



Analysis and comparative review of
equality data collection practices in
the European Union

Data collection in the field of ethnicity

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practices in the European Union

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1 Introduction¹

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 2000.² 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 law.³ 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) prohibits discrimination based – among other grounds - on race, colour, language, religion, national or social origin and association with a national minority.⁴ 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.

Following the adoption and transposition of the RED, racial and ethnic minorities are now protected by anti-discrimination legislation across the Member States.⁵ The focus has turned to implementation and monitoring and in turn the need has arisen for data on (in)equalities based on racial and ethnic origin. Such data is essential to measure the level of implementation and monitor the impact of policies, but there are serious shortcomings as to data regarding the situation of racial and ethnic minorities. The common response in the country reports drafted for this project is that information is not collected on the grounds such as colour or racial origin. Data on ethnic origin and religion are collected on the basis of self-identification.

The European Commission on Racism and Intolerance (ECRI) was the first regional monitoring body that advocated for the collection of ethnic data in a coherent and comprehensive manner.⁶ It defines equality data as 'statistics broken down by citizenship, national/ethnic origin, language and religion' in order to assess the effectiveness of policies targeting ethnic minority groups. The European Committee of Social Rights has identified a duty on national authorities to collect equality data in order to inform policies.⁷ The UN Special Rapporteur on Extreme Poverty and Human Rights

¹ Throughout this report there is reference to reports on EU Member States as source of information, see for example footnote 11: "The Danish report aptly etc; According to the Portuguese report..etc." Unless stated otherwise these reports are the mapping reports written for task 1 of this project.

² Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Article 3 defines the RED's material scope.

³ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

⁴ Article 14 ECHR: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

⁵ A Comparative analysis of Non-discrimination Law in Europe, European network of legal experts in gender equality and non-discrimination, European Commission Directorate General for Justice and Consumers Directorate D - Equality, January 2016, particularly Annex 1 on the main anti-discrimination legislation as well as protected grounds in all EU Member States (as well as EEA countries and candidate countries). See page 124 et seq. at <http://www.equalitylaw.eu/downloads/3824-a-comparative-analysis-of-non-discrimination-law-in-europe-2015-pdf-1-12-mb>.

⁶ See, e.g. ECRI General Policy Recommendation No 4 on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims, adopted on 6 March 1998.

⁷ The Committee said that "where it is known that a certain category of persons is, or might be, discriminated against, it is the national authorities' duty to collect data to assess the extent of the problem (European Roma Rights Centre v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §27). The gathering and analysis of such data (with due safeguards for privacy and against other abuses) is indispensable to the formulation of rational policy (European Roma Rights Centre v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, §23)."

opined that the European Commission should start an infringement procedure if a Member State continues to misinterpret the EU Data Protection Directive as not permitting data collection on the basis of racial and ethnic origin.⁸

Ethnic data is collected for diverse purposes and pursues varied methodologies, which renders existing data unreliable in the majority of Member States, while comparison over time and across the states is difficult. According to the Special Eurobarometer 437, in 2015 ethnic origin based discrimination continues to be perceived as the most widespread in the EU (64%). The European Network Against Racism (ENAR) notes that the groups suffering the highest level of discrimination in Europe in employment and as victims of hate crimes are the Roma, people of African Descent and Black Europeans, Muslims, Jews and migrants.⁹ Stronger policy tools pertain to certain groups, such as the Roma, which renders data collection uneven. Data is collected on migrants and indicators of social inclusion have also been designed for migrants. There is a clear need to streamline the recommendations of the main stakeholders, harmonise methodologies across the Member States and move to designing indicators to measure the integration of racial and ethnic minorities in Europe.

Signs are emerging of gradual improvement in ethnic data collection, especially in relation to discrimination experiences and anonymous testing in the field of employment and housing. Data on attitudes vis-à-vis racial and ethnic minorities are also collected in a handful of Member States, as well at the regional level. Moreover, efforts have been taken to create categories of geographic origin to facilitate data collection. Improvements have been identified in terms of the involvement of racial and ethnic minority communities in designing categories, reaching out to community members, assessing research results and collecting ethnic data for use in legal disputes. National reports prepared for this project mention that equality bodies, academic or research institutes - public and private - regularly map the discrimination experiences of migrant groups and the Roma. Data also arises from the registration of complaints of discrimination by NGOs and equality bodies, but concerns still remain regarding the systemic registration of racial violence.¹⁰ ECRI calls for the systemic registration of racially targeted hate speech.¹¹ The European Union Agency for Fundamental Rights' initiatives represent good practice examples and resonate in a handful of Member States. In the majority of Member States, European wide surveys drive data collection on ethnic origin and migrants, particularly in the field of employment.

The sharing of best practices and progressive initiatives is nevertheless uncommon, despite the growing number of stakeholders who actively promote data collection on racial and ethnic origin. Much care is needed to channel diverse impulses among the divided and cautious national stakeholders. This work is urgent as Europe's changing demographic landscape presents a challenge of properly capturing the groups that are currently absent from statistics.

While racial and ethnic data collection has to some extent been addressed in domestic debates in about half the Member States, pro-data collection advocates rarely succeed in

⁸ United Nations, End-of-mission statement on Romania, by Professor Philip Alston, United Nations Human Rights Council Special Rapporteur on extreme poverty and human rights, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16737&LangID=E#sthash.42v5AeFT.dpuf>.

⁹ Racism and Discrimination in Employment in Europe, ENAR Shadow Report 2012-2013, p. 3. and Racist Crime in Europe, ENAR Shadow Report 2013-2014, p. 3. For a brief overview see, <http://www.enar-eu.org/Communities>

¹⁰ See Committee on the Elimination of Racial Discrimination (CERD) (2009), Consideration of Reports Submitted by States Parties Under Article 9 of the Convention. Concluding Observations of the Committee on the Elimination of Racial Discrimination. Greece, 14 September, p. 3. See also Racist Crime in Europe, ENAR Shadow Report 2013-2014, p. 3-4.

¹¹ See European Commission against Racism and Intolerance (ECRI) (2015), ECRI Report on Greece (fifth monitoring cycle), ECRI Secretariat, Directorate General II – Democracy, Council of Europe, pp. 17-18.

moving the agenda forward into policy and practice. The issue of feasibility conceals political choices not necessarily favouring the effective enforcement of EU non-discrimination law.¹²

Currently, domestic law permits the collection of data on racial and ethnic origin through a 'prohibition with exceptions'. The focus on 'objective' criteria, such as citizenship and migration background may supersede the self-identification of racial minorities, while the lack of consent forms enabling the processing of data on racial and ethnic origin may prevent data collection. In this context, it is interesting to note that prior to 1991, in the UK limited public debate preceded the decision to introduce racial categories in the census and that since then the response rates have been very high. On the other hand, both the Office of National Statistics and the equality body promote data collection on racial and ethnic minorities – for instance by making the data collection principles public. The equality duty completes the legislative and policy context that is conducive to data collection.

The RED focuses on both racial and ethnic origin, and these concepts inform the monitoring of its implementation. In the overwhelming majority of Member States, however, the concept of race or racial origin is not used in data collection. The way racial and ethnic origin is understood impacts on the protection provided by the RED and informs whether treatment apparently based on proxies such as immigrant status, nationality, language and certain religious practices is seen as direct or indirect, covert or overt discrimination. In order to measure (in)equality, it may be as important to identify the perceived racial and ethnic origin as the one self-identified. (Perceived) racial origin is an important element of the discrimination experiences of Afro-Europeans and European Muslims, as well as the Roma. In the Central and Eastern European (CEE) region, poverty is often racialised at the national level, but in practice, the most significant differences of treatment in the CEE remain between the Roma and non-Roma populations. Here, poverty/income data are used as a proxy, especially when combined with geographic location - given the highly segregated living conditions of the Roma across the CEE, affecting entire micro regions.

Racial and ethnic data collection is a complex issue, particularly because of the great variety of stakeholders whose consensus it presupposes: minority communities, statisticians, data protection agencies, equality bodies and policymakers. Some argue that this data collection essentialises ethnic groups or contributes to race discrimination. Others are concerned that migration, language, education level and poverty data are not effective proxies for measuring discrimination based on racial and ethnic origin. National

¹² The Danish Report aptly summarizes the political stakes in ethnic data collection: "there is currently little political support for ... additional non-legislative or policy measures as there is little recognition that discrimination is a problem in Denmark." The 2010 Action Plan for Equal Treatment from 2010 demonstrates the equality data paradigm. "The Action Plan for equal Treatment obviously has to discuss discrimination but does so [by highlighting] difficulties in mapping and measuring discrimination. This would call for new measures pertaining to data collection, [but] the Action Plan discuss[es] discrimination as a methodological rather than a societal problem. [It] points to a number of problems with the existing data [and asks] what perceived discrimination tells us about the proportion of discrimination." It looks at the number of complaints and findings of violation before the Complaints Committee for Ethnic Equal Treatment, the Board for Equal Treatment and the number of criminal proceedings to conclude that 'there are not many cases of discrimination in Denmark'. The problem is that incidents of discrimination often are not reported. The Danish Report also underlines that even though equality data may be thoroughly collected on other grounds - such as gender - this does not automatically mean that measures are then taken to promote equality. For a discussion of the policy framework on gender equality see Emerek R & Jørgensen MB (2011), *Lige rettigheder - Ligestilling i Danmark*. [Equal Rights – Equality in Denmark] https://www.regjeringen.no/globalassets/upload/bld/sla/skjeieutvalget/rapport_liketillingsapparat_danmark.pdf The Danish Report aptly summarizes the political stakes in ethnic data collection: "there is currently little political support ... as there is little recognition that discrimination is a problem in Denmark." According to the Portuguese Report, the current Minister for Justice notes that the issue is not on the political agenda due to the existence of "a kind of counter-prejudice (...) there is an official and institutional discourse that problems of discrimination are not applicable to the Portuguese. This paralyses any possibility of debate on this matter".

debates have taken place in half of the Member States, sometimes sparked by incidents pertaining to abusive practices, usually involving law enforcement agencies. Recently, ethnic profiling has become a central issue of contestation.¹³

Governments rarely pledge support for equality data collection on or including the ground of ethnic and racial origin. Ministries more often commission data collection on ethnic origin as compared to racial origin. Equality bodies are the key brokers of change. They take on diverse pro-active functions at the national level, including data collection reform initiatives, the clarification of methodological standards, complaints data collection and surveying attitudes to and experiences of discrimination – including through situation testing. In general, the surveys are performed by research institutes commissioned by the equality bodies and are therefore dependent on financial resources. The equality bodies collaborate with NGOs in performing their mandate.

Within the United Nations, statisticians have made progressive recommendations to promote data collection based on racial and ethnic origin, but the national reports suggest that their holistic approach has not yet reverberated at the domestic level. Nor have regional stakeholders taken them on board.¹⁴ Statistical data collection on ethnic minorities is to a considerable extent compliant with these recommendations, but statistical data collection on racial minorities – with very few exceptions – and other types of data collection methods are not. These are undertaken with the assumption that objective proxy data that does not directly interrogate respondents about their racial (or ethnic) origin yields more reliable results.

Administrative data is at times collected on the basis of third party identification (TPI), which is considered more reliable.¹⁵ The national reports suggest that for the purposes of equality policies, self-identification as a method has only been tested in few instances. When implemented, self-identification is limited to areas where it cannot be avoided, such as the collection of complaints or demographic data, but these data are not used for planning equality policies. The collection of data on discrimination experience is often received with reservations, particularly in relation to its 'objectivity'. The equality bodies collect complaints data, but data on judgments is not available in half the Member States. Data collection on hate crimes is undertaken in the great majority of Member States, but categorisation as racially motivated may be problematic.¹⁶ A distinction can be drawn between the collection of data on discrimination experiences and the general collection of data on population characteristics. The latter may provide insights into the quantitative presence of recognised ethnic minorities and migrants. Census data does not necessarily reveal discrimination, nor has it been reported to be used for designing equality policies, even though it could be used to reveal inequalities between groups.

Many equality bodies and ombuds institutions cooperate with civil society organisations in an ad hoc manner and good practice examples exist in relation to more coordinated forms of collaboration. NGOs often disagree on whether or not collecting data on racial and ethnic origin is desirable. In general, long standing, dominant, but not necessarily minority led anti-racist NGOs, Jewish and Roma communities oppose data collection,

¹³ European Union Agency for Fundamental Rights, *Towards More Effective Policing, Understanding and preventing discriminatory ethnic profiling: A guide*, October 2010.

¹⁴ Department of Economic and Social Affairs Statistics Division, *Principles and recommendations for population and housing censuses, Revision 2, Draft* (New York: United Nations 2006), para. 2.156-162. *Principles and Recommendations on statistical data collection regarding language and ethnicity*.

¹⁵ Even though the use of the most common proxies for the collection of data that may reveal racial or ethnic origin without the data subjects' consent is in violation of data protection provisions, few legal challenges have so far been mounted against abusive practices. In certain instances, without consultation, data protection agencies have permitted public authorities to collect ethnic data based on TPI – on the Antillean youth in the Netherlands and on Roma in Slovenia. In Hungary, the data protection agency permitted TPI based ethnic data collection in order to protect Roma rights and fight discrimination.

¹⁶ This report does not discuss data collection concerning hate crimes, given that they are not covered by the RED.

while groups advocating against hate speech/crimes or representing non-recognised communities are more vocal supporters. The latter call attention to the inadequacy of the country of origin data in capturing long settled racial minority groups. In general, NGOs collect data on complaints from the communities they serve and there are several good practice examples of data collection on hate crimes. Few NGOs advocate for data collection on racial and ethnic origin, the review of racial and ethnic categories or the use of existing proxies in a systematic way.¹⁷

Interestingly, innovations mostly emerge from entities not playing a central role in data collection, such as municipalities with diverse citizenry, employers wishing to promote ethnic diversity, student associations responding to complaints of racial harassment, private or public research institutes undertaking ad hoc projects and in few instances, NGOs. The pooling or linking of already existing data is rare and financial resources available for research are diminishing.

¹⁷ More detailed information is available on NGO attitudes, activities and obstacles in the Policy Report, Equality Data Initiative - Ethnic Origin and Disability Data Collection in Europe: Measuring Inequality - Combating Discrimination, Isabelle Chopin, Lilla Farkas and Catharina Germaine, November 2014, pp. 11-13. Hereinafter: EDI Report.

2 Racial and ethnic origin: a definitional puzzle

The concepts and definitions of racial and ethnic origin are complex, but if carefully applied and interpreted the categories can properly reflect this complexity.

Racial, ethnic and national origin, minority religion, language and cultural traditions have not been clearly distinguished in law, but are instead recognised as intrinsically interlinked. In its Advisory Opinion no. 17, the Permanent Court of International Justice stated that a (minority) community is “a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by this identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.”¹⁸ This line of interpretation has reverberated but has not been followed in the case law of the European Court of Human Rights (ECtHR) or in national legislation and case law. For instance, in *Orsus and Others v Croatia* the ECtHR interpreted the Romani language as not being part and parcel of Roma ethnic origin – hence the finding that distinction based on this ethnic minority language was neutral in terms of racial or ethnic origin.¹⁹ Outside of the Roma context, cases concerning the use of minority languages – Kurdish in Turkey (election campaigns and civil registries) or French in Belgium (education) have not necessarily been examined in the context of discrimination based on racial or ethnic origin.²⁰ The ECtHR in *Timishev v. Russia* and various Roma cases held that discrimination based on ethnic origin is a form of racial discrimination, which is a particularly invidious form of discrimination.²¹ In the Roma cases, especially in *D. H. and Others v the Czech Republic* and *Yordanova and Others v Bulgaria* it broadened the interpretation of ethnic discrimination by taking on considerations of social marginalization.²²

In *Feryn*, the Court of Justice of the EU skated over potential differences between ‘Moroccans’, ‘immigrants’, ‘race’ and ‘ethnic origin’ when establishing direct discrimination under the RED.²³ More recently, in *Nikolova*, it provided protection under the RED to an ethnically non-Roma person whose business was situated in a predominantly Roma neighbourhood.²⁴ This approach tallies with that of the ECtHR’s in *Yordanova*, enriching the understanding of social marginalization and spatial segregation as being markers of racial or ethnic origin. The people who live in the marginalized and spatially segregated communities in *Yordanova* and *Nikolova* are perceived or assumed as being Roma and the treatment meted out to them is based on perceived or assumed ethnic or racial origin. At times, careful analysis is needed to determine whether discrimination is based on racial or ethnic origin or a constitutive element of either concept, such as minority religion. For instance, in the UK, in *R (E) v Governing Body of JFS*, a case that concerned the refusal of a Jewish faith school to enrol a student whose mother was not considered to be Jewish, the Supreme Court established discrimination based on racial origin.²⁵

¹⁸ International Court of Justice, Advisory Opinion. of July 31, 1930, concerning the Greco-Bulgarian Communities (Opinion no. 17).

¹⁹ Case of ORŠUŠ and Others v Croatia, Application no. 15766/03, Grand Chamber judgment of 16 March 2010.

²⁰ ŞÜKRAN Aydın and Others v Turkey, Applications nos. 49197/06, 23196/07, 50242/08, 60912/08 and 14871/09, judgment of 22 January 2013, Kemal TAŞKIN and Others v Turkey, Applications nos. [30206/04](#), [37038/04](#), [43681/04](#), [45376/04](#), [12881/05](#), [28697/05](#), [32797/05](#) et [45609/05](#), judgment of 2 February 2010 and the Belgian Linguistic case (No. 2) (1968) [1 EHRR 252](#).

²¹ Timishev v Russia, Applications nos. [55762/00](#) and [55974/00](#), judgment of 13 December 2005.

²² D.H. and Others v. Czech Republic, application no 57325/00, Grand Chamber judgment of 13 November 2007 and Yordanova and Others v Bulgaria, Application no. [25446/06](#), judgment of 5 June 2012.

