FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

FRA Opinion – 1/2013
[EU equality directives]

Vienna, 1 October 2013

Opinion of the European Union Agency for Fundamental Rights on the situation of equality in the European Union 10 years on from initial implementation of the equality directives

THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA),

Bearing in mind the Treaty on the European Union (TEU), 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 FRA "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 FRA 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 fact that the European Commission is in the process of drafting a report on the implementation of the Racial Equality Directive[1] and the Employment Equality Directive,[2]

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 Fundamental Rights Agency,

Building on evidence collected and analysed by FRA, 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:

[1] Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial and ethnic origin, OJ 2000 L180.

[2] Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, OJ 2000 L 303.

Opinions

The European Union (EU) adopted two prominent pieces of legislation in 2000 aimed at efficiently fighting discrimination. The Racial Equality Directive and the Employment Equality Directive together create a well-developed anti-discrimination framework. Their wide-ranging scope, precedence over and direct effect on national systems resulted in a robust legislative package that left no doubt of the EU's legal commitment to protect those living in its territory from discrimination. Despite this decisive and influential step and the resulting progress made in many EU Member States' legal systems, evidence gathered by FRA shows that discrimination remains part of the daily experience of too many Europeans. Looking into the reasons for the divide between the law on the books and the situation on the ground, FRA has identified various factors that prevent more effective implementation of legal provisions and other mechanisms designed to improve protection against discrimination. To address the shortcomings identified, the following five opinions could be taken into account.

Rights awareness: intensify efforts

Evidence collected by FRA indicates that the legal obligation and the resulting political efforts to bring EU anti-discrimination legislation to the public's attention have not raised sufficient awareness to render anti-discrimination legislation an efficient and sufficiently invoked instrument. National and local authorities should therefore substantially intensify awareness-raising activities, including among bodies that can help to disseminate information such as equality bodies, non-governmental organisations (NGOs), trade unions and employers. Targeting persons who belong to groups most at risk of discrimination, as well as those in a position to commit breaches, such as employers and service providers, may allow for a more effective use of resources.

Access to justice: consider institutional and procedural reforms

FRA studies have identified various factors that limit access to justice in discrimination cases. EU Member States could therefore consider widening access to complaints mechanisms, including by: broadening the mandate of equality bodies that are not currently competent to act in a quasi-judicial capacity; relaxing the rules on legal standing for NGOs and other civil society organisations; increasing funding for voluntary organisations in a position to assist victims. Since victims are often reluctant to bring claims, allowing civil society organisations, including equality bodies, to bring claims to court or conduct investigations, either without the consent of a victim or without an identifiable victim, could help facilitate enforcement.

The degree to which complaints procedures fulfil their role of repairing damage done and acting as a deterrent for perpetrators depends on whether dispute settlement bodies are able to issue effective, proportionate and dissuasive sanctions. Trade unions have highlighted that sanctions, in the context of employment discrimination are often easily absorbed by perpetrators, and this raises questions about the adequacy of available remedies.

EU Member States should encourage equality bodies, National Human Rights Institutes (NHRIs) and other relevant bodies to cooperate when these entities are not one and the same. Such a coherent architecture at national level makes it possible to avoid the excessive complexity that is prejudicial to effective access to justice.

Data collection: enhance availability of policy-relevant data

Without the collection of disaggregated data it is difficult to develop policies to prevent discrimination and promote equality, as FRA has repeatedly underlined. The lack of disaggregated data makes it difficult to identify where problems exist, and to measure the success of steps to combat discrimination. EU Member States' systematic data collection would greatly facilitate the implementation of the EU obligation under Article 10 of the Treaty on the Functioning of the European Union (TFEU) to combat discrimination whenever "defining and implementing its policies and activities" as well as the establishment of common EU-wide indicators. Such data are often also needed to prove claims of indirect discrimination.

In fact, Special Eurobarometer 263 on Discrimination in the European Union *shows that "on average, there is a broad degree of willingness among the European public to provide personal information as part of a census on an anonymous basis to combat discrimination."*[3] *This is also the case for persons belonging to minorities as shown in FRA's European Union Minorities and Discrimination Survey (EU-MIDIS). Of the 23,500 persons with an ethnic minority or immigrant background interviewed, 65 % said they would be willing to provide information on an anonymous basis about their ethnicity as part of a census if that could help to combat discrimination.*[4]

Against this background, it appears both timely and feasible that Member States collect appropriate information that supports the formulation of anti-discrimination policies. This would be in line with the international standards as laid down, for example, in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the United Nations Convention on the Rights of Persons with Disabilities (CRPD). EU data protection legislation that is currently under negotiation could clarify the place of sensitive categories in anti-discrimination data collection, and make explicit that the collection of sensitive data is allowed for the purpose of combating discrimination based on the grounds as listed in Article 21 of the Charter of fundamental rights of the European Union.

Positive action: aim at substantive equality

The equality directives allow EU Member States to maintain or introduce positive action. The Racial Equality Directive, for example, says that to ensure full equality in practice, "the principle of equal treatment shall not prevent any Member State from

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3 Three quarters of EU citizens would be willing to provide personal information about their ethnic origin (75 %) and their religion or beliefs (74 %). Willingness to provide information about one's sexual orientation (65 %) and health situation (71 %) is somewhat less widespread. See European Commission (2007), *Discrimination in the European Union*, Special Eurobarometer 263, available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_263_en.pdf, p. 28.

4 FRA (European Union Agency for Fundamental Rights) (2009), *European Union Minorities and Discrimination Survey (EU-MIDIS). Main Results Report*, 2009, Luxembourg, Publications Office of the European Union (Publications Office), p. 272.

maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin".[5]

This principle allows Member States to address issues of structural discrimination and pre-empt breaches of non-discrimination law. Measures that address the interlocking nature of disadvantage suffered by minority groups across areas such as employment, housing and education should be encouraged and broadened so that they are applied systematically across policy areas and throughout the Member States, rather than on a more limited ad hoc or project-driven basis.

The wording of the relevant provision in the equality directives might, however, create the misleading impression that positive action constitutes an exemption to the principle of equality rather than an expression thereof. This risks undermining legal clarity in the context of equality law. Positive action allows for full equality in practice. A preventive, rather than reactive, approach to discrimination and the adoption of positive action measures across the Member States can contribute to reducing the gap between the law on the books and the reality on the ground.

Alignment: close gaps in protection

Current protection against discrimination varies by ground and by area. This horizontal asymmetry in protection is complemented by different levels of protection offered by EU and national law. Many EU Member States have already gone beyond current EU obligations and provided protection against discrimination in additional areas and/or on additional grounds, making the asymmetry of protection within the EU not only 'horizontal' but also 'vertical' in nature.

One of the ambitions of the Horizontal Directive proposed in 2008 is to establish a framework for a uniform minimum level of protection which would in a way align protection from discrimination both 'vertically' and 'horizontally'. Such an alignment would be a welcome development.

Besides legislative adjustments, non-legislative measures should also be considered – both at national as well as at European level. The development of coordination actions, such as strategies, frameworks, roadmaps, possibly complemented by appropriate monitoring and benchmarks, can be useful for aligning the unequal standards of protection in equality laws.

[5] Art. 5 of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial and ethnic origin, OJ 2000 L180.

Introduction

The European Union (EU) has robust anti-discrimination legislation. The EU equality directives are far reaching and among the most ambitious equality laws enacted to date. The Racial Equality Directive and the Employment Equality Directive – both adopted in 2000 – represent a prominent share of this EU legislative commitment to fight discrimination. The two directives are generally considered to have significantly raised the level of protection against discrimination across the EU, as Member States were required to review their existing anti-discrimination legislation in order to comply with the directives' requirements. Scholars have reported that prior to the enactment of the Employment Equality Directive, for example, only 11 EU Member States had legislation in place prohibiting sexual orientation discrimination in employment.[6]

Legislation is, however, just one aspect of the overall reality in which fundamental rights unfold. To adopt legislation is to make a clear commitment to combat discrimination. But legislation does not automatically translate into positive results on the ground; for that to occur, dedicated follow-up on the legal obligations undertaken must ensue. It is therefore beneficial to complement structural indicators, which relate to legislative and institutional developments, with process indicators, such as policies and actions plans, and outcome indicators, such as survey and complaints data, to measure the 'fundamental rights temperature' in a given policy area.[7] While it is beyond the scope of this opinion to elaborate on indicators, this opinion draws on findings that go beyond a mere assessment of the directives as legal texts. The opinion draws on findings FRA has gathered from various surveys and a variety of qualitative interviews conducted for different projects to assess the two directives more comprehensively.

The data collected for different projects and areas show that despite significant legislative developments, there is still a considerable way to go in order to sufficiently improve daily reality. The available evidence shows that too many individuals' social and economic achievement is significantly hindered and undercut by diverse forms of discrimination, including multiple and intersectional discrimination. This is the case, for instance, for ethnic minorities, migrants, refugees, asylum seekers and irregular migrants, in the areas of healthcare, education, employment and housing, as FRA's research has shown. In addition, discrimination based on grounds other than ethnic origin, for instance, religion or belief, disability, age or sexual orientation remains a reality within the EU.

The Employment Equality Directive prohibits discrimination based on grounds such as religion or belief, disability, age and sexual orientation. The protection offered, however, is limited to the area of employment and occupation,[8] whereas the Racial Equality Directive protects against racial and ethnic origin discrimination in many areas

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6 Waaldijk, K. and Bonini-Baraldi, M. (2006), *Sexual orientation discrimination in the European Union: national laws and the Employment Equality Directive*, The Hague, Asser Press, p. 1.

7 See, for example, FRA (2012), *Using indicators to measure fundamental rights in the EU: challenges and solutions*, 2nd Annual FRA Symposium, Vienna, 12–13 May 2011, available at: http://fra.europa.eu/fraWebsite/symposium2011/.

8 Art. 1 and 3 of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, OJ 2000 L 303.

other than employment.[9] Thus, the protection against discrimination based on ethnicity covers more areas of life than does the protection against discrimination based on grounds like sexual orientation, age or disability. This discrepancy has been perceived as signalling a 'hierarchy' between the protected grounds.[10]

Persons living in the EU are aware that discrimination occurs in the EU, as revealed by the Special Eurobarometer 393 in 2012 which focused on the issue.[11] The three most widely spread forms of discrimination are considered to be those based on 'ethnic origin' (56 %),[12] 'disability' (46 %) and 'sexual orientation' (46 %).

Despite the perception that discrimination persists in our societies, formal complaints about discrimination remain few. Indeed, both courts and equality bodies set up by the Member States, with a remit to fulfil the Racial Equality Directive's requirements, and often additional grounds, receive relatively few complaints. This situation raises the crucial question of the practical effectiveness of the laws meant to implement the principle of equal treatment and to combat discrimination.

In assessing the effectiveness of the EU equality directives, the following questions arise:

- What is the situation on the ground?
- Are people actually aware of their rights?
- What hurdles do they encounter when trying to access justice after having been discriminated against?
- Is there enough data on discrimination available to assess the overall picture?
- To what degree do Member States go beyond the equality *acquis* as agreed at EU level 10 years ago?

1. The situation on the ground

Special Eurobarometer 393 on discrimination says that close to a fifth of the EU population (17 %) report that they have personally experienced discrimination or harassment: of these, 13 % have experienced discrimination on the basis of one of the grounds analysed in the survey and 4 % on multiple grounds. The percentage of those who have experienced discrimination is higher among those who consider themselves as belonging to a group linked to a particular ground: 28 % of Europeans with a disability have experienced discrimination based on their disability, 28 % who belong to a sexual minority said that they have been discriminated against based on their sexual orientation, and 27 % of persons belonging to an ethnic minority have experienced discrimination due to their ethnic background.[13]

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9 Art. 1 and 3 of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial and ethnic origin, OJ 2000 L180.

10 See, for example, Bell, M. and Waddington, L. (2003), 'Reflecting on inequalities in European equality law', *European Law Review*, Vol. 28, pp. 349–369.

11 European Commission, (2012), *Discrimination in the EU in 2012*, Special Eurobarometer 393, Brussels, November 2012, available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf, p.7.

12 Although discrimination on the ground of ethnic origin is still perceived as widespread by 56 % of Europeans, this figure has decreased by 5 % since the 2009 Special Eurobarometer 317 on discrimination.

13 European Commission (2012), *Discrimination in the EU in 2012*, Special Eurobarometer 393, Brussels, November 2012, p. 65.

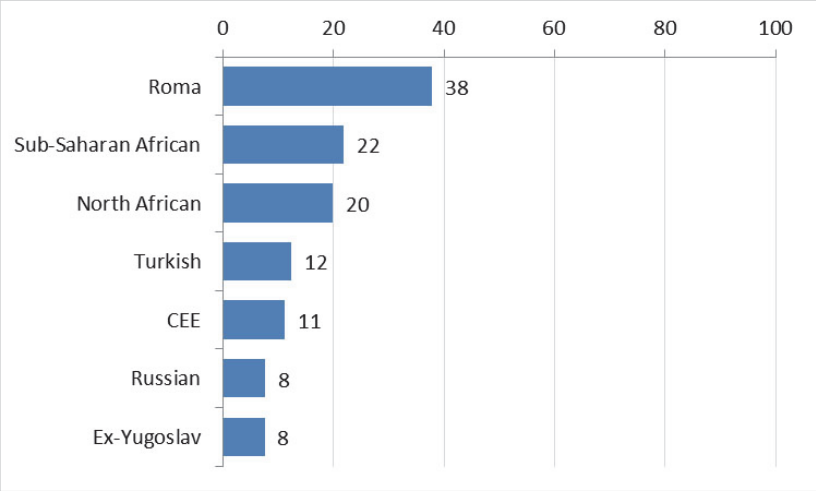
The Eurobarometer interviews respondents who are randomly selected from the general population. FRA has the capacity to look in more depth at the real-life experiences of persons belonging to specific groups or living in specific situations, including persons who are associated with protected grounds of discrimination such as ethnic origin, religion, sexual orientation, disability and other grounds. FRA data from a number of surveys confirm that discrimination remains a reality within the EU.

