, IN DIFFERENT FRA SURVEYS (%)**

Survey	Group	Discrimination because of religion or belief in employment	
		Past 5 years	Past 12 months
EU MIDIS II (2016)	Main results (all groups, EU-28) <sup>a</sup>	12	N.A. <sup>b</sup>
	Muslims (in 15 countries)	17	N.A.
Second survey on discrimination and hate crime against Jews in the EU (2018)	Jews (in 12 countries)	N.A.	16
Fundamental Rights Survey (2019)	General population (EU-27)	1	N.A.
	Respondents who self-identify as Muslim	15	N.A.

Sources: FRA, EU-MIDIS II 2016, second antisemitism survey 2018, Fundamental Rights Survey 2019.

Overall, the prevalence of religious discrimination does not seem to vary between the two sub-areas of employment (looking for work and at work). One out of 10 respondents (10 %) to EU-MIDIS II felt discriminated against because of their religion when looking for work in the five years before the survey, and almost as many (9 %) felt the same at work in the same period.<sup>112</sup> Some 15 % of Muslim respondents felt discriminated against based on their religion when looking for work; another 13 % felt the same at work.

EU-MIDIS II also collected information on specific discriminatory practices by the employer. The results of the survey report Muslims – Selected findings show that 12 % of Muslim respondents who were at work in the five years preceding the survey say that they were not allowed to take time off for a very important religious holiday, service or ceremony.<sup>113</sup> One out of 10 Muslim respondents (9 %) were prevented from expressing or carrying out religious practices and customs at work, such as praying or wearing a headscarf or turban.<sup>114</sup>

Selected findings from EU-MIDIS II show that, with respect to employment, a number of Muslim women mention the way they dress (wearing a headscarf/turban) as the main reason for having felt discriminated against in employment (35 % when looking for work; 22 % at work).<sup>115</sup>

FRA's second survey on discrimination and hate crime against Jews provides information on Jews' experiences of religious discrimination in the area of employment. One in six (16 %) respondents in this survey felt discriminated against in the area of employment because they are Jewish, in the 12 months before the survey (Table 4).

Out of those respondents of the second antisemitism survey who had been working in the 12 months before the survey, some 5 % say they were not allowed to take time off for an important religious holiday/service/ceremony, and another 4 % say they had been prevented from expressing or carrying out religious practices and customs at work.<sup>116</sup>

Notes:

- a The rates for the EU-MIDIS II main results are based on data for all groups surveyed: Roma/Russian minority/immigrants and descendants of immigrants from sub-Saharan Africa/Turkey/North Africa/Asia and South Asia/recent immigrants.
- b N.A., not available for this period.

<sup>112</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, p. 15.

<sup>113</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey: Muslims – Selected Findings*, Luxembourg, Publications Office, p. 31.

<sup>114</sup> *Ibid.*, p. 31.

<sup>115</sup> *Ibid.*, p. 24.

<sup>116</sup> FRA (2018), *Experiences and perceptions of antisemitism – Second survey on discrimination and hate crime against Jews in the EU*, Luxembourg, Publications Office, p. 62.

### 1.2.2. Discrimination in employment on the grounds of disability

On average, across all respondents surveyed, some 3 % of the general population who took part in the Fundamental Rights Survey felt discriminated against in employment (when looking for work and at work) because of disability<sup>117</sup> (in the five years preceding the survey). Note that the Fundamental Rights Survey addressed issues pertaining to discrimination on the grounds of disability through the questions of the Minimum European Health Module developed by Eurostat to collect data on self-perceived health. The module includes the following question: "For at least the past six months, to what extent have you been limited because of a health problem in activities people usually do? Would you say you have been ... [Answer categories: 'Severely limited', 'Limited but not severely', 'Not limited at all', 'Prefer not to say', 'Don't know']". According to Eurostat, this question can be used as a measure of long-standing limitations related to physical or mental health problems, illness or disability.

Overall, 16 % of those in the survey who say that they have severe limitations in their usual activities – due to a disability or a health problem – felt discriminated against in employment specifically because of a disability or a long-term health problem, in the five years before the survey.

Those respondents in the Fundamental Rights Survey who indicate that they are severely limited in their daily activities because of a disability or chronic illness demonstrate a substantially higher prevalence of discrimination on any ground in employment in the past five years (46 %) than among respondents who are limited but not severely (34 %) or who are not limited at all (18 %). The same pattern is visible when looking at experiences of discrimination in the 12-month period preceding the survey: respondents who are severely limited in their daily activities because of a chronic illness or disability have a three-times higher prevalence rate of discrimination on any ground in employment (34 %) than respondents who are not limited at all (10 %). For respondents who are limited, but not severely, the 12-month prevalence of discrimination on any ground is 22 %.

Some 3 % of Jewish respondents in FRA's second survey on discrimination and hate crime against Jews in the EU felt discriminated against in employment because of disability, in the year preceding the survey.

Franet data collected in Denmark,<sup>118</sup> Finland,<sup>119</sup> France,<sup>120</sup> Latvia,<sup>121</sup> Lithuania,<sup>122</sup> Slovakia,<sup>123</sup> Spain<sup>124</sup> and Sweden<sup>125</sup> confirm a high prevalence of discrimination on the grounds of disability in employment, both at work and when looking for work. Findings from surveys carried

<sup>117</sup> See Eurostat (2013), *European Health Interview Survey (EHIS wave 2) – Methodological manual*, Luxembourg, Publications Office, pp. 16–17.

<sup>118</sup> Denmark, Danish National Centre for Social research (*Det Nationale Forsknings- og Analysecenter for Velfærd*) (2016), *Persons with disability – Everyday life and living conditions 2016 (Personer med handicap – Hverdagsliv og levevilkår 2016)*, Copenhagen, VIVE - Det Nationale Forsknings- og Analysecenter for Velfærd.

<sup>119</sup> Finland, Non-Discrimination Ombudsman (2016), *My disability makes me a second-class citizen: A report on the discrimination experienced by the disabled in everyday life ("Vammaisena olen toisen luokan kansalainen": Selvitys vammaisten syrjintäkokemuksista arjessa)*. An English summary is available. Vesala, H. T. and Vartio, E. (2019), *Realization of the rights of persons with disabilities in Finland: Results of a survey carried out in 2018 by the Finnish Disability Forum*, presented in table form (*Miten vammaisten ihmisten oikeudet toteutuvat Suomessa? Vammaisfoorumin vuonna 2018 toteuttaman kyselyn tulokset taulukkomuodossa*), Helsinki, Vammaisfoorumi ry ja Ihmisoikeuskeskus.

<sup>120</sup> France, Mbaye, L. P. (2018), *Disability and discrimination in access to employment: Testing in cultural institutions ('Handicap et discriminations dans l'accès à l'emploi: un testing dans les établissements culturels')*, Marne-La-Vallée, TEPP – Travail, Emploi et Politiques Publiques.

<sup>121</sup> Latvia, Ombudsperson (Tiesībsargs) (2014), *Research on the Implementation the UN Convention on the Rights of Persons with Disabilities (Pētījums par ANO konvencijaspar personu ar invaliditāti tiesībām ieviešanu)*.

<sup>122</sup> Lithuania, Lithuanian Society of the Disabled (Lietuvos neįgalųjų draugija) (2018), *Study on the situation of women with disabilities evaluating implementation of United Nations Convention on the Rights of Persons with Disabilities in Lithuania (Neįgalųjų moterų padėties analizė, įvertinant Jungtinių tautų neįgalųjų teisių konvencijos nuostatų įgyvendinimo efektyvumą Lietuvoje)*.

<sup>123</sup> Slovakia, Profesia.sk (2019), *Paylab Diversity Study: Employees who work in mixed teams have fewer prejudices (Diverzita očami zamestnancov)*.

<sup>124</sup> Spain, Cea D'Ancona, M. A. and Valles Martínez, M. S. (2018), *Evolución de la discriminación en España. Informe de las encuestas IMIO-CIS de 2013 y 2016*, Madrid, Instituto de la Mujer y para la Igualdad de Oportunidades.

<sup>125</sup> Sweden, Statistics Sweden (*Statistiska centralbyrån, avdelningen för befolkning och välfärd*) (2019), *The labour market situation for people with disabilities 2018 (Situasjonen på arbetsmarknaden för personer med funktionsnedsättning 2018)*, Stockholm, Statistics Sweden, Population and welfare Department.

out in Ireland<sup>126</sup> and the Netherlands<sup>127</sup> show that people with disabilities are more likely to experience discrimination in employment than people without disabilities. Moreover, research carried out in Finland<sup>128</sup> and Sweden<sup>129</sup> finds that women with disabilities are more likely than men with disabilities to experience discrimination on the grounds of disability in employment. Franet data collected in Finland<sup>130</sup> and the Netherlands<sup>131</sup> show that people with disabilities experience higher rates of discrimination when looking for work than in the workplace.

### 1.2.3. Discrimination in employment on the grounds of age

Findings from FRA's Fundamental Rights Survey, which provide evidence of the experiences and attitudes of the general population, show that, on average, almost one out of six (15 %) respondents in the EU-27 felt discriminated against in employment in the five years before the survey because of their age (Table 5). Specifically, one out of 10 (10 %) respondents have experienced discrimination in employment because of being too old, and one in 20 (6 %) have experienced discrimination because of being too young.

There are substantial differences between countries, with the highest prevalence of age-related discrimination in employment noted in France (22 %), the Netherlands (19 %), Estonia (19 %) and Germany (18 %). The lowest levels of age discrimination in employment are found in Malta (4 %), Portugal (5 %), Cyprus (7 %) and Romania (7 %).

Looking at the overall rate of discrimination in employment (on any ground, not only on the grounds of age) in the five years preceding the survey, the Fundamental Rights Survey findings show that the highest prevalence is found among respondents aged 16–29 years (36 %), whereas for all other age groups the prevalence is between 19 % (for those aged 65 years and over) and 22 % (for those aged 55–64 years); respondents aged 30–44 years and aged 45–54 years have a prevalence of 20 %.

Some 7 % of Muslim respondents in EU-MIDIS II felt discriminated against in employment based on their age in the five years before the survey.

Moreover, 13 % of respondents in EU-MIDIS II with sub-Saharan or North African backgrounds in France felt discriminated against because of their age when looking for work in the five years preceding the survey.<sup>132</sup>

According to findings from FRA's 2019 EU LGBTI Survey II, 10 % of LGB respondents who felt discriminated against in employment because of their sexual orientation, in the year preceding the survey, mention that, beside their sexual orientation, the last discriminatory incident was also based on their age. However, this rate varies substantially across age groups, with the oldest LGB respondents showing the highest rates, followed by the youngest LGB respondents (age group 15–17 years, 16 %; 18–24 years, 9 %; 25–39 years, 6 %; 40–54 years, 11 %; 55 years and over, 34 %).

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126 Ireland, Banks, J., Grotti, R., Fahey, E. and Watson, D., (2018), *Disability and discrimination in Ireland: Evidence from the Quarterly National Household Survey Equality Modules 2004, 2010, 2014*, Dublin, Irish Human Rights and Equality Commission/Economic and Social Research Institute.

127 Netherlands, Andriessen, I., Hoegen Dijkhof J., van der Torre A., van den Berg E., Pulles I., Iedema J., de Voogd-Hamelink M. (2020), *Experienced discrimination in the Netherlands II (Ervaren discriminatie in Nederland II)*, The Hague, Netherlands Institute for Social Research (Sociaal en Cultureel Planbureau).

128 Finland, Vesala, Hannu T. and Vartiio, Elias (2019), *Realization of the rights of persons with disabilities in Finland: Results of a survey carried out in 2018 by the Finnish Disability Forum, presented in table form (Miten vammaisten ihmisten oikeudet toteutuvat Suomessa? Vammaisfoorumin vuonna 2018 toteuttaman kyselyn tulokset taulukkomuodossa)*, Helsinki, Vammaisfoorumi ry ja Ihmisoikeuskeskus.

129 Sweden, Statistics Sweden (*Statistiska centralbyrån, avdelningen för befolkning och välfärd*) (2019), *The labour market situation for people with disabilities 2018 (Situationen på arbetsmarknaden för personer med funktionsnedsättning 2018)*, 29 March 2019.

130 Finland, Vesala, H. T. and Vartiio, E. (2019), *Realization of the rights of persons with disabilities in Finland: Results of a survey carried out in 2018 by the Finnish Disability Forum, presented in table form (Miten vammaisten ihmisten oikeudet toteutuvat Suomessa? Vammaisfoorumin vuonna 2018 toteuttaman kyselyn tulokset taulukkomuodossa)*, Helsinki, Vammaisfoorumi ry ja Ihmisoikeuskeskus.

131 Netherlands, Andriessen, I., Hoegen Dijkhof, J., van der Torre, A., Pulles, I., Iedema, J. and de Voogd-Hamelink, M. (2020), *Experienced discrimination in the Netherlands II (Ervaren discriminatie in Nederland II)*, The Hague, Netherlands Institute for Social Research (Sociaal en Cultureel Planbureau).

132 FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, p. 28.

**TABLE 5: DISCRIMINATION BASED ON AGE IN EMPLOYMENT IN THE 12 MONTHS AND FIVE YEARS BEFORE THE SURVEY, IN DIFFERENT FRA SURVEYS (%)**

Survey	Group	Discrimination because of age in employment	
		Past 5 years	Past 12 months
EU MIDIS II (2016)	Muslims (in 15 countries)	7	N.A. <sup>a</sup>
Fundamental Rights Survey (2019)	General population (EU-27)	15	N.A.
EU LGBTI Survey II (2019)	LGB people (EU-28)	N.A.	10 <sup>b</sup>

Notes:

- a N.A., not available for this period.
- b Only respondents who experienced discrimination because of identifying as LGB were asked to identify any additional reasons for discrimination in the last discriminatory incident.

Sources: FRA, EU-MIDIS II 2016, Fundamental Rights Survey 2019, EU LGBTI Survey II 2019.

