

EU contribution to the forthcoming report by the Working Group of Experts on the current human rights situation of people of African descent

The European Union would like to thank the Working Group of Experts on People of African Descent for the call for contributions to their upcoming report. Please find below some elements recently prepared for the Office of the High Commissioner for Human Rights, coping with the issues indicated in the request.

The contribution is comprised of both EU internal and EU external actions and policies.

EU CONTRIBUTION

In the European Union, discrimination based on racial and ethnic origin in the fields of employment, social protection, including social security and healthcare; social advantages, education and access to and supply of goods available to the public including housing is prohibited pursuant to the Racial Equality Directive (RED), which was adopted in 2000¹.

The Charter of Fundamental Rights of the EU prohibits discrimination based – among other grounds – on race and ethnic origin (Article 21). The Council Framework Decision of 2008 sets out to combat certain forms and expressions of racism and xenophobia by means of criminal law². However, European law does not define these grounds. International and national law uses various terms in reference to racial and ethnic origin.

The European Convention on human rights and fundamental freedoms (ECHR)³ at Art.14 prohibits discrimination based – among other grounds - on race, colour, language, religion, national or social origin and association with a national minority.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) prohibits racial discrimination, defining it as any distinction based on race, colour, descent, national or ethnic origin.

All Member States have signed and ratified the ECHR and ICERD. Various international and national courts have interpreted ethnic origin broadly and national laws often define and list recognised ethnic minorities.

The International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) is central to EU's fight against racism in the cooperation and in the political dialogues with partner countries and regional and international organizations such as, inter alia, the OSCE, Council of Europe, the African Union and the United Nations.

The EU has supported the UN Decade on People of African descent and the associated programme of activities and follows the discussion on the establishment of the Forum of People of African Descent.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000L0043>

² <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32008F0913>

³ https://www.echr.coe.int/documents/convention_eng.pdf

The EU has expressed its serious concerns over recent events of racism in law enforcement and joined the call for prompt and effective investigation. Racism is a global phenomenon, which requires a global response encompassing all forms of racism. The EU believes that the normative standards, as provided by the ICERD Convention and other human rights instruments, the Durban commitments and follow up mechanisms, as well as the institutional set up of the UN human rights system, offer an adequate framework to fight contemporary forms of racism (e.g. religious intolerance, “racially” motivated hate speech and hate crimes).

At the United Nations, the EU takes an active part in deliberations on the follow up to the Durban Declaration and Programme of Action and related resolutions of the Human Rights Council and the General Assembly. It also engage in the Durban Follow up Mechanisms.

The fight against racism and discrimination on any grounds is a fundamental objective of EU’s Human Rights agenda in external relations and is as such reflected in all human rights policy documents for EU external actions. The successive Action Plans on Human Rights and Democracy (last one for the period 2020-2024 approved in November)⁴ point out specific objectives and reiterate the importance of exchange of best practices with partner countries on relevant strategies and policies.

The EU Human Rights Guidelines on Non-discrimination adopted in March 2019⁵ provide conceptual and operational guidance while also giving clear political lines to be used in EU’s external action in the fight against racism, racial discrimination, xenophobia and related intolerance, both in bilateral and multilateral relations and in engagement with civil society.

The **EU anti-racism action plan 2020-2025**⁶ steps up our action in this field, acknowledging that racism is not only perpetrated by individuals but can also be structural. Structural racism can be found in every area of life. Racism therefore needs to be addressed at all levels of governance.

Recognizing that national action plans have proved to be a successful way for Member States to offer an effective response to racism and racial discrimination, the EU anti-racism action plan encourages all Member States to adopt national action plans against racism and racial discrimination by the end of 2022 (at the moment, around half of Member States in the European Union already have such plans).

The development of comprehensive national action plans was one of the actions called for by the Durban Declaration and Programme of Action.

The death of George Floyd at the hands of law enforcement officials in the early summer of 2020, brought once more to light the specific challenges related to the law enforcement agencies’ approach and the relevant legislative framework, soliciting additional attention and discussion from the different EU institutions.