Discrimination in employment

In 2008, the FRA European Union Minorities and Discrimination Survey (EU-MIDIS) interviewed 23,500 people with an ethnic or migrant background across the then 27 EU Member States.[14] The EU-MIDIS findings highlight that discrimination on the basis of ethnicity is perceived by many respondents as a major problem across the EU. Of the nine areas of everyday life examined in the survey, employment emerged as the main domain where minorities experience the greatest levels of perceived discriminatory treatment, either when looking for work and at work.[15]

When looking for work, 38 % of Roma job seekers said that they were discriminated against because of their ethnicity at least once in the 12 months preceding the survey, according to EU-MIDIS. For other groups of respondents, the rate of discrimination when looking for work was: 22 % for Sub-Saharan Africans, 20 % for North Africans, 12 % for Turkish respondents, 11% for Central and East Europeans, and 8 % for both Russians and former Yugoslavians.[16]

Figure 1: Prevalence rate of specific discrimination: when looking for work (% discriminated against at least once in the past 12 months)



Questions: *CA2 and CA0_1: Can I just check, have you ever looked for paid work during the last 5 years in [COUNTRY] [or since you've been in the country if less than 5 years]? [IF YES] CA1: During the last 5 years [or since you've been in the country if less than 5 years], have you ever been discriminated against when looking for paid work in [COUNTRY] because of your immigrant/minority background? [IF YES] CA2: Thinking about the last time this happened, when was this: in the last twelve months or before then?*

Source: *FRA (2009),* EU-MIDIS European Union Minorities and Discrimination Survey. Main results report, *available at: http://fra.europa.eu/sites/default/files/fra_uploads/663-FRA-2011_EU_MIDIS_EN.pdf.*

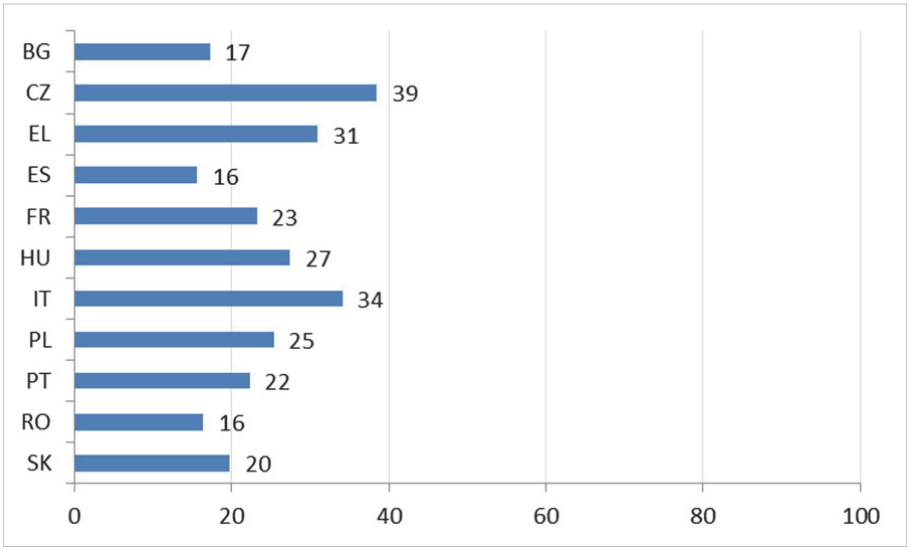
[14] FRA (2009), *EU-MIDIS European Union Minorities and Discrimination Survey. Main results report*, Luxembourg, Publications Office.

[15] *Ibid.*, p. 6.

[16] *Ibid.*

Following on from EU-MIDIS, the 2011 FRA Roma pilot survey also inquired after perceived experiences of discrimination when looking for work in the past five years.

Figure 2: Roma respondents (aged 16 years and over) who had looked for work during the last 5 years and felt discriminated against because of their ethnicity when looking for a job in the last 12 months (%)



Source: FRA (2011), Roma pilot survey

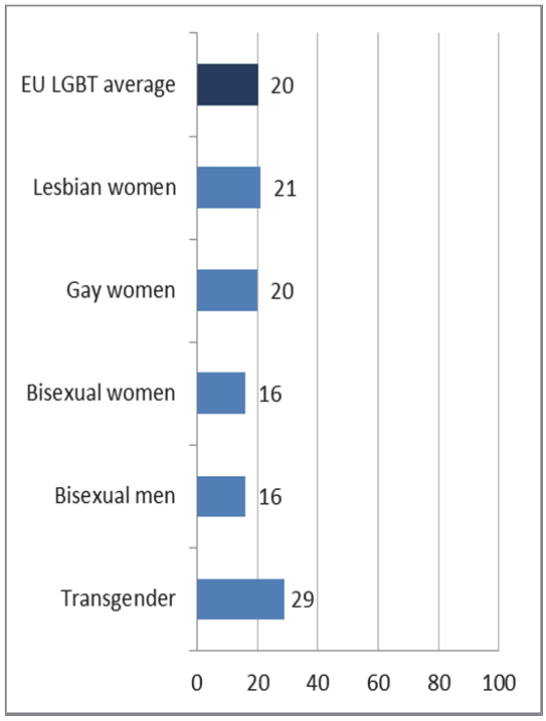
In the FRA Roma pilot survey, Roma of at least 16 years of age were asked if they had looked for work in the last five years. Only those who had done so were then asked about their discrimination experiences. In Greece, Italy and the Czech Republic, 30 % to 40 % of these respondents said they had experienced discrimination because of their ethnic background while looking for work during the last 12 months. Roma respondents in Bulgaria, Romania and Spain reported least often, with 16 % to 17 %, that they had experienced discrimination because of their ethnicity while looking for work in the last 12 months.

The FRA 2012 lesbian, gay, bisexual and/or transgender (LGBT) persons online survey in the 27 EU Member States and Croatia, which gathered replies from 93,000 respondents who self-identified as LGBT, also pointed to employment as a critical area. FRA found that a significant number of respondents had experienced at least occasional unequal treatment at the workplace in the past five years:[17]

- 43 % experienced negative comments or conduct at work;
- 67 % witnessed negative comments addressed to a colleague perceived to be LGBT;
- 66 % perceived a general negative attitude towards LGBT people;
- 25 % was subject to unequal treatment at work because of having a same-sex partner.

[17] FRA (forthcoming 2013), *EU LGBT survey: Main results*, Luxembourg, Publications Office.

Figure 3: Experience of LGBT persons who have looked for work or at work with discriminiation in the last 12 months (%)



Questions: *C3. During the last 12 months, in the country where you live, have you... - A. Looked for a job; B. Worked/were employed*
C4. During the last 12 months, have you personallt felt discriminated against because of being [LGBT] in any of the following situations: A. When looking for a job; B. At work

Source: *FRA (forthcoming 2013),* EU LGBT survey: Main results*, Luxembourg, Publications Office*

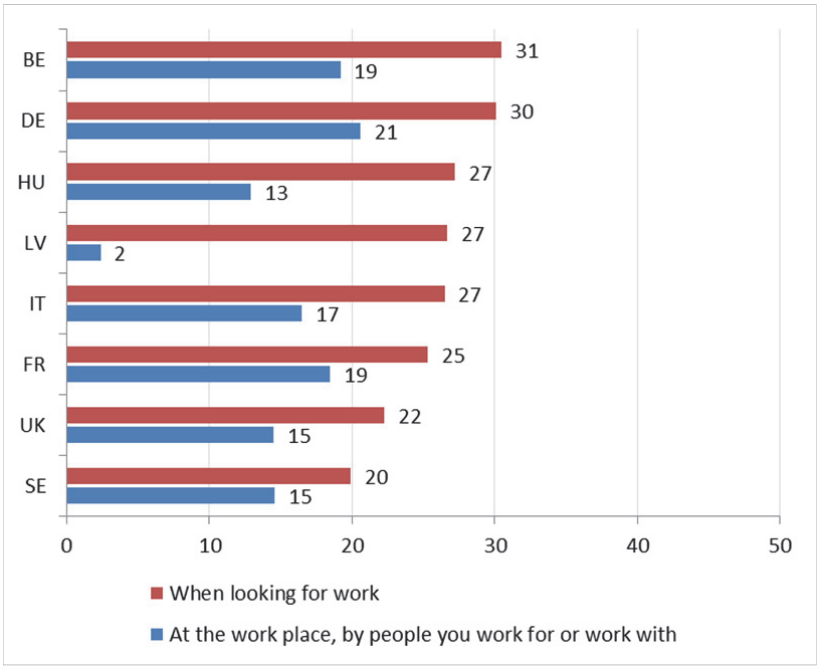
Of those who were looking for a job or were employed in the 12 months preceding the interview, 20 % faced discrimination due to their sexualorientation or gender identity when looking for a job or at the workplace, in the 12 months preceding the survey. An even higher proportion, 29 %, of transgender respondents felt discriminated against (Figure 3).

Three quarters (75 %) of LGBT respondents who encountered harassment in the year preceding the survey felt that this was due to their sexual orientation or gender identity. The workplace was one of the most typical locations for harassment, as were public spaces such as streets.

The FRA survey on Jewish people's experiences and perceptions of antisemitism (not yet published) collected data from 5,847 self-identified Jewish respondents in eight EU Member States.[18] It shows that discrimination experienced by Jewish respondents occurs most commonly in the labour market, either when they are looking for a job or at the workplace. One quarter of all the respondents who experienced some form of discrimination (based on the ground that they were Jewish and other grounds, including gender, sexual orientation and age) in the 12 months preceding the survey, said it happened when looking forwork (25 %), and one in six said it happened at the workplace (16 %). One in 10 who had been looking for a job (10 %) or were employed (11 %) in the same time period said that they felt discriminated against because they were Jewish.

[18] FRA (forthcoming 2013), *Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism*, Luxembourg, Publications Office.

Figure 4: Experience of discrimination of Jewish people for any reason when looking for a job or at work in the last 12 months (% of respondents who had been looking for a job or were at work)



Question: During the LAST 12 MONTHS, have you personally felt discriminated against when looking for work or at the work place, by people you work for or work with?

Note: N differs according to respondents' situations in the last 12 months: 1,253 looked for a job, 3,566 worked/had been employed.

Source: FRA (forthcoming 2013), Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism*, Luxembourg, Publications Office*

In responses to the 2012 Special Eurobarometer 393, 40 % said they believed that a candidate with a disability may be at a disadvantage when a company has a choice between two candidates with equal skills and qualifications.[19]

FRA research on discrimination of persons with disabilities also shows that persons with mental health problems and persons with intellectual disabilities often cannot find adequate employment, which hampers their ability to live independently.[20] Appropriate employment, sufficient income support and benefits are preconditions for independent living, particularly during the current economic crisis – a point also recognised by the United Nations Committee on the Rights of Persons with Disabilities in its Concluding Observations on Spain.[21] The 2010–2020 EU Disability Strategy[22] focuses on eliminating such barriers in a consistent way across eight main areas of social life, including employment, where the goal

[19] European Commission (2012), *Discrimination in the EU in 2012*, Special Eurobarometer 393, Brussels, November 2012, p. 17.

[20] FRA (2012), *Choice and control: the right to independent living*, Luxembourg, Publications Office, p. 6.

[21] UN, Committee on the Rights of Persons with Disabilities (2011), Concluding observations of the Committee on the Rights of Persons with Disabilities Spain, United Nations, available at: http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session6.aspx.

[22] European Commission (2010), *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European Disability Strategy 2010–2020: A renewed commitment to a barrier-free Europe*, COM(2010) 636 final, Brussels, 15 November 2010.

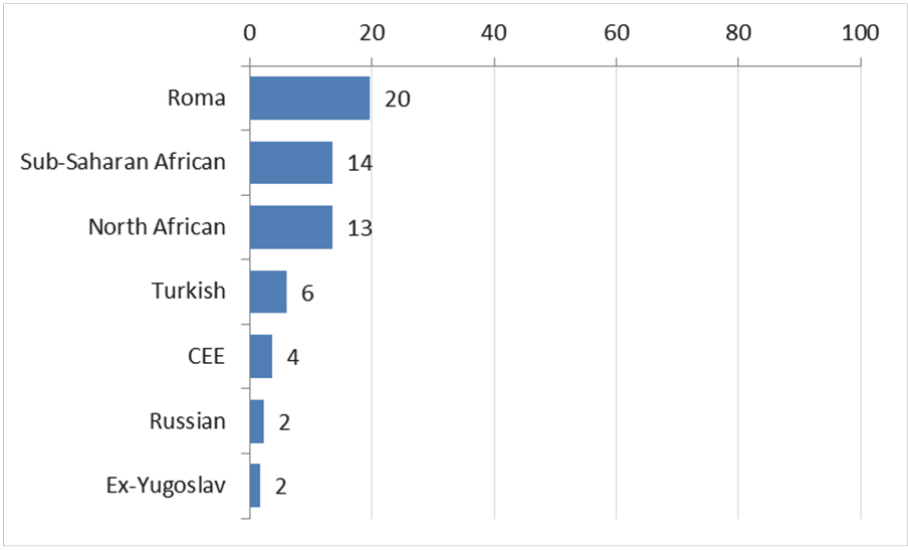
is to "enable many more people with disabilities to earn their living on the open labour market". Increased employment is to be achieved by providing EU Member States with analysis, political guidance, information exchange and other support.

