



The Annual Report on the Situation regarding Racism and Xenophobia in the Member States of the EU

EUMC 2006

Foreword

This Annual Report for 2005 is the first to cover a full year since EU enlargement in 2004. The fact that substantial Roma populations live in a number of the new Member States of Central and Eastern Europe means that issues of discrimination against Roma are now reinforced as a theme within EUMC reports, including this Annual Report. Furthermore, as the report indicates, the situation of the Roma community also continues to be a matter of concern which is high on the political agenda of the European Union.

Several events during 2005 served to highlight themes of exclusion, discrimination and integration in the EU. In July, British Muslim suicide bombers killed more than 50 people and injured hundreds more in attacks on London's public transport system. Initially this stimulated an increase in 'faith hate' crimes in the UK but, as an EUMC report on the aftermath of the crimes concluded, the strong stand taken by political and community leaders in both condemning the attacks and defending the rights of Muslims seems to have played a part in reducing such attacks in the following months. The year 2005 was also marked by violent urban disturbances in October and November in the suburbs of French cities. These involved mainly young men of North African origin, stimulating debates about the alienation of such young men and the discrimination and exclusion that they often experience, particularly in employment. The situation in general is influenced by fear and suspicion, the feeling and experience of not belonging. There has never been such an urgent need for implementation of concerted action and for balanced information, for clarifying possibilities and limitations, for elaborating societal rules and regulations to ensure that ethnic, cultural and religious minorities and the majority populations can live together peacefully and on the basis of respect for Human Rights.

The events of 2005 highlight the importance of the actions of the political leadership in a Member State. For one thing, political leaders have a responsibility not to take advantage of such violent incidents as a means of making short-term political capital. It is equally important that they give clear support to measures in their Member State which actively combat discrimination, thus reducing the danger of alienation and exclusion affecting sectors of European youth. In particular, they should visibly throw their weight behind the national anti-discrimination measures, called for by the anti-discrimination Directives, in those countries where response to them has been slow, and where the message has consequently been given out that discrimination as a problem is not taken seriously.

The wide differences between Member States in the apparent priority they attach to combating racism and discrimination is one of the observations of this report. It describes how far Member States had gone by the end of 2005 in transposing the two anti-discrimination Directives, and notes that four Member States had been declared by the European Court of Justice to have failed to adopt all the necessary

provisions to comply with the Racial Equality Directive, even though the transposition deadline for them had been July 2003. The report also notes the wide variety of arrangements in Member States for providing a specialised body for the promotion of equal treatment, as required by the Racial Equality Directive. In some countries, by the end of 2005, no such body had been designated at all. In contrast, in some others, not only had such bodies been designated, but they had been accorded powers to assist victims of discrimination which go beyond the minimum standard required by the Directive.

In the context of the problems of racial discrimination and racist crime described in the report, the EUMC calls for better data collection mechanisms to help to identify and combat these phenomena, and for positive measures to be included as an integral part of Member States' racial/ethnic equality policies. A range of improvements in these areas over the forthcoming year would be highly appropriate in the context of the 2007 "Year of Equal Opportunities for All".

This EUMC Annual Report 2006 follows the structure of previous years, in that it covers developments in five thematic areas: employment, housing, education, racist violence and crime, and legal and institutional developments relevant to issues of racism and discrimination during the year 2005. As with last year's report, there is a separate chapter devoted to each of these five thematic areas. However, one new development for this year is a further chapter which describes relevant developments during 2005 at the level of the EU and the European Commission, rather than at the level of individual Member States.

The EUMC will continue to give its support to the European Union and its Member States in their efforts to promote integration, fight racism and discrimination, and demonstrate the positive value of diversity and equality. It continues to support the European Commission on its agenda to work on integration and on combating violent radicalism.

Finally, we would like to thank the Management Board and the EUMC staff for their support, their commitment and for the important work they have carried out over the last 12 months.

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Executive Summary

The Annual Report 2006 covers information and developments for the year 2005 in the 25 EU Member States concerning the occurrence of, and responses to, racism, xenophobia, antisemitism and anti-Muslim manifestations. As with last year's report, the five thematic areas of legislation, employment, housing, education, and racist violence and crimes are covered. The data and information are collected by the EUMC's 25 National Focal Points, one in each Member State, who supply the data to the EUMC under common headings in each of the five thematic areas. This year, one extra chapter has been provided for the first time, namely an overview of initiatives that have been taken by the European Commission during 2005 relevant to racism, discrimination and xenophobia in Europe.

