

## ERGO NETWORK

# *Briefing paper on the fundamental rights situation of minority groups in the EU and recommendations to the European Union*

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### Context

George Floyd was an African American man who was killed by police during an arrest in Minneapolis, Minnesota on 25 May 2020. Mass protests in response to his death, and more broadly to police violence against black people, quickly spread across the United States and internationally in a joint mobilisation against police violence and structural racism against black people across the globe. In Belgium and across Europe, civilians have started to demand and destroy statues of King Leopold II and other colonisers and racist figures. A global Black Lives Matter movement is surging alongside with wider anti-racist movements in an attempt to restore centuries of injustice, killings and oppression of people of African descent but also institutional and structural racism and discrimination of all ethnic and racialised minorities, particularly Roma, Muslims, Jews, migrants, refugees and asylum seekers, LGBTIQ+ persons and people with disabilities in continental Europe.

The social contract that all citizens and residents in Europe signed to abide by the laws and standards of their national governments and the EU in return of equal protection and rights before the law weighs heavily on minority groups. It is regrettable that 70 years after the adoption of the European Convention of Human Rights and subsequent international and EU standards on equality and anti-discrimination, minorities continue to be racialised, harassed, attacked and killed in Europe because of their innate characteristics as the EU and national legislative frameworks and state (judicial) institutions failed to protect them or to educate themselves and the majority populations about historical facts, diversity, compassion and living together as equal human beings. Looking at the construction, priorities and progress of the European Union, it is safe to claim that European leaders have prioritised economic growth over the protection of most vulnerable groups in our societies and over ensuring equity of wealth and wellbeing across the world (colonised populations are living under the poverty line and treated as a threat if trying to reach the shores of Europe). The strong awakening, protesting and mobilisation of the majority population in times of a global pandemic to the persistent racism and dehumanization and consequences of colonialism, slavery and oppression is an unprecedented moment in the history of humanity and speaks to the urgency with which world and European leaders need to take unprecedented steps to bring about fundamental changes in our society to restore justice and equality for all, prioritizing those most marginalised and oppressed to date.

## Fundamental rights situation of minority groups

Undeniably, people of African descent face some of the harshest racism in the U.S. and globally. But **structural racism and discrimination** against ethnic and racialised minorities are equally deeply rooted in European societies. Across the EU, people of African descent face widespread and entrenched prejudice and exclusion. Racial discrimination and harassment are commonplace. According to EU FRA, experiences with racist violence against people of African descent vary but reach as high as 14 %. Discriminatory profiling by the police is a common reality. Hurdles to inclusion are multi-faceted, particularly when it comes to looking for jobs and housing.

In September 2019, the European Commission published the results of the most recent wave of its **general population surveys on discrimination** in the EU. The findings show that: — Out of a sample of 27,438 respondents, over one in 10 (12 %) consider themselves part of a minority group. These include religious minorities, sexual minorities, ethnic minorities and people with disabilities, for instance. — People from minority groups are much more likely to have experienced discrimination or harassment on any ground in the 12 months before the survey. More than one in two (58 %) respondents who consider themselves part of a sexual minority say they have been discriminated against or harassed. Other minorities showing high rates of discrimination or harassment experiences are people with disabilities (52 %), Roma people (49 %), ethnic minorities (40 %) and religious minorities (38 %). National polls show that around one in three of 1,005 Latvian residents do not want to work alongside Roma (33 %), Afghan (30 %), Pakistani (29 %), Syrian (26 %) or African (25 %) persons, a poll revealed. In Romania, 62 % of respondents to a national survey believe that physical aggression motivated by hatred exists in the country. In Austria, almost 45 % of 1,200 respondents believe that Muslims should not have the same rights as “everyone else in Austria”, the Social Survey 2018 showed.

Europol’s 2019 annual report highlights the escalation of **extreme right-wing sentiments** and intolerance across the EU against persons and property of minority groups. According to Europol, right-wing extremists exploit fears and grievances linked to the perceived threat from Islam and to the alleged loss of national identity. There is growing online material that promotes racial hatred or religious extremism, as the 2019 Eurobarometer on Europeans’ attitudes to internet security shows. In Germany, a right-wing extremist tried to enter a synagogue in Halle and then shot dead two passers-by in an antisemitic attack. In June, a neo-Nazi shot a local politician and leading advocate for migrants’ rights dead at his home. In Belgium, four people were shot dead in the Jewish Museum in Brussels in 2014.