Discrimination beyond employment

The Racial Equality Directive, as mentioned earlier, prohibits discrimination based on ethnicity across a number of areas beyond employment, such as social protection, including social security and healthcare; social advantages; education; access to and supply of goods and services which are available to the public, including housing.[23]

FRA data have shown that ethnic discrimination is also widespread in areas beyond employment. The experience of discrimination in relation to goods and services was a significant problem for a number of groups surveyed by EU-MIDIS, for example, when trying to enter or in a café, a restaurant, a bar or a nightclub. The data indicate that Roma, Sub-Saharan Africans and North Africans face the highest levels of discrimination in these situations (20 %, 14 % and 13 %, respectively).[24]

Figure 5: Experience of ethnic minorities with discrimination in private services (%)



Question: *EU-MIDIS Prevalence rate of specific discrimination: At a Cafe, Restaurant or Bar (CG2) % discriminated against at least once in the past 12 months.*

Notes: *Percentage of persons in a group, discriminated against at least once in the past 12 months in selected private services (when in or trying to enter a café, restaurant, bar or nightclub; when in a shop or trying to enter a shop; when trying to open a bank account or get a loan from the bank).*

Source: *FRA (2009),* EU-MIDIS European Union Minorities and Discrimination Survey. Main results report*, Luxembourg, Publications Office*

EU-MIDIS also showed that North Africans and Roma experience on average the highest discrimination rates in accessing housing: on average, 11 % of both North Africans and Roma were discriminated against when looking for housing to rent or buy.[25]

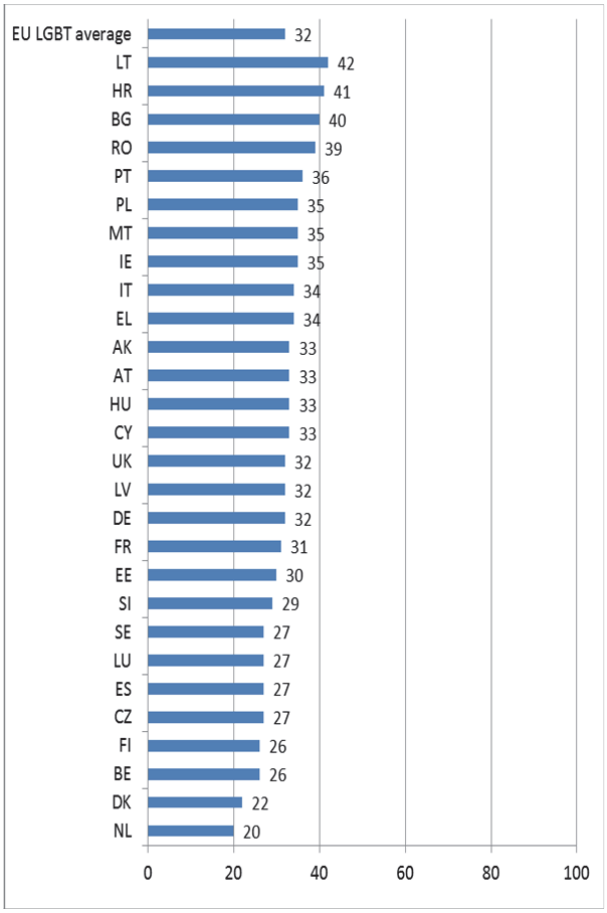
[23] Art. 3 of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial and ethnic origin, OJ 2000 L 180.

[24] FRA (2009), *EU-MIDIS European Union Minorities and Discrimination Survey. Main results report*, Luxembourg, Publications Office, p. 12.

[25] *Ibid.*, p. 10.

The Treaty on the Functioning of the EU (TFEU) establishes in Article 10 that "in defining and implementing [all] 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". More specifically the competence base in Article 19 of the TFEU allows the EU to legislate on a number of protected grounds. Current EU legislation with respect to age, disability, sexual orientation and religion or belief, however, does not require Member States to prohibit discrimination in areas beyond employment.

Figure 6: Experiences of discrimination when receiving different kind of public services in the last 12 months (% of respondents who were received at least in one of the services listed in the questions)



Questions: *C3. During the last 12 months, in the country where you live, have you … - C.Looked for a house or apartmen to rent or buy; D.Accessed healthcare services; E.Accessed social services; F. Attended school/ university yourself or your child/children was/were in school/ university; G.Visited a cafe, restaurant, bar or nightclub; H.Visited shop; I.Visited back or insurance company; J.Exercised at a sport or fitness club. C4. During the last 12 months, have you personally felt discriminated against because of being [LGBT] in any of the following situations: - C.When looking for a house or apartment to rent or buy; D.By healthcare personnel; E. By social service personnel; F.By school/university personnel; G.At a cafe, restraurant, bar or nightclub; H.At a shop; I.In a bank or insurance company; J. At a sport or fitness club.*

Source: *FRA (forthcoming 2013), EU LGBT survey: Main results, Luxembourg, Publications Office*

There is no evidence on the ground that would speak in favour of such an 'asymmetric approach' to the different protected grounds and policy areas

The general population is aware of discrimination against persons belonging to certain groups in areas beyond employment. More than two thirds of Europeans (68 %) see limited access to goods and services as discrimination against people with disabilities and older people,[26] according to the 2012 Special Eurobarometer 393 on discrimination.

FRA research shows that discrimination beyond employment also occurs with respect to other protected grounds such as, for instance, sexual orientation or religion.

The FRA EU LGBT online survey shows that discrimination against LGBT persons outside the area of employment is widespread. In the use of various public services, including housing, healthcare, social services, schools/universities, cafés, restaurant, bars, shops, banks, insurance companies and sport or fitness clubs, 32 % of respondents said they had faced discrimination in at least one of these public services due to their LGBT background (Figure 6). Lesbian women, bisexual women and transgender respondents had faced discrimination more

[26] European Commission (2012*), Discrimination in the EU in 2012*, Special Eurobarometer 393, Brussels, November 2012, p. 7.

often (ranging from 34 % to 39 %) than gay men or bisexual men, an example of gender and sexuality combining to compound experiences of discrimination.

The FRA online survey on Jewish people's experiences and perceptions of discrimination, hate crime and antisemitism found that respondents perceived that the discrimination rate was highest in employment. Beyond this area, 8 % of respondents indicated that they had felt discriminated against by people working in a school or in training in the 12 months before the survey. The percentage of respondents who had felt discriminated against in other areas was lower, falling to 1 %–4 % of respondents depending on the area (including the housing sector, healthcare and various services).

2. Awareness of the right to equal treatment?

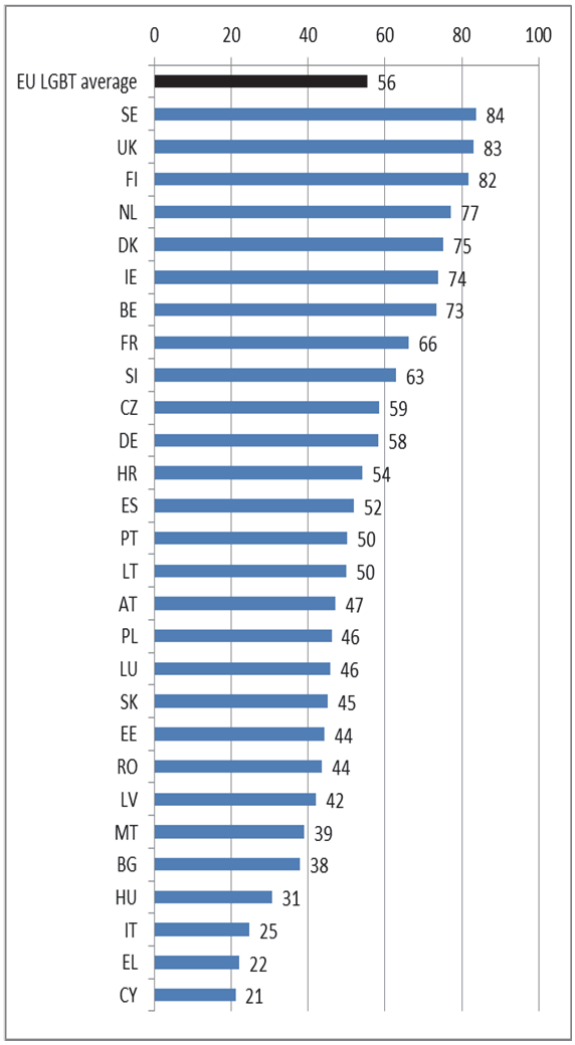
According to the equality directives (Article 10 of the Racial Equality Directive and Article 12 of the Employment Equality Directive), EU Member States shall take care that the provisions adopted pursuant to the directives, together with the relevant provisions already in force in this field, are brought to the attention of the persons concerned, for example to all in employment, throughout their territory, by appropriate means. Government in a democratic society must actively inform the population of legislation that has direct relevance to their lives. The example of passenger rights shows that a plethora of means can be used to this purpose, including posters reminding rights holders of their entitlements, and showing how they can claim compensation, redress and whom to contact.

However, data confirm that rights awareness in the area of discrimination is on average very low among all Europeans. The November 2012 Special Eurobarometer 393 on *Discrimination in the EU* shows that only 37 % of the respondents would know their rights should they fall victim to discrimination or harassment.

Respondents with a disability (34 %) are even less aware of their rights than the general population,[27] according to the same source. FRA's EU LGBT survey identified higher rates of awareness among LGBT people. Online surveys, too, work on the basis of a 'self-selecting sample' which might mean they attract more informed, internet-literate persons. More than half (56 %) of the online survey respondents said that there was a law prohibiting discrimination on the grounds of sexual orientation and gender identity when applying for a job, in the country where they live (Figure 7). Fewer respondents (42 %) were aware of national legislation prohibiting discrimination on the grounds of gender identity. Rates of awareness on anti-discrimination legislation show remarkable divergence, with awareness ranging from 21 % to 84 % of legislation covering sexual orientation, and from 23 % to 64 % on legislation covering gender identity (see Figure 8).

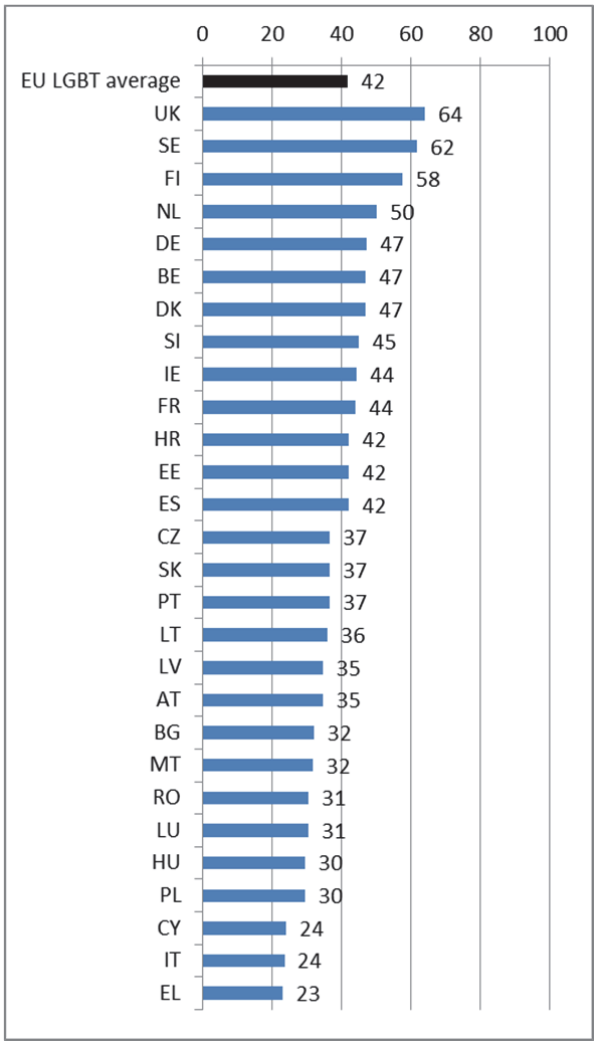
[27] European Commission (2012*), Discrimination in the EU in 2012*, Special Eurobarometer 393, Brussels, November 2012, p. 10.

Figure 7: Awareness about the availability of a law that forbids discrimination against persons because of their sexual orientation when applying for a job (%)



Note: *Base: all LGBT respondents*
Source: *FRA (forthcoming 2013),* EU LGBT survey: Main results, *Luxembourg, Publications Office*

Figure 8: Awareness about the availability of a law that forbids discrimination against persons because of their gender identity when applying for a job (%)



Note: *Base: all LGBT respondents*
Source: *FRA (forthcoming 2013),* EU LGBT survey: Main results, *Luxembourg, Publications Office*

Immigrant and ethnic minority groups have a very low awareness of anti-discrimination legislation, as EU-MIDIS demonstrated. Only 25 % of the survey respondents said that they were aware of anti-discrimination legislation in all three areas surveyed: employment, goods and services and housing.[28] Similarly, according to FRA survey results on Roma

[28] FRA, (2010), *EU-MIDIS Data in Focus report 3: Rights awareness and equality bodies*, Luxembourg, Publications Office, p. 3.

published in 2012, only around 40 % of the Roma surveyed were aware of laws forbidding discrimination towards people from ethnic minority backgrounds when applying for a job.[29]

Additionally, the awareness of the existence of bodies and organisations that offer support to victims of discrimination appears to be very low. EU-MIDIS data show that 80 % of respondents could not think of a single organisation that offered support to victims of discrimination. When given the name of an equality body or equivalent organisation in their Member State, 60 % of the respondents said that they had never heard of it.[30] These results are particularly important for equality bodies and other relevant complaints organisations in EU Member States, as they present clear evidence that some of the groups who are most vulnerable to discrimination are unaware of the existence of the organisations mandated to receive complaints of discrimination.