Franet data collected in Belgium,<sup>133</sup> Czechia,<sup>134</sup> Estonia,<sup>135</sup> Finland,<sup>136</sup> France,<sup>137</sup> Germany,<sup>138</sup> Italy,<sup>139</sup> Latvia,<sup>140</sup> Lithuania,<sup>141</sup> Spain<sup>142</sup> and Sweden<sup>143</sup> confirm a high prevalence of experiences of age discrimination in employment, particularly for older people. The prevalence tends to increase with the respondent's age, as indicated in the findings from surveys carried out in Finland,<sup>144</sup> Germany,<sup>145</sup> Italy<sup>146</sup> and Sweden.<sup>147</sup>

- 133 Belgium, Baert, S., Van Borm, H. and Van Impe, S. (2019), *Which barriers do persons older than 50 experience on our labour market? Analysis and comments ('Welke Drempels Ervaren 50-Plusers Zelf Op Onze Arbeidsmarkt? Analyse En Commentaren')*, Ghent, Ghent University.
- 134 Czechia, Alternativa 50+, o.p.s. (2014), *Research on the obstacles and challenges in the field of employment among people over the age of 50 and caregivers over the age of 50 – A report on a qualitative and quantitative research on the position of people over the age of 50 and caregivers over the age of 50 in the job market and in society (Výzkum překážek a výzev v oblasti zaměstnávání osob 50+ a pečujících osob ve skupině 50+ – Zpráva z kvantitativního a kvalitativního výzkumu o postavení lidí 50+ a pečujících osob na trhu práce a ve společnosti)*.
- 135 Estonia, Ministry of Social Affairs (Sotsiaalministeerium) (2015), *Coping of Older People and the Elderly Survey 2015 (Vanemaealiste ja eakate toimetuleku uuring 2015)*.
- 136 Finland, Taloustutkimus (2018), *'Age discrimination in working life' ('Ikäsyrijintä työelämässä')*, Helsinki, Confederation of Finnish Industries (Elinkeinoelämän keskusliitto).
- 137 France, Public Defender of Rights (Défenseur des droits) and International Labour Organization (ILO) (2017), *Tenth Barometer of the perception of discrimination in employment (Dixième baromètre de la perception des discriminations dans l'emploi)*.
- 138 Germany, Beyer, A.-K., Wurm, S. and Wolff, J. K. (2017), 'Getting older – profit or loss? Individual images of age and age discrimination ('Älter werden – Gewinn oder Verlust? Individuelle Altersbilder und Altersdiskriminierung') in: Mahne, K., Wolff, J. K., Simonson, J. and Tesch-Römer, C. (eds.), *Changing ages – Two decades of the German age survey (Altern im Wandel – Zwei Jahrzehnte Deutscher Alterssurvey (DEAS))*, Wiesbaden, Springer VS, pp. 329–343, doi:10.1007/978-3-658-12502-8\_22.
- 139 Italy, INAPP (2019), *Social environment in the workplace: Education, gender and age in Italian productive contexts (L'ambiente sociale di lavoro: istruzione, genere ed età nei contesti produttivi italiani)*.
- 140 Latvia, SIA Projektu un kvalitātes vadība (2014), *Discrimination in Latvian labour market (Diskriminācija Latvijas darba tirgū)*.
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- 143 Sweden, the Economists – the Union for Sweden's Economists (Cevilekonomerna – förbundet för Sveriges ekonomer) (2019), *Thanks, but no thanks – A report about discrimination on the ground of age among economists (Tack, men nej tack – En rapport om åldersdiskriminering bland ekonomer)*.
- 144 Finland, Taloustutkimus (2018), *'Age discrimination in working life' ('Ikäsyrijintä työelämässä')*, Helsinki, Confederation of Finnish Industries (Elinkeinoelämän keskusliitto).
- 145 Germany, Beyer, A.-K., Wurm, S. and Wolff, J. K. (2017), 'Getting older – profit or loss? Individual images of age and age discrimination ('Älter werden – Gewinn oder Verlust? Individuelle Altersbilder und Altersdiskriminierung') in: Mahne, K., Wolff, J. K., Simonson, J. and Tesch-Römer, C. (eds.), *Changing ages – Two decades of the German age survey (Altern im Wandel – Zwei Jahrzehnte Deutscher Alterssurvey (DEAS))*, Wiesbaden, Springer VS, pp. 329–343, doi:10.1007/978-3-658-12502-8\_22.
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Research conducted in Belgium,<sup>148</sup> Czechia<sup>149</sup> and Finland<sup>150</sup> reveals that the age group 50 years and above has particularly high rates of age discrimination in employment. Women tend to experience age discrimination in employment to a larger extent than men, survey data from Belgium,<sup>151</sup> Czechia,<sup>152</sup> Finland,<sup>153</sup> France,<sup>154</sup> Poland<sup>155</sup> and Sweden<sup>156</sup> show. The prevalence of experiences of discrimination is higher when looking for work than at work, research carried out in Belgium,<sup>157</sup> Czechia,<sup>158</sup> Finland,<sup>159</sup> Latvia,<sup>160</sup> Poland<sup>161</sup> and Sweden<sup>162</sup> finds. Findings from discrimination testing (a scientific method, sometimes referred to as ‘situation testing’, for generating experimental, objective evidence of discrimination) carried out in France<sup>163</sup> and Sweden,<sup>164</sup> and a text analysis of job vacancies carried out in the Netherlands<sup>165</sup> confirm a substantial prevalence of job advertisements that discriminate directly and indirectly based on age.

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- 153 Finland, Taloustutkimus (2018), *Age discrimination in working life’ (‘Ikä syrjintä työelämässä)*, Helsinki, Confederation of Finnish Industries (Elinkeinoelämän keskusliitto).
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- 159 Finland, Taloustutkimus (2018), *Age discrimination in working life’ (‘Ikä syrjintä työelämässä)*, Helsinki, Confederation of Finnish Industries (Elinkeinoelämän keskusliitto).
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- 164 Sweden, Institute for Evaluation of Labour Market and Education Policy (Institutet för arbetsmarknads- och utbildningspolitisk utvärdering) (2017), *The effect of age and gender on labour demand – evidence from a field experiment (Påverkar arbetsökandes ålder och kön chansen att få svar på jobbensökan? Resultat från ett fältexperiment)*.
- 165 Netherlands, Fokkens, A., Beukeboom, C.J. and Maks, I. (2018), *Age discrimination in vacancy texts: An automated content analysis by illegal age-related language use in vacancy texts (Leeftijdscriminatie in vacatureteksten: Een geautomatiseerde inhoudsanalyse naar verboden leeftijd-gerelateerd taalgebruik in vacatureteksten)*.

#### 1.2.4. Discrimination in employment on the grounds of sexual orientation

One out of five (20 %) LGB respondents in FRA's EU LGBTI Survey II felt discriminated against when looking for work or at work on the grounds of their sexual orientation, in the 12 months preceding the survey. Specifically, although almost one out five (19 %) felt discriminated against at work, 7 % of LGB respondents felt discriminated against when looking for work (Table 6).<sup>166</sup>

There are no substantial differences in the prevalence of discrimination in employment between LGB groups when looking for work or at work: lesbian (21 %), gay (20 %), bisexual men (18 %) and bisexual women (18 %).

However, the prevalence of discrimination mentioned in surveys by LGB people may not show the full extent of potential discrimination in employment, because identifying as LGB is often not visible. Moreover, LGB people often try to avoid discrimination by hiding their sexual orientation. FRA's EU LGBTI Survey II data show that, in the EU-28 (the EU-27 and the United Kingdom when it was still a Member State), one quarter (25 %) of LGB respondents hide their sexual orientation at work. More than half (54 %) are only selectively open. Among bisexual men, 49 % hide their sexual orientation at work.

FRA's 2019 Fundamental Rights Survey shows that only 1 % of general population respondents felt discriminated against in employment because of their sexual orientation in the five years preceding the survey (Table 6).<sup>167</sup> Focusing on the results for people who identify as LGB or 'other', 8 % indicate in the survey that they felt discriminated against in employment specifically because of their sexual orientation in the five years before the survey.

**TABLE 6: DISCRIMINATION ON THE GROUNDS OF SEXUAL ORIENTATION IN THE AREA OF EMPLOYMENT IN THE 12 MONTHS AND FIVE YEARS BEFORE THE SURVEY, IN DIFFERENT FRA SURVEYS (%)**

►  
Note:  
a N.A., not available for this period.

Survey	Group	Discrimination because of their sexual orientation in employment	
		Past 5 years	Past 12 months
EU LGBTI Survey II (2019)	LGB persons (EU-28)	N.A. <sup>a</sup>	20
Fundamental Rights Survey (2019)	General population (EU-27)	1	N.A.
	LGB or 'other' (EU-27)	8	N.A.

Sources: FRA, *Fundamental Rights Survey 2019*, *EU LGBTI Survey II 2019*.

The Fundamental Rights Survey results for discrimination in employment on any ground show substantial differences between those respondents who self-identify as heterosexual and those who self-identify as LGB or other categories. Although 22 % of respondents who self-identify as heterosexual felt discriminated against in employment on any ground in the five years preceding the survey, the rate is almost twice as high for respondents who self-identify as LGB or other categories (41 %).

<sup>166</sup> FRA (2020), *EU-LGBTI II – A long way to go for LGBTI equality*, Luxembourg, Publications Office, p. 31.  
<sup>167</sup> FRA (2020), *What do fundamental rights mean for people in the EU? Fundamental Rights Survey*, Luxembourg, Publications Office.

# 2

## IMPACT OF UNEVEN PROTECTION AGAINST DISCRIMINATION IN EU LEGAL PROVISIONS IN CORE AREAS OF LIFE

This section looks at how gaps in EU law on equal treatment and the resulting hierarchy of grounds have an impact on equal treatment by providing evidence from FRA surveys and research that goes beyond the scope of the racial and employment equality directives.

### 2.1. GAPS IN LEGISLATION ON EQUAL TREATMENT IN THE EU AND ACROSS MEMBER STATES IN CORE AREAS OF LIFE

The EU legal framework on equality and non-discrimination is marked by gaps in the promotion of equal treatment. This has led to an artificial hierarchy in the protected grounds covered by the applicable secondary Union law, as Table 7 shows.

**TABLE 7: PROTECTION GAPS IN SECONDARY UNION LAW ON EQUALITY IN CORE AREAS OF LIFE**

<i>Grounds of discrimination</i>	Employment	Education	Goods and services, including housing	Social protection
<b>Sex</b>	2006/54/EC 2010/41/EC	<b>No EU-level protection</b>	2004/113/EC	79/7/EEC
<b>Racial or ethnic origin</b>	2000/43/EC	2000/43/EC	2000/43/EC	2000/43/EC
<b>Religion or belief</b>	2000/78/EC	<b>No EU-level protection</b>	<b>No EU-level protection</b>	<b>No EU-level protection</b>
<b>Disability</b>	2000/78/EC	<b>No EU-level protection</b>	<b>No EU-level protection</b>	<b>No EU-level protection</b>
<b>Age</b>	2000/78/EC	<b>No EU-level protection</b>	<b>No EU-level protection</b>	<b>No EU-level protection</b>
<b>Sexual orientation</b>	2000/78/EC	<b>No EU-level protection</b>	<b>No EU-level protection</b>	<b>No EU-level protection</b>

Source: FRA, 2019.

Protection against discrimination is inconsistent across Member States, despite the fact that most Member States have adopted legislation that goes beyond the minimum standards introduced by the racial, employment and gender equality directives.<sup>168</sup> This is illustrated by the breadth and diversity of the mandates of the competent bodies for the promotion of equal treatment set up under the racial and gender equality directives, as shown in Table 8 (see also [Section 5](#) on the role of the equality bodies).

**“There are comprehensive EU legal provisions on equal opportunities and equal treatment between men and women, and on equal treatment based on racial or ethnic origin, but equal treatment on grounds of religion or belief, disability, age and sexual orientation is not ensured to the same degree.”**

European Commission (2019), *More efficient decision-making in social policy: Identification of areas for an enhanced move to qualified majority voting*, COM(2019) 186 final, Brussels, 16 April 2019.

<sup>168</sup> Directive 2010/41/EU of the European Parliament and of the Council on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC; Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

**TABLE 8: NUMBER OF MEMBER STATES WHERE THE MANDATES OF EQUALITY BODIES GO BEYOND GROUNDS AND AREAS OF LIFE COVERED BY THE RACIAL EQUALITY DIRECTIVE AND THE EMPLOYMENT EQUALITY DIRECTIVE**

Grounds of discrimination	Areas of life			
	Education	Goods and services	Housing	Social protection and healthcare
Age	24	21	21	21
Disability	25	24	24	24
Religion or beliefs	24	20	21	20
Sexual orientation	25	23	23	23

Source: FRA, based on information from Equinet (2019), ‘Mandates’.

By covering additional grounds and areas of life in national legislation, most Member States recognise the need to protect people from discrimination beyond the minimum standards set out in the existing EU legal provisions. However, not all Member States have empowered equality bodies with a comprehensive mandate, as information collected by FRA and Equinet shows. (For more information on the role and standing of equality bodies, see [Section 5](#).)

As of February 2021, the 2008 proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation<sup>169</sup> remains blocked in the Council, where it needs to be adopted unanimously.

The deadlock appears to be far from being resolved, as indicated in the report of the German Presidency of the Council on progress in the adoption of the Equal Treatment Directive, published in November 2020. As stated in the report, 14 Member States fully endorse the current proposal, and an unspecified number of Member States remain “fundamentally opposed to the proposed Directive, challenging its compatibility with the principles of proportionality and subsidiarity”. Moreover, “two Member States saw a need for clarification in connection with the term ‘multiple discrimination’”.<sup>170</sup>

FRA evidence consistently shows that many people across the EU experience discrimination on the basis of various combinations of grounds.<sup>171</sup> However, current EU and national legal provisions on equal treatment pay limited attention to multiple and intersectional discrimination, which constitutes another gap in protection from discrimination. In addition, practitioners in the field recognise that addressing discrimination from the perspective of a single ground fails to tackle adequately the different ways in which unequal treatment can manifest itself.<sup>172</sup>

## Multiple and intersectional discrimination

FRA and European Court of Human Rights (2018), **Handbook on European non-discrimination law – 2018 edition**, Luxembourg: Publications Office of the European, p. 59.

‘Multiple discrimination’ describes discrimination that takes place on the basis of several grounds operating separately.

‘Intersectional discrimination’ describes a situation in which several grounds operate and interact with each other at the same time in such a way that they are inseparable and produce specific types of discrimination.

<sup>169</sup> European Commission (2008), *Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*, COM(2008) 426 final, Brussels, 27 July 2008.