⁴ <https://www.consilium.europa.eu/media/46838/st12848-en20.pdf>

⁵ <https://data.consilium.europa.eu/doc/document/ST-6337-2019-INIT/en/pdf>

⁶ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-anti-racism-action-plan-2020-2025_en

The EU's response to racism

As stated by President von der Leyen in her recent State of the Union address⁷ to the European Parliament, it is now the moment to make change and to build a truly anti-racist Union – that goes from condemnation to action.

Structural racism can be found in every area of life. Racism therefore needs to be addressed at all levels of governance.

The biggest challenge with structural racism is that there is no single person or entity responsible for it; we all are. This is why EU action in this field needs to combine targeted measures and equality mainstreaming into all EU policies, legislation and funding programmes.

A key challenge is the importance of promoting diversity and countering discriminatory attitudes by law enforcement authorities, including police forces. With the support of EU Agencies, such as the Agency for Fundamental Rights (FRA) and the Agency for Law Enforcement Training (CEPOL), Member States are encouraged to step up efforts to prevent discriminatory attitudes by law enforcement authorities and to boost the credibility of law enforcement work against hate crimes.

In order to prevent and counter bias and discriminatory policies or practices on the part of the authorities, the EU Agency for Law Enforcement Training offers regular training to law enforcement authorities on diversity, non-discrimination or discriminatory ethnic profiling. Practical support to practitioners to avoid discriminatory ethnic profiling is also being released in the shape of a Guide on preventing unlawful profiling⁸ by the FRA.

Building on a previous 2010 guide that already included data on ethnic minority, immigrant and Roma groups' experiences of police stops, the new guide provides a general update, taking into account legal and technological developments. In implementing this guidance, Member States should acknowledge and address through targeted measures the particular impact of unlawful profiling practices on Africans and people of African descent.

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In 2018, the EU Agency for Fundamental Rights published the Second European Union Survey on Minorities and Discrimination, with the emblematic title: **Being Black in the EU**⁹.

The report presents selected results based on the experiences of almost 6,000 people of African descent in 12 EU Member States. A large majority first-generation immigrants, hailing from 59 different countries of origin. One chapter was dedicated to the role and experience with law enforcement agencies and in particular police stops. Below some data:

⁷ https://ec.europa.eu/commission/presscorner/detail/ov/SPEECH_20_1655

⁸ <https://fra.europa.eu/en/project/2017/fra-guide-preventing-unlawful-profiling>

⁹ https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-being-black-in-the-eu_en.pdf

2.2. Police stops

KEY FINDINGS

Police stops and perceived racial profiling

- One in four (24 %) respondents of African descent were stopped by the police in the five years before the survey; 11 % were stopped in the 12 months before the survey.
- Among those stopped in the 12 months before the survey, 44 % believe the last stop they experienced was racially motivated. This view was shared at the highest rates by respondents in Italy (70 %) and Austria (63 %), and at the lowest rates by respondents in Finland (18 %).
- The rates of police stops and of perceived racial profiling vary substantially among countries. In both periods – five years and 12 months before the survey – respondents were stopped at the highest rates in Austria (5 years: 66 %, 12 months: 49 %) and Finland (5 years: 38 %, 12 months: 22 %). However, in Austria, the rate at which the latest police stop was perceived as ethnic profiling is almost eight times higher than that in Finland (31 % vs. 4 %), when looking at the 12-month period before the survey.
- Men are three times more likely to be stopped than women (22 % vs. 7 %) and four times more likely to perceive the most recent stop as racial profiling (men: 17 %, women: 4 %).
- With respect to age, results show a linear trend, with younger respondents more likely to perceive the most recent stop as racially motivated. Specifically, every second respondent aged 16 to 24 (50 %) stopped in the five years before the survey perceives the most recent stop as having been racially motivated. By contrast, every third respondent (35 %) aged 45 to 59 holds this view.