Research conducted by FRA in 2009 on the impact of the Racial Equality Directive from the viewpoint of social partners revealed important geographical differences in the level of awareness of the Racial Equality Directive and corresponding national legislation. The research consisted of 300 in-person interviews with key actors, including employers, employer organisations, trade unions, trade union federations, national equality bodies and non-governmental organisations (NGOs).[31] It showed that the social partner organisations in the 15 EU Member States that constituted the EU before enlargement in 2004 were generally more aware of the Racial Equality Directive and corresponding national legislation than their peers in the EU Member States that joined the EU in 2004 and 2007. The research also revealed that trade union interviewees generally had a higher awareness and more positive assessment of the Racial Equality Directive and corresponding national legislation than the other key actors interviewed.[32]

The results of the FRA survey on the experiences and perceptions of antisemitism among Jewish people in eight EU Member States show that approximately half of the respondents said that they were aware of laws forbidding discrimination against Jewish people when applying for a job (57 %), entering a shop, restaurant, bar or club (48 %), using healthcare services (52 %) and renting or buying housing (47 %). Two thirds of the respondents (67 %) said that they were aware of an organisation in the country where they lived that offered advice or support for people who have been discriminated against. Two particular types of organisations stood out above all others in this regard – the Jewish organisations specialising in the safety and security of the Jewish community and/or antisemitism and national equality or human rights bodies.[33]

FRA opinion

Evidence collected by FRA indicates that the legal obligation and the resulting political efforts to bring EU anti-discrimination legislation to the public's attention have not raised sufficient awareness to render anti-discrimination legislation an efficient and sufficiently invoked instrument. National and local authorities should therefore substantially intensify

[29] FRA (2012), *The situation of Roma in 11 EU Member States: Survey results at a glance*, 2012 Luxembourg, Publications Office, p. 27.

[30] FRA (2010), *EU-MIDIS Data in Focus report 3: Rights awareness and equality bodies*, Luxembourg, Publications Office, p. 3.

[31] FRA (2010*), The impact of the Racial Equality Directive – Views of trade unions and employers in the European Union,* Luxembourg, Publications Office, p. 7.

[32] *Ibid.,* pp. 6 and 7.

[33] FRA (forthcoming 2013), *Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism,* Luxembourg, Publications Office.

awareness-raising activities, including among bodies that can help to disseminate information such as equality bodies, NGOs, trade unions and employers. Targeting persons who belong to groups most at risk of discrimination, as well as those in a position to commit breaches, such as employers and service providers, may allow for a more effective use of resources.

3. The hurdles preventing people from effective access to justice

The equality directives oblige EU Member States to provide efficient remedies (Articles 7, 8 and 9 of the Racial Equality Directive and Articles 9, 10 and 11 of the Employment Equality Directive). At the level of EU primary law, access to justice is prominent with the right to an effective remedy and to fair trial laid down in Article 47 of the Charter of Fundamental Rights of the European Union. The situation on the ground is, however, problematic as *de facto* access to justice appears to be limited, including in discrimination cases. FRA research has identified a variety of factors preventing access to justice.

Lack of trust in authorities and lack of support

FRA EU-MIDIS data demonstrated that low reporting of incidents of discrimination is not solely due to a lack of rights awareness. There are other contributory reasons. EU-MIDIS data show that across all ethnic and migrant groups surveyed, 82 % of those who were discriminated against in the 12 months preceding the survey did not report their most recent experience of discrimination, either to the place where the discriminatory incident occurred or to a relevant competent authority. The most common reason for not reporting, given by 63 % of the respondents who had felt discriminated against in that time period, was the belief that nothing would happen as a result of reporting the incident.[34] More than one third (36 %) of all victims of discrimination did not report their most recent experience because they did not know how to go about it or where to report it. Finally, 21 % of the victims of discrimination did not report the incident because of the inconvenience and bureaucracy involved, or the amount of time it would have taken to complete the report. [35]

The results of the FRA EU LGBT online survey paint a similar picture. The most frequently cited reason for not reporting a discriminatory incident was respondents' scepticism about whether reporting would make any difference, with 59 % of those not reporting an incident giving this as one of the reasons for not filing a complaint.[36]

FRA studies point to additional reasons which make victims of discrimination reluctant to report, including lack of accessible reporting mechanisms for persons with disabilities or lack of accommodation of language barriers for persons belonging to ethnic minorities. In the context of health, FRA found that alleged victims of discrimination also fear reprisal from healthcare staff.[37]

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[34] FRA (2009), *EU-MIDIS European Union Minorities and Discrimination Survey. Main results report*, Vienna, FRA, p. 13.

[35] FRA (2010), *EU-MIDIS Data in Focus report 3: Rights awareness and equality bodies,* Vienna, FRA, available at: http://fra.europa.eu/sites/default/files/fra_uploads/854-EU-MIDIS_RIGHTS_AWARENESS_EN.PDF, p. 3.

[36] FRA (forthcoming 2013), *EU LGBT survey: Main results*, Luxembourg, Publications Office.

[37] FRA (2013), *Inequalities and multiple discrimination in access to and quality of healthcare*, Luxembourg, Publications Office, p. 92; FRA (2012), *Access to justice in cases of discrimination in the EU – Steps to further equality*, Luxembourg, Publications Office, p. 56.

A 2012 FRA report on access to justice in cases of discrimination identified a variety of obstacles to victim support.[38] Among these are scarce human, financial and time resources of those providing legal advice and assistance as well as limited accessibility to and availability of a lawyer to provide legal advice and assistance. Costs of legal advice and assistance and strict criteria governing legal aid also pose obstacles. Moreover, scarce resources of equality bodies and intermediaries also limit the potential of these entities, as do more interpersonal factors such as a lack of understanding of what should be involved in support to victims of discrimination, including emotional, personal and moral aspects. Formal provision of emotional, personal and moral support could reduce risks involved in providing other forms of support through staff taking on responsibilities beyond the call of duty in areas where they are not necessarily adequately trained or supported.

Given these results, the FRA report on access to justice in cases of discrimination identified the following elements as enabling factors for rights awareness, a fundamental rights culture and accommodating diversity:[39]

- availability and accessibility of legal advice and assistance at all stages of the process from navigating the system to dealing with a decision on the case;
- systems of cross-referral between organisations providing legal support as well as cross-referral with and outreach to organisations which provide emotional, personal and moral support;
- in-person counselling;
- qualifications of staff providing legal support and skills which encompass legal knowledge, case law and capacity to engage with the diversity of people experiencing discrimination, including employment of a diverse staff and use of inter-disciplinary teams;
- quality of the relationship developed by a counsellor/lawyer with the complainant;
- an explicit provision of emotional, personal and moral support to complainants by equality bodies or intermediaries.

Procedural and institutional complications

FRA research has also shown that the complexity of legal procedures[40] can pose a barrier to accessing justice, and that it has implications for the costs of procedures. The research identified, for example, specific procedural formalities and requirements in the legislation of six EU Member States that often limited access to justice in these countries.[41] These restrictive requirements concern either the form or content of introductory documents needed to initiate court proceedings and/or to specific pre-trial procedural steps again required to start court proceedings.

A 2012 FRA report on *Access to Justice in cases of discrimination in the EU – Steps to further equality* stressed that in some instances the system for fighting discrimination suffers from certain institutional shortcomings, for example, excessive complexity. Among these were complainants' difficulties in determining which path, among many, to take to access justice. The complexity of definitions and provisions in equal treatment legislation

[38] FRA (2011), *Access to justice in Europe: an overview of challenges and opportunities*, Luxembourg, Publications Office, pp. 58 and 59.
[39] *Ibid.*, p. 60.
[40] FRA (2011), *Access to justice in Europe: an overview of challenges and opportunities*, Luxembourg, Publications Office, p. 3.
[41] *Ibid.*, p. 43.

and, for some Member States, the complexity caused by differing equality provisions at federal and at provincial level also appeared to create a hurdle. Another factor is the lack of institutions with a mandate in relation to some of the grounds covered by EU equality directives and the hierarchy between grounds generated by this discrepancy: for ethnic discrimination alone is the existence of an equality body compulsory. Finally, the geographical distance to complaints bodies can have a negative effect on access to justice. To address these issues, FRA identified the following enabling factors to assist people in accessing justice:[42]

- access to legal advice prior to lodging a complaint to enable an effective navigation of the justice system and identification of best entry point;
- support of regional or local organisations by the equality body; cooperation between equality body and NGOs or community organisations;
- cooperation agreements and cross-referral systems between institutions to support complainants in navigating the justice system;
- outreach services by equality bodies through regional offices, cooperation with NGOs or intermediaries.

The FRA report on access to justice also identified procedural obstacles to accessing justice in discrimination cases.[43] Among these was the lack of accessible information on existing case law. Limited legal standing, insufficient guarantees of equality of arms for complainants *vis-à-vis* defendants, and limited application by judges of the shift in the burden of proof also undermines such access. Moreover, where there is in general an insufficient level of sensitivity and not enough is done in order to protect complainants and witnesses from victimisation, access to justice is equally endangered. Overly lengthy procedures in the system of justice also play a major role, as does uncertainty among complainants at the outset of a case about the length of the procedure. Where some quasi-judicial-type equality bodies do not have the means to issue binding decisions or where there is a lack of suitable tools beyond penalties and compensation or insufficient powers to remedy a situation, such as to reinstate people to their pre-discrimination situation, access to justice is also hindered. Similar factors are the low levels of compensation awarded, limited follow-up on the enforcement of decisions or rigid rules of procedures that are less suitable for cases of discrimination. Insufficient resources available for equality bodies and other institutions with an equality remit are also reducing the potential to fight discrimination.

In regard to such procedural hurdles, the FRA report identified the following enabling factors that can enhance access to justice in discrimination cases:[44]

- widen legal standing, such as for collective redress, public interest litigation, and strategic litigation, allowing for a critical mass of cases to achieve change;
- ensure effective equality of arms and speedy resolution of cases; including the improvement of the access of complainants to relevant information and documentation held by the opposing side;
- support judges in understanding and applying the shift of burden of proof and in developing further sensitivity to issues of diversity and discrimination;

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[42] FRA (2012), *Access to justice in cases of discrimination in the EU – Steps to further equality*, Luxembourg, Publications Office, p. 40.

[43] For an overall view on discrimination case law, see FRA (2011), *Handbook on European non-discrimination law*, Luxembourg, Publications Office, available at: http://fra.europa.eu/en/publication/2011/handbook-european-non-discrimination-law.

[44] FRA (2012), *Access to justice in cases of discrimination in the EU – Steps to further equality*, Luxembourg, Publications Office, pp. 46 and 47.

- provide legal and other protection against victimisation and sufficient awareness-raising in this regard;
- enhance capacities of equality bodies by: improved powers of investigation, enforcement and follow-up; enhanced and secured independence of equality bodies to boost credibility and effectiveness; allowing quasi-judicial-type equality bodies to issue binding decisions;
- resource relevant institutions in the justice system adequately;
- simplify procedures to make them more adaptable and swift;
- inform the complainant at an early stage in the process as to how long the case will take and develop systems to make relevant case law sufficiently accessible; and
- provide equality bodies and other institutions with an equality remit with a range of tools that make sanctions and enforcement effective, including dissuasive sanctions, proportionate compensation and powers to make relevant orders to improve the situation of the claimant and others in similar circumstances.

A FRA report on NHRIs in the EU Member States called for a coherent human rights 'architecture' at national level. The report calls upon the EU and its Member States to "jointly support all national monitoring bodies, including equality bodies and data protection authorities, to explicitly comply with the relevant Paris Principles and their authoritative interpretation". To the extent that existing ombudsmen are not also serving as NHRIs, their independence and mandate should be revisited with a view to compliance with the Paris Principles. Moreover, when adding specific mandates under various EU directives, consideration should also be given to promoting existing NHRIs as an alternative to the establishment of new specialised bodies, while ensuring that enlarged mandates are matched with enhanced capacity. Such an approach would allow for a visible and effective overarching NHRI that can act as a hub to ensure that gaps are covered and that all human rights are given due attention.[45]

Legal time constraints on filing discrimination cases

Member States are obliged to provide remedies to victims of discrimination to enforce their rights. The equality directives emphasise, however, that this obligation does not affect national time limits stipulating by when actions must be brought before the court.[46] Time limits are in theory designed to ensure legal certainty and finality, but they also have the potential to hinder access to justice. A balance must thus be struck. In any event, and according to well-established CJEU case law, time limits may not prevent the right to proceed before a court.[47]

[45] FRA (2010), *National Human Rights Institutions in the EU Member States*, Luxembourg, Publications Office, p. 9.

[46] Art. 7 (3) of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial and ethnic origin, OJ 2000 L180; and Art. 9 (3) of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, OJ 2000 L 303.