Legal issues

The transposition process of the two anti-discrimination Directives is completed or underway, with draft legislation introduced in parliament in the majority of EU Member States. However, the European Court of Justice ruled in 2005 that Finland, Luxembourg, Germany and Austria failed to adopt all the laws, regulations and administrative provisions necessary to comply with the Racial Equality Directive before the date for transposition expired on 19 July 2003. The European Court of Justice also ruled that Luxembourg failed to transpose the Employment Equality Directive by the required date. (The EU 10 had a later transposition deadline than the EU 15.)

In some Member States, problems concerning the transposition process could be detected and political debates observed which indicate a fundamental disagreement concerning the transposition of the Directives. In the Czech Republic and Germany, the upper house of the parliament rejected the proposed bill transposing the Directives. In Luxembourg, the Conseil d'Etat made public a critical opinion on the proposed bill transposing the directives. In Latvia and Malta the main legislation to transpose one or both Directives is still only available in draft form awaiting parliamentary adoption. In Estonia and Poland no major legislative activity concerning the transposition of the Directives was noticeable.

Specialised bodies

There were also problems concerning the availability of a specialised body for the promotion of equal treatment according to Art 13 of the Racial Equality Directive. In the Czech Republic, Germany, Luxembourg and Malta no specialised body had been designated by the end of 2005. In Poland a body had been designated in the past, but ceased to exist in November 2005.

However, in most Member States, a specialised body for the promotion of equal treatment was designated. In terms of the powers of these bodies, it is noticeable that some provide assistance to victims of discrimination in the form of support in taking legal action which goes beyond the minimum standard required by the Racial Equality Directive – as in Belgium, Ireland, Latvia, Hungary, Austria, Slovakia, Finland, Sweden and the UK.

Hungary's "Equal Treatment Authority" is noteworthy for its far reaching powers in support of victims of discrimination. It may intervene in the judicial review of administrative decisions. It may also act as a representative of a victim of discrimination before courts. It may also take legal action in the public interest to protect the rights of persons and groups. Another example of a specialised body with strong powers to support victims of discrimination is the Slovak National Centre for Human Rights. The strong powers of these bodies to provide legal assistance to victims of discrimination puts them in a good position to contribute positively to the effectiveness of anti-discrimination legislation in the Member States.

Employment

With anti-discrimination legislation being enacted and cases increasingly coming to court, and with research on discrimination being more widely carried out and disseminated, there is evidence that previous blanket assumptions about educational and other deficits of immigrants as the main reason for employment inequality are becoming balanced by a greater awareness of the operation of discrimination, and the need to combat it.

There were several developments mentioned in 2005 which suggested that an awareness of discrimination and the need to do something about it was growing in the minds of policy makers in a number of Member States, including new initiatives to collect official statistics or to commission research which will more accurately identify the scale and nature of the problem.

The issue of 'ethnic data'

A general absence of data on ethnic/national origin means a reduced ability to evaluate policies against racism. In some Member States it contributes to a low awareness of the problem of discrimination in the first place. However, there are signs that some Member States are looking more sympathetically at issues of recording ethnic/national origin than they were previously. For example, in France, it was reported that some official surveys are now using categories close to these variables. It was also noted that some French employers are starting to note the 'diversity of the origins' of their staff and applicants for posts.

In this regard it is also significant that in France the *Commission Nationale de l'Informatique et des Libertés* (CNIL) declared in a recommendation in 2005 that the French data protection legislation does not hinder the "temporary" collection of certain information related to the ethnic origin of individuals strictly limited to the purpose of antidiscrimination, if certain safeguards which ensure the anonymity of statistics are ensured.