²³ C-54/07 Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV, judgment of 10 July 2008.

²⁴ CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia, C-83/14, 16 July 2015.

²⁵ R (E) v Governing Body of JFS [2009] [UKSC 15](#).

Given data collection shortcomings, the exact number of individuals belonging or perceived as members of racial and ethnic minority groups is not known. The number of the most sizeable communities can only be estimated as follows: 19 million European Muslims, eight million Black Europeans and seven million Roma.²⁶ There are diverse historical roots of racial minorities in Europe leading to a difference between Member States that have been receiving immigrants in greater numbers over the past decades and those that have not. Immigrants and descendants of immigrants are counted on the basis of categories that speak to their status as immigrants – such as citizenship, country of origin (of parents) and language spoken at home – even if they have acquired citizenship or their descendants are born in the EU. Roma, on the other hand, have been present across Europe for centuries and are often counted according to their social status, traditions and language. The discrepancy between the number of racial and ethnic minorities and the estimates – at times generated on the basis of proxy data – are not exactly known but evidence collected by ENAR and through the EDI Project suggests that discrepancies are significant for Afro-Europeans and European Muslims.

Several examples emerge of classifications of ‘more recent immigrants’ on the basis of geographic origin. The commonly used proxies for this standardisation are citizenship and country of origin. In this operationalisation, racial origin is understood as descent linked to immigration and geographic origin. Descent as geographic origin does not only fit an immigration centered approach but also sits comfortably with the ethnic minority protection framework that is dominant in the majority of Member States. Seemingly, racial origin understood as skin colour cannot be accommodated in either of these frameworks. Racial origin understood as skin colour assumes categorisation of skin colour and the reconciliation of descent with skin colour. These steps have not yet been taken in the overwhelming majority of Member States. Consultation has not yet been undertaken between communities, nor has research assessed the extent to which colour, descent, language, religion and cultural tradition should inform classification.

At the European level, legal and statistical instruments use different categories to denote racial and ethnic origin. The following table demonstrates the difference between the RED and ICERD, as well as the Labour Force Survey, the European Social Survey, European Statistics of Income and Living Condition (SILC), Eurobarometer (EB) and EU-MIDIS. The European Health Interview Survey (EHIS) surveys the health conditions of the population.

²⁶ Muslims in Europe: Questions and Answers, 20 February 2015, ENAR, Afrophobia in Europe, ENAR Shadow Report, 2014-2015, p. 11.

Comparative table on legal and statistical categories denoting racial and ethnic origin in European surveys

Characteristic/ source	RED	ICERD	LFS	SILC	ESS	EHIS	EB	EU-MIDIS
Racial origin	x	x			x			
Ethnic origin	x	x			x		x	X (Roma in 2015)
Colour		x			X			
Descent		x						Descendants of immigrants
Citizenship			x	X		x	x	
Place of birth			x	x		x		Immigrants
Place of birth (of parents)				X (2008, 2014)				
Nationality					x			
Religion					x			
Language					x			
Discrimination experience					x		x	
Geographic origin								X (2008)

The concepts of nationality and citizenship create synergies as well as discrepancies , which is borne out in several national reports:

Estonia: The term *nationality* has clear ethnic connotation. It is why country of birth and citizenship are less informative and rarely used proxies for ethnic origin, although they are widely available (Census, Estonian LFS, EU-SILC). In several surveys proxies for ethnic origin are also available and are widely used in the data analysis and assessment of comparative situation of minority groups. Most often these proxies refer to the use of language. Thus, *language most often spoken at home* is available in PISA, ESS, but also in Estonian LFS. *Mother tongue* is identified in the Estonian Educational Information System, but also in the Census. With regard to assessment of the relative situation of ethnic groups in education, language of instruction (mainly Estonian versus Russian) is a widely used proxy for ethnic origin.

France: Data on *migration background* (country of birth and citizenship of individuals and of parents, including citizenship prior to French citizenship by acquisition) are collected within statistical surveys which also include questions on the diploma level and socio-professional status of the respondents. Geographical origins are generally indicated by nationality or grouped by geographical area ("sub-Saharan Africa", "other Asian countries" for example). It is the country of birth, and not the citizenship at birth that defines the geographical origin of an immigrant. An *immigrant* is a person who is born a foreigner and abroad, and resides in France. The category of *descendants of immigrants* involves several limitations. This definition does not include the third generation or French overseas populations, creating an inevitable link with the countries or the cultures of the parents.

Germany: Data on racial and ethnic origin is operationalised as *migration background* and other proxies. Educational research formed and informed later discussions on *migration background*. The broadest definition of the *migration background* is the definition of the micro-census, while other specific statistics use diverging definitions, which creates problems of comparability.²⁷ The Third integration report of the Länder of 2013 out of practical reasons reverts to the *German and non-German nationality* category, in cases when the new definitions of *migration background* in the Länder are not available. The Länder developed a separate system. Following the adoption of the new citizenship law in 2000, the old *foreigner* – “German” divide did not reflect the composition of the German population and the numbers produced were not useful for administrative planning. In 2005, this was solved by the political decision to introduce the categories of *migration background* and *migration experience*. The *German-foreigner nationality* has been replaced by a variety of other categories, which function as ethnic markers. Education research and the micro-census have been in the forefront of developing categories such as *migration background*, *birth place of parents*, *language spoken at home or non-German language of origin* to mark but not to name ethnicity. Other surveys use *names (onomastic procedures*²⁸, *ethno-variables*) to identify ethnicity. *Religion and belief* were used for the first time in the census in 2011 to identify Muslims. Categories have been developed without any consultation or participation of minority groups.

Synergies of migration background, migration experience, nationality and/citizenship, German Report

	German	Foreigner
Without migration background	“native” Germans	x
With migration background	Born into a family which came to Germany after 1955	Holding foreign nationality.
With migration experience	Germans who migrated themselves (e.g. Germans from former Soviet Union)	Foreigner born outside of Germany.
Without migration experience	Born in Germany	Born in Germany

Slovakia: ‘The legal definitions of (...) *ethnicity* [etnicita], *religion* [náboženstvo], *language* [jazyk] and *national origin* [národnostný pôvod] overlap as they are to a very large extent officially unified in the concept of *nationality* [národnosť] (in the sense of a constitutionally guaranteed individual right to choose national affiliation)’.²⁹ Thus, *nationality* is distinguished from *citizenship* [občianstvo]. A person who is a Slovak citizen can belong to one of the 13 recognised national minorities.³⁰ Criteria clearly defining concepts of ethnic groups and national minorities are not contained in any national law.

²⁷ Third integration report of the Länder, 2011-2013, <http://www.bundesregierung.de/Content/DE/Publikation/IB/2009-07-07-indikatorenbericht.html>, accessed 24 January 2016.

²⁸ The SOEP describes the use of so called “onomastic procedures” as follows: “First and last names of individuals without an unequivocal migration background need to be pre-processed and then compared to large databases containing lists of names specific to country and ethnic origin”.

²⁹ Affiliation to Roma community is for example perceived as “nationality”. The Slovak government also regards the Jewish minority as a “national minority” (see, for example, the composition of the Council of the Government for National Minorities and Ethnic Groups), available at <http://www.mensiny.vlada.gov.sk/data/files/4491.pdf>. See Pufflerová, Š. (2009), Slovakia Country Report No.1, Network of Socio-economic Experts in the Non-discrimination Field, Bratislava.

³⁰ Úrad slomocnenca vlády SR pre národnostné menšiny (2014), Národnostné menšiny a etnické skupiny žijúce v Slovenskej republike, Bratislava. Available at

Sweden: *Race* is not used as the term is considered to be closely linked to racism. *Ethnic origin* (etniskt ursprung) is more accepted, used predominantly within the anti-discrimination area. The politically correct term used in public documents is *foreign origin* as opposed to *Swedish origin*. These two terms are officially defined by Statistics Sweden as follows.³¹ Persons of Swedish origin are persons born in Sweden who's both parents were born in Sweden or persons born in Sweden who's one parent was born in Sweden and one parent was born outside of Sweden. Persons of foreign origin are persons born outside of Sweden or persons born in Sweden who's both parents were born outside of Sweden.

http://www.narodnostnemensiny.gov.sk/data/files/5126_narodnostne-mensiny-a-etnicke-skupiny-zijuce-na-uzemi-slovenskej-republiky.pdf Affiliation to Roma community is perceived as "nationality".

³¹ Statistics on persons with foreign background: guidelines and recommendations. Reports on Statistical Co-ordination for the Official Statistics of Sweden 2002:3. Available with an English summary at: <http://www.scb.se/Statistik/OV/AA9999/2003M00/X11OP0203.pdf>

3 The Legal Framework for Collecting Data on Racial and Ethnic Origin

3.1 General trends

No Member State imposes an absolute prohibition of ethnic data collection. In all Member States, the collection of ethnic data takes place in accordance with the Data Protection Directive.³² Article 8 (1) prohibits the processing of personal data in relation to certain special categories, including data concerning ethnic origin. This is, however, subject to exceptions. In particular, it does not prevent the gathering of such data, either with the data subject's consent, or if it is rendered anonymous. Most Member States have chosen to follow the wording of the Directive and interpretation includes racial as well as ethnic origin among the sensitive data. The Spanish Personal Data Protection Act No. 15/1999 fails to extend an explicit protection for data on ethnic origin, since it expressly mentions only racial origin.³³ It is the Spanish Government's view that the availability of statistics on the number of persons of each racial or ethnic origin would result in discrimination. However, racial origin is interpreted as including ethnic origin.

Even in France, often seen as a case of absolute prohibition, ethnic data collection is possible under exceptions. The French Constitutional Council forbids the processing for the purposes of measuring personal data revealing directly or indirectly the racial or ethnic origin of people, as well as the introduction of variables on race or religion in administrative files.³⁴ It finds that ethnic origin and race are not objective concepts, however public statistics are permitted to collect data concerning origins on the basis of objective data such as names, geographical origin or previous citizenship. Data on the spoken language at home are not explicitly mentioned. The religious membership question was eliminated from the census in 1872 and is still qualified as sensitive. However, permission has been obtained to collect data on religion in recent national strands of the international and European surveys, as well as in Trajectories and Origins. It is conceivable that as a result of the Constitutional Council decision, French judicial interpretation is not compliant with the EU Data Protection Directive concerning the collection of ethnic data, inasmuch as it denies the right to individuals to consent to the processing of data concerning their ethnic origin while providing a mechanism that generates such data without their explicit consent.

The exceptions allowing data collection are diverse in terms of the legislative provisions across the Member States. Exceptions have not been reported to go beyond those of the Directive in relation to racial and ethnic origin in a manner that contravenes the Data Protection directive. The Netherlands provides the only example where data protection legislation includes exceptions beyond those envisaged in the Data Protection Directive. The exemption on the ground race, permitting processing when it is absolutely necessary to identify a person may be incompatible with the Directive.³⁵ The other exemption relates to granting persons positive action measures, which is in line with the Data Protection Directive when read in conjunction with Article 5 RED that pertains to permissible positive action measures on the ground of racial and ethnic origin.³⁶

³² Directive 95/46/EC [1995] OJ L281/31.

³³ Spain, Personal Data Protection Act (Ley Orgánica de Protección de Datos de Carácter Personal) 15/1999, 13 December 1999, Article 7. <https://www.boe.es/buscar/act.php?id=BOE-A-1999-23750>.

³⁴ 47 Constitutional Council, No. 2007-557 DC, 15 November 2007.

³⁵ Article 18(a) of the PDPA.

³⁶ 18(b) sub 1,2,3 PDPA contain safeguards on this exemption, namely it should be absolutely necessary, the data relates to the birth place of the subject, his/her parents or grandparents or other legal criteria, or when the subject granted written permission.

3.2 Examples of Member States that have laws obliging or promoting the collection of data relating to race and ethnic origin.

Obligations to collect racial and ethnic data do not generally seem to be codified in law in the Member States. Three notable exceptions, Finland, Ireland and the United Kingdom (UK), place a duty of equality data collection on public bodies as part of their equality planning:

Finland: Equality planning and ethnic data collection are equally promoted in Finland. A duty is imposed on all authorities, all employers and all providers of education to promote equality, with an ensuing duty to assess the realisation of equality in their functions.

Ireland: The Irish Human Rights and Equality Commission Act 2014 (Article 42) introduced a public duty in relation to human rights and equality. Public duty charges Irish publicly funded bodies to have regard to the need to eliminate discrimination, promote equality and protect human rights both in relation to staff and those to whom services are provided. It establishes requirements for an equality and human rights assessment by each organisation and an annual report on evidence of progress in furthering equality goals. In practice, it is reasonable to assume that where it exists, equality planning promotes or is conditioned on ethnic data collection.

United Kingdom: Under the Equality Act 2010 there are duties on public authorities to pay due regard to the promotion of equality of opportunity on a wide range of protected characteristics. The legal obligations include a duty to collect data in order to monitor progress, although the precise data collection obligations differ between England, Wales, Scotland and Northern Ireland.

In a few countries, purpose-bound instruments promote data collection on racial and ethnic origin in a less comprehensive manner. A discrimination registration system is required for municipalities in the Netherlands under the Municipal Anti-Discrimination Facilities Act. The system registers complaints of discrimination.³⁷ The Dutch Discrimination Instruction was issued in 2007 by the Ministry of Safety and Justice for police, public prosecutors, local administration and Anti-Discrimination Bureaus as guidelines for uniform collection of equality data in order to ensure effective prosecution of discrimination which is considered a criminal offence. In addition, in the context of projects financed with European Funds, Romanian and Hungarian authorities collect data on the ethnicity of beneficiaries, as required by the EU on the basis of voluntary declaration.³⁸

³⁷ Netherlands, Municipal Anti-Discrimination Facilities Act (Wet gemeentelijke antidiscriminatie voorzieningen), 25 June 2009, http://wetten.overheid.nl/BWBR0026168/geldigheidsdatum_01-12-2015 accessed 25 February 2016.

³⁸ Article 57/A. (2) k) of Act IV of 1991 and Article 57/D. (2) ge) of Act IV of 1991, respectively.

4 Mapping Existing Sources of Equality Data on Racial and Ethnic Origin

The common response in the national reports is that data collection is permitted but in practice not undertaken on the grounds of (skin) colour or racial origin. Data on ethnic origin - and on some other interrelated grounds, such as religion - is collected on the basis of self-identification. In a few countries, such as Romania, Slovakia and Estonia, only one ethnic origin can be selected in the census.³⁹ A great variety of data is collected on language, place of birth (of parents) and migration background. These data are considered objective and function as ethnic/racial markers, in other words as proxies for racial and ethnic origin. Their common characteristic is that these categories have as a general rule been adopted without community consultation. Another characteristic is that the data collection has not been standardised at regional and even at national level. The discrepancy between national and European methodologies limits access to data for various minority groups, which in turn renders not only national, but also European data collection less reliable and comparable.

The French example aptly demonstrates the ramifications of a restrictive (judicial) interpretation pertaining to sensitive data collection. In France, the publicly funded statistical agencies refuse to collect data on racial and ethnic origin in the national census except regarding nationality and the origin of first degree ascendants for limited secondary studies.⁴⁰ Therefore, racial and ethnic statistical indicators do not exist. However, such data can be collected in small-scale multi-criteria surveys and studies under the supervision of the national statistical agencies (based on a maximum representative sample of 5,000).

Integration, human rights and equality planning provides frames for data collection at the national level. A focus on migrants, ethnic minorities and the Roma are often prompted in the field of education, where the compulsory public service cannot effectively be provided without mapping minority children's language needs.⁴¹ However, more innovative approaches, such as the measuring of discrimination experience, attitudes to minority groups and the use of situation testing as a method, are more characteristic of research in the fields of employment and housing discrimination.

4.1 International and European Sources of Data

Eurostat regularly publishes data, notably on Immigration, Emigration, Acquisition of citizenship (and former citizenship), Asylum and Dublin statistics, Residence permits and Census results by citizenship.⁴²

The Labour Force Survey (LFS) is a quarterly survey carried out in the Member States of the EU, Candidate Countries and EFTA countries (except for Liechtenstein). It covers persons aged 15 years or older living in private households. It provides information on demographic background, employment, unemployment, education and training. The survey collects data using the categories of *citizenship and the place of birth*. If we take

³⁹ Census Spanshots. Tallinn: Statistics Estonia, 2013: 59. This is especially important for those 67% of Estonian Population who answered for 2011 Census questions through the Web. As to major European Surveys, such as Estonian LFS, EU-SILC, their data are collected as face-to-face interviews, so question about ethnicity and home language/mother tongue is just asked, respondent is not provided with any list/card to choose, thus, the procedure insures answers to open-like questions.

⁴⁰ The National Institute of Statistics and Economic Studies (*Institut national de la statistique et des études économiques, INSEE*); the Directorate for Research, Studies and Statistics of the Ministry of Labour, Employment, Vocational Training and Social Dialogue (*Direction de l'animation de la recherche, des études et des statistiques, DARES*); the Directorate for Research, Studies, Assessment and Statistics of the Ministry of Social Affairs, Health and Women's Rights (*Direction de la recherche, de l'évaluation, des études et des statistiques, DRESS*); and the French Institute for Demographic Studies (*Institut national des études démographiques, INED*).

⁴¹ FABER project researched educational achievements of migrants and used mother tongue as important indicator of ethnic origin, see: http://www.pedocs.de/frontdoor.php?source_opus=6588.