[47] Court of Justice of the European Union (CJEU), C-45/76*, Comet BV v. Produktschap voor Siergewassen*, 16 December 1976; CJEU, C–208/90, *Theresa Emmott v. Minister for Social Welfare and Attorney General*, 25 July 1991; CJEU, C–410/92, *Elsie Rita Johnson v. Chief Adjudication Officer*, 6 December 1994 and, more recently, CJEU, C–63/08, *Virginie Pontin v. T-Comalux SA,* 29 October 2009, Case C–246/09*, Susanne Bulicke v. Deutsche Büro Service GmbH*, 8 July 2010, CJEU, C–406/08, *Uniplex (UK) Ltd v. NHS Business Services Authority*, 28 January 2010.

In 2010, FRA conducted research exploring access to justice in the area of discrimination across the 27 EU Member States.[48] Unnecessarily strict time limits on bringing claims to courts surface as a key concern that impedes the accessibility of justice in the EU for cases of discrimination. This concern was an issue in 22 EU Member States.[49]

Two types of limitation periods in this area of law were evident in EU Member States, the first is applicable to general civil law claims and the second to specific areas of the law, for example, cases of discrimination in employment. Limitation periods for general civil law claims range on average from between three and five years, with the exception of Poland, Belgium and the Netherlands, where this period runs to 10, 20 and 30 years, respectively.[50] Unlike limits on general civil law matters, the periods applicable in cases of employment discrimination are usually much shorter – in some cases as short as eight days. Although extremely short time limits apply, the less formalistic procedures used in employment cases in some Member States balance, to a certain extent, the restrictive nature of these time limits. Restrictive time limits may, however, hinder the effectiveness of judicial protection granted to victims of discrimination.

Legal standing

National law also defines the capacity of a party to file a lawsuit or bring a particular legal claim before a court. The conditions limiting a party's capacity to bring a claim must, however, be in accordance with the general EU principle of effective judicial protection. Two relevant aspects are important to mention.

A first aspect concerns the legal capacity of individuals. Legislation on legal standing in 10 EU Member States does not enable individuals to bring claims before a court unless they have full legal capacity and are directly concerned in the matter.[51] For a person with a psychosocial or intellectual disability this can pose a serious obstacle to accessing the protection afforded by the equality directives, a FRA study carried out between November 2010 and July 2011 in nine EU Member States revealed.[52] FRA found that, despite the obligations following from Article 13 of the CRPD, access to justice for persons with disabilities is problematic. Restrictions relating to legal capacity form one of the barriers for persons with mental health problems and persons with intellectual disabilities in accessing justice, including when they want to appeal against a guardianship measure.[53]

A second aspect relates to the standing of associations, organisations and other legal entities to seek redress in courts. The Racial Equality Directive (Article 7) and the Employment Equality Directive (Article 9) oblige Member States to determine, in accordance with national law, which associations, organisations or other legal entities may engage in judicial or administrative proceedings on behalf of or in support of victims, with the victim's permission. Such associations may include NGOs, trade unions or equality bodies.[54] The role of such civil society organisations or equality bodies is particularly

[48] FRA (2011), *Access to justice in Europe: an overview of challenges and opportunities,* Luxembourg, Publications Office, p. 14.
[49] *Ibid.,* p. 38.
[50] *Ibid.,* pp. 38 and 39.
[51] *Ibid.,* pp. 38–40.
[52] FRA (2012), *Choice and control: the right to independent living*, Luxembourg, Publications Office.
[53] FRA (2013), *Legal capacity of persons with intellectual disabilities and persons with mental health problems*, Luxembourg, Publications Office.
[54] FRA (2011), *Access to justice in Europe: an overview of challenges and opportunities*, Luxembourg, Publications Office, p.39.

valuable in facilitating the enforcement of discrimination law for three reasons. Their participation may, for example, help to reduce the financial and personal burden on individual victims, giving them greater access to justice.[55] They may also, particularly where the permission of the victim is not required, help enhance enforcement of the directive since members of ethnic minorities are often unaware of their rights or available procedures and may be unwilling to pursue claims.[56]

Finally, if claims can be brought even in the absence of an identifiable victim, such organisations can choose to pursue cases on a strategic basis to address practices that result in discrimination against large numbers of individuals.[57] This latter is possible because the CJEU clarified in the *Feryn* case that EU Member States may also adopt more generous legal standing rules, allowing claims to be brought without the permission of the victim, or even where no identifiable victim exists.[58] However, almost half of the EU Member States do not entitle trade unions to represent victims in all dispute settlement forums.[59] Trade unions in some Member States provide financial assistance to cover the legal costs of those involved in disputes. In Finland, France and Italy, employee representatives and trade unions play a central role in passing on information about where to look for legal advice and assistance.[60] Only 11 EU Member States allow trade unions, subject to the satisfaction of certain criteria, to initiate legal proceedings. In Cyprus, Hungary and Italy, trade unions are entitled to initiate claims of a 'collective' nature; these are claims that either affect a large number of individuals or where there is no identifiable victim.[61] In Denmark, Finland, Sweden and the United Kingdom, no special rules appear to regulate associations in bringing cases concerning discrimination to court.[62] Individual lawyers working for associations such as NGOs or trade unions may represent victims, where they have permission from the victim. In other Member States, specific rules exist. NGOs are, for example, able to provide legal representation or initiate court proceedings either on behalf of the victim or on behalf of the NGO itself in many Member States. NGOs are able to bring cases to court without the consent of the victim in certain circumstances, for example in Bulgaria, Hungary, Italy and Slovakia. In other Member States, the consent of the victim is required, for example in Latvia, Lithuania and Spain (except employment cases in Spain).[63] In other Member States, it appears that the standing of NGOs is more limited, either in appearing before particular bodies or concerning the right of third-party intervention.

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55 FRA (2012), *The Racial Equality Directive: application and challenges,* Luxembourg, Publications Office,
56 *Ibid*., p. 14.
57 *Ibid.*
58 CJEU, Case C-54/07, *Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryn VN*, [2008] ECR I-5187.
59 FRA (2011), *Access to justice in Europe: an overview of challenges and opportunities,* Luxembourg, Publications Office, p. 39.
60 FRA (2012), *Access to justice in cases of discrimination in the EU – Steps to further equality*, Luxembourg, Publications Office, p. 50.
61 FRA (2011), *Access to justice in Europe: an overview of challenges and opportunities*, Luxembourg, Publications Office, p. 39.
62 *Ibid.*
63 *Ibid.*

Length of proceedings and legal costs

The overall length of proceedings has implications for access to justice. The right to a reasonable length of proceedings is a fundamental right protected by both Article 6 of the ECHR and Article 47 of the Charter of Fundamental Rights.[64]

More than a quarter of complainants in the FRA study, *Access to justice in cases of discrimination in the EU – Steps to further equality*, brought up the length of procedures as a weak point of justice. The report also shows that representatives of institutions and intermediaries argue that lengthy procedures dissuade people from lodging complaints.[65] FRA research shows that across the EU-27, the procedures in non-discrimination cases, as for civil cases in general, are lengthy for a variety of reasons.[66]

In the eight EU Member States investigated, FRA findings suggest that high legal costs, which mainly consist of attorney and court fees, often prevent access to justice.[67] The lawyers interviewed as part of the research stressed the importance of the cost of legal advice,[68] indicating that many of their complainants lack financial resources and they cannot afford the costs of legal advice or assistance.[69] This is of special relevance where the persons concerned do not have sufficient means available due, for example, to unemployment, and where the value of the claim is low. The analysis of relevant case law of these Member States has indeed shown that the fear of incurring costs can help determine whether a victim of discrimination decides to pursue justice, especially given the prevalence of the 'loser-pays' rule in the EU, under which the losing party pays the winning party's costs. Some national courts are therefore left a certain leeway in deciding whether or not to order the payment of legal costs. Depending on the individual's financial situation as well as the merits of the dispute, they may decide to completely or partially relieve a party from legal costs. The person may also receive other types of legal aid from the state, such as the appointment of a lawyer for representation in judicial proceedings.[70]

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[64] CJEU, C-185/95, *Baustahlgewebe GmbH v. Commission of the European Communities*, 17 December 1998; ECR I-08417 CJEU, C-500/10, *Ufficio IVA di Piacenza v. Belvedere Costruzioni Srl*, 29 March 2012, report not yet published.

[65] FRA (2012), *Access to justice in cases of discrimination in the EU – Steps to further equality*, Luxembourg, Publications Office, p. 46.

[66] FRA (2011), *Access to justice in Europe: an overview of challenges and opportunities*, Luxembourg, Publications Office, p. 41.

[67] *Ibid.,* pp. 39 and 42; and FRA (2012), *Access to justice in cases of discrimination in the EU – Steps to further equality*, Luxembourg, Publications Office, p. 58.

[68] *Ibid.*, p. 50.

[69] *Ibid.*

[70] FRA (2011), *Access to justice in Europe: an overview of challenges and opportunities,* Luxembourg, Publications Office, p. 42.

Table 1: Number of ECtHR judgments in 2012 and violations related to fair trial and the length of procedure, by EU Member State and Croatia*

	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	HR	Total
ECtHR judgments finding at least one violation**	10 (7)	6 (7)	58 (52)	0 (1)	10 (19)	11 (31)	0 (1)	2 (3)	52 (69)	8 (9)	2 (5)	19 (23)	24 (33)	2 (2)	36 (34)	7 (9)	1 (1)	10 (10)	1 (9)	5 (4)	56 (54)	22 (27)	70 (58)	4 (0)	20 (11)	21 (19)	10 (8)	19 (23)	486 (529)
Violations of the right to a fair trial	0 (0)	1 (2)	8 (2)	0 (0)	2 (13)	1 (0)	0 (0)	1 (1)	1 (6)	3 (4)	0 (0)	3 (11)	0 (4)	0 (0)	3 (7)	2 (3)	0 (1)	1 (0)	0 (3)	2 (1)	1 (14)	5 (1)	13 (9)	0 (0)	0 (1)	1 (2)	0 (3)	2 (8)	50 (96)
Violations of length of proceedings	3 (5)	1 (0)	17 (21)	0 (1)	0 (2)	0 (19)	0 (0)	0 (0)	35 (50)	1 (1)	0 (2)	0 (2)	9 (19)	2 (2)	16 (16)	1 (5)	1 (0)	2 (1)	0 (3)	0 (0)	6 (15)	17 (13)	10 (10)	0 (0)	13 (6)	11 (5)	1 (1)	5 (3)	151 (202)

*Notes: * Croatia joined the EU on 1 July 2013.*

*** ECtHR judgments finding at least one violation by an EU Member State, or concerning two EU Member States: Italy and Bulgaria (2012), Greece and Germany (2012).*

The number of cases in 2011 is in parenthesis.

The five highest numbers of violations are highlighted in blue.

Source: Council of Europe/ECtHR, Annual Report 2012, p. 152

The legal aid systems of most Member States are based on state 'contributions' as opposed to 'state pays all' funding. In the former, applicants are required to contribute towards costs, with the amount to be contributed typically dependent on the individual's income. In some countries, such as Ireland, the law establishes an obligatory minimum which an individual must pay in order to be provided with legal advice.[71] Hungary has created special funds that provide legal aid for Roma.[72] The provision of legal aid in most Member States does not, however, outweigh the considerable risk of being obligated to pay the opposing party's litigation costs if the case is lost.

Low levels of compensation and legal assistance

Damage compensation in civil law systems rarely extends compensation beyond loss of income or out-of-pocket expenses to non-material or non-pecuniary damages. Low compensation awards in discrimination cases, for example, persuade many alleged victims of discrimination in healthcare to initiate other types of legal action, such as tort actions on grounds of medical negligence, a FRA study published in 2013 shows.[73]

This tendency can be exemplified by the comment made by a legal expert in health/equality law from Italy: "We as lawyers try to go straight to the point, to find a solution to the situation of the client. Especially in health matters, if there is a mistake, a negligence, the possibility of claiming objective damage compensation because the doctors have erred, we don't 'lose time' trying to demonstrate that this victim was also black, gay,

[71] FRA (2011), *Access to justice in Europe: an overview of challenges and opportunities,* Luxembourg, Publications Office, p. 49.

[72] *Ibid.,* p. 50.

[73] FRA (2013), *Inequalities and multiple discrimination in access to and quality of healthcare*, Luxembourg, Publications Office, p. 86.

etc., because this would bring minimal added value. […] I would address the problem of discrimination only when there is urgency, but never in a regular lawsuit."[74]

Both directives require sanctions to be not only effective and proportionate but also dissuasive. Very low levels of compensation awarded to victims send a double message: first, that social and legal penalties for discrimination are mild and second that it is counterproductive to pursue legal claims as the costs might well exceed the compensation awarded. Consequently, these issues encumber the fulfilment of the equality directives and contradict both their wording and spirit.

Interviews with legal professionals point to a number of elements which militate against initiating claims of discrimination on multiple grounds: the so-called 'single-ground approach' which laws or courts in many states have adopted;[75] the increased 'burden of proof' of proving more than one ground; and the problems related to finding a suitable comparator in cases involving more than one ground. These barriers, compounded by the lack of higher compensation for multiple discrimination cases, discourage lawyers from bringing such cases to court. Generally, providing higher compensation in multiple discrimination cases would constitute an incentive for victims and their lawyers to pursue multiple discrimination claims before courts and hence render anti-discrimination law more efficient.