Discrimination testing and awareness

When the variable of ethnic origin is not available in existing statistics for those who wish to identify processes of inequality, research can fill some of the gap. In last year's Annual Report there were many examples of the research method 'discrimination testing' being used in several Member States, when matched pairs of applicants are used to test whether selection or rejection for a job is based on ethnicity or skin colour. In contrast, only one such test was mentioned this year. However, it perhaps is significant that in 2005 authorities in both Sweden and France invited the ILO to carry out a discrimination testing programme in a number of cities, with results to be reported to them in 2006. Both these countries had in previous years declined the opportunity to participate in such experiments, for different reasons. This development might be taken as further indication of official recognition of the need to take seriously the problem of employment discrimination, and the importance of collecting data on it.

The use of 'victim surveys'

Whilst discrimination testing provides an 'objective' indication of the phenomenon of discrimination, research can also be used to provide a subjective dimension, notably through surveys of the perceptions and experiences of victims. There were far more of these reported during 2005 than in the previous year. For example, surveys of Russian speakers in Estonia, immigrants in Denmark, Turks in Germany, Serbs and Bosniacs in Slovenia and Somalians, Russians, Estonians and Vietnamese in Finland all reported experiences of discrimination. In France, immigrants and descendants of immigrants reported that they were routinely subjected to negative treatments related to their origin, skin colour, name or speech. Sensitivity to these kinds of experiences was shown to be greater with the second, younger generation even though the intolerant attitudes and negative experiences they encounter may be less serious than they had been for the older, first generation.

Legal status and vulnerability

Directly related to issues of integration and equality regarding immigrants and minorities is the question of legal status. Access to the labour market is linked directly to the type of work or residence permit held by a migrant worker. Legal

status can determine whether migrants are allowed to change employers or sectors of the economy.

Even when third country nationals are legally and permanently resident in a Member State, laws and regulations restrict their rights of access to employment. Whereas third country nationals can't be excluded from employment opportunities on the grounds of, for example, their ethnic origin or religion, they can be excluded on the grounds of their citizenship status in the cases of certain categories of jobs, notably in the public sector.

There were several reports in 2005 of groups of migrant workers working in legally constrained situations, and less able to resist extremes of exploitation, so that conventional anti-discrimination protection is almost irrelevant. Sometimes, governments can directly and intentionally increase the vulnerability of groups of legally-constrained workers, such as in the case of the new official contracts for domestic workers in Cyprus which forbid such workers from participating in any trade union or political activity, on pain of automatic termination of the work and residence permit.

During 2005 there were events which led commentators to emphasise the importance of maintaining minimum standards of working conditions where migrants are employed so as to avoid the generation of racist discourse. On two occasions during 2005, in two different countries, Ireland and the Netherlands, where there were similar instances of groups of foreign workers introduced to replace and undercut the wages and conditions of national workers, fears were raised about the implications of this for the growth of anti-immigrant sentiments.

Housing

The housing situation of immigrants and ethnic minorities is clearly a major concern in all Member States. A number of projects are being carried out and measures to integrate immigrants and ethnic minorities are underway. Nevertheless, housing conditions of immigrants, Roma and asylum seekers remain problematic. In a number of countries, immigrants and Roma live in poorer and more precarious dwellings than the national average. Immigrant and Roma households are likely to face more discrimination in the housing market than the indigenous population. Roma and Traveler settlements usually lack the proper infrastructure and in the case of Roma dwelling in urban centers, accommodations are often of degraded quality and offer little security.

Changes in the nature and patterns of immigrant inflows in recent years pose an all new range of questions with regard to housing that need to be addressed by Member States. Evidence shows that in several Member States immigrants are particularly vulnerable to homelessness. Failed asylum seekers and elderly immigrants seem to be contributing to the increasing share of non-nationals among homeless people.

Seasonal workers are also seriously affected by housing precariousness. Because of their short residence period in a country and their vulnerability in the employment market, housing solutions have yet to be found. One outcome of the lack of housing provision has been the proliferation of substandard accommodation in the regions where seasonal workers reside.

The avoidance of ‘ghettos’

A different range of problems arises from spatial segregation. Immigrants and ethnic minorities are likely to be victims of segregation, the most visible manifestation of which is ‘ghetto’ formation. Among Member States a few have launched programmes to combat ‘ghettoisation’. However, it is important to distinguish between measures to combat ghetto formation, and forced distribution, as they do not necessarily coincide. Therefore, while counteracting the formation of ‘ghettos’ involves a broad package of measures involving all areas – employment, education, housing, security, and so on - forced distribution can merely change spatial distribution patterns, whilst leaving the main integration problems untouched.