⁴² Eurostat: <http://ec.europa.eu/eurostat/data/database>, accessed 29 March 2016.

citizenship or place of birth as a proxy for racial and ethnic origin, the surveys report important gaps between nationals and persons with a foreign country citizenship. The criterion place of birth presents similar results. For example, at the EU level in 2014 and for the age group 20-64, the unemployment rate of nationals is 9,5% but the unemployment rate of persons with a nationality of a foreign country is 16,1%. Furthermore, if we keep only persons with a nationality other than EU 28 the unemployment rate is 20,1% (Non EU28-countries nor reporting country). In several Member States the gap is even bigger. Similar gaps are found when we consider employment rates whether we use citizenship or place of birth. LFS does not ask about racial and ethnic origin, colour or descent. It does not capture descendants of immigrants, Afro-Europeans, Muslims and the Roma.

The European Statistics of Income and Living Condition (EU-SILC) survey is the EU reference source for comparative statistics on income distribution and social exclusion at the European level. The EU-SILC is an annual survey carried out in the Member States of the EU and Iceland, Norway, Switzerland, Serbia and Turkey (limited data). The survey covers all individuals aged 16 years old and over living in private households. The cross-sectional and the longitudinal data are produced annually. The survey reports the demographic background, employment, unemployment, education/training, poverty (financial and material) and housing conditions. The proxies for race and ethnic origin are *country of birth and citizenship*. The survey reports important gaps between nationals and non-nationals (or born in another country). For example, in the EU in 2014 and for persons aged 18 and over, the rate of nationals at-risk-of-poverty rate is 15,5% compared to 31,7% of foreign nationals. Furthermore, this rate for non-EU 28 citizens (Non EU28-countries nor reporting country) is 38%. In several Member States the gap is even bigger. Similar gaps are found when we consider at-risk of poverty or social exclusion whether we use citizenship or place of birth. Concerning the rate of early school leavers at the EU level, it is 10,3% for nationals and 23,4% for foreign nationals in 2014. Citizenship and place of birth does not take into account the situation of the second and third generation born in the EU and acquiring the nationality of the country of residence. In order to fill this gap, Eurostat organised an LFS ad hoc module on the "Labour market situation of migrants and their immediate descendants" in 2008 and 2014. The data that were collected within this module included country of birth of the father and the mother to identify second generation migrants. Also information was collected on the main reason for migration, legal barriers on the labour market and qualification and languages issues. If we analyse unemployment rates, the module reveals that native-born with foreign background (second generation of immigrants) are generally the most disadvantaged group. Their situation is often worse as compared to foreign-born persons (first generation of immigrants). Different barriers in the labour market are studied (Lack of language skills, Lack of recognition of qualifications, citizenship of residence permit, *origin, religion* or social background, No barrier and Other barriers). A very high percentage reports "other barriers" which may include discrimination. SILC does not ask about racial and ethnic origin, colour or descent. It does not capture descendants of immigrants from second generation up, Afro-Europeans, Muslims and the Roma.

The European Social Survey (ESS) is an academically driven cross-national survey. It measures the attitudes, beliefs and behaviour patterns of diverse populations. Generally, it covers persons aged 15 and over resident within private households in 24 countries (of which 18 are EU Member States), every two years since 2001. It is a household survey covering a wide range of topics, but it includes a question that allows respondents to indicate that they belong to a group that experiences discrimination in their country.

Participants can indicate *belonging to a group that faces discrimination on grounds of, inter alia, colour or race, nationality, religion, language and ethnic group*. Question C24 asks: Do you belong to a *minority ethnic group* in [country] – defining "Belong" as attachment or identification. Given the great variety of questions that may pertain to racial and ethnic origin, much depends on coding – i.e. whether linkages are made

between responses and whether multiple choices are permitted. Whereas question C24 allows statisticians to control for ethnic origin, no similar control question is inserted for racial origin. Concerning proxies related to racial and ethnic origin, the survey considers citizenship, place of birth, place of birth of parents, belonging to a minority ethnic group in country, member of a group discriminated against in this country: colour/race, nationality, religion, language and ethnic group. The survey covers different dimensions of discrimination but the sample and the number of Member States is limited. By increasing order, nationality, colour/race and religion are the most often quoted grounds of discrimination.⁴³ ESS does not capture descendants of immigrants from second generation up, Afro-Europeans, Muslims and the Roma.

Eurobarometer surveys were conducted in order to collect information on discrimination experiences and public attitudes concerning discrimination.⁴⁴ The survey examines Ethnic origin as well as Religion or beliefs, among other grounds. The report presents whether citizens think of themselves as belonging to a minority group; perceptions of discrimination covering attitudes to different groups; detailed analysis of discrimination on individual grounds; measurements of discrimination in Europe, whether directly experienced by Europeans or as third-party evidence; the Roma. In 2006, the *Special Eurobarometer 263 on Discrimination in the European Union* was conducted.⁴⁵ Across the EU, 75 % of respondents within the general population were in favour of providing personal information as part of a census to help combat discrimination based on ethnic origin, while 19% would be opposed and 6 % did not know. There were negligible differences between old and new EU Member States when it came to supporting equality data collection.⁴⁶ Special Eurobarometer 393 was published in November 2012.⁴⁷ It found that ethnic origin is the most widely perceived ground of discrimination (56%).⁴⁸ 16% of EU citizens reported having suffered discrimination, but only 4% consider themselves as belonging to an ethnic minority group.⁴⁹ According to the Special Eurobarometer 437 conducted in 2015, "Discrimination on the grounds of ethnic origin continues to be regarded as the most widespread form of discrimination in the EU (64%), and it is more likely to be seen as widespread than was the case in 2012 (+8 percentage points)".⁵⁰ Concerning racial and ethnic origin, the Eurobarometer asks *citizenship* but also whether the interviewee *experienced discrimination on the basis of ethnic origin*. About 3,4% of respondents report having experienced discrimination.⁵¹ Another question asks whether the respondent thinks of himself as *belonging to a minority group based on ethnic minority criteria*. About 4,1% reports feeling being part of a minority group. The combination of both criteria yields a rate of 6,3% which might be considered as a proxy for ethnic origin (excluding Roma). For comparison about 2,3% report being non-citizens of the country of residence which is an underestimation compared to population data (6,9% for all ages).⁵² Notably, not all non-citizens of the country of residence consider themselves being part of a minority group. Also, several citizens of the country of residence consider themselves to be part of a minority group. However, given the small size of the sample the Eurobarometer survey does not enable a detailed analysis of the characteristics and barriers associated to "ethnic origin/minority".

⁴³ European Social Survey: ESS round 7, Edition 1.0 (ESS7e01), of 28 October 2015.

⁴⁴ European Commission: "Special Eurobarometer 393, Discrimination in the EU in 2012. Report", Special Eurobarometer 393 / Wave EB77.4 – TNS Opinion & Social, November 2012; and European Commission: Eurobarometer on Discrimination 2015: General perceptions, opinions on policy measures and awareness of rights; Factsheet, October 2015.

⁴⁵ Special Eurobarometer 263 Discrimination in the European Union, European Commission, 2007, p. 28.

⁴⁶ Ibid, p. 29.

⁴⁷ European Commission Special Eurobarometer 393, Discrimination in the EU in 2012, November 2012.

⁴⁸ Ibid, p. 7.

⁴⁹ Ibid, p. 14.

⁵⁰ Discrimination in the EU in 2015, European Commission, October 2015, p. 7.

⁵¹ Eurobarometer 83.4 (May-June 2015). GESIS ARCHIVE VERSION & DATE 1.0.0 (2015-11-23)

⁵² Eurostat: <http://ec.europa.eu/eurostat/data/database>, accessed 29 March 2016.

The EU-MIDIS survey of the FRA aimed to measure the degree of discrimination through a 2008 survey covering 23,500 persons with migrant or minority backgrounds across the EU.⁵³ This survey included a question on willingness to provide information on one's ethnic origin as part of an anonymous census if this could help combat discrimination. Although the results varied greatly between different groups, in most countries a majority of respondents were willing to provide such information. The survey canvassed opinions from major ethnic minority groups present across the EU. While on average the ex-Yugoslav, the Russian and the Eastern European immigrant population seemed to be most willing to provide data on their ethnic origin in the census for the purposes of fighting discrimination, willingness among the Turkish and North African communities also ranked high, with Somalis and the Roma ranking lower. However, even the majority of the Roma would be willing to provide ethnic data.⁵⁴ The second wave of the EU Minorities and Discrimination Survey (EU-MIDIS II) is underway. It is collecting comparable data in the 28 Member States to inform EU action against discrimination which immigrant or ethnic minorities face. It will inform the core impact indicators of the EU Framework for National Roma Integration Strategies (EURS) and immigrant integration. EU-MIDIS II focuses on experiences of discrimination in fields covered by the RED, hate crimes and victimisation, social inclusion and societal participation, as well as producing comparable data of EU and national anti-discrimination and equality legislation and policies. EU-MIDIS II aims to collect data from around 25,000 people, surveying the population broadly termed as 'immigrants', 'descendants of immigrants', 'ethnic minorities' or 'national minorities' and 'Roma'. The FRA also undertakes studies that focus on specific minorities, such as the Roma and Muslims – for instance in The Situation of Roma in 11 Member States.⁵⁵

Several international projects have also provided relevant data related to ethnic and racial origin. OECD PISA (Organisation of Economic Cooperation and Development Programme for International Student Assessment) reports provide important insights into inequalities in education. The PISA questionnaires contain information on student's economic, social and cultural backgrounds. The International Labour Organisation (ILO) in 2004 funded comparative research in several countries regarding discrimination in the workforce based on the situation testing methodology focusing on migrant workers.⁵⁶ This initiative has not been followed up. The GendeRace project conducted research from February 2008 to July 2010 in France, Bulgaria, Germany, Spain, Sweden and the UK. It looked at the complex and diverse understandings of discrimination and focused on intersectional experiences (multiple discrimination).⁵⁷ It found different types of data sources relevant for the field of equality data including data from registration processes in schools (number of children taught in special schools or taking part in minority education; registration of citizenship, migration background and/or special educational needs). ENAR and the Open Society Institute/Foundations are two NGOs that regularly publish comparative reports on Afro-Europeans and European Muslims.⁵⁸

4.2 National Sources of Data

Governments rarely pledge support for equality data collection on or including the ground of ethnic and racial origin. Ministries often commission data collection on ethnic origin. Good practice examples of more comprehensive data collection emerge in the

⁵³ European Union Agency for Fundamental Rights (2009) European Union Minorities and Discrimination Survey, http://fra.europa.eu/sites/default/files/fra_uploads/663-FRA-2011_EU_MIDIS_EN.pdf.

⁵⁴ European Union Minorities and Discrimination Survey, Main Results Report (2009), pages 85, 137, 158, 179, 200 and 223.

⁵⁵ Available at: <http://fra.europa.eu/en/publication/2012/situation-roma-11-eu-member-states-survey-results-glance>.

⁵⁶ http://www.ilo.org/global/topics/labour-migration/publications/WCMS_201593/lang--en/index.htm. In particular, for details concerning methodology, nationality and category of migrants see pages 27-41.

⁵⁷ GendeRace. The use of racial antidiscrimination laws Gender and citizenship in a multicultural context, final report, <http://genderace.ulb.ac.be/rapports/GENDERACE%20FINAL%20REPORT%20sent.pdf>.

⁵⁸ Open Society Institute, At Home in Europe project, Muslims in Europe: A Report on 11 EU Cities, 2010.

Netherlands, Portugal, Belgium and the UK.⁵⁹ Most recently, in The Netherlands, in September 2015, a national anti-discrimination campaign 'Delete Discrimination' was launched by the Minister of the Interior to stimulate reporting of discrimination and develop more effective responses.⁶⁰ The campaign combines TV-commercials, social media, a special website and a toolkit, while discrimination guidelines have been developed for organisations dealing with complaints – criminal or otherwise.⁶¹

Equality bodies are the key brokers of change. They take on diverse pro-active functions at the national level, including the piloting of data collection reform initiatives, the clarification of methodological standards, complaints data collection and surveying attitudes to and experiences of discrimination – including through situation testing. In general, the surveys are performed by research institutes commissioned by the equality bodies and are therefore dependent on financial resources. The equality bodies collaborate with NGOs in performing their mandate. At the European level, Equinet, the European Network of Equality Bodies supports equality data collection by reference to the work of national equality bodies and the FRA.⁶² In Sweden and Lithuania, the equality bodies pursued data collection reform initiatives, which regrettably have not borne fruit. In France, Hungary and the UK, the equality bodies have engaged in clarifying methodological standards – in the former two involving the national data protection agencies, in the latter complementing the efforts of the national statistical office and the government.⁶³ In the UK, the Equality and Human Rights Commission has issued guidance on equality data, and specifically on how its collection relates to data protection considerations.⁶⁴ In Belgium, the equality body is planning to engage stakeholders in methodological discussions – particularly in relation to situation testing. All the equality bodies collect complaints data and some – such as the Greek and Polish Ombud – collaborate with NGOs in order to improve data collection. In Germany, in 2010 the Federal Anti-discrimination Agency (ADS) commissioned a feasibility study and organised an expert meeting on Standardised Data Collection creating evidence of discrimination⁶⁵. The ADS is the only German state organ that openly talks about racism and the need to have data, especially on discrimination experiences.⁶⁶

⁵⁹ The Dutch government recognises the importance of conducting regular research on discrimination and exclusion in order to combat discrimination at the local level. E.g. Tiemeijer W., Jonkers P., Policymaking using Behavioural Expertise (Met kennis beleid maken), Netherlands Scientific Council on Government Policy, WRR-report 92. In 2007, the UK government conducted a wider review of equality data, which presented eight principles for such data collection.

⁶⁰ National campaign 'Delete Discrimination', 9 September 2015, <https://www.rijksoverheid.nl/actueel/nieuws/2015/09/02/plasterk-lanceert-nieuwe-campagne-tegen-discriminatie>.

⁶¹ Website campaign 'Delete Discrimination': <http://discriminatie.nl/#/over-discriminatie/projecten>. Toolkit for 'Delete Discrimination' available at <http://toolkit.discriminatie.nl> Ministers of the Interior, Social Affairs and Justice and Safety joint annual letter of Progress on Discrimination in 2015, 2015-000039792 11 February 2015, <https://www.rijksoverheid.nl/documenten/kamerstukken/2015/02/12/kamerbrief-bij-jaarlijkse-rapportage-discriminatie>.

⁶² <http://www.equineteurope.org/spip.php?page=recherche&recherche=data+collection>.

⁶³ In France, the dominant interpretation of the data protection act on administrative files hinders monitoring within companies and public administration. However, the Defender of Rights (France's equality body) jointly with the National Commission for Information Technology and Freedom (CNIL) published in 2012 a handbook for private and public human resources managers entitled "Measuring to progress towards equal opportunity. The guide aims at assisting employers facing a complex legal landscape. It brings answers to their questions about the procedures to be followed to establish reliable indicators while respecting personal data regulation.

⁶⁴ This was most recently issued in 2015.

⁶⁵ http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Public%20Sector%20Equality%20Duty%20and%20Data%20Protection%20final.pdf.

⁶⁵ Peucker, Mario and Claudia Lechner (2010): Machbarkeitsstudie: „Standardisierte Datenerhebung zum Nachweis von Diskriminierung!? – Bestandsaufnahme und Ausblick“, Berlin. Hieronymus, Andreas (2010): Documentation of the Expert meeting "Standardised Data Collection to create Evidence of Discrimination!?", Berlin, http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Dokumentationen/doku_standardisierte_datenerhebung_2010.pdf?__blob=publicationFile.

⁶⁶ Themenjahr 2014 gegen Rassismus, http://www.antidiskriminierungsstelle.de/DE/ThemenUndForschung/Ethnische_Herkunft/Themenjahr_2014/themenjahr2014_node.html.

While statisticians have made progressive recommendations within the United Nations to promote data collection based on racial and ethnic origin, as concerns racial origin their holistic approach has not reverberated at the domestic level, nor have regional stakeholders taken them fully on board, with the exception of the UK.⁶⁷ National statistical data collection on ethnic origin is more in line with the UN recommendations.

UN Recommendations on statistical data collection regarding ethnicity

2.160. The decision to collect and disseminate information on ethnic or national groups of a population in a census is dependent upon a number of considerations and national circumstances, including, for example, the national needs for such data, and the suitability and sensitivity of asking ethnicity questions in a country's census. Identification of the ethno-cultural characteristics of a country's population has increasing importance in the context of migration, integration and policies affecting minority groups. Owing to the sensitive nature of questions on ethnicity, special care may be required to *demonstrate to respondents that appropriate data protection and disclosure control measures are in place*. It is important that the responding public *be informed* of the potential uses and need for data pertaining to ethnicity, as this improves public support for the census exercise. Data on ethnicity provide information on the diversity of a population and can serve to identify subgroups of a population. Some areas of study that rely on such data include demographic trends, employment practices and opportunities, income distributions, educational levels, migration patterns and trends, family composition and structure, social support networks, and health conditions of a population.

2.161. *Broadly defined, ethnicity is based on a shared understanding of history and territorial origins (regional and national) of an ethnic group or community, as well as on particular cultural characteristics such as language and/or religion. Respondents' understanding or views about ethnicity, awareness of their family background, the number of generations they have spent in a country, and the length of time since immigration are all possible factors affecting the reporting of ethnicity in a census. Ethnicity is multidimensional and is more a process than a static concept, and so ethnic classification should be treated with movable boundaries.*

2.162. *Ethnicity can be measured using a variety of concepts, including ethnic ancestry or origin, ethnic identity, cultural origins, nationality, race, colour, minority status, tribe, language, religion or various combinations of these concepts.* Because of the interpretative difficulties that may occur with measuring ethnicity in a census, it is important that, where such an investigation is undertaken, the basic criteria used to measure the concept are clearly explained to respondents and in the dissemination of the resulting data. *The method and the format of the question used to measure ethnicity can influence the choices that respondents make regarding their ethnic backgrounds and current ethnic identification.*

The subjective nature of the term (not to mention increasing intermarriage among various groups in some countries, for example) requires that information on ethnicity be acquired through *self-declaration* of a respondent and also that respondents have the *option of indicating multiple ethnic affiliations*. Data on ethnicity should not be derived from information on country of citizenship or country of birth. The classification of ethnic groups also requires the inclusion of the finest levels of ethnic groups, self-perceived groups, regional and local groups, as well as groups that are not usually considered to be ethnic groups, such as religious groups and those based on nationality. Countries

⁶⁷ Department of Economic and Social Affairs Statistics Division, Principles and recommendations for population and housing censuses, Revision 2, Draft (New York: United Nations 2006), para. 2.156-162. Principles and Recommendations on statistical data collection regarding language and ethnicity. The UK Office of National Statistics' guidance on the collection of equality data on ethnicity <http://www.ons.gov.uk/ons/guide-method/measuring-equality/equality/index.html>.

collecting data on ethnicity should note that the pre-coding or the pre-classification of ethnic groups at the time of data capture may have a tendency to lose detailed information on the diversity of a population. Since countries collect data on ethnicity in different ways and for different reasons, and because the ethno-cultural composition of a country could vary widely from country to country, no internationally relevant criteria or classification can be recommended.