With regard to legal assistance, it is important to recall that EU equality law obliges EU Member States to create 'equality bodies'. In a few Member States, these bodies may ensure the representation of private individuals pursuing remedies through the courts, for example in Hungary and the United Kingdom.[76] In approximately one third of EU Member States, equality bodies may themselves initiate court proceedings either in the victim's and/or their own name, though sometimes the consent of the victim is required.[77] In Belgium, Hungary and Ireland the equality bodies may bring claims regarding patterns of discrimination, or as a public interest action, addressing potentially widespread discrimination where there is no identifiable victim.[78] Representatives of equality bodies and intermediaries themselves characterised the non-binding nature of some equality bodies' decisions as a major weak point of the justice system.[79] Some equality bodies, as well as NGOs, seem to offer legal advice to everyone as long as the case falls within their mandate. In the framework of the FRA study, representatives of equality bodies in six of the eight EU Member States studied – Belgium, Bulgaria, the Czech Republic, Finland, Italy and the United Kingdom – identified a number of criteria they use to decide whether or not to provide complainants with legal advice. Such criteria included, most importantly, strategic litigation, under which key cases are pursued in order to set a precedent. In Belgium, two other criteria played a role: namely, the alleged discrimination should have taken place in an under-reported area and the complainant should belong to an under-

[74] *Ibid.,* p. 87.
[75] *Ibid.,* p. 79.
[76] FRA (2012), *The Racial Equality Directive: application and challenges*, Luxembourg, Publications Office, p. 11; FRA(2012), *Access to justice in cases of discrimination in the EU – Steps to further equality*, Luxembourg, Publications Office, p. 50.
[77] FRA (2012), *The Racial Equality Directive: application and challenges*, Luxembourg, Publications Office, p. 11.
[78] FRA (2011), *Access to justice in Europe: an overview of challenges and opportunities*, Luxembourg, Publications Office, p. 39.
[79] FRA (2012), *Access to justice in cases of discrimination in the EU – Steps to further equality*, Luxembourg, Publications Office, p. 46.

represented group.[80] Equality bodies also took into consideration the credibility of the case, the chances of success, the strength of the evidence and available institutional resources.

FRA opinion

FRA studies have identified various factors that limit access to justice in discrimination cases. EU Member States could therefore consider widening access to complaints mechanisms, including by: broadening the mandate of equality bodies that are not currently competent to act in a quasi-judicial capacity; relaxing the rules on legal standing for NGOs and other civil society organisations; increasing funding for voluntary organisations in a position to assist victims. Since victims are often reluctant to bring claims, allowing civil society organisations, including equality bodies, to bring claims to court or conduct investigations, either without the consent of a victim or without an identifiable victim, could help facilitate enforcement.

The degree to which complaints procedures fulfil their role of repairing damage done and acting as a deterrent for perpetrators depends on whether dispute settlement bodies are able to issue effective, proportionate and dissuasive sanctions. Trade unions have highlighted that sanctions, in the context of employment discrimination are often easily absorbed by perpetrators, and this raises questions about the adequacy of available remedies.

EU Member States should encourage equality bodies, National Human Rights Institutes (NHRIs) and other relevant bodies to cooperate when these entities are not one and the same. Such a coherent architecture at national level makes it possible to avoid the excessive complexity that is prejudicial to effective access to justice.

4. Data collection in the EU Member States

National authorities, EU policy and decision makers and civil society at large need a solid, broad and reliable body of knowledge depicting the current situation and how it is evolving. Data collection repeated at regular intervals can show trends over time.

Data collection is particularly crucial for the development of effective policies to promote equality and tackle discrimination, by:

- guiding policy and legal developments;
- assessing the effectiveness of national anti-discrimination legislation;
- revealing patterns suggestive of discrimination;
- developing positive action policies;
- monitoring the national situation and workplace practices;
- assessing the effectiveness of Member States' and equality bodies' awareness and sensitivity-raising activities.

The preambles of the two equality directives explicitly refer to the possibility of establishing indirect discrimination "by any means including on the basis of statistical evidence". Both the CJEU and the ECtHR have accepted statistical data as evidence capable of giving rise to a presumption of discrimination; in the Netherlands and the United Kingdom such a use is well established.[81] In the majority of Member States, however, this

[80] *Ibid.*, p. 51.
[81] FRA (2011), *Access to justice in Europe: an overview of challenges and opportunities*, Luxembourg, Publications Office, pp. 90 and 91.

practice remains uncommon: data on discrimination are not collected for statistical purposes that could reveal patterns of discrimination.

There is a wide range of data sources that can be used in the context of anti-discrimination legislation, including, official statistical sources, administrative registers, complaints data, academic research and workplace diversity monitoring. In practice, however, many erroneously consider that the collection, production, analysis and dissemination of official statistics relating to anti-discrimination conflicts with the prohibition on the processing of special or sensitive categories[82] of personal data as defined in Directive 95/46/EC.[83]

Official complaints data are another form of baseline data on discrimination. These complaints could include formal complaints filed with the police, courts of law, tribunals and equality bodies with competence to investigate claims of discrimination. FRA research has shown that few Member States collect or publish data on the number of cases on ethnic discrimination or of religiously motivated hate crime, as well as other grounds of hate crime, lodged with a court. Where data on cases involving discrimination law are collected, the results are not always disaggregated by grounds. Moreover, the number of complaints in the area of discrimination remains very limited in a number of Member States. This is particularly the situation for cases relating to racial or ethnic discrimination which go through the courts. In contrast, equality bodies often catalogue the number of complaints they receive. Again, Member States have, however, recorded very few complaints. The equality bodies in Estonia, Luxembourg, Malta, Portugal, Romania, the Slovak Republic and Slovenia registered fewer than 20 complaints each in 2008. At the other end of the scale, the French equality body registered over 3,009 cases in 2009.[84] Other equality bodies received more than a few hundred complaints in 2008 or 2009, including equality bodies in Belgium, Ireland and Sweden. Even when taking population differences into account, the divergences are substantial.

The diversity of approaches to the collection of discrimination cases can be illustrated, for instance, by the way in which equality bodies record multiple discrimination. Research conducted by FRA in 2011[85] shows that equality bodies in seven EU Member States (Austria, Belgium, Hungary, Luxembourg, Portugal, Slovenia and the United Kingdom) record cases involving more than one ground of discrimination as a distinct category, thereby giving an indication of the number of cases where multiple discrimination is alleged. The equality bodies in Hungary, Luxembourg, Slovenia and the United Kingdom collect specific data on multiple discrimination, despite the lack of provisions in national legislation targeting multiple discrimination. Equality bodies in six other EU Member States (Bulgaria, Germany, Greece, Italy, Poland, and Romania) do not collect data on multiple discrimination, although legislation on multiple discrimination is in place in these Member States. In Greece, the law transposing the non-discrimination directives does not explicitly prohibit multiple discrimination; however, labour inspectors, who monitor the application of this law in the private sector, are required to take such cases into account.

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82 See Art. 8 of Directive 95/46 /EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

83 FRA (2012), *Opinion of the European Union Agency for the Fundamental Rights on the Proposed Data Protection Reform Package*, available at: http://fra.europa.eu/sites/default/files/fra-opinion-data-protection-oct-2012.pdf, p. 23.

84 FRA (2011), *Fundamental rights: challenges and achievements in 2010*, Annual report, Luxembourg, Publications Office, pp. 33 and 34; France, Equal Opportunities and Anti-Discrimination Commission (*Haute autorité de lutte contre les discriminations et pour l'égalité*, HALDE) (2009), *Annual Report*, p.15, available at: http://halde.defenseurdesdroits.fr/IMG/pdf/Halde_annual_report_2009.pdf.

85 FRA (2012), *Fundamental rights: challenges and achievements in 2011*, Annual report 2011, Luxembourg, Publications Office, p. 127.

Against this background, it becomes obvious that the comparability of complaints data across the EU is very limited. Moreover, complaints data represent only the 'tip of the iceberg' and do not fully reflect the actual number of cases of discrimination on the ground. Finally, there is an absence of official statistics disaggregated by ethnicity and other protected grounds such as age, sexual orientation or disability. Nevertheless, various research instruments such as minority population surveys, attitude surveys, qualitative research methods and discrimination testing, which are practical tests comparing how individuals are treated in real life situations, provide means to measure discrimination, as recent FRA Annual reports show.

A number of Member States have explored the possibility of extending existing census and surveys to specifically cover ethnic and national minorities. This would be an important development in the effort to record, identify and analyse discriminatory practices. Discrimination testing is one possible approach for Member States to identify barriers to employment and access to services including housing for ethnic minorities. More than a third of Member States presently allow for 'discrimination testing', subject to certain criteria, to be used to examine and prove the existence of discrimination (Belgium, Bulgaria, the Czech Republic, Finland, France, Hungary, Latvia, the Netherlands, Sweden and the United Kingdom).[86] At the international level, data collection is stressed as a useful component in the fight against ethnic discrimination. Under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) to which all EU Member States are a party, Member States are invited to regularly report on the "demographic composition" of their population by providing "information on race, colour, descent and national or ethnic origin".[87]

Article 31 of the CRPD, requiring State Parties to collect appropriate information that support the formulation of anti-discrimination policies for persons with disabilities, is another example of an international provision that has the potential to inspire amendments to data collection legislation for wider anti-discrimination purposes. These statistical and research data should be collected in compliance with data protection legislation.[88]

It is permitted, under certain conditions, to collect sensitive data for anti-discrimination purposes. The European Commission's proposal for a General Data Protection Regulation COM(2012) 11 final prescribes a new exception that enables the collection of sensitive data where it is "necessary for historical, statistical or scientific research purposes and subject to the safeguard referred to in Article 83".[89] As argued in the FRA opinion on the

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[86] FRA (2012), *Access to justice in Europe: an overview of challenges and opportunities*, 2011 Luxembourg, Publications Office, pp. 90 and 91.

[87] See CERD (1999), general recommendation XXIV on the Reporting of persons belonging to different races,national/ethnic groups, or indigenous peoples (Art. 1).

[88] To date, 23 EU Member States and the EU have ratified the CRPD. Article 31 of the CRPD states:
"1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall: (a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;
(b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.
2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights."

[89] European Commission (2012), *Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data* (General Data Protection Regulation), COM(2012) 11 final, Brussels, 25 January 2012 (hereafter

data protection package, it would be advisable to clarify the place of sensitive categories in anti-discrimination data collection. This provision could make explicit that the collection of sensitive data is allowed for the purpose of combating discrimination based on the grounds as listed in Article 21 of the Charter of Fundamental Rights of the European Union.[90]

FRA opinion

Without the collection of disaggregated data it is difficult to develop policies to prevent discrimination and promote equality, as FRA has repeatedly underlined. The lack of disaggregated data makes it difficult to identify where problems exist, and to measure the success of steps to combat discrimination. EU Member States' systematic data collection would greatly facilitate the implementation of the EU obligation under Article 10 of the Treaty on the Functioning of the European Union (TFEU) to combat discrimination whenever "defining and implementing its policies and activities" as well as the establishment of common EU-wide indicators. Such data are often also needed to prove claims of indirect discrimination.

In fact, Special Eurobarometer 263 on Discrimination in the European Union *shows that "on average, there is a broad degree of willingness among the European public to provide personal information as part of a census on an anonymous basis to combat discrimination."*[91] *This is also the case for persons belonging to minorities as shown in FRA's European Union Minorities and Discrimination Survey (EU-MIDIS). Of the 23,500 persons with an ethnic minority or immigrant background interviewed, 65 % said they would be willing to provide information on an anonymous basis about their ethnicity as part of a census if that could help to combat discrimination.*[92]

Against this background, it appears both timely and feasible that Member States collect appropriate information that supports the formulation of anti-discrimination policies. This would be in line with the international standards as laid down, for example, in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the United Nations Convention on the Rights of Persons with Disabilities (CRPD). EU data protection legislation that is currently under negotiation could clarify the place of sensitive categories in anti-discrimination data collection, and make explicit that the collection of sensitive data is allowed for the purpose of combating discrimination based on the grounds as listed in Article 21 of the Charter of fundamental rights of the European Union.

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draft Regulation). Article 9 (2) (i) of the draft Regulation. Article 83 of the draft Regulation regulates the processing of data for historical, statistical and scientific research.

90 See FRA (2012), *Opinion of the European Union Agency for Fundamental Rights on the Proposed Data Protection Reform Package*, available at: http://fra.europa.eu/sites/default/files/fra-opinion-data-protection-oct-2012.pdf; see also draft Art. 6 of the modernised Convention 108. See Consultative Committee on Modernisation of the Convention 108, p. 14.

91 Three quarters of EU citizens would be willing to provide personal information about their ethnic origin (75 %) and their religion or beliefs (74 %). Willingness to provide information about one's sexual orientation (65 %) and health situation (71 %) is only somewhat less widespread. See European Commission (2007), *Discrimination in the European Union,* Special Eurobarometer 263, available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_263_en.pdf, p. 28.

92 FRA (2009), *EU-MIDIS European Union Minorities and Discrimination Survey. Main results report*, 2009, Luxembourg, Publications Office, p. 272.

5. The current *acquis* as a mere minimum standard

The equality directives set minimum EU-level standards for Member States to guarantee equal treatment, thereby leaving it up to the States themselves to go beyond the standard requirements. This has led to a rather diverse picture at national level, although most EU Member States go beyond the obligations EU law prescribes. Evidence gathered by FRA shows that legal standards and commitments set at national level are constantly evolving, creating a favourable environment in which to discuss how to ensure an EU-wide level-playing field encompassing the pioneering solutions that some Member States have adopted.