Discrimination testing and data

There is a significant paucity of data on housing discrimination. However, ‘discrimination testing’ research has shown that immigrants face differential treatment by real estate agencies and landlords. While testing has raised ethical doubts in some Member States, there is a noticeable trend to adopt this method to gauge levels of discrimination. In France, after the urban disturbances of October – November 2005, the possibility of applying testing is being considered, so as to gain a picture of the barriers faced by immigrants. In general, the number of housing discrimination complaints is likely to fall short of reflecting the real situation in the Member States. Whilst other indicators such as spatial segregation, housing conditions or nature of tenancy can be seen as proxies for housing discrimination, these are not based on direct evidence. In the absence of other measures, testing remains a generally efficient tool to collect data on direct discrimination.

Awareness and ‘good practice’

Many innovative initiatives on housing exclusion are underway in the Member States. Despite the fact that countries show different levels of implementation of “good practices”, we can note an increasing awareness of the important role that housing plays in the integration process of immigrants and ethnic minorities. It has become clear that spatial segregation, racist discrimination in the housing market and housing precariousness are intertwined with multiple forms of exclusion hindering the possibilities for social advancement. Measures to improve the

housing situation of Roma have been launched in a number of the new Member States in what seems to be a coordinated national effort.

Education

Partial or even total segregation in education is still a common phenomenon in large parts of the EU. An analysis and overview of the Europe-wide PISA education performance study and others concluded firmly in 2005 that highly differentiated and segregationist school systems produce and reproduce inequality.

A few Member States reported a narrowing of the gap in educational attainment between the majority population and some migrant/minority groups. In general, however, the attainment gap between different ethnic/national groups has remained at a significant level, with certain groups, such as Roma, particularly vulnerable to falling behind.

The situation of Roma pupils

One major cause of Roma pupils falling behind the average attainment rate is the fact that they are in many Member States the group most affected by segregation and diverse forms of direct and indirect discrimination. Steps have been taken in this and previous years to reduce the occurrence of segregation, discrimination and educational underperformance. However, the situation for Roma pupils is still a precarious one and continues to need further attention.

Gaps in data

There is a lack of systematic recording of racist and discriminatory incidents in the field of education in most EU Member States. In addition, data on educational attainment of different ethnic/national groups is in most Member states either only partial, or not available at all. Thus, for many Member States, reliable information on instances of direct and indirect discrimination, which could for example be used in order to judge and enhance the effectiveness of good practice measures, is missing.

Religious symbols

The question of permitting or prohibiting the displaying of religious symbols in the education sphere has led to new legislation and new debates in 2005. Policies in Member States range from nationwide prohibition of displaying any religious symbol in state schools to complete freedom of pupils and teachers to wearing any religious symbol. In between are policies that leave decision to federal states or

individual schools or that prohibit only certain religious symbols, while others are not considered as subject for regulation.

‘Good practices’ in education

Recent research studies on institutional barriers for migrants and minorities in the field of education have come to the conclusion that selective support measures alone have in many cases only little impact on improving the position of migrants and minorities. Rather, broader changes towards a more integrationist and less differentiated education system, accompanied by selective support measures, have the potential for reducing barriers and promoting educational success.

As regards selective anti-discrimination measures, there are a wide range of instruments that are being applied to improve the situation of migrants and minorities in the education sector and combat racism and discrimination. Such measures include the mainstreaming of awareness-raising on diversity and discrimination in education, providing individual support for pupils with language and/or learning difficulties, or providing programmes for the support of parents and teachers.

In some countries there are financial programmes, either in the form of grants and scholarships for pupils, or in the form of incentives for companies to invest in apprenticeships for children with migrant/minority backgrounds, and there is also funding for projects aimed at enhancing the position of migrants and minorities in the education sector. Some Member States are setting up measures against segregation in education, abandoning special schooling and dissolving separate classes. Others are setting up structures for systematic data collection on racist incidents and discriminatory practices.

Racist violence and crime

Available information for the period 2004-2005 indicates that racist violence and crime continues to be an on-going problem in the EU25, with evidence that it emerges in different forms which are generally under-documented by official data collection mechanisms.