FRA survey showed that descendants of **immigrants and minority ethnic groups** continue to face widespread discrimination based on ethnic or immigrant background across the EU and in all areas of life – most often when seeking employment. Some 29 % of all respondents who looked for a job in the five years before the survey felt discriminated against, based on their ethnic or immigrant background. Almost one out of four respondents (23 %) encountered discrimination in access to housing in the five years before the survey.

European States continue to fail in securing **equal access to justice and equality before the law** for people belonging to racial, linguistic, religious minorities and ethnic minorities, manifested in over-policing and violations of people’s human rights committed by police officers, such as violent raids resulting in injuries and property damage and severe ill-treatment during detention, as well as failure to bring perpetrators to justice in cases of crimes committed by police officers; or manifested in prosecuting human rights defenders testifying against the

police or other authorities. For example, in Belgium, young people with an ethnic minority background are three times more likely to be stopped by the police for identity checks, research published by the University of Antwerp in June 2019 reveals.

**Hate speech, hate crime, segregation, structural and systemic exclusion and discrimination of Roma people**, including segregation of Roma children in schools, discrimination in the housing sector, access to healthcare and employment persists in many Member states. The implementation of the EU Framework for National Roma Inclusion Strategies and national Roma inclusion strategies (NRIS) saw no major improvements. While some states made some progress in the area of education, the European Commission launched infringement proceedings on discrimination against Roma in education in the Czech Republic, Hungary and Slovakia. As a result, in the context of the adoption of a new EU Framework for Roma equality, inclusion and participation, the European Parliament is calling for a binding commitment on the part of governments to ensure equality and social inclusion of Roma across Europe.

### Inadequate implementation of EU law by Member States

Intergovernmental organisations monitoring the implementation of human rights standards, such as ECRI and UN bodies such as CERD have stressed that EU and national **equality and anti-discrimination legislation** is often not applied correctly or that there are gaps in legislation against ethnic discrimination in a number of Member States. For example, in its report on Latvia, ECRI stressed that there is currently no comprehensive legislation dedicated to prohibiting racial discrimination. Similarly, in the Netherlands, anti-discrimination legislation does not provide for sufficiently dissuasive sanctions and the scope of application of the General Equal Treatment Act is too narrow. Also, only 15 EU Member States have initiated government action plans against racism, racial/ethnic discrimination and related intolerance in 2019. The effectiveness and independence of equality bodies, a key element of the equality policy framework, continues to raise concerns.

By 2019, several Member States had not fully and correctly transposed the provisions of the **Framework Decision on Racism and Xenophobia (2008/913/JHA)**, while there is a **lack of guidance and training for criminal justice personnel makes it difficult to address hate crime effectively**. The Framework Decision requires bias motivation to be considered as an aggravating circumstance or taken into consideration by the courts in determining the penalties imposed on offenders. ECRI reports on Ireland, Latvia, Slovenia, and Romania raised concerns that no legislative provisions penalise the public expression of insults, or defamation on grounds of race, colour, language, religion, nationality or national or ethnic origin. The European Court of Human Rights (ECtHR) has already issued several important judgments deeming illegal hate speech and incitement to hatred. Similarly, in 2019, the ECtHR concluded that the right to freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) cannot protect hate speech on the grounds of religion and faith, ethnicity and race. Still, hate crime remains widely unreported and unrecorded, and national hate-crime data collection is insufficient, FRA's research and other studies consistently show.

Article 21 of the **Charter of Fundamental Rights prohibits any discrimination on the grounds of ethnic origin and race**. Similarly, Article 3 of the **Racial Equality Directive (2000/43/EC)** prohibits any discrimination on ethnic or racial origin in access to education; employment; services, including housing; and social protection, including healthcare. Reports of the European Commission and of international human rights monitoring bodies show that Member States need to make more effort to implement the directive's provisions correctly.

Members of minority ethnic groups, including those who are migrants, continue to face ethnic and racial discrimination across the EU in all areas of life, as FRA's and other research findings show – most often when seeking employment and housing.