<sup>170</sup> Council of the European Union (2020), *Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation – Information from the Presidency on responses to its questionnaire*, Brussels, 4 November 2020.

<sup>171</sup> See the different reports published by FRA on the findings of the *EU-MIDIS II*.

<sup>172</sup> FRA (2017), *Fundamental Rights Report 2017*, Luxembourg, Publications Office, p. 58.

At the EU level, CJEU case law pertaining to intersectionality reveals a protection gap regarding intersectional discrimination in the EU equality legal framework: “Articles 2 and 6 (2) of Directive 2000/78 must be interpreted as meaning that a national rule such as that at issue in the main proceedings is not capable of creating discrimination as a result of the combined effect of sexual orientation and age, where that rule does not constitute discrimination either on the ground of sexual orientation or on the ground of age taken in isolation”.<sup>173</sup> Article 2 of the Employment Equality Directive relates to the concept of discrimination, although Article 6 (2) relates to justification of differences in treatment on the grounds of age in the context of occupational social security schemes.

This protection gap is also evident in the recitals of the racial and employment equality directives, which merely state that women are often the victims of multiple discrimination.

National equality laws in the EU rarely include provisions that relate to multiple or intersectional discrimination. Where this is the case, there are discrepancies between countries, as the European network of legal experts on gender equality and non-discrimination notes.<sup>174</sup> The network observes, however, that, “despite limited legislative provisions, 18 equality bodies in 17 countries identified that they had worked on issues of intersectionality”.<sup>175</sup>

Regardless of legal arrangements and provisions, research data and evidence highlight that intersectional discrimination is a recurrent reality for many people across the EU. FRA survey data show, for example, that people experience discrimination based on a variety of grounds and as a combination of grounds, such as age and ethnicity, or religion and ethnicity.

### 2.1.1. Poverty and social exclusion

The Council of the European Union refers to systemic or structural discrimination “as being evident in the inequalities that result from legislation, policy and practice, not by intent but resulting from a range of institutional factors in the elaboration, implementation and review of legislation, policy and practice”.<sup>176</sup>

FRA data from **EU-MIDIS II** and the **Roma and Travellers Survey** point to significant inequalities concerning the risk of poverty or social exclusion with respect to Roma and Travellers, as well as people of African descent.

EU-MIDIS II data show that 80 % of Roma respondents live below the at-risk-of-poverty threshold of their country; every fourth Roma (27 %) and every third Roma child (30 %) live in a household that faced hunger at least once in the month preceding the survey (**EU-MIDIS II: Roma – Selected findings**, p. 9).<sup>177</sup> When asked if the total household income is sufficient to make ends meet, 92 % of Roma surveyed indicate that they face some difficulties in this regard, with 45 % facing ‘great difficulties’ (**EU-MIDIS II: Roma – Selected findings**, p. 14). On average, only one in four Roma aged 16 years and older (25 %) describe their main activity as ‘employed’ or ‘self-employed’ at the time of the survey (**EU-MIDIS II: Roma – Selected findings**, p. 17). The question on ‘any paid work done in the last four weeks’, on average, adds 18 percentage points to the self-declared employment rate. Overall, the paid work rate for Roma in the nine EU Member States surveyed in EU-MIDIS II is therefore 43 %. This is well below the average EU-28 (EU-27 + UK) employment rate, which was 70 % in 2015 (**EU-MIDIS II: Roma – Selected findings**, p. 19).

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<sup>173</sup> CJEU, *C-443/15, Parris v. Trinity College Dublin and Others*, 24 November 2016.

<sup>174</sup> European network of legal experts in gender equality and non-discrimination (2020), *A comparative analysis of non-discrimination law 2019*, Luxembourg, Publications Office, pp. 36–37.

<sup>175</sup> European network of legal experts in gender equality and non-discrimination (2018), *Equality bodies making a difference*, Luxembourg, Publications Office, p. 79.

<sup>176</sup> Council of the European Union (2021), *Council Recommendation on Roma equality, inclusion and participation*, Brussels, 2 March 2021, p. 20.

<sup>177</sup> See also FRA (2018), *A persisting concern: Anti-Gypsyism as a barrier to Roma inclusion*, Luxembourg, Publications Office.

The findings of the 2019 **Roma and Travellers Survey** conducted in five EU Member States (Belgium, France, Ireland, the Netherlands, Sweden) and the United Kingdom, lead to the same conclusion, showing that in some of the most affluent countries in Europe the numbers of Roma and Travellers who say that they went to bed hungry at least once in the past month are startling. For example, in Sweden, every fifth Roma and Traveller, including their children (22 %), went to bed hungry at least once in the previous month.<sup>178</sup> The results also show that, on average, 38 % of Roma and Traveller children live in a household that has notable difficulties in making ends meet. In stark contrast to the general population, every fourth Roma and Traveller child (23 %) across the six countries surveyed lives in a household affected by severe material deprivation. This means its household members cannot afford basic items, such as healthy food or heating, or are in arrears with paying the rent and cannot afford a week of holiday in a year. The survey also found that respondents face greater challenges in accessing the labour market than the general population, and the employment situation is particularly severe for the younger age group. Every second young Roma and Traveller aged 16–24 years is not in education, employment or training (NEET), and young women are more affected (58 %) than young men (36 %). This number is much higher than the comparable 10.5 % NEET rate for the general population in the EU-27.<sup>179</sup>

Both surveys also show that housing conditions are very poor for Roma and Travellers across the EU. For example, according to FRA's EU-MIDIS II, every third Roma lives in housing without tap water, and one in 10 lives in housing without electricity (*EU-MIDIS II: Roma – Selected findings*, p. 33). According to the 2019 Roma and Travellers Survey, around one in 10 interviewed households have no access to tap water or a shower or toilet inside their dwelling/caravan (upcoming report).

Similarly, more than one in two (55 %) respondents of African descent report in EU-MIDIS II that they have a household income below the at-risk-of-poverty threshold after social transfers in the country where they live. The at-risk-of-poverty rate remains high for second-generation respondents (48 %) and respondents who are citizens (49 %), and is higher than that of the general population (the value for the general population in the countries surveyed varies between 12 % and 17 %) (*EU-MIDIS II: Being Black in the EU*, p. 63). One in two respondents also reported living in overcrowded housing (45 %), compared with 17 % of the general population in the EU-28. One in 10 (12 %) respondents experience housing deprivation, which includes living in a dwelling without a bath and a toilet or in a dwelling that is too dark, has rot in the walls or windows, or has a leaking roof (*EU-MIDIS II: Being Black in the EU*, p. 57).

**These results indicate that those groups experiencing some of the highest rates of discrimination – as reported in earlier sections of this report – also tend to have high rates of material deprivation.**

As FRA has highlighted in its **2018 report on antigypsyism**, antigypsyism, like any other form of racism targeting other groups, is a barrier to Roma inclusion, as it affects the enjoyment of all their rights, including the right to decent work, to education, to healthcare and to housing.

**These findings should be read alongside results from FRA's surveys, which indicate that skin colour and wearing traditional/religious clothing are also factors that contribute to higher rates of discrimination.**

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<sup>178</sup> FRA (2020), *Roma and Travellers in six countries – Roma and Travellers Survey*, Luxembourg, Publications Office, p. 71.

<sup>179</sup> FRA (2020), *Roma and Travellers in six countries – Roma and Travellers Survey*, Luxembourg, Publications Office, p. 93.

# Impact of COVID-19 pandemic on discrimination and equality

\* FRA (2020), **Bulletin #6 – Coronavirus pandemic in the EU – Fundamental rights implications: Focus on social rights**, Luxembourg, Publications Office of the European Union, pp. 31–32.

\*\* Germany, Federal Anti-discrimination Office (*Antidiskriminierungsstelle des Bundes*) (2020), **'Questions and answers on discrimination in the age of corona' ('Fragen und Antworten zu Diskriminierung in Zeiten von Corona')**, 19 June 2020.

\*\*\* FRA (2020), **Bulletin #1 – Coronavirus pandemic in the EU – Fundamental rights implications**, Luxembourg, Publications Office of the European Union, pp. 33–36; **Bulletin #4 – Coronavirus pandemic in the EU – Fundamental rights implications**, Luxembourg, Publications Office of the European Union, pp. 33–35. For Roma, see FRA (2020), **Bulletin #5 – Coronavirus pandemic in the EU – Impact on Roma and Travellers**, Luxembourg, Publications Office of the European Union, in particular pp. 26–27.

\*\*\*\* FRA (2020), **Bulletin #3 – Coronavirus pandemic in the EU – Fundamental rights implications: With a focus on older people**, Luxembourg, Publications Office of the European Union, pp. 33–41.

\*\*\*\*\* FRA (2020), **Bulletin #2 – Coronavirus pandemic in the EU – Fundamental rights implications: With a focus on contact-tracing apps**, Luxembourg, Publications Office of the European Union, pp. 35–36.

The measures to contain the COVID-19 pandemic had a significant impact on everyone's rights and all aspects of life. FRA documented this impact by issuing, in 2020, six bulletins on the fundamental rights implications of the pandemic. One of the main findings is that its impact was not felt evenly across society. Research in a number of countries found, for example, that infection rates were much higher among migrants and people with a migrant background, in particular among those at risk of poverty and social exclusion and living in overcrowded housing and poor hygienic conditions, than among the general population.\*

Against this backdrop, the pandemic triggered increased incidents of discrimination and intensified inequalities in different areas of life.

Initially, racist and discrimination incidents targeted people of (perceived) Chinese or Asian origin. For example, by 19 June 2020, the German Federal Anti-discrimination Office had received some 300 counselling requests for COVID-19-related incidents, mostly targeting people of Asian origin who had been blamed for spreading the virus.\*\* Soon other minority groups were blamed and affected too, particularly Roma and Travellers, and people with an immigrant background. In this context, incidents of discrimination in accessing goods and services, as well as in accessing healthcare and education, were reported.\*\*\* Such incidents raise concerns about the violation of national law incorporating the EU Racial Equality Directive.

Other groups were also disproportionately affected. This was the case for older persons and persons with disabilities, who are among those hardest hit by the COVID-19 pandemic and its containment measures.\*\*\*\* Older persons, in particular, are at a much higher health and life risk if they are infected with the virus than younger age groups.

Certain measures raised questions about their compliance with the principle of non-discrimination based on age. For example, older persons were often faced with stricter measures as regards obligations to stay at home; obligations to self-isolate and not meet people; when going shopping and accessing services (e.g. they were allowed to do these activities only during limited time slots); using public transport; having leisure time; and participating in communal and voluntary activities. The crisis also had an impact on their place in and access to the labour market. Furthermore, the pandemic and the related acceleration of digitalisation in all aspects of life revealed the challenges older persons face in accessing digital services on an equal footing.

For persons with disabilities, a major issue was the disruption of the provision of essential services to them, such as education, schools and other learning support for children with disabilities, healthcare, community-based and in-home support, and designated transport.\*\*\*\*\* The transition to digital learning for persons with disabilities revealed a risk of increased inequality in accessing education. This risk is linked to an existing digital divide between them and the rest of the population caused by digital tools and applications that are not always user friendly for persons with disabilities.

However, the discrimination experiences and related challenges older people and people with disabilities may face in enjoying their rights on an equal footing do not fall under the protection of the equality directives examined in this opinion. Except for employment, all other issues refer to discrimination and inequalities in areas of life that are not covered by EU secondary law.

In the light of the above, the COVID-19 pandemic and its impact on equality highlights the importance of filling the gap in terms of uneven protection against the different grounds of discrimination in the EU.

## 2.2. EVIDENCE OF EXPERIENCES OF DISCRIMINATION IN AREAS NOT COVERED BY THE RACIAL EQUALITY DIRECTIVE AND THE EMPLOYMENT EQUALITY DIRECTIVE

Eurobarometer data from 2015 attest to the experiences of unequal treatment among the general population. They show that one in five people in the EU experience discrimination or harassment because of their age, gender, ethnic origin, religion or beliefs, sexual orientation, gender identity or disability, or a combination of these grounds. These data also show that

62 % of the general population in the EU agrees that new measures are needed to close the existing protection gap.<sup>180</sup> In 2019, 17 % of respondents from the general population said that they personally felt discriminated against in the past 12 months, with substantially higher percentages for those who consider themselves part of a minority group (for example 58 % of those who consider themselves part of a sexual minority, 52 % of those with a disability and 38 % of those who consider themselves part of a religious minority, compared with 13 % who do not identify as a minority).<sup>181</sup>

FRA evidence and data provide more detail on how population groups experience discrimination in the EU in areas that are not covered by either the Racial Equality Directive or the Employment Equality Directive.

### 2.2.1. Discrimination on the grounds of sexual orientation

FRA's EU LGBTI Survey II asked respondents if they felt discriminated against in certain areas of life in the year before the survey. This included when looking for housing; when accessing healthcare and social services; in educational settings; when in a shop, café, restaurant, bar or night club; and when showing an identity card or another official document that indicates their sex.

The data suggest that discrimination against LGBT people outside the field of employment has not decreased over time. Overall, 43 % of LGBT respondents in FRA's 2019 EU LGBTI Survey II felt discriminated against in the 12 months preceding the survey, compared with 37 % of LGBT respondents in the 2012 FRA survey.<sup>182</sup>

### Unlawful profiling is a discriminatory practice that undermines people's trust in the police and the legal system

EU-MIDIS II data show that police stops are often experienced as discriminatory racial profiling across the EU. Profiling involves categorising individuals according to personal characteristics, which can include racial or ethnic origin, skin colour, religion or nationality. According to Article 11 of **Directive (EU) 2016/680**, read together with Article 10, profiling that is based solely or mainly on one or more protected characteristics and results in discrimination is prohibited, in accordance with Union law. Profiling is commonly and legitimately used by the police to prevent, investigate and prosecute criminal offences.

According to EU-MIDIS II data, out of all respondents who were stopped by the police in the five years before the survey, 33 % indicate that this was because of their ethnic or immigrant background. On average, nearly every second respondent with a sub-Saharan (41 %) or North African (38 %) background who was stopped during this time frame says they were stopped because of their ethnic or immigrant background. Similarly, among Roma respondents, nearly every second respondent (42 %) who was stopped believes this was because of their Roma background.

The EU-MIDIS II results also show that levels of trust in the police are substantially affected by whether or not the stop is perceived as racial profiling. The lowest average level of trust in the police is found among respondents who view the most recent police stop they have experienced as racial profiling.