4.2.1 Official sources of data collection

National census and administrative registries are the most common sources of ethnic data. *General records of population information* as a rule provide information on the basis of categories such as citizenship, nationality, country of origin, migration background, (minority) language and ethnic origin/identity. However, the proxies – i.e. other than ethnic origin/identity – do not provide a reliable picture of discrimination affecting racial and ethnic groups. Depending on the questions that ask respondents about their ethnic identity (language, traditions, etc.) and the availability of multiple or open choices, the data on ethnic origin may greatly vary.

Integration Monitoring of migrants was mentioned as a key new official source of ethnic proxy-based data in countries such as Belgium, Denmark, Estonia, Germany and Portugal:

Belgium: Through biannual Diversity Barometers, data are collected on discrimination, attitudes and participation related to different equality grounds in the labour market, in housing and in education: attitudes in all, testing in first two and participation in education. In terms of policy changes, the Diversity Barometer reports on Employment and on Housing receive extensive attention from different political authorities: Parliamentary Commissions, Parliamentary questions and it has contributed in developing and objectifying the problematique of discrimination. The Diversity Barometer constitutes a tool for the equality body to prove the existence and the level of discrimination in the studied domains.

Denmark: The Integration barometer is used systematically and consistently over time to monitor progress of integration.⁶⁸ Launched in late 2012, it is an instrument to measure integration according to nine specific goals (employment, education, equal treatment etc.). designed by the former Ministry of Social Affairs and Integration. It focuses on ethnic minorities and uses the definitions of the statistical office. The data is taken from the latter twice a year and some variables (equal treatment; autonomy) are based on survey data. It monitors the *discrimination experience* of ethnic minorities. The Danish municipalities, for their part, have access to local integration-barometers (containing six of the goals).⁶⁹ It is suggested that the competent ministry selects and defines a limited number of goals of particular relevance to manage and evaluate the efforts.⁷⁰

Estonia: Important information on various *ethnic/linguistic* groups has been regularly collected through the Integration Monitoring.⁷¹ It is an in-depth survey, commissioned by the Ministry of Culture and carried out every three to four years. The main focus of this survey is to reveal the attitudes towards and experiences of integration of different ethnic groups, first of all Estonians and Russians. Regretfully, due to the rather small sample, relative socio-economic position of ethnic groups is assessed in very general terms.

⁶⁸ <http://www.integrationsbarometer.dk/>.

⁶⁹ <http://integrationsbarometer.dk/de-9-mal#.UXqEgndLcTA>.

⁷⁰ Social- of Integrationsministeriet (2013) *Måltrettet integration – et fælles ansvar. Anbefalinger fra Task Force om Integration* [Targeted integration – a joint responsibility. Recommendations from the Task-Force of Integration]. København.

⁷¹ See: <http://www.kul.ee/et/eesti-uhiskonna-loimumismonitooring-2015> (Integration Monitoring 2015).

Germany: The Socio-Economic Panel (SOEP), a joint project of the Institute for Employment Research (IAB) and the German Socio-Economic Panel Study (SOEP), has been conducting the longitudinal study Living in Germany, oversampling immigrants of Turkish, Greek, Italian, Spanish and (former) Yugoslavian households, as well as ethnic Germans who settled in Germany after 1989.⁷²

Portugal: A policy of *organised integration* of immigrants have led to a multiplication of the data sources. There is a growing integration and coordination of administrative registration data.⁷³ Other studies, developed in coordination with the High Commissioner for Migration under the Migration Observatory follow simultaneously qualitative and quantitative research methodologies, including Interviews (individual and focus group), questionnaires and direct observation in the field.⁷⁴

Specific national surveys on racial or ethnic origin have been organised in few countries:

Belgium: The first Socioeconomic Monitoring was published in 2005, presenting for the first time in Belgium extensive data on the origin and the migration background of people between 18 and 60 years old, crossed with many indicators on the labour market.⁷⁵ The report had many echoes in the press and no criticism was raised on the principle of collecting and analysing data pertaining to origin or the categorisations used.

France: The Trajectories and Origins (TeO) survey focused on immigrants, descendants of immigrants, persons from the French overseas territories and their descendants. TeO was conducted by researchers at the National Institute for Demographic Studies and the National Institute for Statistics and Economic Studies and closely supervised by the official bodies which oversee the collection and use of public statistics. All participants were surveyed on a voluntary and anonymous basis. In the French context, a major contribution of TeO is to combine an objective approach (country and nationality at birth of respondents and parents) and a subjective approach of discrimination (self-declared discrimination experience). The introduction of questions on the subjective feeling of discrimination has opened another perspective in other public surveys, as in the Trajectories and Origins survey on living conditions.⁷⁶

Italy: In 2011, one statistical survey on gender, sexual orientation and ethnic origin was conducted by the Italian National Institute of Statistics and funded by the government in order to collect data regarding attitudes vis-a-vis and actual discrimination experienced on the grounds including ethnic origin.⁷⁷ The survey collected data on opinions and attitudes toward immigration and estimated the number of persons who experienced discrimination at school and at work (including job seekers). The methodology mixed CAPI (Computer Assisted Personal Interview) – SAQ (Self-administered Questionnaire). The weakest point of the survey seems to be the lack of definition of the grounds of discrimination: according to the title the survey deals with discrimination on ground of racial or ethnic origin, but the

⁷² SOEP, Living in Germany, <http://www.leben-in-deutschland.info/>, accessed 24 January 2016.

⁷³ An example of these dynamics of provision of official statistics is the SEFSTAT portal, with data relative to the migrant population, exclusively from an Integrated Information System of the Aliens and Borders Service (SEF/MAI): <http://sefstat.sef.pt/relatorios.aspx>.

⁷⁴ Migration Observatory, Publications: <http://www.om.acm.gov.pt/publicacoes-om/colecao-estudos>.

⁷⁵ FPS Employment, Labour and Social Dialogue & Centre for Equal Opportunities and Opposition to Racism (2013), *Socio-economische Monitoring*. (*Socioeconomic Monitoring*).

⁷⁶ Beauchemin, C. et al. (2016), *op. cit.*

⁷⁷ Istat, Discriminations on grounds of gender, sexual orientation and ethnic origin: information on the survey (Discriminazioni in base al genere, all'orientamento sessuale e all'appartenenza etnica: informazioni sulla rilevazione) <http://www.istat.it/it/archivio/30726>.

questionnaire and the description of the results deal with migrants, taken not only as a proxy but as equivalent to race.

Spain: The National Immigrant Survey has been developed as two surveys in 2011 and 2012 by the Council for the Promotion of equal treatment and non-discrimination addressed immigrant and ethnic minorities, asking about their experiences and knowledge on discrimination (in line to the EU- MIDIS enquiry of the FRA).⁷⁸ The survey conducted in 2012 collected data on discrimination experiences in the labour market.⁷⁹

Data on race discrimination complaints are regularly published by national equality bodies in their annual reports and/or on their websites. For example, in Romania, when preparing its statistical information on complaints, the NCCD uses several distinct categories: race, ethnic origin, belonging to a national minority, and mother tongue, depending on the ground invoked by the complainant. The categories are not further detailed in the statistical data or the NCCD analysis of the complaints. The NCCD does not provide publicly a definition of the different categories and there is no information publicly available on the data collection mechanism. In Greece, the broad categories used by the Greek ombuds and NGOs for the collection of data on ethnic origin are: Africa, Europe, Asia, Unknown. Complaints on discrimination against the Roma are classified as racial discrimination. The Spanish Council of equal treatment uses the following categories: 1. Central American and the Caribbean 2. East European and Russia 3. East European Roma 4. Spanish 5 Spanish Roma 6. Maghreb 7. Sub-Saharan 8. Andean South American 9. South American 10. Others.

The example of hate crime registration shows that statistical categories need to reflect changing social practices. The majority of Member States collects data on hate crimes, but classification remains problematic in most.⁸⁰ There are few good practice examples of changing classification, such as in Ireland and the UK. In November 2015, in Ireland, Garda Síochána – the national police service - extended its recording of bias motivation indicators for hate motivated incidents to include anti-Traveller and anti-Roma, as well as anti-Muslim incidents in addition to anti-Semitism, racism, sectarianism and xenophobia in order to form part of the victim assessment in accordance with the EU Victims Directive 2012/29. The UK has also recently added anti-Muslim crime as a category. Since 1971, in the Netherlands, when the antidiscrimination provisions were adopted in the Criminal Code, race has been interpreted broadly as required by ICERD. Categories for racial and ethnic origin in police and public prosecutor service systems may vary considerably, which may correlate with this wide interpretation. The Criminal Code interprets race as including skin colour, origin, national or ethnic extraction, refugee, migrant but is not limited to those variables.⁸¹

In half of the Member States, data is not available from tribunals and courts on judgments pertaining to discrimination on racial and ethnic origin. The few adjudication bodies that specialise in discrimination are more likely to publish statistics on cases by the ground of racial and ethnic origin than general tribunals and courts. This is the case, for instance, in Denmark and Austria.

⁷⁸ Council for the Promotion of equal treatment and non-discrimination against on racial or ethnic origin in Spain (2012), Annual report on discrimination for racial or ethnic origin: the perception of potential victims 2011. http://www.igualdadynodiscriminacion.msssi.es/recursos/publicaciones/2012/estudio_2011.htm.

⁷⁹ Council for the Promotion of equal treatment and non-discrimination on racial or ethnic origin in Spain (2013), Monograph on the perception of ethnic minorities on the level of discrimination in respect of employment and training 2012. http://www.igualdadynodiscriminacion.msssi.es/recursos/publicaciones/2013/monografia_empleo.htm.

⁸⁰ ECRI General Policy Recommendation No. 11 on combating racism and racial discrimination in policing. 2013.

⁸¹ Dinsbach W., van Bon S., *Set of Guidelines for the collection, registration, processing and reporting of discrimination complaints*, Rotterdam: Art 1, 2012 http://www.art1.nl/artikel/10523-Onderzoek_naar_registratie_discriminatieklachten_in_Duitsland_en_Nederland accessed 25 February 2016.

Equality bodies investigating complaints do occasionally end up collecting ethnic data:

Hungary: Ethnic data has been collected by the Hungarian Equal Treatment Authority together with the president of a local Roma minority self-government and the headmaster of a local school on the ethnic origin of pupils based on TPI and using the proxies as recommended in the Joint Guidelines of the Data Protection and Ethnic Minority Rights Commissioner.⁸² The Roma leader provided information on the typical Roma names in the village and the streets in the Roma segregated Roma neighbourhood.

France: The use of a quantitative analysis regarding employment on the ground of ethnic origin was expressly recognised by the court of appeal of Toulouse as a valid approach to establishing a presumption of discrimination. The High Authority for the Fight Against Discrimination and for Equality (Halde) found discrimination on the ground of origin against an employee, who alleged that people of North African origin were hired for short-term contracts at Airbus but almost never for contracts of indefinite duration. The evidence was based on enquiries into French citizenship and last name of North African origin.⁸³

Slovakia: Following an ethnic data collection controversy, in December 2015, the Slovakian Public Defender of Rights published a report on the practice of elementary schools in obtaining informed consent from parents, especially of children with disadvantage in relation to vouchers for extracurricular activities. She recommends to the Ministry of Education to instruct schools on the correct use of informed consent and strengthen the protection of personal data of students and parents.

Few equality bodies have played central roles in ethnic data debates. A good practice example of a well-coordinated effort that brought representatives of racial and ethnic minorities to the table was conducted in Sweden. In 2011, the government commissioned the Equality Ombudsman to conduct a study on equality data with focus on the Survey on Living Conditions that is produced by Statistics Sweden. The study was based on consultation with minority communities and outlined how equality data on living conditions could be produced in relation to the grounds ethnic origin, religion or other belief, disability, sexual orientation, transgender identity or expression as well as the five officially recognised national minorities. ECRI's involvement in the consultation provided further impetus, but finally the government did not follow up on the study and its recommendations.⁸⁴

Similar equality body-led initiatives have not moved forward in other Member States. For example, in Lithuania, the Office of the Equal Opportunities Ombudsperson produced a draft national action plan for equality data collection in 2009, within the framework of the PROGRESS project implementation. It was proposed to engage different public authorities, research and study institutions, NGOs. The project provided an overview of methodological issues related to the collection of equality data.⁸⁵ The study notes that

⁸² Case of Chance for Children Foundation v Taktaharkány, 2011. Report on the conclusions of a study on the processing of ethnically disaggregated data, Parliamentary Commissioner for the Rights of National and Ethnic Minorities and the Parliamentary Commissioner for Data Protection and Freedom of Information, 9 November 2009. Available in Hungarian at: <http://kisebbségiombudsman.hu/data/files/158627216.pdf>.

⁸³ Toulouse Court of Appeal no R 08/06630, 19 February 2010 and Cass. Soc. 15.12.2011 no K 10-15873 Airbus.

⁸⁴ Al-Zubaidi, Y. (2012), *Statistikens roll i arbetet mot diskriminering* (The role of statistics in fighting discrimination). Diskrimineringsombudsmannen: Stockholm. The five officially recognised national minorities are: Jews, Roma, Sami, Swedish Finns, Tornedalers.

⁸⁵ Okunevičiūtė Neverauskienė, L., Gruževskis, B. (2009), Institute of Labour and Social Research of Lithuanian Social Research Centre. *Lygybės statistikos pagrindai. Nacionalinis lygybės statistikos rengimo veiksmų planas* (Basics of Equality Statistics. National Action Plan for the Development of Equality Statistics), available at: <http://www.lygybe.lt/lt/tarnybos-leidiniai.html>, accessed on 9 December 2015.

official statistics or data from administrative sources are available and can be used for the purpose of assessing equal opportunities and discrimination phenomena. However, the plan was not approved and different institutions use different indicators and definitions.

Discrimination data is regularly and recently collected or commissioned by over a third of equality bodies. The data refers to discrimination experiences or attitudes, some using the methodology of situation testing:

Belgium: The Interfederal Centre for Equal Opportunities (now: Unia) conducts a biannual Diversity Barometer that investigates not only attitudes to minorities but also the level of participation of ethnic and racial minorities in employment etc.

France: Every year, in partnership with the International Labour Organisation's French office the Defender of Rights releases a barometric survey of self-declared discrimination in public and private employment. Victimisation surveys (on harassment and racial insults) are conducted in schools.

Germany: In 2015 the Anti-Discrimination Agency conducted the largest-ever German survey on experience of discrimination, which was open to all persons aged over 14.

Malta: In 2012, the NCPE commissioned research on Immigrant and Ethnic Minority groups and housing in Malta.⁸⁶ The methodology included surveys as well as a qualitative, 'in-depth' research of the perceptions and opinions of relevant stakeholders, the experiences of migrants and ethnic minorities and property-owners, property developers and real estate agents. The innovative aspect for Malta was the 30 situation testing for the research.

The Netherlands: In 2015 the NISR research on discrimination on the grounds of racial or ethnic background in job applications in The Hague is a good example of combining various methods of data collection: situation testing and interviews as data collection mechanisms.⁸⁷

Romania: The NCCD conducts yearly a survey of perceptions and attitudes regarding discrimination also available online on the website of the institution.

National ministries, particularly those with a portfolio in immigration, social affairs, equality, culture and integration – commission ad hoc surveys in the majority of Member States, although some reports noted a lack of coordination across the agencies. Education agencies collect their own data – mainly on language. For instance, in Ireland, the Department of Education and Skills is introducing a new individualised database of primary school pupils called the Primary Online Database, with a question on the ethnic or cultural background of students, including the options "Traveller" and "Roma".⁸⁸ In Spain, schools register the number of Roma students in some exceptional cases of concentration of Roma students. Some Spanish regions also register the number of Roma in the case of Minimum Income beneficiaries.⁸⁹

⁸⁶ [http://ncpe.gov.mt/en/Documents/Projects_and_Specific_Initiatives/I_m_Not_Racist/imnrb_research\(1\).pdf](http://ncpe.gov.mt/en/Documents/Projects_and_Specific_Initiatives/I_m_Not_Racist/imnrb_research(1).pdf), accessed 13 January 2016.

⁸⁷ Andriessen I. et al, *Rejected on descent, research into discrimination on the The Hague labour market*, 17 June 2015, available at: http://www.NISR.nl/Publicaties/Alle_publicaties/Publicaties_2015/Op_afkomst_afgewezen accessed 26 February 2016.

⁸⁸ The question is optional and requires the consent of parents/guardians.

⁸⁹ See Spanish Ministry of Health, Social Services and Equality (2014) Report on minimum insertion income. Page 59 <http://www.msssi.gob.es//ssi/familiasInfancia/inclusionSocial/serviciosSociales/RentasMinimas/Docs/InformeEMI2014.pdf> accessed 15 January 2016.