Treatment by the police and trust

- A majority (60 %) of respondents who were stopped by the police in the five years before the survey say that they were treated respectfully during the most recent stop. Meanwhile, 16 % say the police treated them disrespectfully. Larger proportions of respondents believe they were treated disrespectfully in Denmark (30 %) and Austria (29 %).
- Only 9 % of respondents who said they were treated disrespectfully reported or made a complaint about this.
- Overall, respondents' level of trust in the police is 6.3 on a scale from 0 to 10, where 0 means 'no trust at all' and 10 indicates 'complete trust'. Respondents in Finland trust the police the most (8.2). By contrast, respondents in Austria have the lowest level of trust in the police (3.6).
- The results show that levels of trust in the police are not affected by a police stop itself, but by whether the stop is perceived as racial profiling. The lowest average level of trust in the police is found among respondents who view the most recent police stop they experienced as racial profiling (4.8).

The findings of the report shed light on the widespread discrimination Africans and people of African descent face in the EU. It showed that many people in Europe experience racist harassment and violence, including at the hands of the police:

- **racial harassment** – 30% of respondents say they have been racially harassed and 5% were attacked in the five years before the survey;
- **discriminatory profiling in police stops** – 24% of respondents were stopped by the police in the five years before the survey. Among those, 41% felt the stop constituted racial profiling.
- **gender aspect** – men are three times more likely to be stopped than women (22 % vs 7 %), and they are more likely to consider the most recent stop as racial profiling compared to women.
- **underreporting** – only 14 % of the most recent incidents of racist harassment were reported to police or other services.
- **not reporting attacks by police** – a majority (63 %) of victims of racist physical attack by a police officer did not report the incident to anybody, either because they felt it would not change anything or because they do not trust the police.

According to the survey, large numbers of Africans and people of African descent who are stopped by the police say they experience racial profiling, an unlawful practice that undermines their trust in law enforcement authorities. The population groups surveyed showed high levels of trust in the police and the legal system, sometimes higher than the general population. However, data also confirmed that racial profiling is a common occurrence for immigrants and descendants of immigrants as well as for ethnic and national minorities such as the Roma and that experiencing discrimination, harassment or violence strongly undermines trust in the police and the legal system.

The Agency recommendation is that: *EU Member States should develop specific, practical and ready-to-use guidance to ensure that police officers do not conduct racial profiling in the exercise of their duties such guidance can be attached to relevant legislation, issued by law enforcement authorities, or included in standard operating procedures of the police, or in codes of conduct for police officers, as a means to increase its effectiveness and reach. Guidance should be systematically communicated to front line law enforcement officers by their leadership.*

In addition, Member States should assist relevant authorities in developing guidance for community policing, as a means to offset the existing negative impact of racial profiling on trust in the police among members of ethnic minority groups. Community policing entails the police working with local residents, businesses and other groups in the community to reduce crime and the fear of crime, to address anti-social behaviour, and to boost community cohesion”.

The EU legal framework

Actions to combat racial discrimination, racism, and xenophobia at European level are embedded in an **established EU legal framework**, based on a number of provisions of the Treaties and in line with the general principles of non-discrimination and equality, reaffirmed in the EU Charter of Fundamental Rights (art 21).

Directive 2000/43/EC providing a framework for equal treatment irrespective of racial or ethnic origin (the so-called Racial Equality Directive) prohibits discrimination, including harassment, in a wide range of areas of life. More particularly, the legal protection offered by the Racial Equality Directive covers the areas of employment, education, social protection, social advantages and access to and supply of goods and services available to the public. This Directive does not cover discrimination in the area of law enforcement and policing. All Member States have transposed the Directive and are bound to ensure its effective implementation at national level, including when it comes to discrimination faced by people of African descent.

The Racial Equality Directive has also ensured the set-up of equality bodies at national level to assist victims of discrimination. The European Commission closely monitors the implementation of the Racial Equality Directive. It has also adopted a Recommendation on Standards for Equality Bodies in order to support the role and independent functioning of these bodies, which may offer useful support to people of African descent who have suffered from discrimination.