The fact that a number of Member States still do not have adequate official criminal justice data collection mechanisms in place, to record and make publicly available information on racist violence and crime, would seem to indicate that the problem is neglected through much of the EU. In the reporting period 2004-2005, no official data on racist violence and crime was available for five Member States; namely: Greece, Spain, Italy, Cyprus and Malta. In the same period, nine Member States were classified as having ‘limited’ official data collection mechanisms in place, which either tended to focus on a limited number of investigations and court cases or collected information more generally on discrimination rather than,

specifically, racist violence and crime; namely: Belgium, Estonia, Latvia, Lithuania, Luxembourg, Hungary, Netherlands, Portugal and Slovenia.

In turn, nine Member States were classified as having ‘good’ mechanisms in place for registering reports and recording crimes, and/or a system focusing on the particular problem of right-wing extremism/hate crimes; namely: Czech Republic, Denmark, Germany, France, Ireland, Austria, Poland, Slovakia and Sweden. Finally, only two Member States – Finland and the UK (England and Wales) – were classified as having ‘comprehensive’ mechanisms in place, which demonstrated extensive data collection that could also provide detail with respect to victim characteristics.

Trends

Looking at eleven Member States for which official criminal justice data is available for the period 2000-2005, and calculating a mean average of the year-by-year percentage changes in reported/recorded crime, the following can be noted (based on the fullest available data for each Member State, which in some cases covers only 2000-2004 or 2001-2005): eight experienced a general upward trend in reported/recorded racist crime during this period: Denmark, Germany, France, Ireland, Poland, Slovakia, Finland and the UK (England and Wales); three of the eleven experienced a general downward trend in reported/recorded racist crime during this period: Czech Republic, Austria and Sweden. However, these trends must be cautiously interpreted because they reveal as much about changes in recording practices in each Member State as they do about the actual extent of racist violence and crime. Also, as data collection is different in each Member State, trend comparisons can only be made within Member States but not between them.

In sum – it can be generally stated, with a few exceptions, that Member States with well developed official criminal justice data collection mechanisms tend to show higher levels of reported and recorded racist violence and crime, while Member States with inadequate data collection mechanisms reveal no or limited data on racist violence and crime.

Information from NGOs

Given the limitations of official data collection, unofficial NGO sources currently fill the knowledge gap concerning ‘who’ the most vulnerable victim groups are. In 2004-2005, NGOs revealed that asylum seekers, refugees and immigrants were among some of the most vulnerable groups experiencing racist violence and crime, and, most disturbingly, often suffered abuse from public officials – including police officers. In particular, NGOs from southern Member States identified a number of cases of abuse involving public officials.

Reports from eastern and southern Member States also revealed that the Roma are a particular target for racist violence and crime, both at the hands of the general public and public officials. In turn, Jews continue to experience antisemitic incidents, which tend to be well documented by both official and unofficial sources. And, although their experiences remain under-documented, Muslims are increasingly coming to NGOs' attention as victims of racist violence and crime.

'Good practices'

As a counterpoint to official and unofficial reports on racist violence and crime, a number of 'good practice' initiatives were identified in 2004-2005 that variously try to respond to the problem. Encouragingly, given the continuing inadequacy of many official data collection mechanisms, a number of initiatives focus on practical responses for improving police data collection on racist violence and crime. Other initiatives range from concrete examples of practical interventions with offenders or potential offenders, through to victim-focused initiatives.

EU initiatives

Combating racism continues to be an area of comprehensive activity by the European Union, as shown in the final thematic chapter of this report. Here, questions of solidarity and the protection of fundamental rights are addressed, as well as the specific attention that is attributed by European institutions to the situation of Roma communities in EU Member States. In addition, the chapter shows that issues related to freedom and security have become high on the agenda of the European Union. In this context, the EU continues its work on a common agenda on integration and on combating violent radicalism.