Public administrations also provide a limited number of examples of consistent ethnic data collection. Ireland undertakes this data collection on Traveller and Roma grounds and in Hungary for the implementation of the ECtHR's *Horváth and Kiss v. Hungary* judgment. The Hungarian National Public Education Act was amended to enable the registration of data on ethnic origin subject to parental consent in the Integrated Follow-up System that holds data on children with special education needs. However, the system does not in practice collect ethnic data.⁹⁰ In Slovakia, a national project began in 2016 for the next seven years, with the title "Monitoring and Evaluation of Policies Aimed at the Social Integration of the Marginalised Roma Population". This cross-sectoral measure is intended to create a comprehensive system of monitoring and analysing the living conditions of Roma communities.⁹¹

At local level in Sweden, Botkyrka municipality is planning to introduce equality data covering the Afro-Swedish community and the Muslim community, involving in data collection representatives of two NGOs representing these communities. The project has not started yet.

4.2.2 Non-governmental sources

In the majority of Member States, research institutes – and to a lesser degree – universities play an important role, even if limited mainly due to financial constraints.⁹² Research ranges from gathering data on the experience of discrimination of racial and ethnic minorities through the testing of discrimination to surveys. Few examples emerge of major initiatives by both institutes and universities:

France: Universities or research institutes play a major role in processing data from national statistical surveys. A large part of the scientific work consists in decomposing data into an explained part of inequalities due to the individuals' characteristics, and an unexplained part attributed to discrimination. Applied to existing datasets⁹³ this quantitative method has been widely implemented in the field of employment in order to reveal ethnic or racial disadvantages.⁹⁴ From the database of the National Education in the academia of Bordeaux, the researchers have built a proxy for the origins of pupils by considering the first name as the expression of a cultural origin (religion and country of origin).⁹⁵ The researchers found segregation of pupils with African and Turkish background.

Luxembourg: The University of Luxembourg and public research institutes (mainly LISER76) run surveys, studies, research projects on discrimination within the labour market, on Roma and on migrants' experiences of racism and discrimination in Luxembourg. The three last reports were undertaken with guidelines and a template provided by FRA. The last one was based on representative sample of Portuguese (white and Catholic), ex-Yugoslavian (white and Islam), Cap Verdeans

⁹⁰ http://kimittud.atlatszo.hu/request/roma_nemzetisegu_tanulok_a_rehab#incoming-8603.

⁹¹ The Ministry of Interior of the Slovak Republic (2015), 'Odpočet splnomocnenca vlády SR pre rómske komunity Petra Polláka za obdobie roka 2015' (Deduction of the Plenipotentiary for Roma Communities Peter Pollak for the period of 2015), available at: <http://www.minv.sk/?romske-komunity-uvod&subor=231613>.

⁹² Bulgaria is the only example where an NGO, the Open Society Institute Foundation plays a major role in professional research through the Open Data sociology team. See more at: <http://www.opendata.bg/en/opendata.php?q=7&s=7>.

⁹³ Especially the following surveys: Generation (Cereq), Job Seekers Trajectories and Local Labour Market (Insee), Study of Family History (Insee), Life story / Construction of identities (Insee), Continuous Labour Force (Insee), Education and Vocational Qualification (Insee), Wage Structure (Eurostat), Tax Revenue and Social Security (Insee), Trajectories and Origins (INED & Insee).

⁹⁴ For a list of the main studies in this field, see Aeberhardt, R. and Rathelot, R. (2013), "Les différences liées à l'origine nationale sur le marché du travail français" (Ethnic Differentials on the French Labour Market), *Revue française d'économie*, 1, pp. 43-71.

⁹⁵ Felouzis, G. et al. (2005), *L'Apartheid scolaire : enquête sur la ségrégation ethnique dans les collèges* (School Apartheid: investigation on ethnic segregation in colleges), Seuil.

(Africans) and Belgians (Northern Europeans) and their experiences of discrimination in different areas of life.

Spain: the Map of Discrimination covers both racial and ethnic origin and consists of two pieces of research published in 2013: the first one being a diagnostic study on secondary sources on discrimination in Spain published in 2013;⁹⁶ and the second regarding Perceptions of Discrimination in Spain developed by the Sociological Research Centre.⁹⁷

The lack of funding or diminishing funding curtails ethnic data collection by academics, researchers and NGOs. The EU plays an important role in funding NGO and academic research.⁹⁸

NGOs collect data on the complaints they receive on discrimination and hate crimes. In general, NGOs do not collect ethnic data in a coherent or permanent manner, nor do they take advantage of the data available from equality bodies and courts. In the majority of Member States, few undertake systematic data collection beyond this scope or through focus group discussions or interviews. A handful of important exceptions exist, including standard setting. For instance, the Hungarian Helsinki Committee developed a method for collecting data on ethnic origin in relation to stop and searches by the police. The method has been approved by the Data Protection Commissioner and used in a countrywide research project called STEPPS.⁹⁹ In the Netherlands, Art 1, the national expert centre on discrimination produced a handbook with Guidelines on the collection, registration, processing and reporting of discrimination complaints.¹⁰⁰ Uniquely, in the UK, various NGOs engage in interpreting ethnic data collected by public institutions.

In contrast to the LGBTI ground, data collection on ethnic and racial grounds has not as a rule been initiated by NGOs alone or in collaboration with academics or research institutions. Only a few examples were mentioned in national reports:

Belgium: In 2015, the NGO Minorities Forum conducted discrimination tests, revealing that 2 out of 3 state-subsidised domestic help services are prepared to discriminate against ethnic minority cleaners when asked for by a customer. The study was the main motive for a joint action of 5 Belgian NGOs to demand for discrimination testing as a legal instrument to be used against perpetrators of discrimination.¹⁰¹

Denmark: The Danish Documentation and Advisory Centre on Racial Discrimination has done smaller qualitative surveys, including ethnic minority women's conditions and experiences on the Danish labour market.

⁹⁶ Spanish Ministry of Health, Social Services and Equality (2013) Diagnostic study of secondary sources Discrimination in Spain. Executive Summary. http://www.msssi.gob.es/ssi/igualdadOportunidades/noDiscriminacion/documentos/r_Castellano_vf.pdf Last accessed: 15 January 2016.

⁹⁷ Spanish Sociological Research Centre (2013) Perception of Discrimination in Spain. Study No 3000. http://www.cis.es/cis/export/sites/default/-Archivos/Marginales/3000_3019/3000/es3000mar.pdf accessed 15 January 2016.

⁹⁸ For instance, in 2015, in Latvia, the research centre "Latvijas Fakti" conducted a study of access to education, employment, health care and housing services entitled Roma in Latvia, following the initiative of the Ministry of Culture, within the frame of the project "Different people. Different experience. One Latvia II" was funded from the EU PROGRESS Programme.

⁹⁹ http://helsinki.hu/wp-content/uploads/MHB_STEPSS_US.pdf.

¹⁰⁰ Dinsbach W., van Bon S., Set of Guidelines for the collection, registration, processing and reporting of discrimination complaints, Rotterdam: Art 1, 2012 <http://www.art1.nl/artikel/10523-Onderzoek-naar-registratie-discriminatieklachten-in-Duitsland-en-Nederland> accessed 25 February 2016.

¹⁰¹ Spaas, N. (2015). *Dienstencheques: subsidiëren om te discrimineren? (Domestic services: subsidising to discriminate?)*. Brussels: Minorities Forum.

Malta: The People for Change Foundation is conducting a research study on equality data entitled "Counted: Ethnic and Equality Data Collection for Malta".¹⁰²

Portugal: In 2001, SOS Racism collected data on the numbers and conditions of Roma communities in Portugal.¹⁰³ In 2012, NGOs triggered a particularly important debate following the presentation and public discussion of a UN study based on field observations conducted in 2011, portraying discrimination and 'subtle racism' in Portugal.¹⁰⁴

NGO and academic collaborations have specifically developed in reporting hate crimes. For instance, the Spanish Observatory of Racism and Xenophobia (OBERAXE) have produced annual reports based on the annual survey they developed along with the Spanish Sociological Research Centre (CIS).¹⁰⁵ In Greece, they collaborate with the Ombud. In Finland the government has for eight years involved ethnic minority NGOs in collecting data on discrimination experience through the national Discrimination Monitoring System working group.

Few business-initiated best practice examples could be identified from the national reports:

France: The mobilisation around promoting "diversity" came from the largest companies signing Diversity Charters since 2004. It quickly spread within the State and some local communities who signed their own charters.

Germany: The Diversity Charter (Charta der Vielfalt) is a corporate initiative to promote diversity in companies and institutions. *"Organisations are to create a working environment free of prejudice. All employees should be valued – regardless of gender, nationality, ethnic origin, religion or worldview, disability, age, sexual orientation and identity"*. Various German cities also have diversity policies in place.

The Netherlands: Dutch social partners set up the Diversity at Work project and adopted a Diversity Charter¹⁰⁶ that companies and organisations in both public and private sector are encouraged to adopt.¹⁰⁷ Within three months of signing the contract, organisations are to present a diversity plan including specific targets and then share their experiences and barriers with other organisations. Since 1989, the Centre for Labour relations in the Public Sector (CLPS) monitors diversity.¹⁰⁸ The

¹⁰² <http://www.pfcmalta.org/counted-ethnic-and-equality-data-collection-for-malta.html> accessed 15 January 2016.

¹⁰³ <http://www.sosracismo.pt/produto/ciganos-numeros-abordagens-e-realidades> The "National Study on the Roma Communities", 2014 collected data with the support of mediators from Roma community, by direct observation and third part categorisation, while the research on School achievement, social profile and ethnicity, focus in immigrants' children at basic school Mendes, M., Magano, O., Candeias, P. (2014), Estudo Nacional Sobre as Comunidades Ciganas, OBCIG/ACM Seabra, T. e Mateus, S. (2011), "School achievement, social profile and ethnicity: immigrants' children at basic school in Portugal", Portuguese Journal of Social Science, 10 (1), pp. 73-86.

¹⁰⁴ UN Report of the Working Group of Experts on People of African Descent: 11th session - Mission to Portugal. Available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-60-Add1_en.pdf.

¹⁰⁵ Spanish Ministry of Interior (2013), *report on the evolution of hate crime in Spain* http://explotacion.mtin.gob.es/oberaxe/documentacion_descargaFichero?bibliotecaDatoId=4063.

¹⁰⁶ Labour Foundation, Diversity at Work (Diversiteit in bedrijf), 2015 <http://www.stvda.nl/nl/~media/files/stvda/diversiteit/20150408-projectnotitie-diversiteit-bedrijf.ashx> accessed 28 February 2016.

¹⁰⁷ Diversity Charter, <http://diversiteitinbedrijf.nl/charter-diversiteit-wat-is-het/wat-is-het-charter-diversiteit/> 28 February 2016.

¹⁰⁸ CLPS, Factsheet diversity public sector 2008-2012, 2014 <http://www.caop.nl/diensten/onderzoek/onderzoekpublicaties/diversiteit-publieke-sector-2008-2012/>.

Platform Integration and Society is developing a self-audit system of diversity for companies.¹⁰⁹

Similarly, few examples emerge of *businesses* conducting research on racial or ethnic minorities. Interestingly, in Denmark, the Confederation of Employers argues against ethnic data collection and the opportunities for affirmative action this would open up.¹¹⁰ The European Commission is funding a platform for EU-level exchange between organisations promoting and implementing national diversity charters.¹¹¹ The platform is part of a larger project aiming at supporting voluntary initiatives promoting diversity management in the workplace. The platform allows promoters of existing diversity charters to meet on a regular basis, to share their experiences and develop common tools.

¹⁰⁹ Kis on self-audit system, <http://www.kis.nl/project/inclusief-beleid-het-bedrijfsleven-self-audit-instrument> accessed 28 February 2016.

¹¹⁰ Information (2006), 'Registrering af etnicitet er nødvendig' [Registration of ethnic origin is necessary], 2 January 2006, <http://www.information.dk/117630>.

¹¹¹ http://ec.europa.eu/justice/discrimination/diversity/charters/index_en.htm.

5 Key Issues in Data Collection on Racial and Ethnic Origin

During the national consultations held within the framework of the EDI project, it was reported that the dominant experience among racial minorities was being singled out for abusive ethnic data collection that generally takes the form of profiling by law enforcement agencies on account of perceived high rates of criminality. Incidents have been reported from various Member States over the years, such as fingerprinting Roma and others living in nomad camps, compiling police files on citizens of Roma origin.¹¹² On the rise since the 9/11 attacks, throughout Europe, Black and Muslim minorities as well as immigrant communities have reported discriminatory treatment by the police.¹¹³

Bulgaria: In 2015, the Ministry on Regional Development published an official statement regarding the number of unlawfully built constructions subject to demolition under final demolition orders. According to the statement, 530 out of 6080 buildings were Roma-owned.¹¹⁴ It is not known how the information was collected. The Bulgarian Regional Inspectorates on education collect information regarding the ethnic origin of the students in every school. This information is only available for the respective Educational departments within the municipalities and would not be revealed upon official request. On occasions, concerns arise even in relation to the collection of census data on ethnic origin.¹¹⁵

Germany: Housing companies have developed their own strategies in dealing with the emerging diversity: there is a commonly held view – the so called 25 % myth – among urban planners, according to which with more than 25 % foreigners, a block becomes a problem area and often falls under special local urban development plans. In order to learn about the ethnic composition, housing cooperatives and companies purchase a program, the so-called ethno-variable (onomastic procedures), which categorises their tenants according to names and related regions.¹¹⁶

The Netherlands: A recent publication on the housing of asylum seekers and their integration in Dutch society led to a heated public debate on the use, validity, and interpretation of research findings based on ethnicity. The debate focused on one research question: to what extent asylum seekers were involved in criminality.

¹¹² Such practices have been condemned at the national level. For instance, see the judgment passed by the Tribunal of Rome on 27 May 2013, The Government was ordered to pay compensation of 8000 Euro for moral damages together with the publication of the judgment in the "Corriere della sera" and the deleting of the claimant's data obtained in the emergency census.

http://www.asgi.it/public/parser_download/save/trib_roma_ordinanza_27052012_impronte.pdf. The Swedish police files scandal has been widely reported and compensation claims are presently being adjudicated in domestic court. Reports are available at <http://www.equalitylaw.eu>.

¹¹³ The Open Society Justice Initiative's reported widespread profiling in France, Germany, Italy, the Netherlands, and other EU member states. It documents how the personal data of 8.3 million people were searched in a massive German data mining exercise which targeted Muslims and others, and which did not identify a single terrorist. OSJI charges that ethnic profiling by police in Europe is "a common, long-standing practice that has intensified in recent years". *Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory*, Open Society Institute, 2009, p. 1. FRA also found discrepancies between the policing of minority and majority communities, for instance in the EU MIDIS Data in Focus 4 Report on Police Stops and Minorities, FRA, 2010.

¹¹⁴ Information available in English at: <http://www.mrrb.government.bg/?controller=news&id=7227>.

¹¹⁵ United Nations, Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention- Concluding observations of the Committee on the Elimination of Racial Discrimination Romania, CERD/C/ROU/CO/16-19 available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fROU%2fCO%2f16-19&Lang=en The Sépvakian national report also called attention to concerns.

¹¹⁶ Onomastic method: First and last names of individuals without an unequivocal migration background need to be pre-processed and then compared to large databases containing lists of names specific to country and ethnic origin.

Contrary to the research findings, various national (online) media published the hasty conclusion that asylum seekers were more likely to commit criminal acts.¹¹⁷

Few NGOs advocate for the collection of data on racial and ethnic origin. Historic trauma often prevents Jewish and Roma communities from supporting data collection on racial and ethnic origin. Given the controversies and the repeated use of racial and ethnic data for purposes that are illegal or contrary to the original intention (and therefore quite possibly contrary to European data protection standards), few NGOs advocate for equality data collection on ethnic and racial origin. The prime example is ENAR that partnered with the Migration Policy Group in the EDI project and continues campaigning at the European level.¹¹⁸ The European Roma Rights Center has also been advocating for data collection concerning the Roma.¹¹⁹ In Ireland, since 2013 the Equality Budgeting Campaign has been advocating for disaggregated data and impact assessments to provide a clearer picture of the effects of economic policies as they pertain to specific sections of society. In the European context, the Irish NGO, Pavee Point is one of the few Traveller and Roma organisations that advocate for the collection of disaggregated ethnic data. In their view, there "must be a universal question on ethnic origin (asked of everyone, not just minorities), which is answered voluntarily and on the basis of self-identification, and that the collected data is aggregated and anonymised to avoid identification of specific individuals. Data must only be used for the purpose for which it was collected, must be available in a timely manner and must be analysed in consultation with organisations representing minority ethnic groups."¹²⁰

5.1 Methods of collecting data on racial and ethnic origin

Qualitative studies, on-line surveys, interviews on telephone and in person, *ad hoc* surveys on experiences of discrimination and anonymous testing were the most frequently cited methods researching discrimination based on race and ethnic origin. Discrimination experience is surveyed in the majority of Member States (16) and in about half, the surveys are commissioned or conducted by equality bodies:

Austria: The Institute of Higher Studies (IHS) has undertaken a research for the Austrian National Union of Students on experiences of discrimination at Austrian universities, including universities of applied sciences according to ethnic, cultural or religious affiliation, language, nationality and skin colour. The response rate was around eight per cent. Questionnaires were provided in German, English, Turkish, Slovene and Serbian.¹²¹

Germany: The Anti-Discrimination Agency's online survey conducted in the fall of 2015 is an important example, because it is the largest ever survey on discrimination experiences in Germany. All people above the age of 14 and living in Germany were able to report about their experiences or observations of discrimination. More than 16,000 people have made use of it. The survey was carried out in cooperation with the Berlin Institute for Empirical integration and migration research to make discrimination visible. They also wanted to know what effect discrimination has on people and how they deal with it. All spheres of life

¹¹⁷ Engbersen et al, No time to lose: from shelteringshelter to integration of asylum migrants (Geen tijd verliezen: van opvang naar integratie van asielmigranten), Policy Brief No. 4, WRR, WODC and NSRI, <http://www.wrr.nl/publicaties/publicatie/article/geen-tijd-verliezen-van-opvang-naar-integratie-van-asielmigranten-4/> accessed 25 February 2016.