EU Member States may, for example, add grounds that are protected under national equality legislation. For, whereas the equality directives address only racial and ethnic origin and religion or belief, disability, age and sexual orientation, Article 21 of the Charter of Fundamental Rights sets a more wide-reaching prohibition of 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". In addition, Member States may add not only grounds but also areas of protection beyond those addressed in the equality directives. There is large scope, for instance, to provide protection beyond the Employment Directive, which covers discrimination only in the area of employment. Member States may also make use of the discretion the directives provide to maintain or adopt "specific measures to prevent or compensate for disadvantages linked to any of the grounds" with a view to "ensuring full equality in practice".[93]

Finally, EU Member States may choose to streamline and coordinate their legal and policy tools to make their action against discrimination more effective. This often takes the form of strategies, roadmaps or action plans.

The grounds protected

There are a variety of differences across the EU Member States with regard to the scope of protection provided for different grounds. Some Member States go beyond what is required by current EU legislation thereby creating a trend towards an increased scope of protection. For instance, in 2010, FRA looked into the situation at the national level and identified twelve Member States where national legislation contained an explicit prohibition of discrimination on grounds of gender identity, either as an autonomous ground or as a form of sex discrimination (Austria, Belgium, Czech Republic, Denmark, Finland, France, Hungary, Ireland, the Netherlands, Sweden, Slovakia and the United Kingdom). Only two years earlier the Czech Republic, Sweden and the United Kingdom were not yet part of this group as was evidenced by a 2008 comparative legal analysis conducted by FRA.

By now many EU Member States provide increased protection in all the areas of life covered by the Racial Equality Directive:[94] not only do these Member States outlaw discrimination based on protected grounds mentioned in the Employment Directive but

[93] See, for example: Art. 7 of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, OJ 2000 L 303, and Art. 5 of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial and ethnic origin, OJ 2000 L180.

[94] Information provided to FRA through its network of National Liasion Officers (NLOs, August 2013).

some also forbid discrimination based on additional grounds listed in Article 21 of the Charter of Fundamental Rights.

Of the Article 21 grounds, Member State legislation most frequently bans discrimination based on sex. More than half the Member States outlaw discrimination based on sex in all the areas covered by the Racial Equality Directive. More than a third of the Member States ban discrimination based on political or other opinion in all the areas of life covered by the Racial Equality Directive. A large group of Member States does the same for discrimination based on social origin, language, birth, genetic features and property. In addition, many Member States provide for protection against discrimination based on such additional grounds, not in all the areas covered by the Racial Equality Directive, but in selected areas beyond employment such as education.

Moreover, the majority of Member States cover in some areas even grounds in their anti-discrimination legislation that are not explicitly mentioned in Article 21 of the Charter of Fundamental Rights. Such protected grounds include civil/marital/family status; pregnancy as well as mother- and fatherhood; actual or future health status (or different specifications of health, including HIV infection); membership in a trade union or in an employers' association; gender identity; or even broad categories such as social status or personal circumstances.

In relation to multiple discrimination, FRA has conducted research[95] that shows that at the level of national legislation, multiple discrimination is covered by seven EU Member States, namely Austria, Bulgaria, Croatia, Germany, Greece, Italy and Romania. Even here, however, the legislation tends to be limited to 'dual' discrimination, covering two, rather than 'multiple' grounds. In this sense, the EU situation remains fragmented. There is also a lack of clarity and certainty in the application of existing standards and definitions at national level, FRA data show. In Austria, through legislation, and in Germany, through official guidelines, courts and equality bodies are directed to award higher levels of compensation where victims have suffered discrimination on multiple grounds.

The areas covered

Experts have, as mentioned earlier, criticised the current EU legislative framework in the area of non-discrimination for establishing a 'hierarchy' of protected grounds with the Racial Directive combating ethnic discrimination in various areas reaching far beyond employment, whereas the Employment Equality Directive prohibits discrimination against various grounds but only and exclusively in the area of employment. The Horizontal Directive as proposed by the European Commission would in part do away with this asymmetry.[96] Although this legislative proposal has not yet met with consensus in the Council, several EU Member States have already gone beyond the standards set by the existing directives.

Already in a 2010 study, for example, FRA found that the prohibition of sexual orientation discrimination covered all areas mentioned in the Racial Equality Directive in 10 EU Member States (Belgium, Bulgaria, Czech Republic, Germany, Romania, Sweden, Slovak Republic,

[95] FRA (2013), *Inequalities and multiple discrimination in access to and quality of healthcare*, Luxembourg, Publications Office; FRA (2013), *Fundamental rights: challenges and achievements in 2012*, Annual report 2012, Luxembourg, Publications Office.

[96] 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.

Slovenia, Spain and the United Kingdom). In eight other Member States, equal treatment legislation on the grounds of sexual orientation extends to some of the areas mentioned in the Racial Equality Directive (Austria, Finland, Hungary, Ireland, Latvia, Lithuania, Luxembourg, and the Netherlands). FRA found that only nine Member States have maintained the hierarchy that affords racial and ethnic origin wider protection than the grounds covered by the Employment Equality Directive (Cyprus, Denmark, Estonia, France, Greece, Italy, Malta, Poland and Portugal).[97] In regard to disability, a 2011 FRA study on the legal protection of persons with mental health problems under non-discrimination law shows, for instance, that in some Member States, the obligation to provide for reasonable accommodation was extended beyond the field of employment (Belgium, Bulgaria, Croatia, the Czech Republic, Ireland, the Netherlands, Spain and the United Kingdom).[98] Some EU Member States, including Austria, Bulgaria and the Netherlands, have broadened their concept of discrimination so that the denial of reasonable accommodation is itself a form of discrimination, in line with the CRPD, the FRA 2011 disability study also shows.

Several EU Member States have thus already implemented elements of the proposed 'horizontal' directive in their legal frameworks. New data show similar trends extending the protection against discrimination into areas beyond employment. Around half of the Member States forbid discrimination based on all the grounds protected under the European Employment Directive not only in employment but even in all the areas covered by the Racial Equality Directive, thereby aligning the level of protection across four protected grounds and five areas of life. Some Member States selectively cover in their legislation some but not all of the areas covered by the Racial Equality Directive: for instance, there are Member States that limit the protection against discrimination based on religion or on disability to the area of education. Other Member States again provide a protection that goes beyond the areas covered in the Racial Equality Directive by forbidding some forms of discrimination in areas such as: military service; membership and activities in trade unions, civil society organisations, political parties or other organisations; cultural and artistic creation; access and use of media and information-society related services; or access to and use of public spaces.

Tools to realise equality in practice

There are a variety of tools that EU Member States may use to promote equality in practice. The United Kingdom's Public Sector Equality Duty, for example, aims to eliminate discrimination, advance equality opportunities and foster good relations. Under this duty, public authorities as well as private organisations carrying out public functions must advance equality by: removing disadvantages; meeting the needs of people with protected characteristics;[99] and encouraging protected groups to participate in public life.[100] Other tools, such as the duty under EU disability law to provide reasonable accommodation, aim to ensure compliance with the principle of equal treatment and to remedy or avoid indirect discrimination. In some countries, such as Sweden, even private entities (employers) have a duty to promote equality by adopting equality plans at the branch or company level,

[97] FRA (2010), *Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity,* Luxembourg, Publications Office.

[98] FRA (2011), *The legal protection of persons with mental health problems under non-discrimination law,* Luxembourg, Publications Office.

[99] These protected charateristics are: age, disability, pregnancy and maternity, religion or belief, race, sex, sexual orientation, gender reassignment, marriage and civil partnership.

[100] See section 149 of the Equality Act 2010. The Equality and Human Rights Commission is reponsible for monitoring and enforcing the equality duty.

ensuring data collection and monitoring the workplace. Finally, specific measures, known as 'positive actions', are tools to alleviate disadvantage, reduce under-representation and meet specific needs of particular groups of people in society: examples of such measures include targeted training programmes, health services and campaigns as well as quotas.

International law allows, and sometimes even requires, 'temporary special measures', which may include a mix of the above examples.[101] The UN Committee on the Elimination of Racial Discrimination (CERD), for instance, stressed that the "concept of special measures is based on the principle that laws, policies and practices adopted and implemented in order to fulfil obligations under the Convention require supplementing, when circumstances warrant, by the adoption of temporary special measures designed to secure to disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms."[102] The UN treaty bodies have underlined that such measures should not extend in scope beyond what is strictly necessary to achieve the goal of eliminating inequalities.[103]

The adoption of positive action, in EU law, is usually associated with equality between women and men, which has been permitted since the first directives on equality between men and women in the field of employment and occupation.[104] These measures were then also reflected in primary law, both in the Treaties (see, for example, Article 157 TFEU, former Article 141 of the Treaty establishing the European Communities) and in the Charter of Fundamental Rights (Article 23). The adoption or maintenance of positive action is also explicitly permitted by Article 5 of the Racial Equality Directive and Article 7 of the Employment Equality Directive. According to its well-established case law, the CJEU has maintained in the context of quota systems that, to ensure respect for the principle of equality before the law, each case must be decided on its individual merits rather than applying an automatic and unconditional priority for minority candidates.[105]

With respect to the rights of people with disabilities, the Employment Equality Directive has introduced the concept of reasonable accommodation, thereby requiring employers to take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training (Article 5 Employment Directive). The duty to provide reasonable accommodation does not apply if such measures would impose a disproportionate burden on the employer.

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[101] See, for example: (reprinted in UN Doc. HRI/GEN/1/Rev.9, Vol. II, 27 May 2008) UN Committee on Economic Social and Cultural Rights, General Comment 13: The Right to Education; the UN Committee on the Elimination of Discrimination Against Women, General Recommendation No. 25: Art. 4, para. 1, of the Convention (temporary special measures); UN Human Rights Committee, General Comment No. 18: Non-Discrimination; UN Committee on the Elimination of Racial Discrimination, General Recommendation 30 on Discrimination against Non-Citizens.

[102] UN Committee on the Elimination of Racial Discrimination (2009), General Recommendation No. 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms of Racial Discrimination, UN Doc. CERD/C/GC/32, 24 September 2009.

[103] *Ibid.,* paras. 21–26. UN Committee on the Elimination of Discrimination Against Women, General Comment No. 25, para. 22.

[104] See, for example: Art. 2 (4) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, working conditions, OJ 1976 L039.

[105] Case law specifically concerns equality between men and women, but could be referred to by analogy to other protected grounds of discrimination: CJEU C-450/93, *Kalanke v. Freie Hansestadt Bremen*, [1995]; CJEU C-409/95, *Marschall v. Land Nordrhein-Westfalen*, [1997]; CJEU C-407/98, *Abrahamsson and Leif Anderson v. Elisabet Fogelqvist*, [2000].

FRA research has shown that in the context of employment, such preventive or promotional measures can be found across several EU Member States as policy and practices of governments, employers or trade unions. In Belgium, Finland, Hungary, Sweden and the United Kingdom there is a legal obligation, applicable to both public or private entities, to take a variety of measures, such as assessing and monitoring the impact of policies on racial equality, adjusting practices that prevent the realisation of equality, creating equality plans, introducing measures to reflect ethnic diversity proportionately in workforces or introducing training or education to facilitate the participation of persons belonging to minorities. Similarly, trade unions and employers reported several initiatives, such as offering extra training or language tuition to ethnic minority employees, targeted recruitment drives, reviewing the ethnic make-up of workforces, adjusting criteria for posts to focus on generic skills rather than on formal qualifications, diversity training and codes of conduct for employers and awarding prizes for best equality practices.[106] In addition, national measures can accommodate diversity to avoid situations where certain norms result in indirect discrimination. This could include, for instance, making allowances for variations in rest days, dress codes, dietary requirements or working hours to reflect the different ethnic backgrounds of workers.

In addition to its research into employment discrimination, FRA has also surveyed the situation of Roma people in the EU. EU Member States have adopted measures aimed at promoting social inclusion. These included housing projects integrated with vocational or other training programmes,[107] and more specific programmes, such as targeting persons belonging to minorities in recruitment drives, FRA research revealed. Some Member States have also developed generalised anti-segregation policies.[108] Several Member States have instituted good practices that integrate improvements in housing conditions with measures to improve the qualifications, accessibility to public services and assistance in entering the job market.[109] To improve housing conditions, particularly for Roma, the European Commission has highlighted the possibility of using the European Social Fund and European Regional Development Funds.[110] Indeed, the European Commission stressed that all Member States should ensure that appropriate measures are taken to include Roma integration in the Partnership Agreements on the use of European Structural and Investment Funds.[111] The Commission proposed making funds conditional upon a set of general *ex ante* conditionalities including anti-discrimination, gender-equality and disability as well as thematic *ex ante* conditionalities including explicitly "Integration of marginalised communities such as the Roma".[112]

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[106] FRA (2010), *The impact of the Racial Equality Directive – Views of trade unions and employers in the European Union*, Luxembourg, Publications Office, pp. 62–68.

[107] FRA (2009), *Case Study: Traveller Participation in decision making on housing issues, Ireland,* Luxembourg, Publications Office; FRA (2009), *Case Study: A model of Traveller needs assessment*, *United Kingdom,* Luxembourg, Publications Office.

[108] FRA (2009), *Housing conditions of Roma and Travellers in the European Union: Comparative report,* available at: http://fra.europa.eu/sites/default/files/fra_uploads/608-ROMA-Housing-Comparative-Report_en.pdf.

[109] See FRA (2009), *Case Study: A model of Traveller needs assessment, United Kingdom* Luxembourg, Publications Office; FRA (2009), *Case Study: Combating Roma residential segregation, Hungary*, Luxembourg, Publications Office; FRA (2009*), Case Study: Improving Roma housing and eliminating slums, Spain,* Luxembourg, Publications Office.

[110] European Commission*, The Roma in the European Social Fund 2007–2013,* available at: ec.europa.eu/employment_social/esf/ docs/roma_en.pdf.