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For more information on discriminatory ethnic profiling, see FRA (2018), **Preventing unlawful profiling: A guide**, Luxembourg, Publications Office of the European Union; and FRA (2016), **Second European Union Minorities and Discrimination Survey – Main results**, Luxembourg, Publications Office of the European Union, p. 71.

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<sup>180</sup> European Commission (2015), *Special Eurobarometer 437: Discrimination in the EU in 2015*, Brussels, European Commission.

<sup>181</sup> European Commission (2019), *Special Eurobarometer 493: Discrimination in the EU. Summary*.

<sup>182</sup> FRA (2020), *EU-LGBTI Survey II – A long way to go for LGBTI equality*, Luxembourg, Publications Office, p. 10.

The findings of the second LGBTI survey carried out in 2019 brought the following to the fore.

- More than one third of LGB respondents (34 %) felt discriminated against in areas of life other than work, such as in housing, in healthcare or social services, at school or university, in a café, restaurant, bar or night club, in a shop, or when showing an identification document. The rates are even higher for trans (55 %) and intersex (59 %) respondents.
- Among the different areas of life asked about in the survey, the highest share of LGB respondents (21 %) felt discriminated against in a café, restaurant, bar or night club (compared with 8 % of respondents from the general population in the 2019 Special Eurobarometer survey).
- One in five (17 %) felt discriminated against in educational settings (compared with 6 % of respondents from the general population in the 2019 Special Eurobarometer survey).
- Every sixth respondent (13 %) felt discriminated against when in contact with healthcare or social services staff (compared with 6 % of respondents from the general population in the 2019 Special Eurobarometer survey).

Moreover, the survey findings also point to the high prevalence of experiences of discrimination in the area of employment for trans and intersex people (grounds that are not protected under the Employment Equality Directive): 40 % for trans respondents and 38 % for intersex respondents, based on the EU-28 in the 2019 EU LGBTI Survey II.

Under EU law, gender identity is protected to a limited extent under the protected ground of sex, in that it covers individuals who intend to undergo or have undergone gender reassignment surgery.<sup>183</sup> It also remains unclear whether or not intersex people are implicitly covered by the existing EU non-discrimination legal framework. EU gender equality legislation is silent on this issue, and no case of discrimination against intersex people has yet reached the CJEU.

In FRA's Fundamental Rights Survey, 23 % of people in the EU-27 who identify as LGB or identify themselves in another way felt discriminated against in a public setting, such as a shop, café or restaurant, or in leisure or sports facilities, in the five years before the survey, compared with 11 % of people who describe themselves as heterosexual. These results include feeling discriminated against on one or more grounds, such as age, sex, disability, racial or ethnic origin, religion or belief, sexual orientation, gender identity, and being overweight/obese. Out of the people who describe themselves in the survey as LGB or identify themselves in another way, 5 % have felt discriminated against specifically because of their sexual orientation.

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<sup>183</sup> See CJEU, C-13/94, *P v. S and Cornwall County Council*, 30 April 1996, in: *FRA and European Court of Human Rights (2018), Handbook on European non-discrimination law – 2018 edition*, Luxembourg, Publications Office, p. 39 and p. 45.

### 2.2.2. Discrimination on the grounds of religion

Some 25 % of Muslim respondents to FRA's EU-MIDIS II say they experienced discrimination in the 12 months preceding the survey because of their ethnic or immigrant background, which includes their religion or religious beliefs. The data clearly show that this type of discrimination is not limited to the area of employment.<sup>184</sup>

- ★ 17 % experienced discrimination in accessing services, excluding housing.
- ★ 6 % experienced discrimination in accessing housing.
- ★ 6 % experienced discrimination in education.

Overall, some 17 % of Muslim respondents in EU-MIDIS II say they experienced discrimination specifically because of their religion or beliefs in one or more areas of their daily lives, in the five years preceding the survey.

Among all groups surveyed in EU-MIDIS II, some 13 % said they experienced discrimination when using healthcare services because of the way they dress, such as wearing a headscarf/turban; for the same reason, some 9 % felt discriminated against when in contact with school authorities as a parent or guardian, and another 8 % did so when trying to rent or buy an apartment.

Among the Muslim respondents in FRA's **Fundamental Rights Survey**, on average, 33 % in the EU-27 felt discriminated against in a public setting, such as a shop, café or restaurant, or in leisure or sports facilities, in the five years before the survey, compared with 9 % of those who identify as Christian and 14 % of those who describe themselves as having no religion. These results include feeling discriminated against on one or more protected grounds (e.g. age, sex, disability, racial or ethnic origin, religion or belief, sexual orientation, gender identity, being overweight/obese), as listed in the survey. Out of the people who are Muslims, 13 % have felt discriminated against specifically because of their religion or belief, and 17 % because of their ethnic origin or immigrant background.

Some 21 % of Jewish respondents in the most recent FRA survey on discrimination and hate crime against Jews<sup>185</sup> say they experienced discrimination because of their religion or beliefs in one or more areas of their daily lives in the 12 months preceding the survey.

### 2.2.3. Discrimination on the grounds of disability

Persons with disabilities also risk experiencing a protection gap when facing discrimination in areas of life beyond employment. FRA data show that they often have difficulties in using general services commonly available to the public.<sup>186</sup> The data show that 43 % of persons with disabilities report facing difficulties in using everyday services, such as grocery shopping, banking, postal services, primary healthcare and public transport. Persons with disabilities most often face difficulties in accessing public transport services (26 %), postal services (25 %) and primary healthcare services (23 %).

In FRA's **Fundamental Rights Survey**, out of those who are severely limited in their usual activities – because of a disability or a health problem – 25 % felt discriminated against in a public setting, such as a shop, café or restaurant, or in leisure or sports facilities in the five years before the survey, compared with 15 % of those who have limitations but not severe ones, and 8 % of people with no such limitations. These results include feeling discriminated against on one or more protected grounds, as listed in the survey. Out of those respondents who are severely limited in their usual activities, 7 % have felt discriminated against specifically because of a disability or a long-term health problem, and 8 % because of being too old.

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<sup>184</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey: Muslims – Selected Findings*, Luxembourg, Publications Office, p. 25.

<sup>185</sup> FRA (2018), *Experiences and perceptions of antisemitism – Second survey on discrimination and hate crime against Jews in the EU*, Luxembourg, Publications Office, p. 60.

<sup>186</sup> FRA (2017), *From institutions to community living – Part III: Outcomes for persons with disabilities*, Luxembourg: Publications Office.

#### 2.2.4. Discrimination on the grounds of age

According to FRA's **Fundamental Rights Survey**, 23 % of 16- to 29-year-olds felt discriminated against in a public setting, such as a shop, café or restaurant, or in leisure or sports facilities in the five years before the survey. The rates are lower in other age groups – 12 % for people aged 30–44 years, 8 % for those who aged 45–54 years, and 7 % for both those aged 55–64 years and those aged 65 years and over. These results include feeling discriminated against on one or more of the grounds listed in the survey. Among people aged 16–29 years, 9 % have felt discriminated against specifically because of being too young. In the age group 65 years and older, 4 % of people have felt discriminated against specifically because of being too old.

FRA has highlighted the particular challenges older persons face as regards equal treatment in the focus chapter of the 2018 Fundamental Rights Report.<sup>187</sup> Data from the Equality of Life Survey indicate that, in 2016, 26 % of persons aged 65 years and older in the EU report having difficulties in reaching a doctor's office because of the distance, whereas 20 % have difficulties in accessing healthcare because of the costs of medical visits.<sup>188</sup>

Another issue, which is becoming increasingly important, concerns the equal enjoyment of rights in the digital environment. FRA's Fundamental Rights Survey shows that the digital divide between the generations is significant and increases with age. The findings suggest that only one out of five respondents (20 %) aged 75 years and older use the internet at least occasionally, compared with 98 % of those aged 16–29 years.<sup>189</sup>

#### 2.2.5. Addressing discrimination when using artificial intelligence and algorithms for decision-making

The past few years have seen an enormous increase in the use of algorithms and artificial intelligence (AI) for decision-making. For example, public administrations started using algorithms to automate or support their decisions on social benefits in several countries. Law enforcement officials are testing and planning to use facial recognition technology to identify suspects in criminal investigations, and use algorithms to support their decisions on policing. The business sector is increasingly using AI; for example, companies working on online targeted advertising use automated means and complex algorithms to place adverts on people's devices, and AI is also used for recruitment purposes. In the past years, many examples of potential discrimination in relation to the use of AI have emerged. These include recruitment algorithms preferring men to women,<sup>190</sup> a chatbot (software used mainly to provide information automatically online through text or text-to-speech avoiding the employment of a person) that became racist within a couple of hours,<sup>191</sup> bias in machine translations<sup>192</sup> and even racial bias in risk scores used in the criminal justice system.<sup>193</sup>

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187 FRA (2018), *Shifting perceptions: Towards a rights-based approach to ageing*, Luxembourg, Publications Office.

188 Eurofound (2016), *European Quality of Life Survey – Data visualisation*.

189 FRA (2020), *Selected findings on age and digitalisation from FRA's Fundamental Rights Survey*, background paper presented by FRA during the international online conference 'Strengthening older people's rights in times of digitalisation – Lessons learned from COVID-19', organised in the context of the German Presidency of the EU, 28–29 September 2020.

190 Reuters (2018), *'Amazon scraps secret AI recruiting tool that showed bias against women'*, 10 October 2018.

191 Independent (2017), *'AI robots learning racism, sexism and other prejudices from humans, study finds'*, 17 April 2017.

192 Prates, M., Avelar, P. and Lamb, L. (2019) *'Assessing gender bias in machine translation – A case study with Google Translate'*, 11 March 2019.

193 Angwin J., Larson, J., Mattu, S. and Kircher L. (2016), *'Machine bias – There's software used across the country to predict future criminals. And it's biased against blacks'*, ProPublica.

FRA has highlighted the risks and possible sources of potential discrimination when algorithms are used to support decision-making or automating procedures.<sup>194</sup> One of the reasons for potential discrimination in AI relates to the use of low-quality datasets on which automated decisions are based.<sup>195</sup> For example, a dataset used for algorithms may contain biases and data on discriminatory behaviour. Given this, the use of algorithms and AI may perpetuate or even reinforce the discriminatory behaviour. Data may also lack representativeness of the target population or lack certain information needed for predictions, and hence potentially lead to discrimination.

FRA's report on AI and fundamental rights has highlighted that, although discrimination is one of the major concerns when using AI, the knowledge of implicit risks and how discrimination might occur varies considerably among users of AI. Often, AI users do not examine in detail if and how their system discriminates based on any of the grounds protected by law. Moreover, the use of a variety of data and information in datasets could lead to discrimination by association, through proxy information that strongly relates to grounds of discrimination but is not easily identifiable as such.<sup>196</sup> At the same time, information on protected characteristics might be needed to assess the potential discrimination when using algorithms and AI. Collecting data on protected characteristics, such as racial origin, might be useful for the very purpose of testing AI systems for potential discrimination. This is related to the discussion on equality data and its potential challenges linked to data protection in [Section 5](#).

In view of the potential challenges posed by the use of AI, the Commission has outlined plans to propose legislation on AI in a white paper published in February 2020<sup>197</sup> ([European Commission \(2020\), White Paper on artificial intelligence – A European approach to excellence and trust](#)). In the white paper, the Commission outlines major concerns with respect to non-discrimination in high-risk areas when using AI and in view of the proposed upcoming legislation on AI. The Commission also prepared a [proposal for a Digital Services Act](#), which suggests an upgrade of the rules governing digital services in the EU. It also refers to the need to mitigate discriminatory risks in the provision of online content, including advertising. The legislative work of the Commission in relation to AI was informed by the work of the Commission's High Level Expert Group on AI, which published [ethics guidelines for trustworthy AI](#), including seven key requirements that AI systems should meet to be trustworthy. The guidelines highlight the principle of fairness needed for ethical AI, which is realised, among other means, through the key requirement for AI systems to respect diversity, non-discrimination and fairness. The group also published an [assessment list](#) that can help to check AI systems in relation to these principles and requirements.

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<sup>194</sup> FRA (2018), [#BigData: Discrimination in data-supported decision making](#), Luxembourg, Publications Office.

<sup>195</sup> FRA (2019), [Data quality and artificial intelligence – Mitigating bias and error to protect fundamental rights](#), Luxembourg, Publications Office.

<sup>196</sup> FRA (2020), [Getting the future right – Artificial intelligence and fundamental rights](#), Luxembourg, Publications Office.

<sup>197</sup> European Commission (2020), [White Paper on artificial intelligence – A European approach to excellence and trust](#). COM(2020) 65 final, Brussels, 19 February 2020.

# 3

## RIGHTS AWARENESS AND REPORTING OF DISCRIMINATION

### 3.1. FINDINGS FROM FRA SURVEYS ON RIGHTS AWARENESS, KNOWLEDGE OF EQUALITY BODIES AND REPORTING OF DISCRIMINATION WITHIN THE SCOPE OF BOTH EQUALITY DIRECTIVES

This section provides evidence on rights awareness, knowledge of equality bodies and reporting of discrimination within the scope of both equality directives. It draws on findings from FRA's 2016 EU-MIDIS II, 2018 second survey on discrimination and hate crime against Jews in the EU, 2019 EU LGBTI Survey II and 2019 **Fundamental Rights Survey**, as well as data collected through the agency's Franet network in all Member States.

This section starts with data on reporting and awareness within the scope of the Racial Equality Directive from EU-MIDIS II (2016), the second antisemitism survey (2018) and the Roma and Travellers Survey (2019), followed by findings within the scope of the Employment Equality Directive from the Fundamental Rights Survey (2019) and the EU LGBTI Survey II (2019).