¹¹⁸ <http://www.enar-eu.org/Equality-data-collection-151>.

¹¹⁹ See, for instance an initiative on data collection in the field of health: <http://roma.idebate.org/news-articles/errc-calls-states-collect-and-publish-data-address-roma-health-gap>.

¹²⁰ <http://www.paveepoint.ie/project/ethnic-data-collection/> accessed 11 January 2016

¹²¹ Institut für Höhere Studien (2015), Projektbericht: Diskriminierungserfahrungen von Studierenden (Research Report: Experiences of discrimination by students), Vienna, available at: http://uniko.ac.at/modules/download.php?key=8432_DE_O&cs=0E95.

were targeted, from kindergarten through school and college, to professional life; from living, to insurance and banking to leisure.

Hungary: The Hungarian Social Research Institute (TÁRKI) conducted qualitative research into *ethnic profiling by the Police in Hungary*.¹²²

Ireland: The Irish Central Statistical Office runs the Quarterly National Household Survey's (QNHS) Equality Module.¹²³ Originally developed in consultation with the equality body, the National Disability Association, the Department of Justice, Equality and Law Reform, the National Consultative Committee on Racism and Interculturalism and Pavee Point has been included in QNHS in 2004, 2010 and 2014. Its primary focus is to produce high quality baseline data on discrimination in Ireland. The interview questionnaire focuses on the self-perceived experience of discrimination over the previous 2-year period by respondents in a range of areas and based on the 9 grounds of discrimination described in Irish law.

Lithuania: The identity of "traditional" ethnic minorities is researched. The ENRI-East project implemented from 2008 to 2011 covered Russians, Poles and Belarussians¹²⁴. The ENRI-VIS quantity research revealed that roughly half of the minority respondents fear losing their minority culture and identity.

The Netherlands: The National Institute of Social Research reported on discrimination experiences of migrant groups in the Netherlands.¹²⁵

The anonymous testing of *recruitment practices, pay and rent* for discrimination against migrants is a method followed in more than a quarter of the Member States. The identities constructed are country specific, with several examples in the national reports:

Austria: A correspondence testing experiment was conducted to study discrimination in recruitment using applications of fictional male and female candidates with equal qualification but with names indicating Austrian, Serbian, Turkish, African (Nigerian) and Asian (Chinese) background. All candidates indicated Austrian nationality and having completed their whole educational carrier in Austria.

Belgium: In 2014, the Diversity Barometer on housing was published, containing the results of discrimination testing in rented housing.

Denmark: In 2014, Incentive, a private consultancy conducted mapping for the Danish Anti-Discrimination Unit in 'The scope of unequal treatment of new-Danes: A field experimental study on the rental housing market'.¹²⁶

¹²² See: Pap, A. L., Miller, J., Gounev, P., Wagman, D., Balogi, A., Bezlov, T., Simonovits, B. and Vargha, L.: Racism and Police Stops – Adapting US and British Debates to Continental Europe, In: European Journal of Criminology, 2008/5, pp. 161–191.

¹²³ <http://www.cso.ie/en/media/csoie/qnhs/documents/StdRptQNHSequalityQ32014.pdf> accessed 17 February 2016.

¹²⁴ Frėjūtė-Rakauskienė, M., Šliavaitė, K., Institute for Ethnic Studies of the Lithuanian Social Research Centre (2012), 'Rusai, lenkai, baltarusiai Lietuvoje: lokalaus, regioninio ir europinio identitetų sąsajos' (Russians, Poles and Belarusians in Lithuania: interplay of local, regional and European identities), available at: http://www.ces.lt/wp-content/uploads/2013/01/EtSt_Fr%C4%97jut%C4%97-Rakauskien%C4%97_%C5%A0liavat%C4%97_2012.pdf, accessed 17 December 2015.

¹²⁵ Andriessen I., Fernee & Wittebrood, Experienced Discrimination in the Netherlands, NISR publication 24 January 2014 http://www.scp.nl/Publicaties/Alle_publicaties/Publicaties_2014/Ervaren_discriminatie_in_Nederland last accessed 23 February 2016.

¹²⁶ Ankestyrelsen (2015), Omfanget af forskelsbehandling på lejemarkedet [The scope of unequal treatment of new-Danes. A field experimental study on the rental housing market]. København.

Finland: Discrimination testing was used as a method in a 2012 study on the Finnish labour market discrimination.¹²⁷

France: Testing is often carried out in the framework of state procurements. Traditionally centred on access to jobs, they tend to widen to housing or, more rarely, to goods and services (rent of vehicles, bank loans). A researcher from Paris School of Economics, jointly with the Institut Montaigne, carried out a CV-based trial in the bookkeeping sector between September 2013 and September 2014 throughout the whole of mainland France. The experimental protocol compares the rates at which male and female applicants of Lebanese origin, whose applications are identical in every respect except their religion, are called back and invited to an interview.

Malta: In 2012, the equality body conducted the survey Immigrant and Ethnic Minority groups and housing in Malta to uncover racial discrimination.¹²⁸ The study mapped the experiences of migrants and ethnic minorities in accessing housing, as well as the perceptions and experiences of property-owners, property developers and real estate agents". It conducted 30 situation testing.

The Netherlands: A nationwide study on discrimination on the grounds of race and ethnic origin in job application used the situation testing method. It sent 1300 letters of application and CV to employers in various sectors, testing for Turkish, Moroccan, Surinam and Antillean.¹²⁹ A combination of methods were used to collect data on discrimination against Turkish, Moroccan, Surinam and Antillean migrants on the labour market in 2012: quantitative analysis of data from the Labour Force Survey, complaints data, discrimination testing, focus group meetings, and in-depth interviews and questionnaires with migrant organisations.¹³⁰

United Kingdom: A test for racial discrimination in recruitment practices in British cities was commissioned by the Department for Work and Pensions in 2009.

In the CEE region, quantitative research to map discrimination based on third party identification of the Roma as individuals or a group has been conducted since the 1970s.

Czech Republic: Following the *D. H. and Others v Czech Republic* judgment in 2007, two anonymous surveys of Roma pupils in practical (former special) schools were carried out: by the Ministry of Education, Youth and Sports in the school year of 2009/2010 and in the school year of 2011/2012 by the Czech School Inspection. The Ministry of Education, Youth and Sports recognises as Roma a pupil who considers herself Roma, without necessarily proclaiming herself Roma in the census, and/or is for such purposes considered to be Roma by an important part of her surrounding on the basis of real or perceived characteristics. The data was collected on the basis of TPI by observation based on indirect criteria provided by class teachers.

¹²⁷ By Larja & al. (2012) in Pietiläinen M & Keski-Petäjä M (2014) Monitoring Labour Discrimination in Finland, MEE Publications Employment and entrepreneurship 53/ 2014. Helsinki: Ministry of Employment and the Economy. Summary report on data and findings, In Finnish with English summary.

¹²⁸ [http://ncpe.gov.mt/en/Documents/Projects_and_Specific_Initiatives/I_m_Not_Racist/imnrb_research\(1\).pdf](http://ncpe.gov.mt/en/Documents/Projects_and_Specific_Initiatives/I_m_Not_Racist/imnrb_research(1).pdf), accessed 13 January 2016.

¹²⁹ Andriessen I., Rather Marc than Mohammed (Liever Marc dan Mohammed), 21 January 2010 http://www.scp.nl/Publicaties/Alle_publicaties/Publicaties_2010/Liever_Mark_dan_Mohammed accessed 28 February 2016.

¹³⁰ Andriessen, Nievers, Dagevos, Backlog. Discrimination of non-western migrants on the labour market, NISR 2012 http://www.scp.nl/Publicaties/Terugkerende_monitors_en_reeksen/Discriminatiemonitor_niet_westerse_migranten_op_de_arbeidsmarkt accessed 25 February 2016.

Hungary: Since 2000, studies concerning school segregation carried out for the Ministry of Education's unit in charge of Roma and socially deprived children have used the data from 1992 which was the last year when the number of Roma children was registered in schools based on TPI.¹³¹ The sample also included schools, which received public funds for the education of Roma children.¹³² The last study was published in 2010 on the impact assessment of the integration based education policy.¹³³ Since 2005, Hungarian schools have been under the duty to implement a centrally organised competence assessment of students in grades 4, 6, 8 and 10 coupled with a questionnaire estimating the proportion of Roma students taking part in the assessment. The estimates are made by headmasters; the response rate is 60%.

Slovakia: The UNDP in cooperation with the Plenipotentiary for Roma Communities and municipalities in Slovakia surveyed 1 575 Roma settlements in 2004 and 1 070 Roma settlements in 2013 in order to map their spatial distribution, infrastructure, access to services (social, education, healthcare) and activity of their residents (political, cultural and economic) based on TPI.¹³⁴

Of all the countries in continental Europe, Finland pursues perhaps the most nuanced equality data collection regime. However, major national surveys such as LFS and SILC have not been utilized as sources for equality data. The equality data consists of five main components (1) Data on attitudes (2) Discrimination experience (3) Hate crimes, hate experience (4) Discrimination claims and court cases and (5) Monitoring survey of equality planning by local governments and trade unions. Discrimination experience is collected from various data sets, including Eurobarometer, Quality of Work Conditions Survey, School Health Survey, various barometers and the annual targeted research as defined by the Discrimination Monitoring Steering Group.

Linking across databases is highly useful but rare for ethnic and racial data collection. In Estonia, data sets are also linked in order to produce new data.¹³⁵ The lack of coordination and synergies across the data collection efforts in Sweden is the reason why the Equality Ombudsman recommended a national mapping study on what data is actually collected, with what frequency, where, and according to which definitions. Linking data sets is a desideratum in Luxembourg.

¹³¹ István Kemény (ed.), Beszámoló a magyarországi cigányok helyzetével foglalkozó, 1971-ben végzett kutatásról ("Report about a Research Carried out in 1971 Relating to the Situation of Hungarian Roma"), MTA Szociológiai Intézet Budapest, 1976. Gábor Havas and István Kemény, A magyarországi romákról ("About Roma in Hungary"), In: Szociológiai Szemle (1995/3.). István Kemény, Béla Janky and Gabriella Lengyel, A magyarországi cigányság 1971–2003. (Hungarian Roma 1971–2003), Budapest: Gondolat Kiadó, MTA Etnikai-Nemzeti Kisebbségkutató Intézet (Hungarian Academy of Sciences Ethnic-National Minority Research Institute), 2004., available at: <http://www.kisebbségkutató.tk.mta.hu/a-magyarországi-cigányság-1971-2003>.

¹³² Gábor Havas, István Kemény, Ilona Liskó: Cigány gyerekek az általános iskolában, ("Roma children in primary school"), OKI, Budapest 2001. Gábor Havas - Ilona Liskó: Szegregáció a roma tanulók általános iskolai oktatásában („Segregation of Roma students in primary education”), Oktatáskutató Intézet, Budapest, 2005.

¹³³ Gábor Havas - János Zolnay: Az integrációs oktatáspolitikai hatásvizsgálata (Impact-assessment of integration policy”), Oktatási és Kulturális Minisztérium, Budapest, 2010.

¹³⁴ UNDP (2004), Atlas rómskych komunít (Atlas of Roma communities), available at: http://www.minv.sk/?atlas_2004 And UNDP (2013), Atlas rómskych komunít (Atlas of Roma communities), available at: http://www.minv.sk/?atlas_2013, more information at: The Ministry of Labour, Social Affairs and Family of the Slovak Republic, 'Sociálne vylúčené spoločenstvá' (Social excluded communities), available at: <http://www.employment.gov.sk/sk/rodina-socialna-pomoc/socialne-sluzby/socialne-vylucene-spolocenstva/dokumenty.html>.

¹³⁵ In Estonia personal surveys are linked with the data of the Register of Social Insurance Board. Here, the Ministry of Social Affairs in its written communication of 22 January 2016 mentioned another example of such production of new data: "With the help of the Norwegian support programme 2009-2014 "Gender equality and balance of working life and family life" the Ministry of Social Affairs jointly with the Statistics Estonia worked out the gender wage gap database, based on merger of data of Estonian Labour Force Survey and Estonian Social Survey and linked to the wage data from Tax and Customs Board Register of Tax Liable Persons".

5.2 Challenges encountered in collecting data on Racial and Ethnic Origin

Consensus among regional monitoring bodies is in favour of ethnic data collection. Since the 1990s, ECRI has been advocating for the collection of ethnic data in a coherent and comprehensive manner.¹³⁶ ECRI defines equality data as 'statistics broken down by citizenship, national/ethnic origin, language and religion' in order to assess the effectiveness of policies targeting ethnic minority groups. CERD points out that the experiences of race discrimination should be taken into account when planning social policy measures.¹³⁷

Monitoring bodies and statisticians agree on the principles that should guide data collection on the grounds of racial and ethnic origin, but in practice methodological inconsistencies remain. The *core principles* identified by NGOs and advocated in the EDI Report are: self-identification, voluntary response (individual right to opt in to data collection), anonymous data collection, informed consent as to the purpose of the data collection, community consultation throughout the process, commencing with the naming of categories and identification of ethnic origin question sets and ending with the involvement of community representatives in the analysis and dissemination of the data.¹³⁸ These are consistent with the 'UN Principles and recommendations for population and housing censuses', according to which citizenship should not be used to measure data on ethnic minorities, questions on religion and language should not be taken as yielding proper ethnic data, multiple choices of ethnic origin should be permitted and mixed couples should be given the opportunity to determine the ethnic origin of their children.¹³⁹ There is a clear need for harmonising practices and providing methodological guidance to national stakeholders. The way the racial and ethnic origin question is asked numerically impacts on response rates.

5.2.1 Confidentiality and Anonymity

The confidentiality and early anonymisation of ethnic data is ensured when data collection is carried out according to the legal and professional standards. In small Member States sample sizes may cause challenge to protecting anonymity. Concerns about data collection can be avoided if due regard is paid to legal and professional standards.

5.2.2 Representativeness

Typically, representativeness poses a challenge in general surveys, but the national reports have not flagged particular concerns in this regard. Few mentioned the concerns related to the small size of minority populations (e.g. in Finland the Roma and the various Kurdish subgroups or in Lithuania for various ethnic minorities). The number of national minority members and respondents in statistical samples is often too small for producing country-wide data.¹⁴⁰

¹³⁶ See, e.g. ECRI General Policy Recommendation No 4 on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims, adopted on 6 March 1998.

¹³⁷ CERD (2015), Concluding observations on the twentieth and twenty-first periodic reports of Denmark. http://um.dk/da/~media/UM/Danish-site/Documents/Udenrigspolitik/Nyheder_udenrigspolitik/2015/CERD%20Concluding%20observations.pdf.

¹³⁸ EDI Report, p. 64.

¹³⁹ 'Principles and recommendations for population and housing censuses', Revision 2, Draft, United Nations, September 2006, (f) 2.143. They underline that 1. affiliation with ethnic groups is distinct from language and/or religion; 2. affiliation with an ethnic group should not be confused with citizenship: it is better to use 'ethnicity' and avoid 'nationality'; 3. free self-declarations / open questions should be used; 4. respondents should be able to indicate more than one ethnic affiliation; 5. 'none' or 'not declared' should be allowed; 6. instructions should be provided on determining the ethnicity of children of mixed couples; 7. the basic criteria and classification procedures should be documented; and 8. classification depends on national concepts – there are no international recommendations.

¹⁴⁰ Information provided by a representative of Statistics Lithuania. Received by e-mail 15 December 2015.

5.2.3 Comparability

Comparability is not discussed in the majority of national reports, no doubt because ethnic and racial data collection is not yet at a stage of development to seriously consider this concern. The concerns expressed in relation to the diverse proxies reverberate in relation to the comparability of data. According to the Belgian report: given that the different ways of operationalising origin and migration background continue to be used without further alignment or coordination, there is a risk of further divergence in the future:

"Although the possibility of operationalising origin in different ways poses serious drawbacks in the national context, it does hold the opportunity to operationalise origin in a comparable way to other international surveys. For instance, the EU-MIDIS survey in Belgium focused on persons of North African (from Algeria, Egypt, Libya, Morocco, Sudan, Tunisia or Western Sahara) and Turkish origin: while these countries of origin have not been grouped in the same way in other Belgian studies or surveys, administrative data from the National Register and the Crossroads Bank for Social Security could be used with a similar operationalisation for origin compared to the EU-MIDIS survey."

5.2.4 Categorisation

Similar to other characteristics protected under EU anti-discrimination law, racial and ethnic origin are socially constructed, fluid concepts that although interlinked are not interchangeable. All the 28 EU Member States have ratified the ICERD, which defines racial discrimination as encompassing any distinction on the basis of race, colour, descent, national or ethnic origin. In general, racial origin is not defined in national laws or case law. Laws on ethnic/national minorities list the recognised minority groups, which often include minority populations that share a language, religion and cultural traditions with the majority populations of neighbouring countries. Interestingly, the Netherlands takes a different approach than most other Western European countries with similar historical experiences of racism, which tend to oppose use of the term *race*. The Dutch anti-discrimination law and Criminal Code interpret race broadly, as including skin colour, origin, national or ethnic extraction but not being limited to those variables.¹⁴¹ The Dutch understanding is that reference to physical, ethnic, cultural or geographical characteristics may lead to discrimination on the grounds of race.