The long-awaited adoption of the Equal Treatment Directive did not happen in 2019, leaving the EU's non-discrimination legal framework incomplete. Article 19 of the **Treaty of the Functioning of the EU** (TFEU) provides the basis for EU legislation to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Until now, the Council of the EU has adopted legislation providing protection against discrimination on grounds of gender and of racial or ethnic origin in employment and occupation, education, social protection, and access to goods and services, including housing. By contrast, EU legislation protects against discrimination on grounds of religion or belief, disability, age and sexual orientation only in the area of employment. As a result, under EU law, sex and racial or ethnic origin have more protection than religion or belief, age, disability and sexual orientation. The European Commission proposed an Equal Treatment Directive (COM (2008) 426) in 2008 in order to close this gap by extending protection against discrimination on grounds of religion or belief, age, disability and sexual orientation to the areas of education, social protection and access to goods and services and end the artificial hierarchy of protected grounds in the EU. In 2019, European Commission proposed to move from a unanimity regime to a qualified majority regime by making use of the general clause under Article 48 (7) of the Treaty on the EU (TEU), which requires however a unanimous decision of the European Council after obtaining the consent of the European Parliament. To date, the Council has still not attained the consensus it needs.

**Intersectionality** continues to be highly challenging both for **anti-discrimination law and for strategies promoting equality**. Intersectional experiences of racialised minorities and women from minorities such as undocumented women, women with disabilities, LGBT women, Roma women, older women, migrant women remain largely invisible, despite growing attention to the issue of intersectionality. Existing International and European legal and policy frameworks present severe structural obstacles to intersectional claims, particularly as they traditionally relied on addressing discrimination through a single-axis angle. Current interpretations of anti-discrimination law in Europe lack explicit standards for cases involving intersectional discrimination patterns. Similarly, international human rights instruments and enforcement mechanisms relied on by European bodies conceptualize discrimination on a single, discrete ground that might involve race, gender, sexuality, or religion. This limited arsenal of approaches reflects how European legal bodies are currently under-equipped to address cases of intersectional discrimination. Unfortunately, the **Court of Justice** of the European Union refuses to extend protection against discrimination on grounds that are considered 'new' categories of discrimination, such as claims asserted by Black or Muslim women that reflect claims involving a combination of several grounds.

## Recommendations

- EU should urgently adopt the **Horizontal Anti-discrimination Directive** in order to close the current protection gap in the EU legal framework concerning non-discrimination on grounds of age, disability, religion or belief, or sexual orientation in key areas of life, such as social protection, education and access to goods and services, and to ensure that the EU does not operate an artificial hierarchy of grounds; and that all minority and racialised groups, particularly women from minorities are better protected.

- The Commission should propose **additional anti-discrimination legislation** as set out in the political guidelines for the 2019-2024 European Commission and calls on the Commission to swiftly come up with it;
- Welcome the commitments to equality by the Commission President in her Political Guidelines for the next European Commission (2019-2024), the measures announced in the Commission Work Programme 2020, and in particular proposals on **minimum standards on the definition of certain types of violence and strengthening the Victims' Rights Directive**, as well as to table a **proposal to add violence against women to the list of EU-recognised crimes defined in the Treaty**; the best way forward is to regulate the prevention and elimination of all forms and dimensions of gender-based violence in a single legislative act by adopting a directive on combating violence against women and girls and other forms of gender-based violence;
- **Equality data** are indispensable for informing evidence-based non-discrimination policies, monitoring trends and assessing the implementation of anti-discrimination legislation. The EU should establish a coordinated approach to equality data collection and use. EU Member States should make further efforts to systematically record data on hate crime, collect them and publish them annually.
- EU Member States should fully and correctly transpose and apply the provisions of the **Framework Decision on Combating Racism and Xenophobia**. In addition, they should take the necessary measures to criminalise bias-motivated crime (hate crime), treating racist and xenophobic motivation as an aggravating circumstance. EU Member States should put measures in place that ensures reporting of hate crime and facilitate directing the victim to support services. In addition, they should ensure that any alleged hate crime is effectively recorded, investigated, prosecuted and tried. This needs to be done in accordance with applicable national, EU, European and international human rights law.
- The **hate crime data** should be disaggregated at a minimum by bias motivation, type of crime, and sex and age of victim(s) and perpetrator(s), to enable them to develop effective, evidence-based legal and policy responses to this phenomenon. Any data should be collected in accordance with national legal frameworks and EU data protection legislation.
- Member States should adopt for targeted policies with an **intersectional approach to guarantee the fundamental rights of vulnerable groups** who experience multiple discrimination, such as women, people with disabilities, refugees, asylum seekers and migrants, religious, linguistic and ethnic minorities, such as Roma, LGBTI+ people, children, elderly people and people with socioeconomically disadvantaged background;
- The EC and governments need to **address ongoing ill-treatment, profiling and over-policing of minorities by police officers**, particularly complaints with a possible racial motive. These should be investigated by a fully autonomous body outside the structures of the Interior Ministry or the police. Victims or witnesses of police ill-treatment should be ensured protection against harassment and victimisation.
- The **right to participation in public affairs** is also recognised in Article 25 of the International Covenant on Civil and Political Rights and was recently reaffirmed in the Council of Europe Guidelines for civil participation in political decision-making, September 2017. The EU is party to the UNECE Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, which links environmental rights with human rights, grants the public rights and imposes obligations on parties and public authorities regarding access to information, public participation and access to justice. Joint commitments and aims cannot be achieved without broad ownership, representation and