#### 3.1.1. Reporting of discrimination within the scope of the Racial Equality Directive

This section looks at the rates of reporting incidents of discrimination based on racial and ethnic origin. As shown in Table 9, only one out of 10 (12 %) respondents in the EU-MIDIS II who felt discriminated against on the grounds of racial or ethnic origin reported the most recent incident of discrimination to anybody. Overall, there are no substantial differences in the level of reporting between women (14 %) and men (11 %) who are victims of discrimination. However, there are some differences between the sexes within some of the groups surveyed. For example, female victims of discrimination with a Turkish background (17 %) are more than twice as likely to report as men from the same target group (8 %). Similarly, female respondents from the North African target group are, on average, slightly more likely to file a complaint (12 %) than men from the same group (9 %).<sup>198</sup>

According to EU-MIDIS II findings, respondents with a sub-Saharan African background are more likely to report the last incident of discrimination (16 %) than other groups surveyed in EU-MIDIS II. However, there are substantial differences between the EU countries where this group was surveyed.<sup>199</sup> The highest reporting rate overall is observed for respondents with a sub-Saharan African background in Finland, where almost every third respondent who experienced discrimination reported or made a complaint about the latest incident (30 %). In Austria, Italy and Portugal, fewer than one out of 10 respondents from the same group reported or made a complaint about the latest incident (8 %, 9 % and 9 %, respectively). Meanwhile, respondents from this group in Ireland (27 %) and Sweden (25 %) indicate significantly higher levels of reporting than victims from this target group in Malta (11 %), Denmark (12 %), France and Germany (both 15 %).<sup>200</sup>

<sup>198</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, pp. 44-45.

<sup>199</sup> FRA (2019), *Second European Union Minorities and Discrimination Survey: Being Black in the EU*, Luxembourg, Publications Office, p. 43.

<sup>200</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, p. 44.

Although one out of four immigrants and descendants of immigrants from Turkey reported or made a complaint about the latest incident of discrimination in Sweden (22 %), Denmark (21 %), and the Netherlands (21 %), only every 10th did so in Germany (11 %). The rates in Austria and Belgium are similar, at 16 % and 15 %, respectively. The EU-MIDIS II data confirm relatively higher rates of reporting for North African victims of discrimination in the Netherlands (29 %) as well.

The findings from FRA’s Roma and Travellers Survey show slightly higher rates of reporting than the results from the other FRA surveys, although the overall rate is still at a comparatively low level (21 %) (Table 9). According to this survey, Travellers in Ireland show the highest reporting rate (28 %), followed by Roma and Travellers in Sweden (25 %), Roma in Belgium (22 %), and Travellers and Sinti in the Netherlands (21 %). By contrast, the lowest rates are observed for Roma in the Netherlands (13 %) and Travellers (Gens du voyage) in France (14 %).<sup>201</sup>

Overall, of the respondents in FRA’s second survey on discrimination and hate crime against Jews in the EU who have experienced discrimination because of being Jewish in any area of life covered in the survey, 23 % reported the most serious incident in the past 12 months to any authority or organisation.<sup>202</sup> Among all groups surveyed through the agency’s EU-wide surveys (including the general population), Jewish victims of discrimination tend to report more than victims of discrimination from other groups covered in the FRA surveys. Nevertheless, the great majority of this group (77 %) did not report the most serious incident of discrimination to any authority or organisation.<sup>203</sup>

**TABLE 9: REPORTING RATE OF THE LAST INCIDENT OF DISCRIMINATION BASED ON RACIAL OR ETHNIC ORIGIN, IN DIFFERENT FRA SURVEYS (%)**

Survey	Group	Reporting rate of the most recent incident of discrimination
EU MIDIS II (2016) <sup>a</sup>	Main results (all groups, EU-28) <sup>a</sup>	12
	Muslims	12
	Roma	12
	North Africans	10
	Sub-Saharan Africans	16
Second survey on discrimination and hate crime against Jews in the EU (2018) <sup>b</sup>	Jews (in 12 countries)	23
Roma and Travellers survey (2019)	Roma and Travellers (in 6 countries)	21

Sources: FRA, EU-MIDIS II 2016, second antisemitism survey 2018, Roma and Travellers Survey 2019.



Note:

- a The rates for the EU-MIDIS II main results are based on data for all groups surveyed: Roma/Russian minority/immigrants and descendants of immigrants from sub-Saharan Africa/Turkey/North Africa/Asia and South Asia/recent immigrants.

201 FRA (2020), *Roma and Travellers in six countries – Roma and Travellers Survey*, Luxembourg, Publications Office, p. 32.

202 FRA (2018), *Experiences and perceptions of antisemitism – Second survey on discrimination and hate crime against Jews in the EU*, Luxembourg, Publications Office, p. 63.

203 *Ibid.*, p. 63.

### 3.1.2. Reasons for non-reporting

The EU-MIDIS II shows that there are notable differences in reporting discrimination incidents among the various areas of life as well as among the different groups surveyed. The most common reason for not reporting discrimination incidents cited by EU-MIDIS II respondents was that nothing would happen or change if they did report. In particular, it was the most common reason not to report incidents in the following areas of life: when trying to rent or buy an apartment or house (42 %), when trying to access a night club/bar/restaurant and administrative offices or public services (both 39 %), when using public transport (37 %), when looking for work (36 %), when in or entering a shop (34 %), when trying to access healthcare (33 %) and when at work (31 %).<sup>204</sup>

The incident being too trivial or not worth reporting was the most common reason not to report incidents regarding educational institutions (44 %) and public transport (37 %).<sup>205</sup>

Having no proof is also an important reason. One out of four cited this as a reason not to report a discrimination incident when trying to rent or buy an apartment or house (25 %) and when accessing administrative offices or public services (24 %).<sup>206</sup>

Like the EU-MIDIS II results, the findings of the Roma and Travellers Survey show that the majority of respondents (60 %) did not report the last incident of discrimination because they thought that nothing would happen or change if they reported it.<sup>207</sup> One third (32 %) mentioned as a reason that it happens all the time.

Likewise, one out of two Jewish respondents (52 %) who experienced discrimination in the 12 months before the survey and did not report it said the reason was that nothing would change as a result, and one in three said that the incident was not serious enough (34 %) or that they had no proof (33 %).<sup>208</sup>

### 3.1.3. Place of reporting discrimination on the grounds of racial or ethnic origin

According to EU-MIDIS II, most reports or complaints about the latest incident of discrimination involve experiences of discrimination at work (40 %), followed by reports related to discrimination when accessing administrative offices or public services (22 %). Reporting incidents related to respondents' educational institutions ranks third (13 %), followed by reporting about experiences of unfair treatment when looking for work (11 %).<sup>209</sup>

Most complaints were made to an employer (36 %), some 13 % of incidents were reported to trade unions and staff committees, and 17 % were reported to the police – these last about entering a night club or a bar.<sup>210</sup> Only 4 % of all reports were made to an equality body.

On average, male victims of discrimination are more likely to report incidents that happen at work than female victims (45 % and 35 %, respectively). However, more women than men report incidents relating to accessing administrative offices and public services (25 % and 18 %, respectively), and incidents of discrimination in shops or incidents related to their children's schools, which may reflect different patterns of engagement with activities between women and men.<sup>211</sup>

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204 FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, p. 45.

205 FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, p. 49.

206 *Ibid.*

207 FRA (2020), *Roma and Travellers in six countries – Roma and Travellers Survey*, Luxembourg, Publications Office, p. 31.

208 FRA (2018), *Experiences and perceptions of antisemitism – Second survey on discrimination and hate crime against Jews in the EU*, Luxembourg, Publications Office, p. 63.

209 FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, p. 45.

210 *Ibid.*, p. 22.

211 *Ibid.*, p. 45.

Similarly, the findings of the Roma and Travellers Survey show that only about 5 % of respondents who felt discriminated against reported the last incident to an equality body. One third (34 %) reported the incident to somebody at the place where the incident happened. One out of six Roma and Travellers (17 %) reported it to the police.<sup>212</sup>

### **3.1.4. Awareness of legislation, support organisations and equality bodies within the scope of the Racial Equality Directive**

Overall, most EU-MIDIS II respondents (67 %) know that discrimination based on ethnic origin, skin colour or religion is unlawful in their country of residence.<sup>213</sup> The highest levels of awareness of anti-discrimination legislation are found among respondents with a Turkish background in Sweden (82 %), respondents with a sub-Saharan African background in France (81 %) and respondents with a North African background in France (81 %) and the Netherlands (78 %). The lowest awareness levels are found among Roma respondents in Portugal (13 %), respondents with a South Asian background in Italy (15 %), and respondents with a sub-Saharan African background in Malta (18 %).<sup>214</sup>

However, almost three out of four EU-MIDIS II respondents (71 %) are not aware of any organisation that offers support or advice to victims of discrimination.<sup>215</sup>

Around three out of five (62 %) do not recognise the name of any equality body in their country of residence that covers racial or ethnic origin as a ground of discrimination (**Table 10**).

The proportion of Roma and Traveller respondents in FRA's Roma and Travellers Survey who are not aware of at least one equality body is 67 %.<sup>216</sup>

In total, 62 % of all respondents in EU-MIDIS II are aware of equality bodies that cover racial or ethnic origin as a ground of discrimination. However, this varies greatly across Member States. The proportion of respondents who knew the equality bodies that were asked about in the survey was highest in Ireland (67 %) and Denmark (65 %), and lowest in Spain (6 %), Malta (9 %), Slovenia (10 %), Luxembourg (12 %) and Italy (14 %).<sup>217</sup>

More than half (52 %) of all respondents in the Fundamental Rights Survey in the EU-27 are aware of an equality body that covers racial or ethnic origin as a ground of discrimination in their mandate. This proportion is lower for those who are not citizens of the survey country (34 %) than for those who are citizens (53 %). Similarly, 45 % of those Fundamental Rights Survey respondents who consider themselves belonging to an ethnic minority are aware of an equality body that covers racial or ethnic origin as a ground of discrimination, compared with 53 % of those who do not consider themselves to belong to an ethnic minority.<sup>218</sup>

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<sup>212</sup> FRA (2020), *Roma and Travellers in six countries – Roma and Travellers Survey*, Luxembourg, Publications Office, p. 32.

<sup>213</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, p. 22.

<sup>214</sup> *Ibid.*, p. 52.

<sup>215</sup> *Ibid.*, p. 15.

<sup>216</sup> FRA (2020), *Roma and Travellers in six countries – Roma and Travellers Survey*, Luxembourg, Publications Office, p. 32.

<sup>217</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey – Main results*, Luxembourg, Publications Office, p. 52.

<sup>218</sup> FRA (2020), *What do fundamental rights mean for people in the EU? Fundamental Rights Survey 2019*, Luxembourg, Publications Office.

**TABLE 10: PROPORTION OF SURVEY RESPONDENTS WHO ARE NOT AWARE OF AN EQUALITY BODY, IN DIFFERENT FRA SURVEYS (%)**

Survey	Group	Percentage of respondents who are NOT aware of an equality body
EU MIDIS II (2016) <sup>a</sup>	Main results (all groups, EU-28)	62
	Muslims	65
	Roma	71
	North Africans	66
	Sub-Saharan Africans	54
Roma and Travellers survey (2019)	Roma and Travellers (in six countries)	67
Fundamental Rights Survey (2019)	General population	48

Sources: FRA, EU-MIDIS II 2016, Roma and Travellers Survey 2019, Fundamental Rights Survey 2019.

Overall and across different FRA surveys, respondents' awareness of an equality body varies with their level of education – respondents with lower educational levels are less aware of such institutions.

### 3.1.5. Reporting of discrimination within the scope of the Employment Equality Directive

This section provides evidence about the level of reporting of discriminatory incidents based on religion or belief, age, disability or sexual orientation in the area of employment, as covered by FRA's relevant surveys.

Only one out of 10 general population respondents (9 %) in the Fundamental Rights Survey reported the most recent incident of discrimination in employment based on any ground (Table 11).

The reporting rates are slightly higher for discrimination incidents experienced by LGB respondents in employment. Some 14 % of LGB respondents in FRA's EU LGBTI Survey II reported the last incident of discrimination in employment to anybody. Although 12 % reported the last incident themselves, some 2 % mentioned that it was reported by someone else.

**TABLE 11: REPORTING RATES FOR DISCRIMINATION INCIDENTS IN THE AREA OF EMPLOYMENT, IN DIFFERENT FRA SURVEYS (%)**

Survey	Group	Reporting discrimination (in employment)
EU LGBTI Survey II (2019) <sup>a</sup>	LGB persons (EU-28)	14
Fundamental Rights Survey (2019)	General population (EU-27)	9

Sources: FRA, Fundamental Rights Survey 2019, EU LGBTI Survey II 2019.



Note:

- a The rates for the EU-MIDIS II main results are based on data for all groups surveyed: Roma/Russian minority/immigrants and descendants of immigrants from sub-Saharan Africa/Turkey/North Africa/Asia and South Asia/recent immigrants.



Note:

- a In the EU LGBTI Survey II, the reporting rate refers to the past 12 months and the last incident of discrimination. The reporting rate includes reporting by respondents themselves or somebody else. In the Fundamental Rights Survey, it refers to the last incident of discrimination in employment.

### 3.1.6. Reasons for not reporting incidents of discrimination within the scope of the Employment Equality Directive

Respondents in the Fundamental Rights Survey gave the following reasons for not reporting the most recent incident of discrimination: more than one third (36 %) said nothing would have happened or changed if they had reported it; almost one third (29 %) did not report the incident because they had no proof; one in four (26 %) said the discrimination incident was not serious enough; and one in 10 (11 %) said it was inconvenient/too much trouble. Another one in 10 (11 %) said they did not know how to make a complaint/where to report the incident, took care of it themselves (11 %) or were worried about negative consequences (such as losing their job) (10 %).<sup>219</sup>

Among the LGB respondents of the EU LGBTI Survey II, the main reasons indicated for not reporting the most recent incident experienced in employment are that nothing would happen or change if they reported it (36 %); not wanting to reveal their sexual orientation (30 %); that it is not worth reporting, as similar incidents happen all the time (28 %); being concerned that the incident would not have been taken seriously (20 %); not trusting the authorities (16 %); dealing with the problem on their own or with the help of family and friends (13 %); feeling hurt, traumatised and too stressed to actively deal with the reporting process (12 %); not knowing how or where to report the incident (11 %); and fear of intimidation by perpetrators (10 %).<sup>220</sup>

### 3.1.7. Place of reporting discrimination in employment

Of those respondents in the Fundamental Rights Survey who reported the most recent incident of discrimination in employment, one out of two (51 %) in the EU-27 reported it to employers, one in four (24 %) to trade unions/labour unions, 13 % to a lawyer/legal service, 13 % to a non-governmental organisation (NGO)/charity, 12 % to an equality body or national human rights institution (NHRI), 9 % to a community organisation and 9 % to the police (Table 12).