[111] European Commission (2013), COM (2013) 454 final, 26 June 2013, p. 6.

[112] European Commission (2013), COM (2013) 246 final, 22 April 2013, p. 153.

In education, EU Member States have adopted measures such as intercultural teacher training and the training of Roma as teaching assistants to promote integration.[113] Whatever tools are chosen, it remains important to provide for reality checks including through the collection of relevant data, in order to gauge the degree to which these tools meet expectations.

Policy strategies and action plans

Both equality directives require EU Member States to "promote dialogue" between the social partners "with a view to fostering equal treatment" (Article 11 of the Racial Equality Directive and Article 13 of the Employment Equality Directive). They also make reference to "monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices". In this capacity, national authorities could be seen as facilitators of processes and actions which appear to be the primary responsibility of private actors.

However, the directives also require Member States to "take the necessary measures" to ensure compliance with the principle of equal treatment. This translates, for instance, into a duty to abolish "any laws, regulations and administrative provisions contrary to the principle of equal treatment" (Article 14 of the Racial Equality Directive and Article 16 of the Employment Equality Directive).

Some Member States equipped themselves with tools designed to ensure a review of existing and new laws, regulations and administrative provisions in light of the principle of equal treatment. Often these tools take the shape of strategies, action plans, roadmaps or the like, and can encompass other policy measures to ensure better planning, monitoring and coordination of financial resources.

For instance, the Netherlands has a long-standing tradition of using action plans to guide work on LGBT rights. The most recent one is called *LGBT and Gender Equality Policy Plan 2011 – 2015*.[114] In this publication the government sets out how to work towards the goal of the emancipation of girls and women and of LGBT persons. In a similar vein, France in 2012 adopted a Government action programme against violence and discrimination on the ground of sexual orientation (*Programme d'actions gouvernemental contre les violences et les discriminations commises à raison de l'orientation sexuelle ou de l'identité de genre*.)[115]

Similar developments have taken place at the EU level, within areas of EU competence and spheres of action; examples include the Disability Strategy mentioned earlier, the Strategy

[113] See EU Monitoring centre on racism and xenophobia (EUMC) (2004), *Migrants, minorities and education: Documenting discrimination and integration in 15 Member States of the European Union* Luxembourg, Publications Office; EUMC (2006), *Roma and Travellers in public education: An overview of the situation in the EU Member States,* Luxembourg, Publications Office; FRA (2011), *Fundamental rights: challenges and achievements in 2010*, Annual report, Luxembourg, Publications Office.

[114] Dutch Government (2012), *LGBT and gender equality policy plan of the Netherlands 2011–2015,* available at: http://www.government.nl/documents-and-publications/leaflets/2012/01/10/lgbt-and-gender-equality-policy-plan-of-the-netherlands-2011-2015.html.

[115] French Government (2012), Government action programme against violence and discrimination on the ground of sexual orientation or gender identity (*Programme d'actions gouvernemental contre les violences et les discriminations commises à raison de l'orientation sexuelle ou de l'identité de genre*), available at: http://www.gouvernement.fr/gouvernement/en-direct-des-ministeres/programme-d-actions-gouvernemental-contre-les-violences-et-les.

for equality between women and men and the EU Agenda for the Rights of the Child. In order to promote equal treatment for Roma, in April 2011 the European Commission adopted an EU Framework for national Roma integration strategies up to 2020.[116] The European Council endorsed it in June 2011. In June 2013, the European Commission adopted its proposal for a Council recommendation on effective Roma integration measures in the Member States.[117] Such new methods of cooperation might spill over to policies regarding other protected grounds. With regard to LGBT people, the European Parliament has called on the European Commission to issue, as a matter of urgency, the EU Roadmap for equality on grounds of sexual orientation and gender identity, with a view to its adoption by 2014.[118]

Reducing asymmetries in protection

The equality directives allow Member States to maintain or introduce positive action. The Racial Equality Directive underlines, for example, that to ensure full equality in practice, "the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin".[119]

This allows Member States to address issues of structural discrimination and preempt breaches of non-discrimination law. Measures that address the interlocking nature of disadvantage suffered by minority groups across areas such as employment, housing and education should be encouraged and broadened so that they are applied systematically across policy areas and throughout the Member States, rather than on a more limited *ad hoc* or project-driven basis.

The wording of the relevant provision in the equality directives might, however, create the misleading impression that positive action constitutes an exemption to the principle of equality rather than an expression thereof. Positive action allows for full equality in practice. A preventive, rather than a reactive, approach to discrimination and the adoption of positive action measures across the Member States can help reduce the gap between the law on the books and the situation on the ground.

Current EU legislation protects against discrimination on the grounds of race or ethnic origin to a greater degree than it does for the grounds of religion, belief, disability, age or sexual orientation. Civil society and academics have criticised this distinction and in 2008, the Commission attempted to bridge the gaps in legal protection. The Commission proposal, the so-called 'horizontal directive', would extend the prohibition of discrimination into areas beyond employment for those grounds not yet covered. As documented above, the available evidence fully supports the need for such an approach. The aim of the Horizontal

[116] European Commission (2011), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *An EU Framework for National Roma Integration Strategies up to 2020*, COM(2011) 0173 final, Brussels, 5 April 2011.

[117] European Commission (2013), *Proposal for a Council Recommendation on effective Roma integration measures in the Member States*, COM(2013) 460 final, Brussels, 26 June 2013.

[118] See European Parliament resolution of 12 December 2012 on the situation of fundamental rights in the European Union (2010–2011) (2011/2069(INI)), Para. 96 as well as the 2012 study commissioned by the Parliament and entitled: *Towards an EU roadmap for equality on grounds of sexual orientation and gender identity* (PE 462.482).

Directive proposed in 2008 is to establish a framework for a uniform minimum level of protection within the EU across these protected grounds – 'horizontal alignment'.

So far the progress on this legislative proposal seems limited, though this has not prevented national systems from evolving. A number of EU Member States have moved considerably in recent years towards aligning the legislative protection they afford against discrimination on different grounds, arguably making the systems simpler and more accessible. At the same time, the protection provided at national level is increasing, creating a need to align EU standards with rapidly developing standards at national level – 'vertical alignment'.

Vertical and horizontal alignment is not only possible through legislation. Other helpful measures include, in particular, the development of coordination actions, such as strategies, frameworks, roadmaps, possibly complemented by appropriate monitoring and benchmarks. EU action in the past has facilitated this by mobilising all available legal, policy and financial tools. This would ensure both the compliance of EU policies and activities with applicable international standards in the field of fundamental rights of all persons, rather than just selected categories, and the ability to align EU standards with progress at national level.

One example of vertical and horizontal alignment is the EU Framework for national Roma integration strategies, which underlines the potential of bringing together a variety of tools and actors to work toward a common set of integration goals, enhancing inclusion and protecting individual fundamental rights. A similar approach, in accordance with common practice in the field of fundamental rights, could be used to guide future action in other fields. Such a policy approach cannot replace legislation. Any changes to or departure from the proposed Horizontal Directive should avoid undermining the core added value of the legislative proposal, namely to provide for more equal levels of protection across layers of government and across the different grounds that are protected against unequal treatment.

FRA opinion

The equality directives allow Member States to maintain or introduce positive action. The Racial Equality Directive, for example, says that to ensure full equality in practice, "the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin".[120]

This principle allows Member States to address issues of structural discrimination and pre-empt breaches of non-discrimination law. Measures that address the interlocking nature of disadvantage suffered by minority groups across areas such as employment, housing and education should be encouraged and broadened so that they are applied systematically across policy areas and throughout the Member States, rather than on a more limited ad hoc *or project-driven basis.*

[120] Art. 5 of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial and ethnic origin, OJ 2000 L180.

The wording of the relevant provision in the equality directives might, however, create the misleading impression that positive action constitutes an exemption to the principle of equality rather than an expression thereof. This risks undermining legal clarity in the context of equality law. Positive action allows for full equality in practice. A preventive, rather than reactive, approach to discrimination and the adoption of positive action measures across the Member States can contribute to reducing the gap between the law on the books and the reality on the ground.

Current protection against discrimination varies by ground and by area. This horizontal asymmetry in protection is complemented by different levels of protection offered by EU and national law. Many EU Member States have already gone beyond current EU obligations and provided protection against discrimination in additional areas and/or on additional grounds, making the asymmetry of protection within the EU not only 'horizontal' but also 'vertical' in nature.

One of the ambitions of the Horizontal Directive proposed in 2008 is to establish a framework for a uniform minimum level of protection which would in a way align protection from discrimination both 'vertically' and 'horizontally'. Such an alignment would be a welcome development.

Besides legislative adjustments, non-legislative measures should also be considered – both at national as well as at European level. The development of coordination actions, such as strategies, frameworks, roadmaps, possibly complemented by appropriate monitoring and benchmarks, can be useful for aligning the unequal standards of protection in equality laws.

Vienna, 1 October 2013

Information on relevant FRA surveys

European Union minorities and discrimination survey (EU-MIDIS)

This FRA research project covered all EU Member States and interviewed 23,500 immigrant and ethnic minority people in-person in 2008. In addition 5,000 people from the majority population living in the same areas as minorities were interviewed in-person in 10 Member States to allow for comparison of results concerning certain key questions. As a default sampling approach, a standard random route procedure was used to sample households. Gallup Europe carried out the survey interviews. The survey provided the most extensive data set to date on discrimination and victimisation faced by ethnic minorities and immigrants in the EU. It was the first of its kind to systematically survey immigrant and ethnic minority groups across the EU through in-person interviews and using the same standard questionnaire.

Roma pilot survey

The FRA Roma pilot survey covered 11 Member States, namely: Bulgaria, the Czech Republic, France, Greece, Hungary, Italy, Poland, Portugal, Slovakia, Spain and Romania. A sample of Roma – and non-Roma living in close proximity to the Roma – was created using random route sampling and focused enumeration. The resulting sample represents Roma and non-Roma living in the selected areas, which were sampled across different parts of the 11 Member States. In each of the Member States, the sample selection was carried out in areas where Roma live in sufficient concentration, in other words above the national average, to allow random route sampling at reasonable cost.

The survey used a multi-stage sampling design, where the first stage involved the selection of areas in the country taking into account the geographical distribution of the Roma population and the population density, followed by selection of households and finally respondents who self-identified as Roma (one person per household, aged 16 years or over). The respondent was asked to provide some information on the household as a whole and all persons living in it, as well as on their individual situation and experiences. The survey interviews were carried out in May–July 2011 by Gallup Europe, and they collected data from 10,811 Roma respondents and 5,508 non-Roma respondents in the 11 survey countries.

Survey on 'Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism'

The FRA survey on Jewish people's experiences and perceptions of antisemitism collected data from 5,847 self-identified Jewish respondents (aged 16 or over) in eight EU Member States – Belgium, France, Germany, Hungary, Italy, Latvia, Sweden and the United Kingdom. The survey was also carried out in Romania, but due to the low number of responses, the data were analysed separately from those for the other eight survey countries. The survey was carried out online in September and October 2012 when all self-identifying Jewish respondents were free to complete the survey – therefore the respondents are a self-selected sample of Jewish people in the survey countries. The countries selected for the survey correspond to over 90 % of the estimated Jewish population in the European Union and the number of respondents obtained in each country corresponds roughly to differences in the estimated size of the Jewish population between Member States.

The survey data collection was coordinated by Ipsos MORI and the Institute for Jewish Policy Research.

EU LGBT survey

In an online survey carried out between April and July 2012, FRA collected survey data from 93,079 self-identified Lesbian, Gay, Bisexual and Transgender (LGBT) respondents (aged 18 years or over) in the 27 EU Member States and Croatia. The survey and the questionnaire were designed by FRA; the online survey data collection was coordinated by Gallup Europe in cooperation with ILGA-Europe. This survey is the largest of its kind to date and represents the most wide-ranging and comprehensive picture available of the experiences of LGBT people residing in the EU and Croatia.

Selected FRA reports

FRA (forthcoming 2013), *Discrimination and hate crime against Jews in EU Member States: experiences and perceptions of antisemitism*, Luxembourg, Publications Office of the European Union (Publications Office).

FRA (2013), *Legal capacity of persons with intellectual disabilities and persons with mental health problems*, Luxembourg, Publications Office.

FRA (forthcoming 2013), *EU LGBT survey. European Union lesbian, gay, bisexual and transgender survey: Main results,* Luxembourg, Publications Office.

FRA (2013), *EU LGBT survey. European Union lesbian, gay, bisexual and transgender survey: Results at a glance,* Luxembourg, Publications Office.

FRA (2013), *Inequalities and multiple discrimination in access to and quality of healthcare*, Luxembourg, Publications Office.

FRA (2012), *Access to justice in cases of discrimination in the EU – Steps to further equality*, Luxembourg, Publications Office.

FRA (2012), *The situation of Roma in 11 EU Member States. Survey results at a glance*, Luxembourg, Publications Office.

FRA (2012), *Choice and control: the right to independent living*, Luxembourg, Publications Office.

FRA (2011), *The legal protection of persons with mental health problems under non-discrimination law,* Luxembourg, Publications Office.

FRA (2011), *Access to justice in Europe: an overview of challenges and opportunities*, Luxembourg, Publications Office.

FRA (2010), *EU-MIDIS Data in Focus report 3: Rights awareness and equality bodies*, Luxembourg, Publications Office.

FRA (2010*), The impact of the Racial Equality Directive – Views of trade unions and employers in the European Union,* Luxembourg, Publications Office.

FRA (2010), *Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity. 2010 update – Comparative legal analysis,* Luxembourg, Publications Office.

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