The proper recording of racial origin implies methodological difficulties, because its various facets can best be captured along a wide range of questions. In theory, statisticians seem to favour a model that uses question cards and combines ethnic origin as well as geographic origin.¹⁴² The political ties with geographic areas may receive more emphasis in other proposals.¹⁴³ An example of using question cards is provided by research conducted by Anthony Heath and his colleagues. They have adapted the Australian ethnic origin question card in order to survey the relative status of ethnic minorities in the labour market in EU Member States.¹⁴⁴

¹⁴¹ Dinsbach W., van Bon S., Set of Guidelines for the collection, registration, processing and reporting of discrimination complaints, Rotterdam: Art 1, 2012 http://www.art1.nl/artikel/10523-Onderzoek_naar_registratie_discriminatieklachten_in_Duitsland_en_Nederland accessed 25 February 2016.

¹⁴² Billiet, J. (2002): Questions about national, subnational and ethnic identity. In: European Social Survey: Core Questionnaire Development. http://www.europeansocialsurvey.org/index.php?option=com_content&view=article%20&id=62&Itemid=355.

¹⁴³ The Concept of Ethnicity and its Operationalisation in Cross-National Social Surveys, Jürgen H.P. Hoffmeyer-Zlotnik and Uwe Warner, Metodološki zvezki, Vol. 7, No. 2, 2010, 107-132.

¹⁴⁴ Interview with Anthony Heath on 3 April 2014, Florence. Prior to developing statistical classification for cultural and ethnic groups, the Australian Bureau of Statistics conducted not only extensive literature and existing data review, but consulted with ethnic and community groups, as well as agencies which provide and use cultural diversity data.

Diverse statistical and legal categories are used to mark racial and ethnic origin. Marking does not equal naming. Marking along the citizen-non-citizen or majority-non-majority nationality binary may entrench social exclusion. Indeed, the major difference between racial and ethnic minorities is that while the latter have their own names – often equivalent to the name of neighbouring countries’ ethnic majorities – racial minorities do not. EU citizens ‘of migrant background’, ‘new- or non-majority ethnicities’ or ‘allochthones’ share one characteristic: they are named in binary opposition to a Member State or the ethnic origin of the majority population of that Member State.¹⁴⁵ These categories are also misleading, because they lump minorities in one unit without investigating whether they indeed belong together. Statisticians seek to work around the system in order to achieve better results, even though the UN recommendations suggest a different route.¹⁴⁶ With a minor exception, none of the country reports to this project contained a single example when they reached out to the communities whose data they collected.¹⁴⁷ Moreover, no indications could be found of collaboration between equality bodies and statistical institutes or administrations responsible for registries.

Naming certain minority groups may be easier, because they more neatly fit the broad definition of racial origin – such as Afro/Black-Europeans. Naming may be more challenging in the case of European Muslims. The example of the UK is illustrative. While few debates preceded the naming of racial and ethnic categories in the 1991 census, the religion question has caused more debate.¹⁴⁸ “The religion question was not added in 2001 to ensure religion was protected as an equality characteristic, but rather because both Jews and Sikhs are defined as ‘racial groups’ for the purposes of anti-discrimination legislation. In many ways the controversy is more around *how* the question(s) is asked rather than that such data are collected. On the other hand, data on religion or belief is much less frequently collected in other administrative public data, or indeed by employers.” Similarly, in the EU being named as a racial group carries advantages – including a wider scope of protection from discrimination and consequently, more widespread data collection needs. NGOs, such as ENAR have characterised discrimination against European Muslims as racial discrimination, but the RED leaves this question open by not defining racial and ethnic origin. The issue has not yet been raised before the Court of Justice of the EU.

The Member States that recognise ethnic or national minorities do collect data using the categories of recognised ethnic/national minorities. Except for Luxembourg, Cyprus and Greece, data is collected on the Roma and Travellers as an ethnic group. In the latter two countries Roma are subsumed under the religious category of Turkish Muslim, while in Ireland the Irish Travellers form a particular group not recognised as an ethnic minority. However, data collection on recognised ethnic minorities is usually limited to classic minority rights including the use of language in education and public administration.

¹⁴⁵ As the Danish Report explains: “New-Danes is not an official statistical category but used synonymously for ethnic minorities and descendants. It has been used since at least 1992 where Den Danske Ordbog [The Danish Dictionary] included the term. It basically refers to people living in Denmark originating from another country. It is controversial as it also includes descendants who are born in the country.”

¹⁴⁶ In Belgium, the example of the Socioeconomic Monitoring that crosses data from the National Register and the Crossroads Bank for Social Security shows that the need to juxtapose migration background with ethnic origin is still considered viable when countries decide to move towards straightforward ethnic data collection. According to the national report, the method enables statisticians to map the labour market participation of persons based along their ethnicity or migration background. It is found particularly effective, as it allows to measure the labour market participation of (among others) second generation migrants – previously unidentified as they all have Belgian nationality. In France, the TeO described above sought to follow this methodological path.

¹⁴⁷ In Hungary, Beash was given as a subcategory in the questionnaire of the 2011 census, meaning that after the word ‘Gypsy’ in brackets one could read ‘romani, beash’, however only the Gypsy could be ticked <http://www.ksh.hu/nepszamlalas/docs/kerdoivek/szemely.pdf>.

¹⁴⁸ “The collection of disaggregated data has been an issue of debate in the UK in the past, however, it is not currently a topic of controversy. In the parliamentary debates surrounding 2010 Equality Act there was no direct discussion of disaggregated data, as its necessity was assumed” <https://www.essex.ac.uk/hrc/careers/clinic/documents/disaggregated-data-and-human-rights-law-policy-and-practice.pdf> p. 35.

Ethnic categories and the questions pertaining to them may be problematic.¹⁴⁹ In Slovakia, it has been noted that conceptual and definitional clarity would be needed on the concept of ethnicity, nationality and religion to guide the work of statisticians, academics, lawyers, NGO activists and public administration. "For example the legal definitions of ethnicity, religion and national origin overlap as they are to a very large extent officially unified in the concept of nationality."¹⁵⁰

Geographic origin is a category used in few Member States. In Ireland and the UK, geographic origin has served as the basis of developing racial and ethnic categories. If and when it is used, it is derived from the citizenship and country of origin (of parents). Beyond Eurobarometer 393 conducted in 2012 to canvass the willingness among different ethnic and immigrant groups to participate in ethnic data collection, efforts aimed at harmonising categories of geographic origin could not be detected. It appears that consultation on categories of geographic origin is not widespread. Within the categories of geographic origin, few countries consider language and religious differences that may exist within certain racial or ethnic minorities. Belgium, Finland, Ireland, the Netherlands, and the UK were reported to collect census or survey data based on geographic origin:

Belgium: The Socioeconomic Monitoring uses two variables to describe the (ethnic) origin of individuals. a. Belgian origin: Belgian, born Belgian, if both parents are Belgians born Belgian. b. "foreign origin". The categories are the following: i. EU-14, ii. EU-12, iii. EU candidate, iv. Other European, v. Maghreb, vi. Other Africa, vii. Near/Middle East, viii. Pacific/Far East, ix. Other Asia, x. North America, xi. Central and South America.

Finland: The 'Immigrant Health and Well-being Study' dealt with Russian-speakers, Kurdish and Somali communities. Categorisation was an issue with the Kurds, given the significant language differences.¹⁵¹ In the Quality of Life Survey: "nationality or colour" has been in use since the 1990s, but the Saami cannot be in this way identified, and the identification of Roma may also be problematic.¹⁵²

Ireland: The categories in the census were A. White – 1. Irish; 2. Irish Traveller and 3. Any other white background. B. Black or Black Irish 1. African or 2. Any other black background C. Asian (Irish) 1. Chinese and 2. Any other Asian background D. Other.

The Netherlands: Various mechanisms of ethnic data collection use the following categories: descent, national or ethnic origin, skin colour, Antillean/Aruban, other Europe, other Africa, Asia, Other, unknown, autochthonous, allochthones, Turkish, trailer park residents. Race and religion, as well as Race and nationality are examples of attempts at capturing multiple discrimination.

United Kingdom: The categories combine national, ethnic and geographic headings.¹⁵³ The present categories are open and include: A, White including Gypsy

¹⁴⁹ In relation to the amendment of the Hungarian Public Education Act in order to permit ethnic data collection, the Chance for Children Foundation tested self-identification questions among Roma parents (wording, order of the questions, etc.). Unfortunately, the legislator in Hungary did not take on board CFCF's recommendation.

¹⁵⁰ See Pufflerová, Š. (2009), Slovakia Country Report No.1, Network of socio-economic experts in the anti-discrimination Field, Bratislava.

¹⁵¹ The overwhelming majority of the Finnish Kurds belong to the Sorani group who originate from Iran or Iraq, not from Turkey.

¹⁵² In other surveys the focus has been on Russian-speakers, Estonians, ethnically Finnish returnees, Kurds, the Somali, Vietnamese and Albanian-speakers i.e. quantitatively the most significant immigrant groups.

¹⁵³ However, categories have changed, indicating how changed social experiences (for example the growth of the 'Mixed', Black African, White Other and Arab populations) informs data collection categories". On the one hand this indicates a lack of conceptual consistency, on the other hand, the categories respond to social reality.

or Irish Traveller, B, Mixed / Multiple ethnic groups, C, Asian / Asian British including Indian, Pakistani, Bangladeshi, Chinese, D, Black / African / Caribbean / Black British and E, Other ethnic group including. Arab.

Geographic categories are historically embedded and reflect the structure of the population in Member States. The main value of geographic origin lies in shedding light on the process through which they emerged, as well as the elements of racial and ethnic origin they capture. The examples from Finland, Ireland and the UK show a more nuanced approach to identifying categories of geographic origin that also seeks to capture linguistic as well as cultural differences. Only the UK and Ireland use geographic origin as a basis of categorising racial and ethnic origin. The UK's racial categories are open ended and ethnic background is also named as a way of identifying racial origin. (Irish and British) Travellers fall into the categories of white in both countries, while Gypsies also belong to this category in the UK.

An important feature of the UK and Irish categories is their universality: they apply to racial and ethnic majority and minority populations in the same manner. Another significant feature is that categories are identified by reference to colloquial terms specific groups use to self-identify. Certain methodological choices may not easily transfer to other Member States:

1. White as a category may be difficult to introduce, particularly in countries where many ethnic and national minorities would ultimately be categorised as white, because this may be seen to undermine the legitimacy of their claims for special rights.
2. Given the greater variety of ethnic groups on the continent, it may be challenging to bring them under one category, whereas dividing them may suggest a hierarchy between them.¹⁵⁴
3. Roma in the continent are more diverse and may not wish to be categorised as 'white'. Inequalities that Muslim Roma suffer may best be captured by their categorisation as 'Muslim' instead of other racial categories.
4. The category Arab in light of country specific histories of colonization and migration may warrant caution.
5. The interchangeable use of racial and ethnic origin seems more straightforward in the UK than in the continent. The special rights regimes may be seen to complicate the use of these terms.

Other all-encompassing categorisations have their limitations. The categorisation of Kurds in Finland suggests that the languages spoken at home may require subgrouping. The Dutch use of distinctions such as allochthon and autochthon may not facilitate data collection. Categorisation is yet to reflect recent trends concerning Muslims. While the categories such as those used in Belgium seem legitimate from the perspective of the freedom of movement of workers, they may not readily align with the equality perspective. Multiple categories, such as race and religion or race and nationality should be introduced only as long as they facilitate streamlining.¹⁵⁵

At the European level, EU statistics do not employ uniform categories and they have an overwhelming focus on citizenship, although some ask about racial and ethnic origin in open questions. Indicators have been developed to measure the integration of migrants, not of ethnic and racial minorities. The measurement of Roma inclusion falls to FRA and the process is not yet complete. At the European level, in general, inequalities based on

¹⁵⁴ As noted in the Finnish report, there are doubts whether the Sami can be categorised according to colour.

¹⁵⁵ For instance, if in the main race and religion measures discrimination against Muslims, then it may be more effective to introduce Muslim as a racial category or revise geographic origins so that they can reflect the racialization of immigrants and descendants of immigrants from the Muslim world. Given that citizenship is widely used, introducing nationality and race as a 'multiple' category may be misleading and there may exist a methodological solution to factoring citizenship in.

racial and ethnic origin can only be assessed with reference to citizenship and migration status. The use of these proxies at the European level is wrought with the same difficulties as it is wrought at the national level in the majority of the Member States. As demonstrated in this paper, such difficulties can be and have been overcome in a handful of countries, whose experiences can provide useful examples for changes at the European level as well. The reform of the European data protection regime provides a historic opportunity to review the use of proxy categories that may reveal racial and ethnic origin without the data subject's informed consent.

Racial categories are the prerequisite of more efficient data collection and therefore there is clear need to explore the most effective and viable options of collecting equality data on grounds of racial or ethnic origin. The conclusion may be that Afro-Europeans, the Roma and European Muslims are not perceived as being white – but obviously, variance across Member States may occur. Not all the racial categories are constructed by European societies on the basis of skin colour only and this has to be acknowledged in the way they are named. An analysis of the social construction of Muslims as a racial group is necessary. European and national consultation with minority communities will enable the design of categories cognizant of differences in descent, religion, language and cultural traditions.

5.3 The inclusion of minority communities in data collection

The potential abuse of data collection and the complacency of public authorities discourage racial and ethnic minorities from engaging actively in data collection at the national level. Regional efforts are more successful. In the framework of the Local Engagement for Roma Inclusion targeting municipalities in charge of local social inclusion policies, FRA promotes the standards set in the Ten Common Basic Principles on Roma Inclusion. FRA is consulting representatives from National Roma Contact Points in the FRA-Member States Ad-hoc Working Party, but little is known about the way Member States include the Roma in these processes. Another best practice example from the regional level is ECRI's consultations held in 2006 with NGOs and a report that lay the ground for ethnic data collection in the framework of the national census.¹⁵⁶ The report canvassed opinions from all sides: NGOs, national statistical offices, data protection authorities and equality bodies. ECRI concluded that out of the 42 Council of Europe countries covered by the study, 22 collect data on ethnicity (usually termed 'nationality'), 24 on religion and 26 on language (most commonly mother tongue).

Consultation of minority communities have been reported from a handful of Member States:

Belgium: Requested by the Interministerial Conference about employment on 5 July 2005, the Interfederal Centre for Equal Opportunities organised two consultations on data collection on migrants. 1) In Flanders, there was globally support for collecting data pertaining to origin under the conditions of absolutely no use of these data for repression or security purpose; accurate contextualisation of analyses and results in broader societal context, as well as safeguards for anonymity and participation in data collection on a voluntary basis. 2) In the French Community, participants emphasised two points: first, the usefulness of such data for equality policies was underlined, and second, strict safeguards for anonymity and good communication.

France: The Committee for the Measurement and Assessment of Diversity, essentially composed of social scientists conducive to changes in the census

¹⁵⁶ Patrick Simon, Ethnic statistics and data protection in the Council of Europe countries, European Commission against Racism and Intolerance (ECRI), Council of Europe, Strasbourg, October 2007.

organised alternative hearings for various associations representing minority populations.

Germany: Prior to launching the online survey on the experience of discrimination, the ADS conducted intensive consultation with NGO's from the different fields of discrimination. The data subjects were not only involved in generating data, but also in conceptualising the questionnaire.

Ireland: Question 14 was introduced in Census 2006. It asks 'What is your ethnic or cultural background?' The question was agreed after consultation with the National Consultative Committee on Racism and Interculturalism, the equality body, Pavee Point and relevant Government Departments. This was preceded by a Traveller-specific question in Census 2002 whereby Travellers were the only group asked to state their ethnic status.¹⁵⁷ Roma ethnicity is not listed as an option in the 'ethnic/cultural background' question; however, the Roma may self-identity using the 'other' category. The suggested targeted recruitment of Traveller 'super' enumerators for the census has been rejected by the Central Statistical Office for logistical reasons.

The Netherlands: 475 mosques participated in the Monitor Muslim Discrimination and were asked about their experiences with discriminatory incidents.¹⁵⁸

Sweden: Between 2008 and 2010, the Public Health Authority conducted a study on the health of the five recognised national minorities - Jews, Roma, Sami, the Swedish Finns and Tornedalers. Representatives of the minorities were involved in the planning and the conducting of the study, and different methodologies were used in respect to different groups. Regrettably, the final report as well as final reviews from the minorities involved indicate serious shortcomings in terms of validity and comparability.¹⁵⁹

5.4 Methods of building confidence in data collection

As racial or ethnic minority communities are seldom involved in designing, implementing and establishing policies through racial and ethnic data collection, the rules of engagement are not laid down at the national level. There are indications that Member States may be more open to involving recognised ethnic minorities in equality data collection. In March 2013, FRA reported that it met with European stakeholders and civil society organisations to map existing initiatives and challenges of collecting disaggregated ethnic data in order to move towards systematic equality data collection in Europe.¹⁶⁰ A few good practice examples were reported on building confidence in data collection:

Finland: Discrimination monitoring is discussed and supervised by the Steering Group on Discrimination Monitoring, where the Saami Parliament, the Roma Council, the Islamic Council of Finland and the Council for Ethnic Relations are represented. For some other surveys, groups have been targeted on the basis of

¹⁵⁷ The current question is perceived as a compromise by Pavee Point, with the 'cultural' background including Irish Travellers who otherwise would have been excluded due the State's non-recognition of Traveller ethnicity. It was also largely understood that the 'ethnic/cultural background' question would evolve to reflect the changing ethnic composition of the Irish population; this has not been the case as the standard question developed in 2006 was subsequently used for the 2011 census and will appear in the upcoming 2016 Census.

¹⁵⁸ Valk I., Monitor Muslim Discrimination, discrimination on the grounds of race/religion in Mosque's and higher education, University of Amsterdam: IMES: March 2015 <http://imes.uva.nl/news/news/news/content-3/folder/2015/03/monitor-moslim-discriminatie.html> IMES report series accessed 26 February 2016.