Similarly, 58 % of LGB respondents who reported the last incident did so to their employer; 24 % reported it at the place where the incident happened.

**TABLE 12: TO WHOM THE LAST INCIDENT OF DISCRIMINATION IN THE AREA OF EMPLOYMENT WAS REPORTED, IN DIFFERENT FRA SURVEYS (%)<sup>a</sup>**

Recipient of the report	EU LGBTI Survey II (2019)	Fundamental Rights Survey (2019)
	LGB persons (EU-28)	General population (EU-27)
Employer	58	51
Trade union/labour union /staff committee	16	24
NGO/charity	(2)	13
Community organisation /LGBTI organisation	7	9
Equality body/NHRI	(3) <sup>b</sup>	12
Lawyer/legal service	5	13
Police	8	9
Politician/Member of Parliament	(1)	(3) <sup>c</sup>
The place where it happened	24	N.A.

Source: FRA, *Fundamental Rights Survey 2019*, *EU LGBTI Survey II 2019*.

<sup>219</sup> FRA (2020), *What do fundamental rights mean for people in the EU? Fundamental Rights Survey 2019*, Luxembourg, Publications Office.

<sup>220</sup> FRA (2020), *EU-LGBTI II – A long way to go for LGBTI equality*, Luxembourg, Publications Office, p. 37.

Note:

- a The figures for the Fundamental Rights Survey refer to the person or entity to whom the last incident in employment was reported. The figures for the EU LGBTI Survey II refer to the person or entity to whom the last incident of discrimination was reported.
- b N.A., not available for this period.
- c Results based on a small number of responses are statistically less reliable. Therefore, the results based on 20–49 unweighted observations in a group total or 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.

### 3.1.8. Awareness of support organisations and equality bodies within the scope of the Employment Equality Directive

On average, most Muslim respondents (72 %) surveyed in EU-MIDIS II are not aware of any organisations that offer support or advice to discrimination victims in their country of residence,<sup>221</sup> and the majority (65 %) of Muslim respondents are not aware of any equality body in their country, although results vary by country. The best-known equality bodies are in Denmark (64 %) and Cyprus (61 %) (and in the United Kingdom (52 %)), where more than half of the Muslim respondents are aware of at least one equality body.<sup>222</sup>

The level of awareness of equality bodies among the general population is relatively high. On average, in the EU-27, three out of five respondents (61 %) in the Fundamental Rights Survey are aware of at least one equality body in their country – which includes an awareness of equality bodies that cover racial and ethnic origin and gender as grounds of discrimination.<sup>223</sup>

In the EU-27, the level of awareness of an equality body differs slightly by age group. The oldest age group of 65 years and over has the lowest level of awareness (54 %), followed by the youngest age group (16–29 years) (59 %). Most respondents in the age group 30–44 years (63 %) are aware of an equality body, followed by 64 % of 45- to 54-year-olds and 54- to 64-year-olds.

In the EU-27, the general population's level of awareness of an equality body differs slightly by disability. More than half (55 %) of respondents who are severely limited in their daily activities indicate that they are aware of an equality body, followed by 57 % of respondents who are limited but not severely and 63 % of respondents who are not limited.

LGB respondents have, on average, the same level of awareness of equality bodies as the general population. In the EU-28 (the EU-27 and the United Kingdom), three out of five respondents (61 %) in the EU LGBTI Survey II say they know an equality body in their country; the rate for the EU-27 is 59 %.<sup>224</sup>

## 3.2. ENCOURAGING REPORTING OF DISCRIMINATION TO EQUALITY BODIES

Low or high numbers of reported incidents of discrimination in Member States do not necessarily reflect the prevalence or nature of discrimination in these Member States. Instead, the number of reported incidents can act as an indicator of people's willingness to report discrimination, which is affected by levels of trust in institutions and by levels of awareness of equality law, equality rights and equality bodies.

High numbers of reported cases of discrimination can sometimes indicate that reporting systems are functioning, whereas low numbers potentially indicate the contrary. In addition, year-on-year variations in reporting rates do not necessarily indicate fluctuations in the prevalence of discrimination. Instead, they might reflect changes in the reporting systems, increased willingness and ability among victims and witnesses to report incidents, or improved capacity of the competent bodies to deal with such incidents accordingly.

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<sup>221</sup> FRA (2017), *Second European Union Minorities and Discrimination Survey: Muslims – Selected findings*, Luxembourg, Publications Office, p. 36.

<sup>222</sup> *Ibid.*, p. 37.

<sup>223</sup> FRA (2019), *Fundamental Rights Survey*.

<sup>224</sup> FRA (2020), *EU-LGBTI II – A long way to go for LGBTI equality*, Luxembourg, Publications Office, p. 36.

The previous section showed that many victims of discrimination do not report incidents of discrimination to any organisation, with many also not knowing where to turn to report such incidents. This is the case despite the existence of equality bodies in all Member States. Evidence collected by FRA further shows that people across the EU tend to be more aware of equality bodies with higher numbers of staff and larger budgets, in relation to the size of the population of the country in which they live. For example:

- equality bodies in Czechia, Denmark, Ireland, Latvia, Poland and Sweden are at the higher end in terms of staff and budget size relative to the countries' populations, and 50 % or more of respondents in FRA's EU-MIDIS II say they are aware of equality bodies in these countries (with a slightly lower level of awareness in Ireland and Sweden at around 40 %);
- equality bodies in Austria, Bulgaria, Germany, Greece, Hungary, Italy, Luxembourg, Malta, the Netherlands, Romania, Slovenia and Spain are at the lower end in terms of staff and budget size relative to the countries' populations, with 30 % or less of respondents in FRA's EU-MIDIS II being aware of the equality bodies in these countries.

People's level of awareness of the existence of equality bodies does not always go hand in

hand with substantially higher or lower rates of reporting of incidents of discrimination to these bodies. This suggests that the efficiency, structure, mandate and independence of equality bodies also affect the reporting rate as well as the channels used to reach out to groups most at risk of discrimination.

Low levels of reporting to equality bodies indicate that victims of discrimination will often not get – or even seek – redress against perpetrators, and that they often also do not receive the assistance they are entitled to under EU law.

This calls for the EU and its Member States to take action to encourage victims to report incidents of discrimination. Lessons learned from the work led by FRA under the EU High Level Group on combating racism, xenophobia and other forms of intolerance<sup>225</sup> could be transferred to the context of equality bodies, many of which are also competent to deal with hate crime.

In March 2021, the High Level Group endorsed key guiding principles on encouraging reporting of hate crime – as outlined in the box below.<sup>226</sup> Principles 5, 6, 8 and 9 are particularly relevant in the context of encouraging victims and witnesses to report incidents of discrimination to equality bodies.

## Encouraging hate-crime reporting: key guiding principles

European Commission, EU High Level Group on combating racism, xenophobia and other forms of intolerance, Working Group on hate crime recording, data collection and encouraging reporting (2021), *Key guiding principles on encouraging reporting of hate crime – The role of law enforcement and relevant authorities*, Luxembourg, Publications Office of the European Union.

### REMOVING BARRIERS TO REPORTING

- ★ **Principle 1:** Address invisibility of hate crime and actively communicate and disseminate hate crime data
- ★ **Principle 2:** Counter discriminatory perceptions and practices in policing
- ★ **Principle 3:** Facilitate effective access to specialist support services for hate crime victims

### ENABLING STRUCTURES

- ★ **Principle 4:** Ensure proper recording of reported incidents
- ★ **Principle 5:** Set up alternative reporting options

### ENABLING PROCESSES

- ★ **Principle 6:** Tailor outreach measures to individuals at risk of hate victimisation and raise the general public's awareness
- ★ **Principle 7:** Build institutional capacity through specialisation, comprehensive training and specific guidance
- ★ **Principle 8:** Structured cooperation within, across and beyond institutional boundaries
- ★ **Principle 9:** Participation of civil society organisations and community partnerships as a means to tackle under-reporting
- ★ **Principle 10:** Regularly assess progress and impact

<sup>225</sup> FRA (2021), *'Working Group on hate crime recording, data collection and encouraging reporting'*

<sup>226</sup> European Commission, EU High Level Group on combating racism, xenophobia and other forms of intolerance, Working Group on hate crime recording, data collection and encouraging reporting (2021), *Key guiding principles on encouraging reporting of hate crime – The role of law enforcement and relevant authorities*, Luxembourg, Publications Office.

Principle 5 relates to setting up alternative reporting options. Applying this principle could help address reasons underlying the reluctance among many victims to report incidents, such as a lack of trust in authorities or the feeling that the process is too bureaucratic. In addition to reporting incidents at the premises of equality bodies (including at local or regional offices), systems could be put in place to enable user-friendly reporting by phone, by email, online, through apps or through third-party reporting and anonymous reporting.

Third-party reporting is a process whereby victims and witnesses can report incidents to another competent organisation, which would then take the case forward on their behalf. Anonymous reporting is a process whereby victims can remain anonymous throughout the process, which can be helpful when they do not wish to be identified because they fear reprisals, for example.

Principle 8 relates to cooperation between equality bodies and other organisations and is particularly relevant in the context of third-party reporting of incidents of discrimination. FRA survey data consistently show that many victims would feel more comfortable reporting incidents to civil society organisations, as they tend to trust them more than other bodies.

In line with the European Commission Recommendation on standards for equality bodies, Member States could enable equality bodies to conclude cooperation agreements with civil society and other relevant organisations. These organisations would refer incidents of discrimination that come to their attention to equality bodies, following the agreed modalities, protocols and referral processes. The equality bodies would then take the cases forward.

Principle 9 relates to cooperation with civil society and other community organisations, which could work in tandem with equality bodies to raise awareness of the rights of victims of discrimination, or even of equality bodies themselves. “Ensuring regular dialogue and structured cooperation with organisations and groups that have trusted relationships with at-risk individuals is crucial. [Civil society and community organisations] should be involved in the design, implementation and evaluation of the impact of actions taken to encourage reporting”, as noted in the *Key guiding principles on encouraging reporting of hate crime*.<sup>227</sup>

In line with Principle 6, such awareness-raising activities should be tailored to address the lived experience of discrimination of different population groups, as well as the reporting trends and patterns among these groups.

## Promising practices to encourage reporting of discrimination

European Commission (2021), *Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive')*, COM(2021) 139 final, Brussels, 19 March 2021, p. 6.

The European Commission notes: “Besides general awareness-raising campaigns on non-discrimination, several Member States have indicated specific initiatives to facilitate reporting. Some are aimed at alleviating the financial burden of proceedings, e.g. by: reducing court fees for discrimination cases; creating tax incentives; and setting up funds that provide victims of discrimination with advance coverage of legal costs.”

It further notes that: “Other good practices include: enabling online reporting; improving the capacity and accessibility of local authorities and local intermediary or community organisations; setting up easily accessible dispute settlement bodies; providing for specialised legal advice clinics; and establishing networks of police officers and magistrates trained in discrimination issues.”

<sup>227</sup> European Commission, EU High Level Group on combating racism, xenophobia and other forms of intolerance, Working Group on hate crime recording, data collection and encouraging reporting (2021), *Key guiding principles on encouraging reporting of hate crime – The role of law enforcement and relevant authorities*, Luxembourg, Publications Office.

# 4

## DEVELOPMENTS IN THE ROLE OF EQUALITY BODIES

Article 13 of the Racial Equality Directive obliges Member States to establish equality bodies to address racial and ethnic discrimination in a range of areas of life – from employment, education and healthcare to the provision of goods and services. The Employment Equality Directive does not require Member States to designate an equality body to protect victims of discrimination on the grounds of disability, sexual orientation, religion or belief, or age. (For more details on the asymmetric nature of the current protection against discrimination under EU equality law, see [Section 3](#)).

### Bodies for the promotion of equal treatment

*“1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals’ rights.*

*“2. Member States shall ensure that the competences of these bodies include:*

*“- [...] providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,*

*“- conducting independent surveys concerning discrimination,*

*“- publishing independent reports and making recommendations on any issue relating to such discrimination.”*

**Article 13 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.**

The Racial Equality Directive sets out minimal requirements as regards the competences of equality bodies (Article 13). It merely requires equality bodies to provide independent assistance to victims in pursuing their complaints, conduct independent surveys on discrimination, publish independent reports and make recommendations on issues relating to discrimination. Otherwise, the directive leaves Member States to decide about the institutional arrangements (for example regarding the method for selecting and appointing leadership and the guarantees of independence), the scope of the mandate and the range of functions of their equality bodies.

In most cases, Member States have gone beyond the EU legal requirements and have mandated equality bodies to deal with a broad range of grounds of discrimination and areas of life beyond employment. In all but three Member States (Finland, Portugal, Spain), the equality bodies are competent in relation to all the grounds covered by the Employment Equality Directive. Many have also equipped equality bodies with additional functions and powers, for example to initiate and support litigation or to deliver decisions on discrimination cases with legally binding effect.

Overall, there is, in practice, a limited level of harmonisation in the way equality bodies have been established across Member States. This situation “sometimes leads to unsatisfactory access to protection for citizens, a protection which is unequal from one Member State to another”<sup>228</sup>

In 2018, the European Commission published a recommendation on standards for equality bodies to address some of these

protection gaps and provide further guidance on how to strengthen equality bodies.<sup>229</sup> The recommendation identifies three areas in which Member States could implement measures to enable equality bodies to fully promote equal treatment and effectively perform the tasks assigned to them under EU legislation. These pertain to their mandate; their independence and effectiveness; and the way they cooperate and coordinate with one another, with public authorities and other organisations.

<sup>228</sup> European Commission (2018), *Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies*, OJ 2018 L 167.

<sup>229</sup> *Ibid.*

The European Commission annexed a staff working document on the state of the implementation of the recommendation across Member States to its 2021 report on the application of the equality directives.<sup>230</sup> This analysis “is based both on specific contributions received during the preparation of the 2021 Application report or on pre-existing information from the Member States, the European Network of Equality Bodies (Equinet), the European Union Agency for Fundamental Rights (FRA), the European Commission against Racism and Intolerance (ECRI), equality bodies, civil society and the European Network of legal experts in gender equality and non-discrimination. It also builds on good practices that were shared during the Good Practice Exchange Seminar co-organised by the Commission and the Swedish government in June 2019.”

Based on this analysis, the following developments emerge regarding the situation of equality bodies in the EU-27, with the information being current up to December 2020.