The EU anti-racism action plan 2020-2024 sets out a number of actions to tackle racism through EU law but also other means – working with Member States, including national law enforcement, media and civil society; harnessing available and future EU tools; and looking into the Commission’s own human resources.

Among others, the action plan calls for:

- **Better enforcement of EU law:** In 2021, the Commission will report on the application of Racial Equality Directive. The Commission will also ensure a full and correct transposition and implementation of the Framework Decision on combating racism and xenophobia, including through infringement procedures.
- **New proposals if need be:** The Commission will propose to further strengthen the legal framework, if needed. This could happen in particular in the areas not yet covered by the non-discrimination legislation, such as law enforcement.
- **Closer coordination:** The Commission will appoint a coordinator for anti-racism and promote regular dialogue with stakeholders, meeting at least twice a year.

The European Commission will publish a report on the implementation of the Racial Equality Directive in 2021. It will present, by 2022, possible new legislation required to address shortcomings, including to strengthen the role and independence of equality bodies.

Some characteristics of Artificial Intelligence, including its opacity, the complexity of certain systems, and granular applicability of computed outcomes to individuals, may hamper the effective enforcement of existing EU law meant to protect fundamental rights. On 19 February 2020, the Commission published a White Paper on Artificial Intelligence setting out a framework for trustworthy Artificial Intelligence. Wide public consultations on the White Paper had been organised and pave the way for future regulation on AI.

In terms of specific measures, the European Commission will ensure that Member States fully implement relevant EU law and further strengthen the legal framework, if needed. This could apply in particular to the areas not yet covered by non-discrimination legislation, such as law enforcement.

Adopting measures to fight discrimination and hate speech are among the criteria for accession of new Members into the European Union.

According to Article 49 of the Treaty on European Union, countries wishing to accede to the Union must respect and promote the values in Article 2 of the Treaty, which recalls that the Union is founded on values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights.

Accordingly, countries wishing to join must adopt measures to ensure equality and non-discrimination. The Commission promotes adoption of legislation and policy in line with the EU acquis and European Standards in this field.

The Commission also support countries through its financial assistance. The EU-funded Horizontal Facility for Western Balkans and Turkey (phase II¹⁰), implemented by the Council of Europe builds upon recommendations of the monitoring bodies of the Council of Europe, including the European Commission against Racism and Intolerance (ECRI). In accordance with ECRI's Policy Recommendation No.11¹¹ on combating racism and racial discrimination in policing. The programme includes anti-discrimination actions,

¹⁰ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/ipa_ii_2018_040-113.05_mc_eu-coe_horizontal_facility.pdf

¹¹ <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.11>

with a general approach, involving work with law enforcement in handling anti-racism protests and related events, notably with potential elements of hatred motivations, including racial profiling against minority groups.

Proposals range from importing/exporting models of local trust police officers; ways to engage with pride organisers; training schemes; swift intervention on hate motivated attacks and victim protection.

An analysis on domestic Equality Bodies in the Western Balkans is being finalised with a draft roadmap of activities to adapt their anti-racism responses to the situation in the region, with a specific focus on hate/hatred motivated cases. Activities include joint training on standards and tools for improving reporting.

Data collection

The European Commission supports Member States' efforts in the area of equality data. This includes dedicated guidance and working groups, which also benefit from the assistance and expertise of the European Union Agency for Fundamental Rights (FRA). This work can effectively contribute to improving data collection for people of African descent.

In October 2017, the High Level Group on Non-Discrimination, Equality and Diversity agreed to set up a subgroup on Equality Data (consisting of experts from 13 Member States). Facilitated by FRA, they prepared a set of non-binding guidelines on how to gradually improve the collection and use of equality data, with a view to assist them in monitoring the implementation of relevant legislation, policies and measures they devise to that effect¹². However, compared to data on other grounds of discrimination, such as sex, disability and age, personal data disaggregated by protected characteristics such as racial or ethnic origin is relatively scarce.