¹⁵⁹ <http://www.folkhalsomyndigheten.se/documents/livsvillkor-levnadsvanor/nationella-minoriteter/redovisade-uppdrag/aterrapportering-hur-mar-sveriges-nationella-minoriteter.pdf>.

¹⁶⁰ <http://fra.europa.eu/en/event/2013/meeting-discuss-how-improve-equality-data-collection>.

the country of origin and language, but their representatives have not been included in the research as researchers.

Hungary: In the 2011 census the National Alliance of National Minority Self-Governments were consulted by the Hungarian statistical office. In the settlements with Roma population the Roma minority self-governments appointed Roma people to help enumerators if no Roma enumerator was contracted. In the Coding Working Group the National Alliance of National Minority Self-Governments was also represented. Beash was given as a subcategory in the questionnaire of the 2011 census, meaning that after the word 'Gypsy' in brackets one could read 'Romani, beash', however only the Gypsy could be ticked.¹⁶¹

Ireland: The categories used to collect ethnic and cultural minority data in the census were identified in consultation with NGOs.

Romania: During the 2011 census several ad hoc practices of community involvement were reported. For example, in some places the censors had been accompanied by Roma leaders in Roma communities in order to protect them but also to explain the purpose of the census.¹⁶² In other cases, Roma leaders, health mediators or experts had been trained as censors and involved in the interviews.¹⁶³

Spain: When preparing reports on discrimination experience, the Spanish Council of equal treatment consulted NGOs on the categories. The final categories were based on geographic origin present among immigrants in Spain. NGOs and ethnic minorities were involved in collecting data.

United Kingdom: Nomisweb seeks to overcome the challenge of *accessing and understanding* equality data, particularly for non-specialists. While there is a limit to how simply data can be supplied, the national statistical office's website allows individuals to produce relatively simply 'queries', with the tables accessible in web-based format and for relatively easy download.

5.5 Designing indicators of social inclusion, integration and diversity

The EU level debate on indicators measuring inequalities and the extent of integration relating to immigrants has been on-going for over a decade. The EU's 11th Common Basic Principles on Immigrant Integration Policy adopted in 2004 states that developing clear goals, indicators and evaluation mechanisms are necessary to adjust policy, evaluate progress on integration and to make the exchange of information more effective.¹⁶⁴ The Zaragoza EU migrant integration indicators look at the first and second generation according to both country of birth and country of citizenship.¹⁶⁵ They use Eurostat data and come from the Zaragoza Declaration.¹⁶⁶ They aim to support the monitoring of the situation of immigrants in order to enhance comparability between the EU Member States. The Member States agreed that the indicators should be on existing and comparable data for most Member States, limited in number, comparable over time, productive and cost-effective, simple to understand and easy to communicate and focused on outcomes. Four areas of integration have been currently identified as priority

¹⁶¹ <http://www.ksh.hu/nepszamlalas/docs/kerdoivek/szemely.pdf>.

¹⁶² Information available at: <http://www.mediafax.ro/social/recensamantul-populatiei-si-al-locuintelor-recenzori-insotiti-de-romi-si-apeluri-telefonice-la-primarii-ce-probleme-au-aparut-pana-acum-8889676>.

¹⁶³ Information available at: <http://www.rasunetul.ro/un-numar-de-20-recenzori-de-etnie-roma-cooptati-la-recensamant>.

¹⁶⁴ Council Document 14615/04 - Common Basic Principles for Immigrant Integration Policy in the EU.

¹⁶⁵ The MPG report below explains how to use the indicators and also provides a mapping of the use of integration indicators: http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/legal-migration/general/docs/final_report_on_using_eu_indicators_of_immigrant_integration_june_2013_en.pdf.

¹⁶⁶ Zaragoza Declaration, adopted in April 2010 by EU Ministers responsible for integration, and approved at the Justice and Home Affairs Council on 3-4 June 2010.

areas, building on national experiences and key areas for the common basic principles. Employment is a vital part of the integration process, and efforts in education are essential in helping immigrants to become successful and more active participants in society. Social inclusion is important not only for access to the labour market, but also for entry into society more generally. The participation of immigrants in the democratic process as active citizens supports their integration and enhances their sense of belonging. As recommended, the indicators compare specific age groups of the general and immigrant population: for both third-country nationals and the foreign-born as well as for men and women. The indicators are meant to be in line with the Europe 2020 headline indicators that aim for smart, sustainable and inclusive growth.

Indicators relating to the integration of the Roma are less developed. The FRA-Member States Ad-hoc Working Party develops indicators on measures and actions of Roma Integration, including in the operational programmes of the 2014-2020 programming period. National reports contain few references to this initiative. In Italy, a working group devoted to bridge the gaps on data is foreseen, involving among others institutions and representative of Roma, Sinti and Traveller (RSC) communities, as well as the National Statistical Office, ISTAT.¹⁶⁷ A project with the FRA is foreseen in order to carry out research on the situation of the RSC communities.

Initiatives addressing inequalities based on racial and ethnic origin could not be identified. Racial and ethnic origin based data collection is not included in the EU level statistical planning, even though other grounds covered by EU anti-discrimination law serve as a basis of data collection - including age and disability.

¹⁶⁷ "National Strategy for the Inclusion of Roma, Sinti and Caminanti Communities", http://ec.europa.eu/justice/discrimination/files/roma_italy_strategy_en.pdf, in particular at 31-33 and 37.

6 Conclusions

The most effective and economically viable way to assessing the impact and enforcement of anti-discrimination law and policy in the fields covered by the RED would be to collect and analyse straightforward racial and ethnic origin data in the national census, surveys and administrative registries. This can and is being done across the world. The size as well as the racial and ethnic diversity of the European continent may pose challenges, but the debate has not yet advanced this far. Instead, data on inequalities - inclusion and integration - is collected about migrants and is planned to be collected on the Roma. This report has demonstrated the shortcomings of such data collection at the national level, including the stigmatizing effect of the use of migrant categories, as well as their inability to capture the population whose situation they seek to measure.

The EU has competence to combat discrimination based on racial and ethnic origin. Data on racial and ethnic inequalities provides the knowledge necessary for combatting discrimination. In order to ensure that European data collection does not discriminate across the grounds covered by EU anti-discrimination law - which could potentially violate Article 21 of the EU Charter - Eurostat needs to provide equality data on the basis of racial and ethnic origin to the same extent it provides data on grounds such as sex, age and disability. This is dependent on statistical programming. At the heart of the European Statistical System (ESS) is the European Statistical System Committee (ESSC), which was established by Regulation (EC) No 223/2009 of the European Parliament and Council of 11 March 2009 on European statistics. It is chaired by the European Commission (Eurostat) and composed of the representatives of Member States' National Statistical Institutes. According to Article 7 of the Regulation the ESSC "shall provide professional guidance to the ESS for developing, producing and disseminating European statistics". In practice, this means that the European Commission shall consult the ESSC, including the proposed developments and priorities in the European Statistical Programme, the annual work programme for the following year and any other question, in particular issues of methodology, arising from the establishment or implementation of statistical programmes.

A handful of Member States collect data on racial and ethnic origin and pilot research using racial and ethnic categories has been undertaken both at the European, as well as the national level. Research using the testing methodology and/or collecting data on discriminatory attitudes is rather widespread at the national level. However, at the European level the methodology of data on inequalities based on racial and ethnic origin that complies with the ESS Code of Conduct as well as European data protection norms are still to be worked out. If undertaken, this process would also present the opportunity to review the usefulness of migration and citizenship data as collected at the European level.

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. Consent forms need to be adopted. Methodological harmonisation is necessary. Guidance on collecting data while respecting privacy needs to be issued. But first and foremost, the target groups need to be engaged in naming the racial and ethnic categories. Trust lies at the heart of the matter: racial and ethnic minority groups need to be trusted to self-identify on the basis of questions that seek to inform the best design of equality policies. People who intentionally or unwittingly inflict discrimination on others will not or cannot admit to causing harm, even though they may admit to discriminatory attitudes. Data on inequalities will have to be collected from those who experience the harm: on their experiences and their relative disadvantages.

Since the mid-1990s, Europe has witnessed a gradual shift in attitudes *vis-a-vis* data collection on racial and ethnic origin. The FRA and Council of Europe monitoring bodies have been driving this process, their views being echoed by European NGOs, while being

in essence unchallenged by data protection agencies and statisticians at the regional level. However, there are differences between the regional and national levels. National anti-racist NGOs as well as statisticians and data protection experts rarely engage in sincere debates and cooperation. The voice of invisible racial minorities asking to be counted has been ignored.

The RED implies that data is necessary to facilitate its implementation and prevent discrimination. The collection of data on geographic origin and discrimination experience emerges as a growing trend. Data is also gathered through testing in relation to access to employment and housing, as well as pay discrimination. In the Central and Eastern European space, discrimination in education has been measured through third party identification. A new balance needs to be struck not only between the efficiency of data collection and the inclusion of minority groups in the process, but also between pre-existing data collection practices and the need for new equality data. The EDI Report projects an action plan for achieving change at the European and national levels.¹⁶⁸ It is, however, clear that no single entity has full competence in the EU to drive the process.

The key to any viable solution lies in the creation of incentives for relevant stakeholders and agreement on rules of cooperation. The outstanding issues require not only commitment, but also investment from statisticians at the European and national level. Statisticians in Eurostat and in national statistical offices need to dialogue with racial and ethnic minorities on the one hand and equality bodies, Equinet and the European Commission on the other. Within the EU, the FRA and Equinet are perhaps the best placed to facilitate discussions and pilot solutions that seek to navigate between statisticians, minorities and equality bodies. In the Council of Europe space, ECRI is an important ally, similar to the Human Rights Commissioner and the Framework Convention on National Minorities' Advisory Committee, given the overlaps in their portfolios. At the national level, equality bodies and/or ombuds institutions have played constructive roles and this may be replicated at the EU level. However, at the EU level there are differences in the status, the funding and the competences of the bodies that perform the functions a typical domestic equality body would perform under Article 13 RED at home. While Equinet can bring to the table the views of national equality bodies, FRA is best placed to consult with racial and ethnic minority communities and conduct research on discrimination. The European Commission monitors compliance with the RED and issues reports on its implementation. ENAR, the European Roma and Traveller Forum (ERTF) and various other NGOs represent racial and ethnic minorities at the regional level. The consultations with data protection agencies and their regional representatives within the framework of the EDI project shows that it will be relatively straightforward to obtain the consent of data protection experts to change. However, it is illusory to expect effective cooperation between Eurostat and the patchwork of stakeholders on the other part, unless a coalition headed and represented by the key players – the Commission and the FRA – is put in place. Given the great variance in national approaches, finding solutions first at the EU level and using the leverage of Eurostat surveys to facilitate changes at the national level seems more promising. The ripple effects of methodological changes in LFS, SILC, EHIS and other European surveys should not be underestimated.

The European Commission may provide financial resources to incentivize the standardisation and piloting of data collection on racial and ethnic origin. The wide array of good practice examples shows that there is room for exchange and need for peer review. However, existing tools such as testing and the collection of discrimination experience have their limits, first and foremost in their transferability to data collection in the census and surveys. Geographic origin cannot fully capture the way racial and ethnic origin is constructed in the context of discrimination. The role that language, religion and cultural traditions play in ascribing racial and ethnic origin may vary across the groups and this variance needs to be taken into account during the design of categories. As the

¹⁶⁸ EDI Report, p. 65.

information for such design can only come from minority communities, it is imperative that they are meaningfully engaged and can test the newly established categories. ECRI, the FCNM Advisory Committee and the Commissioner for Human Rights, as well as FRA are all able to network with minority communities - the former through regular field visits to Member States and hearings of minority representatives, the latter through organising NGO platforms and meetings with national Roma focal points. The modalities of potential cooperation are numerous and are not for this report to explore. Input from regional minority representations, such as ENAR and the ERTF needs to be sought. It is necessary not only to publish the results of proceedings but also to engage minorities throughout, on and off-line.

FRA has been leading by example in relation to measuring discrimination experience. European policy initiatives, such as EURS seek to develop indicators and hopefully further methodological harmonisation. European policy initiatives should promote data collection on grounds other than Roma ethnic origin, without employing proxy and stigmatising categories. Domestic NGOs working with racial and ethnic communities should be engaged in collecting, analysing data and advocating for data collection. Forging cross-ground alliances may accelerate this process. More needs to be done to improve the resources and capacity of NGOs working on ethnic and racial origin based data collection. FRA could cooperate with them in order to lend visibility and test their methodology.

In terms of European surveys, LFS and the EU-SILC do not ask about racial and ethnic origin, colour or descent. They do not capture descendants of immigrants, Afro-Europeans, Muslims and the Roma across the EU. Similarly, the European Social Survey (ESS) does not capture descendants of immigrants after the second generation, Afro-Europeans, Muslims and the Roma. The LFS and the EU-SILC enable us to monitor the evolution of Europe 2020 indicators (employment, education and poverty). The EU-SILC provides big enough cases for the main immigration countries. Even though the EU-SILC survey indicators may not be available for certain countries with small migrant communities, this does not necessarily hamper statistical robustness.

The LFS ad hoc module on the "Labour market situation of migrants and their immediate descendants" in 2008 and 2014 are good examples of mainstreaming minority data and variables into EU surveys. This module has revealed the limitations of the EU surveys to identifying barriers and analysing discrimination experiences. European and national surveys ought to be mutually enriched. In this respect, Eurostat could valorise the experience of national surveys on discrimination and favour the exchange of best practice. This might be useful for the selection of sample, elaboration of questionnaire, categories to be used and methodological issues. An EU-SILC module on racial and ethnic origin could be organised in order to study different dimensions of racial and ethnic origin.

FRA has pioneered categories of geographic origin in EU-MIDIS I and asked about the groups' willingness to participate in data collection on ethnic and racial origin. The survey canvassed opinions from major ethnic minority groups: ex-Yugoslav, Russian and Eastern European immigrant population, Turkish, North African, Somalis and the Roma. EU-MIDIS II focuses on 'immigrants', 'descendants of immigrants', 'ethnic minorities' or 'national minorities' and 'Roma'. The FRA's commitment to abandoning data collection relating to generations of immigrants is commendable, but the effectiveness of the new category 'descendants of immigrants' needs to be reviewed in relation to uncovering patterns of racial discrimination. This category may be too broad. Moreover, a further interrogation of the survey data may show whether it is suitable to capture Afro-Europeans and Muslims who may not identify with a proxy of immigration but rather with categories relating to colour, descent and minority religion. Consultations with minority communities are needed to determine whether language is an important identifier of groups other than first generation immigrants.

Different Eurobarometer surveys examine ethnic origin as well as religion or belief, among other grounds. Given the small size of the sample the Eurobarometer survey does not enable a detailed analysis of the characteristics and barriers associated with "ethnic origin/minority". The sample is relatively small in order to draw robust conclusions concerning persons discriminated. These surveys provide information concerning discriminatory attitudes and practices (e.g. in employment, housing, social relations, political participation, etc.). This ought to be the basis for information campaigns and the elaboration of new legal instruments. Here the target group is the general population. Awareness raising campaigns need to address the discriminatory attitudes revealed by these indicators.

7 Key Recommendations

The following brief recommendations can be made on the basis of the report:

- Eurostat should valorise the experience of national surveys on discrimination and organise an exchange of best practices on data collection on racial and ethnic origin in European as well as national surveys, publish the contributions and issue recommendations to national statistical offices on the topic;
- FRA should poll European citizens - more particularly Afro-Europeans, European Muslims and the Roma - as to their readiness to provide sensitive personal data in order to fight discrimination and implement positive action measures;
- Eurostat should organise an EU-SILC module on racial and ethnic origin in order to study different dimensions of racial and ethnic origin in areas such as living standards (financial and material deprivation), housing, education, health and access to services available to the public;
- in consultation with the European Statistical System Committee the European Commission (Eurostat) should include data collection on racial and ethnic origin in the European Statistical Programme and annual work programme in order to enable data collection for the purposes of designing equality policies and fighting discrimination in the fields covered by the RED, the EURS and Europe 2020;
- in consultation with the European Statistical System Committee and FRA the European Commission (Eurostat) should provide methodological guidance - complementing the Code of Practice, if necessary - and pilot in European surveys categories of geographic, racial and ethnic origin with particular attention to the Roma, Afro-Europeans and European Muslims;
- FRA should establish time-bound, special consultation mechanisms with representatives of racial and ethnic minorities, particularly the Roma, Afro-Europeans and European Muslims with a view to designing guidelines on categorisation and methodologies of data collection on racial and ethnic origin, as well as guidelines for consultation at the national level. Minorities should be consulted whether to include in Eurobarometer and European surveys Roma and Travellers as a category under ethnic origin/ethnic group (including Roma, Travellers, Manush, Sinti, Egyptian, Ashkalia, etc.). and whether to include Afro-European and European Muslim as a category under colour/race;
- Equinet should organise consultation with national equality bodies on the best practices of equality body involvement in data collection on racial and ethnic origin and publish its findings and recommendations;
- Equinet should improve the collection of comparable data on the number of complaints and cases of discrimination before equality bodies;
- the European Commission should encourage the methodological standardisation of research into discrimination experiences, anonymous testing and on-line discrimination surveys in fields covered by the RED, particularly in access to employment, housing and education, inequalities in pay, segregation and harassment in education;
- the European Commission should ensure that data collection on racial and ethnic origin is supported through EU-funded research programmes, including the above methods;
- the European Commission should encourage the exchange of experience and identification of good practices amongst the Member States, especially in relation to measuring the impact of anti-discrimination policies;
- the Article 29 Working Group and the European Data Protection Supervisor should provide guidance on consent forms and the practical implementation of ethnic data collection principles;
- FRA should ensure equality data collection relating to the defence of legal claims and court orders concluding such claims.

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