- Nearly all equality bodies across the EU cover discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.<sup>231</sup>
- Two thirds of equality bodies cover employment and occupation; access to and supply of goods and services; education; social protection and social advantages; and hate speech.
- Most Member States have set up multiground bodies, that is, bodies mandated to deal with more than one ground of discrimination. The main challenge for multiground bodies is to ensure that they allocate sufficient resources and attention to cover all the grounds adequately.
- About one half of Member States have set up multimandate bodies, which may combine a national equality body with an NHRI and/or an ombuds organisation. The main challenge for these multimandate bodies is to ensure that sufficient resources and adequate attention are dedicated to effectively fulfilling all mandates.
- Evidence collected by FRA further shows that 10 NHRIs in the EU-27 were the sole equality body in 2020, whereas “for six other [Member States], the NHRI forms part of the equality body as one of two or more institutions sharing that designation”.<sup>232</sup> On 1 January 2021, the NHRI in Hungary, which also performs the ombuds function, became the sole equality body.
- There is a great degree of variation in the extent to which equality bodies can litigate, with many avoiding taking part in legal proceedings altogether because of a lack of resources.
- Inadequate human and financial resources preclude equality bodies in many Member States from fully performing all the functions they have been assigned.
- Equality bodies often lack the necessary resources to enable them to raise awareness of discrimination among the general population or groups at risk of discrimination, to conduct surveys on discrimination or to report on the state of equality with regularity.
- The ability of equality bodies to operate independently is predicated on their budgetary independence and the independence of their leadership. This includes the ability to independently allocate resources to the different areas of operation of equality bodies without interference, whether from government or parliament.

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<sup>230</sup> European Commission (2021), *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD(2021) 63 final, Brussels, 19 March 2021.

<sup>231</sup> For more detailed information on equality bodies in the EU, including as regards their mandates, functions and accountability, see Equinet’s ‘*European directory of equality bodies*’, as well as European network of legal experts in gender equality and non-discrimination (2020), *A comparative analysis of non-discrimination law in Europe 2019*, Luxembourg, Publications Office, pp. 105–110.

<sup>232</sup> FRA (2020), *Strong and effective national human rights institutions – Challenges, promising practices and opportunities*, Luxembourg, Publications Office, pp. 29–30.

- Equality bodies in about half of the Member States do not have a local or regional presence. This can limit the access of rights holders to equality bodies, and contribute to a lack of awareness of the existence and functions of these bodies among the general public and the groups at risk.
- Cooperation between equality bodies and other organisations is often done informally and on an ad hoc basis, despite the many possible areas of cooperation and complementarity that exist between them (e.g. data collection, victim support, information campaigns).

The overall conclusion is that there is a great variety of equality bodies in the EU. Each of these has its own very specific combination of mandate, functions, independence, effectiveness, accessibility, and institutional practices of cooperation and collaboration, alongside the political climate in which it operates. In this context, the European Commission announced in the EU anti-racism action plan 2020–2025 and in the LGBTIQ equality strategy 2020–2025 that it will explore the possibility of proposing new binding legislation to strengthen equality bodies by 2022.<sup>233</sup> The unequal protection against discrimination across the EU that results from the variety in the set-up of equality bodies speaks in favour of such legislation, particularly when considering that equality is one of the founding values of the Union.

Equinet has developed two sets of indicators that, if applied, can assist the EU and its Member States in their efforts to strengthen equality bodies.<sup>234</sup> One set relates to the mandate of equality bodies, and focuses on the grounds of discrimination and areas of life covered by equality bodies, their nature and the extent of their competences with regard to providing independent assistance to victims of discrimination (including legal standing, to represent victims of discrimination before courts), their decision-making powers, their ability to conduct surveys and research, and their advisory function.<sup>235</sup> The other set of indicators relates to independence, and focuses on the legal framework establishing equality bodies, their ability to perform their functions without interference, the budget and resources allocated to equality bodies, and appointment and accountability of the leadership of equality bodies.<sup>236</sup>

Work on completing these sets of indicators is expected to continue, including developing resource indicators, and indicators relating to training, communications and awareness-raising activities of equality bodies.

The important role of equality bodies in giving effect to the principle of equal treatment is also evidenced in the active role assigned to these bodies in the EU anti-racism action plan;<sup>237</sup> the EU strategy on victims' rights;<sup>238</sup> the Council Recommendation on Roma equality, inclusion and participation;<sup>239</sup> and the proposal for a Regulation laying down common provisions on EU funds for the period 2021–2027 (the Common Provisions Regulation).<sup>240</sup>

<sup>233</sup> European Commission (2020), *A Union of equality – EU anti-racism action plan 2020–2025*, COM(2020) 565 final, Brussels, 18 September 2020; European Commission (2020), *Union of equality: LGBTIQ equality strategy 2020–2025*, COM(2020) 698 final, Brussels, 12 November 2020. See also European Commission (2021), *Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive')*, COM(2021) 139 final, Brussels, 19 March 2021.

<sup>234</sup> Equinet (2019), *'Standards for equality bodies'*.

<sup>235</sup> Equinet (2021), *'Mandate indicators'*.

<sup>236</sup> Equinet (2021), *'Independence indicators'*.

<sup>237</sup> European Commission (2020), *A Union of equality – EU anti-racism action plan 2020–2025*, COM(2020) 565 final, Brussels, 18 September 2020.

<sup>238</sup> European Commission (2020), *EU strategy on victims' rights (2020–2025)*, COM(2020) 258 final, Brussels, 24 June 2020.

<sup>239</sup> Council of the European Union (2021), *Council Recommendation on Roma equality, inclusion and participation*, Brussels, 2 March 2021.

<sup>240</sup> European Commission (2018), *Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument*, COM(2018) 375 final, Strasbourg, 29 May 2018.

The EU anti-racism action plan provides that equality bodies should be involved in the design, implementation and evaluation of national action plans on anti-racism. It also sets out that equality bodies should be involved in a dialogue with the European Commission on the implementation of the EU action plan on anti-racism.

The EU strategy on victims' rights provides for the involvement of equality bodies in the victims' rights platform. This platform will gather "actors relevant in the area of victims' rights and ensuring synergy with other relevant policy strategies".<sup>241</sup>

The Council Recommendation on Roma equality, inclusion and participation envisages an active role for equality bodies in two areas.

The first area concerns active cooperation with different actors working on Roma equality, inclusion and participation. This encompasses pursuing cases of discrimination, addressing under-reporting, conducting research, building the capacity of Roma civil society, and providing guidance and training to raise awareness of the situation of Roma.

The second area envisages a role for equality bodies when "designing, implementing, monitoring and reviewing national Roma strategic frameworks for equality, inclusion and participation and relevant Union funds programmes".<sup>242</sup>

Also in regard to EU funds, the Common Provisions Regulation sets out a role for equality bodies in the preparation, implementation, monitoring and evaluation of the disbursement of EU funds at the national level. More concretely, Article 6 on partnership and multilevel governance of the European Commission's proposal for a Common Provisions Regulation relating to EU funds envisages an active role for various national stakeholders, including "bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender equality and non-discrimination" in the preparation of the partnership agreements. These agreements set the "arrangements for using the Funds in an effective and efficient way".<sup>243</sup>

The Common Provisions Regulation provides for the participation of equality bodies in the monitoring committees of EU-funded programmes.<sup>244</sup> These committees will be responsible for examining whether or not the EU-funded programmes comply with the enabling conditions that are necessary for accessing and using EU funds throughout the programming period.

Among these conditions is the effective application and implementation of the Charter, as well as the implementation and application of the United Nations Convention on the Rights of Persons with Disabilities (CRPD).<sup>245</sup> In practical terms, these enabling conditions require Member States to have in place arrangements ensuring reporting to the monitoring committees of cases of non-compliance of operations supported by the funds with the Charter or the CRPD, as well as dealing with Charter- or CRPD-related complaints concerning the funds (namely the Cohesion Fund, the European Maritime and Fisheries Fund, the European Regional Development Fund, the European Social Fund Plus, the Asylum and Migration Fund, the Border Management and Visa Instrument, the Internal Security Fund).

To be able to carry out these roles effectively, equality bodies would need to be provided with adequate resources and be able to work independently. This necessity is also highlighted in the European Commission's 2021 report on the application of the racial and employment equality directives.

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<sup>241</sup> European Commission (2020), *EU strategy on victims' rights (2020-2025)*, COM(2020) 258 final, Brussels, 24 June 2020, p. 20.

<sup>242</sup> Council of the European Union (2021), *Council Recommendation on Roma equality, inclusion and participation*, Brussels, 2 March 2021, p. 26.

<sup>243</sup> *Ibid.*, Article 7.

<sup>244</sup> *Ibid.*, Article 34, read together with Article 6.

<sup>245</sup> *Ibid.*, Article 11 (1) and Annex III.

# 5

## PROMOTING THE COLLECTION AND USE OF EQUALITY DATA

According to the 2016 *European handbook on equality data*, “hardly any specific equality data legislation has emerged in the EU Member States. The collection, processing and use of equality data are generally regulated by a combination of anti-discrimination and data protection legislation.”<sup>246</sup> Evidence from FRA research shows that EU Member States tend not to have a coherent and systematic approach to equality data. Moreover, Member States tend to underestimate the need to ground their anti-discrimination policies in robust and reliable equality data, which leads to insufficient resources being invested in improving the collection of such data or in ensuring their regularity and timeliness.<sup>247</sup> As a result, there are substantial knowledge gaps and imbalances in the data collected on the different grounds of discrimination and across the areas of life in which discrimination occurs, as well as over time. For example, evidence collected by FRA for this opinion on existing national research about discrimination on the grounds of age and disability in employment confirms persisting gaps and imbalances: only a few Member States carry out surveys on experiences of discrimination in employment on the grounds of age or disability (for more details, see [Section 2.2](#)). Of those that do, the majority do not examine issues such as rights awareness, reporting of discrimination incidents and reasons for under-reporting of such incidents. This suggests that Member States need to significantly improve their collection of equality data, in line with the European Commission guidelines mentioned above.

Moreover, all EU strategies and action plans adopted in 2020 and 2021 acknowledge the importance of equality data for enabling proper assessment of the implementation of the relevant EU equality legislation and other relevant international and national legal and policy frameworks. For example, the [EU anti-racism action plan 2020–2025](#) calls for a more significant step towards a new approach on equality data collection and encourages Member States to improve the collection of data disaggregated by racial or ethnic origin, in order to capture both subjective experiences of discrimination and victimisation and structural aspects of racism and discrimination at all levels of governance.<sup>248</sup> According to the [EU strategy on the rights of persons with disabilities 2021–2030](#), “the Commission will reinforce data collection in all areas where gaps have been identified”.<sup>249</sup> In addition, the EU High Level Group on Non-discrimination, Equality and Diversity agreed to prolong the mandate of the [Subgroup on Equality Data](#) until 2025, which will continue to be facilitated by FRA.

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<sup>246</sup> European Commission (2016), *European handbook on equality data*, Luxembourg, Publications Office, p. 29.

<sup>247</sup> European Commission, High-Level Group on Non-discrimination, Equality and Diversity, Subgroup on Equality Data (2018), *Guidelines on improving the collection and use of equality data*, Brussels, European Commission, p. 6.

<sup>248</sup> European Commission (2020), *A Union of equality: EU anti-racism action plan 2020–2025*, COM(2020) 565 final, Brussels, 18 September 2020, p. 16.

<sup>249</sup> European Commission (2021), *Union of equality: Strategy for the rights of persons with disabilities 2021–2030*, Luxembourg, Publications Office, pp. 31–32.

## European Commission Subgroup on Equality Data

The High-Level Group on Non-discrimination, Equality and Diversity agreed to set up a Subgroup on Equality Data at its sixth meeting, held in Brussels on 23–24 October 2017. The European Commission invited FRA to facilitate the work of the subgroup, in line with FRA's mandate to develop methods and standards to improve the comparability, objectivity and reliability of data at European level. The creation of the subgroup was endorsed by the High Level Group on 1 March 2018 for a period of one year.

In 2018, the subgroup prepared a set of **guidelines on improving the collection and use of equality data**, compiled a **compendium** of practices on equality data implemented at national level related to the set of guidelines and developed a **diagnostic mapping tool/checklist** for assessing the availability and quality of equality data collected at national level. In 2019, the work of the subgroup was prolonged until the end of 2020 to implement the guidelines at national level and to organise country visits.

Based on Member States' interests in continuing the work on equality data and owing to tasks assigned by the EU anti-racism action plan, as well as the LGBTIQ equality strategy, the work of the Subgroup on Equality Data has been prolonged until 2025. The subgroup will continue to report to the High Level Group. In 2021, the subgroup will prepare a guidance note on the collection and use of equality data based on racial or ethnic origin, which will be presented at a High Level Round Table on Equality Data, as set out in the **EU anti-racism action plan 2020–2025**.

### 5.1. WHAT ARE 'EQUALITY DATA'?

The *European handbook on equality data*<sup>250</sup> and accordingly the *Guidelines on improving the collection and use of equality data* define equality data as any piece of information that is useful for the purposes of describing, analysing, reasoning about and decision-making on the state of equality. The information may be quantitative or qualitative in nature. It could include aggregate data that reflect inequalities or their causes or effects in societies.

Multiple data sources can serve as a basis for the compilation of equality statistics, such as population censuses, administrative registers, household and individual surveys, victimisation surveys, attitudinal surveys, complaints data (including aggregate profiles of offenders/respondents and complainants), case law (including court statistics and data on outcomes of court cases, including on compensation offered/sanctions applied) and data from the criminal justice system, discrimination testing, diversity monitoring by employers and service providers, and data used to train algorithms in the context of AI and machine learning, including social media data, qualitative research such as case studies, and in-depth and expert interviews.<sup>251</sup>

<sup>250</sup> European Commission (2016), *European handbook on equality data*, Luxembourg, Publications Office, p. 15.

<sup>251</sup> European Commission, High-Level Group on Non-discrimination, Equality and Diversity, Subgroup on Equality Data (2018), *Guidelines on improving the collection and use of equality data*, p. 4,

Data disaggregated by certain personal characteristics – including age, sex, racial or ethnic origin, religion or belief, disability, sexual orientation, and gender identity – can be used for producing equality data, at an aggregated level for statistical purposes, provided that this is done in full compliance with data protection law and corresponding exceptions.