participation by all citizens. European institutions should take steps to **reform internal policies and working methods in order to ensure a fair representation of minority populations within EU institutions** as well as an **adequate participation and consultation of minority groups in EU decisions in policies, programmes and funding**, including through introducing positive measures and quotas. The sole criterion of nationality is discriminatory in its essence and does not ensure an equitable participation of everyone in the society, particularly minority groups. Similar approaches should be passed on to **national level to ensure a better participation of minority groups in public administrations, law enforcement and the justice system overall.**

- EU and the Member states should **commit to an ambitious, comprehensive, and binding EU Strategic Framework for Roma to achieve equality, social and economic justice, and combat antigypsyism.** The new EU Strategic Framework should include explicit Guidelines for Member states and Enlargement Countries for combating antigypsyism, ensuring social and economic rights, and enhancing empowerment and participation. Approaches to countering antigypsyism should include “Truth, Recognition, Justice and Reconciliation Commissions” and positive counter-narratives in art, culture, history, media and education targeting majority society and institutions.
- EU and member States should ensure **equitable access to quality inclusive education for all children; map and repeal the existing segregation among Roma pupils.** Access to higher education of **Muslim women** wearing a veil should be guaranteed in conformity with their own religious and philosophical convictions and not against them as guaranteed by the ECHR and ICCPR. In addition, it is essential that EU and Member States invest consistently in **raising awareness and adequately teach European societies about their colonial and racist past**, including the Genocide of people of African people in Congo or the Holocaust and slavery of Roma in Romania and historical facts about other minorities as well as in **depicting minorities in a non-discriminatory and non-stereotypical** way in schools, in public images, symbols and discourses.
- Segregation in education and housing regarding Roma is pervasive in Europe. EU should **define segregation as illegal in housing and in education**, in conformity with the International Convention on the Elimination of All Form of Discrimination (ICERD), which “condemns in Article 3 apartheid and racial segregation and obliges parties to ‘prevent, prohibit and eradicate’ these practices in territories under their jurisdiction and includes “an obligation to eradicate the consequences of past policies of segregation, and to prevent racial segregation arising from the actions of private individuals.”
- Address **discrimination of minority groups, particularly women and youth in employment** and encourage their employment in the private, public and third sectors. Discriminatory state and company policies limiting access to **Muslim women** wearing a veil should be repealed and sanctioned in line with an adequate application of non-discrimination and gender mainstreaming principles.
- Support the adoption of **laws explicitly recognising the right to water and sanitation** and ensure that all people in the country enjoy access therein, including by connecting informal settlements to public drinking water and sewerage systems.
- Monitor and fight discrimination in access to health and sensitise health professionals to the needs of ethnic and racialised minorities.
- Legalise informal settlements or desegregate settlements of Roma and other minority groups where possible.
- Linked to the coronavirus pandemic, an **immediate European humanitarian response** across the region should focus on the most vulnerable groups and racialized

minorities, making sure they are reached through funding and programmes in all Member States, Enlargement and Neighbourhood Countries.

- The **Covid-19 Recovery Plan** should fully take into account the needs of racialised minorities and define them as a priority in all mainstream policies and measures. It should ensure long-term investments in infrastructure, improved living conditions and smart and flexible economic solutions in employment and entrepreneurship, quality education, a clean environment, and fighting poverty and structural racism.
- The Commission should **ensure funding for equality and fundamental rights of minority groups** under the **Multi-Annual Framework**, particularly the **European Structural and Investment Funds**, the **new Citizens, Equality, Rights and Values Programme** the **New Green Deal** and **EU Covid-19 Recovery Plan**.
- Include **positive equality measures in EU structural fund policies**, as well as more specific actions, such as support for **strategic litigation** in cases of discrimination, **diversity policies** for women in leadership, developing **trainings** on the practical implementations of intersectionality in legal expert networks and for the judiciary, and setting up strong and **permanent consultative mechanisms** that engage with the most marginalised women at the intersections of different grounds of discrimination.