The Racial Equality Directive forbids using a neutral provision, criterion or practice putting persons of a racial or ethnic origin at a particular disadvantage compared to other groups. Furthermore, such sensitive personal data are protected by constitutional norms, the applicable European Union data protection law and the Charter of Fundamental Rights. Other difficulties include problems in establishing a common methodology, with some Member States collecting such data while others consciously avoid this approach. As a result, many surveys focus on the perception of discrimination or use proxies such as citizenship or country of birth.

The EU Action Plan against Racism include among its objectives: awareness raising and addressing racial and ethnic stereotypes through media, education, culture and sport; and improved collection of data disaggregated by ethnic or racial origin.

The Action Plan outlines that the next two years will see new Fundamental Rights Agency surveys on the situation of immigrants and descendants of immigrants. Eurobarometer surveys on discrimination will also continue to be run periodically so that changes in attitudes and perceptions can be monitored over time. Equality bodies can usefully cooperate to examine their own equality data collection systems, address the barriers to such systems being effective and/or comparative and interoperable, and

¹² https://fra.europa.eu/sites/default/files/fra_uploads/ec-july-2018-guidelines-equality-data-collection.pdf and <https://fra.europa.eu/en/promising-practices-list>

considering how best to improve and coordinate their data collection. The Commission will support efforts to develop such a coordination.

If collected and processed in full respect of this legal framework and the safeguards it sets out, such data are essential for Member States to assess their compliance with human rights obligations and enables policy makers to design evidence-based measures to address discrimination, inequalities and exclusion. The Commission will organise a roundtable on equality data bringing together key stakeholders to examine obstacles to the collection of data related to racial or ethnic origin and identify paths to a more harmonised approach, including on intersectional data as regards, for instance, religion or belief and gender.

It is important to underline that EU health statistics do not include data based on race, colour, descent, or national or ethnic origin. Eurostat only collects country of birth and citizenship.

The EU Directorate-General for Justice and Consumers, published a study dedicated to: Analysis and comparative review of equality data collection practices in the European Union - Data collection in the field of ethnicity¹³.

In its conclusions, the study suggests: *“since the mid-1990s, Europe has witnessed a gradual shift in attitudes vis-a-vis data collection on racial and ethnic origin”* and *“collection of data on geographic origin and discrimination experience emerges as a growing trend”*.

Still: *“in order to ensure that the data collected captures all the racial and ethnic minorities that experience discrimination in Europe, a lot of work needs to be done both at the domestic and regional levels”*. And a priority is: *“to ensure that European data collection does not discriminate across the grounds covered by EU anti-discrimination law”*. The key to any viable solution would be: *“in the creation of incentives for relevant stakeholders and agreement on rules of cooperation”*.

Best practices

In the action plan on human rights and democracy for 2020-2024, specific action on the exchange of best practices with partner countries on strategies and policies to combat racism, racial discrimination, xenophobia and related intolerance will be continued.

In 2010, the European Commission launched an EU-level platform of Diversity Charters, funded under the project ‘Support for voluntary initiatives promoting diversity management at the workplace across the EU’. The Platform offers a place for existing European Diversity Charters to exchange and share experience and good practices more easily through Platform meetings, expert seminars and annual high-level forums. A diversity charter consists of a short document voluntarily signed by a company or a public institution. It outlines the measures it will undertake to promote diversity and equal opportunities in the workplace, regardless of race or ethnic origin, sexual orientation, gender, age, disability and religion. The platform now consists of 24 Diversity Charters and has more than 10 000 employers as signatories.

The Commission stands ready to encourage, in the context Diversity Charters, initiatives to contribute gaining a better understanding of the specific challenges faced by Africans

¹³ <https://op.europa.eu/en/publication-detail/-/publication/1dcc2e44-4370-11ea-b81b-01aa75ed71a1/language-en>

and people of African descent in the access to the labour market and at the workplace, and exchanges on how to address them.

Finally, in order to start from inside, the European institutions are taking steps to significantly improve the representativeness of staff through measures targeting recruitment and selection.