## 5.2. EQUALITY DATA COLLECTION UNDER THE GENERAL DATA PROTECTION REGULATION

For historical reasons, the collection and processing of certain personal data disaggregated by protected characteristics, such as racial or ethnic origin, health, religion or belief, or sexual orientation, is a particularly sensitive issue in many EU countries. As stated in the **guidelines** of the Subgroup on Equality Data, EU anti-discrimination legislation forbids the use of any such data to the disadvantage of the groups they refer to.<sup>252</sup> These types of data are also protected under the EU General Data Protection Regulation (GDPR)<sup>253</sup> and the Charter (Article 8 in conjunction with Article 21).

More specifically, Article 9 of the GDPR states that “Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation shall be prohibited.” However, the GDPR clarifies in the same article that this prohibition does not apply in the following circumstances, among others:

- ★ when the data subject has given **explicit consent to the processing of those personal data for one or more specified purposes** (Article 9 (2) (a));
- ★ when **processing is necessary for reasons of substantial public interest, statistical purposes, scientific or historical research purposes**, or archiving purposes in the public interest, on the basis of Union or Member State law, which must be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject (Article 9 (2) (g) and (j)).

Moreover, recital 26 of the GDPR provides some interpretational clarity on the relevant provisions by clarifying that the principles of data protection should not apply to **anonymous** information, that is, information that does not relate to an identified or identifiable natural person, or that relates to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable. Recital 26 further states that the GDPR does not concern the processing of such anonymous information, including for statistical or research purposes.

In any event, the way personal data are processed always has to comply with the general principles of data protection as set out in Article 5 of the GDPR: lawfulness, fairness, transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity, confidentiality and accountability.

In the light of the above, the existing EU data protection framework **allows the collection and processing of special categories of personal data, such as equality data, under certain conditions, including for statistical or research purposes**. For this, however, it establishes strict safeguards guaranteeing the rights of data subjects and against possible abuse of their data. In other words, if the necessary safeguards guaranteeing the rights of the data subject are in place (for example ensuring the anonymity of the data subject and respect of the general principles on data protection), as enshrined in the GDPR, EU legislation on personal data protection is not an obstacle to the processing of equality data for statistical or research purposes.<sup>254</sup>

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<sup>252</sup> *Ibid.*, p. 3.

<sup>253</sup> *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ 2016 L 119.*

<sup>254</sup> Al-Zubaidi, Y. (2020), ‘Some reflections on racial and ethnic statistics for anti-discrimination purposes in Europe’, in: *European equality law review, Issue 2*, Luxembourg, Publications Office, p. 65.

In January 2020, the European Data Protection Supervisor issued *A Preliminary Opinion on Data Protection and Scientific Research*, in which it recommends “intensifying dialogue between data protection authorities and ethical review boards for a common understanding of which activities qualify as genuine research, EU codes of conduct for scientific research, closer alignment between EU research framework programmes and data protection standards, and the beginning of a debate on the circumstances in which access by researchers to data held by private companies can be based on public interest”.

### 5.3. WHY ARE EQUALITY DATA NEEDED?

The EU’s commitment to the principle of equal treatment cannot be realised without the necessary evidence to show that the corresponding legal provisions have been implemented effectively. Equality data are of crucial importance to identifying, making visible and understanding patterns of discrimination and structural inequality, and to devising policies and measures to tackle these. Equality data are crucial for monitoring trends in the effective implementation of non-discrimination laws and for identifying needs for future action. Without the evidence based on equality statistics, it would be impossible to track progress in achieving goals towards equality, as set out by EU economic governance instruments such as the European Semester or by global agendas such as the 2030 Agenda for Sustainable Development, to which all EU Member States have committed. The need for equality data has also been identified by the European Court of Auditors in recommendation 8 of its 2016 special report on *EU policy initiatives and financial support for Roma integration* calling for the collection of statistical data on ethnicity.<sup>255</sup>

Moreover, equality statistics can empower groups affected by (structural) discrimination to advocate for change based on identified inequalities,<sup>256</sup> and enable the competent bodies to contribute to effective rights enforcement, for example by using such evidence in strategic litigation or when acting as an *amicus curiae* (a person or a body that is not a party to a particular litigation but is providing advice to a court in respect of legal issues that are relevant for the case under examination). This is also in line with recital 15 of the Racial Equality Directive, which identifies the use of statistical evidence among the means for establishing indirect discrimination (see also **Section 4** on developing standards for equality bodies).

Acknowledging the importance of equality data, the European Commission continued its efforts to provide guidance to Member States on how to improve the collection and use of equality data, including launching the **European handbook on equality data (2016 revision)** with a number of accompanying reports, and initiating the work of the Subgroup on Equality Data.<sup>257</sup> In addition, the **European Commission’s rights, equality and citizenship programme 2014–2020** specifically funded actions aimed at studies, data collection, development of common methodologies, indicators, surveys, and preparation of guides, or at implementing the subgroup’s *Guidelines on improving collection and use of equality data* at the national level. The new **citizens, equality, rights and values programme of the European Commission** will continue to promote rights, non-discrimination and equality, including gender equality, and advance gender and non-discrimination mainstreaming.

<sup>255</sup> European Court of Auditors (2016), *Special report – EU policy initiatives and financial support for Roma integration: Significant progress made over the last decade, but additional efforts needed on the ground*, Luxembourg, Publications Office.

<sup>256</sup> European Network Against Racism (ENAR) (2014), *Measure, plan, act – How data collection can support racial equality*, Brussels, ENAR.

<sup>257</sup> Makkonen, T. (2016), *European handbook on equality data (2016 revision)*, Luxembourg, Publications Office; Farkas, L. (2017), *Analysis and comparative review of equality data collection practices in the European Union – Data collection in the field of ethnicity*, Luxembourg, Publications Office; Bell, M. (2017), *Analysis and comparative review of equality data collection practices in the European Union – Data collection in relation to LGBTI people*, Luxembourg, Publications Office; Huddleston, T. (2017), *Analysis and comparative review of equality data collection practices in the European Union – Equality data indicators*, Luxembourg, Publications Office; European Commission (2017), *Analysis and comparative review of equality data collection practices in the European Union – Legal framework and practice in the EU Member States*, Luxembourg, Publications Office.

#### FRA ACTIVITY

## FRA’s EU-MIDIS II: contributing to evidenced-based policymaking

The two FRA surveys on minorities and discrimination (**EU-MIDIS I, EU-MIDIS II**) have proven indispensable resources for EU institutions and Member States, which often lack comparable data on people’s experiences of and views on a variety of fundamental rights issues.

For example, the **EU-MIDIS II** findings have significantly contributed to recent EU policy documents, including the **EU anti-racism action plan 2020–2025**; the **EU strategy on victims’ rights 2020–2025**; the **EU Roma strategic framework for equality, inclusion and participation (2020–2030)**; and the **EU action plan on integration and inclusion 2021–2027**.

In parallel, FRA has taken part in working groups examining the collection of data for Sustainable Development Goal 16.b – “Promote and enforce non-discriminatory laws and policies for sustainable development” – and in particular for indicator 16.b.1, using EU-MIDIS II (2016) survey data.

In 2020, FRA, in close cooperation with the European Commission, relaunched the EU Roma Working Party, which facilitates the exchange of experiences between Member States in relation to data collection, monitoring and reporting in the framework of equality, inclusion and participation of Roma and Travellers. Together with EU Member States, FRA developed a portfolio of indicators to monitor progress on Roma inclusion. The proposed set of headline indicators uses FRA's survey data as a baseline. **A background paper for a monitoring framework** was prepared by FRA to provide guidance to Member States on how to collect data for the proposed portfolio of 'equality' indicators for Roma. In 2021, the EU Roma Working Party will continue supporting Member States in their efforts to develop their own data collection, alongside national indicators and exchange of good practices.<sup>258</sup>

Surveys of Roma populations require the application of a specific methodology to reach those who are most marginalised as well as those living in non-segregated settings. FRA provides technical assistance and methodological guidance for the development of national survey data collection on request. Such cooperation for collecting data on Roma or on immigrants and their descendants has been successfully realised with the national statistical offices in Austria, Bulgaria, Czechia and Slovakia.

In 2020, the Conference of European Statisticians endorsed a new methodological guide for data disaggregation in poverty measurement. It describes how to include the so-called hard-to-reach groups in poverty measurement by referring to FRA's methodology.<sup>259</sup> It includes recommendations and good practices to ensure respect of the human rights-based principles in data collection, as promoted by the United Nations High Commissioner for Human Rights, that particularly apply to minority groups that are considered 'hard-to-reach or elusive populations'; this includes participation, self-identification, data disaggregation, transparency, privacy and accountability in the design, collection and use of data.<sup>260</sup>

In recent years, several Member States have either taken up their own equality data collection (mostly on a particular ground or in a particular area of life) or started implementing the *Guidelines on improving the collection and use of equality data* (for example Belgium, Bulgaria, Finland, Germany, Ireland, Italy, the Netherlands, Slovakia and Slovenia).

To give an example, the project '**Improving equality data collection in Belgium**' is a direct result of the work of the EU Subgroup on Equality Data. It is co-funded by the European Commission's rights, equality and citizenship programme and carried out in partnership with the Equal Opportunities Team (Ministry of Justice) and the Belgian equality body Unia. The project follows the first three institutional and structural guidelines set by the subgroup: (1) map existing sources of equality data and identify data gaps; (2) foster interinstitutional cooperation in the collection and use of equality data; and (3) set up a data hub on equality and non-discrimination.

Equality bodies across Europe also addressed the need for a coordinated approach in improving the comparability of their data collection on complaints, by setting up a Working Group on Research and Data Collection under the auspices of Equinet. Moreover, equality bodies in some Member States (e.g. Unia in Belgium, the Federal Anti-Discrimination Agency in Germany, and the Irish Human Rights and Equality Commission) take a proactive approach in implementing the guidelines developed by the Subgroup on Equality Data in their national contexts, and, in particular, to fostering interinstitutional cooperation by providing a centralised platform to improve accessibility and transparency.

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<sup>258</sup> FRA (2020), '**Roma Working Party – Consultations on the Roma inclusion monitoring framework**'. See also FRA (forthcoming), *Fundamental Rights Report 2021*.

<sup>259</sup> United Nations Economic Commission for Europe (2020), *Poverty measurement: Guide to data disaggregation*, New York, United Nations.

<sup>260</sup> United Nations Human Rights Office of the High Commissioner, (2018), *A human rights-based approach to data – Leaving no one behind in the 2030 agenda for sustainable development*, New York, United Nations.

# ANNEX: FRA SURVEYS ON DISCRIMINATION EXPERIENCES

## → **EU-MIDIS II: Second European Union Minorities and Discrimination Survey (2016)**

EU-MIDIS II collected information from 25,515 respondents with different ethnic minority and immigrant backgrounds across the EU-28. The data were collected in 2015 and 2016. The sample includes groups with persons belonging to ethnic or national minorities, Roma and Russians, persons born outside the EU (first-generation respondents) and individuals with at least one parent born outside the EU (second-generation respondents). The countries/regions of origin of the immigrants and descendants of immigrants include Turkey, North Africa, sub-Saharan Africa and South Asia (in Cyprus, Asia in general); in Slovenia and Poland, individuals who immigrated to the EU in the previous 10 years were included regardless of country of origin.

## → **EU-MIDIS II: Being Black in the EU (2018)**

*EU-MIDIS II: Being Black in the EU* analyses the responses of 5,803 immigrants and descendants of immigrants of African descent surveyed in 11 Member States (Austria, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Malta, Portugal and Sweden) and the United Kingdom, through EU-MIDIS II.

## → **EU-MIDIS II: Muslims – Selected findings (2017)**

The report *EU-MIDIS II: Muslims – Selected findings* is based on 10,527 interviews, in 14 EU Member States (Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Italy, Malta, the Netherlands, Slovenia, Spain and Sweden) and the United Kingdom, with immigrants and descendants of immigrants who indicated that they are Muslim when asked about their religion. The data for the report were collected through EU-MIDIS II.

## → **EU-MIDIS II: Roma –Selected findings (2016)**

The findings summarised in this report are based on 7,947 individual interviews with Roma respondents in Bulgaria, Croatia, Czechia, Greece, Hungary, Portugal, Romania, Slovakia and Spain. In addition, the survey collected information on 33,785 individuals living in respondents' households. It presents a selection of results from EU-MIDIS II.

## → **Experiences and perceptions of antisemitism – Second survey on discrimination and hate crime against Jews in the EU (2018)**

FRA's second survey on discrimination and hate crime against Jews collected data from 16,395 self-identified Jewish respondents in 11 Member States (Austria, Belgium, Denmark, France, Germany, Hungary, Italy, the Netherlands, Poland, Spain and Sweden) and the United Kingdom. The survey was carried out online during May and June 2018.

## → **EU LGBTI Survey II (2019)**

A total of 139,799 persons who describe themselves as LGBTI completed the online EU LGBTI Survey II in the EU-28, North Macedonia and Serbia. The data were collected in 2019. For all discrimination rates in this document, only data concerning LGB persons have been used in the calculations. The terms 'lesbian women', 'gay men', 'bisexual women' and 'bisexual men' refer only to respondents who identify as cisgender and endosex. The term 'cisgender' refers to people whose gender identity and gender expression match the sex they were assigned at birth and the social expectations related to their gender. The term 'endosex' describes people who are not born intersex. Respondents who identified as trans and/or intersex were for analytical purposes included in separate categories.

## → **Roma and Travellers Survey (2019)**

The survey targeted 4,659 individuals aged 16 years and over who self-identified as having a Roma or Traveller background in five EU Member States (Belgium, France, Ireland, the Netherlands and Sweden) and the United Kingdom. The data were collected in 2018–2019.

## → **Fundamental Rights Survey (2019)**

The survey interviewed just under 35,000 people aged 16 years and older in all EU Member States, North Macedonia and the United Kingdom. The survey design involves a combination of face-to-face and online data collection, as appropriate in each country, to reach a representative sample of the total population. Fieldwork took place from January 2019 to October 2019. Data collection was carried out in cooperation with Statistics Netherlands (CBS) in the Netherlands, Statistics Austria in Austria and the Centre des technologies de l'information de l'Etat in Luxembourg.





# PROMOTING AND PROTECTING YOUR FUNDAMENTAL RIGHTS ACROSS THE EU —



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