1. Introduction

During the year 2005 there were several dramatic events which served to highlight debates on exclusion, discrimination and integration of immigrants and minorities in the EU. Most notably, in London, on 7 July, a series of bomb attacks on public transport killed 52 people and injured hundreds. The bombers were young British-Muslim men. On 21st July there were four more attempted attacks on London's public transport system, which resulted in no injuries or deaths. In last year's EUMC Annual Report¹, reference had been made to events of the preceding year – the Madrid train bombings in March 2004, and the later murder of Theo van Gogh in Amsterdam - both crimes carried out by radical Islamists, and both of which led to violent incidents in various countries, mainly directed against Muslims and mosques. Similarly in the UK in 2005 there was reported an upsurge in 'faith hate' crimes against Muslim targets in the aftermath of the bombings. However, as shown in the analysis in Chapter 6 of this report, by the end of the following month the number of reported incidents had reduced to 'normal' levels.

In November 2005 the EUMC published a report² on the impact of the attacks which concluded that: 'the strong stand taken by political and community leaders both in condemning the attacks and defending the legitimate rights of Muslims saw a swift reduction in such [racist] incidents'. Community and political leaders were quick to distance the actions of a few British-Muslim bombers from the Muslim community in general. This message was picked up and repeated by the British and foreign media and served not to 'demonise' the Muslim community in Britain, nor to generate fundamental questions about the existence of a 'multicultural society'. It is notable that in a survey conducted by the firm MORI one month after the bombings in London, 62 per cent of respondents agreed that 'multiculturalism makes Britain a better place to live.'³

The year 2005 was also dramatically marked by the urban disturbances in France, which began at the end of October and continued into mid-November, involved mainly young men of north-African origin in the suburbs of Paris and other French cities. The riots resulted in nightly arson attacks on hundreds of vehicles and property. Within the many analyses of the causes of such disturbances which followed, a recurring theme was the alienation of large numbers of young residents of these suburbs, and their experiences of exclusion and discrimination regarding employment. Evidence for such phenomena in 2005 is discussed in Chapter 3 of this report, which sets out the statistical indicators of inequality in employment in

¹ See Annex 1 for the methodology of the Annual Reports.

² EUMC (2005) *The Impact of 7 July 2005 London Bomb Attacks on Muslim Communities in the EU*, Vienna: EUMC. See <http://eumc.eu.int/eumc/material/pub/London/London-Bomb-attacks-EN.pdf> (12.10.2006).

³ MORI, August 10 2005. See http://news.bbc.co.uk/2/hi/uk_news/4137990.stm (12.10.2006).

EU Member States, describes the ways in which discrimination comes to public attention, and gives examples of the forms of its manifestation. It also quotes studies in 2005 which showed how people of non-EU foreign origin in France, as in many other EU countries, suffer higher rates of unemployment even when their educational levels are similar to those of the majority.

Also in France, a series of fires in Paris in hotels and apartment blocks housing immigrants occurred during 2005, two in August which killed more than 20 people, and one in April which killed a similar number. Many of those who died were children, and most of the families came from Africa. The incidents drew public attention sharply to the appalling housing conditions suffered by many immigrants. Chapter 4 of this report looks at the housing picture for migrants and minorities in Europe for 2005, describing the nature of the inequality and segregation suffered by migrant and minority communities, and the manifestations of the direct and indirect discrimination to which they are exposed.

The above mentioned events, however, should not distract from the fact that phenomena of discrimination are part of everyday life of many Europeans irrespective of the occurrence of high profile events. In this respect, Chapter 5 of this report describes discriminatory practices and structures in education, particularly highlighting issues of segregation in education, and in particular the precarious situation of people from Roma communities with regard to their educational attainment and the discriminatory attitudes they encounter. In addition, the latest developments in policies and debates regarding religious symbols in education are discussed in Chapter 5, which is rounded off by examples of good practice that were implemented in 2005 in order to promote anti-racism and improve the situation of migrants and minorities in the education sector.

In the context of existing inequalities in the thematic areas of employment, housing, and education, the transposition of the EU Equality Directives is of particular importance. Chapter 2 deals with the status of transposition of the Racial Equality Directive and the Employment Equality Directive in EU Member States. In addition, Chapter 2 informs on the state of play on the establishment of specialised bodies for the promotion of equal treatment in Member States, as well as on good practice concerning equal treatment and integration.

The events of 2005 clearly pointed to a lack of data that could make transparent or explain certain developments. This lack of data concerns all thematic areas covered by the Annual Report, but is particularly noticeable in the differing quality of data as regards statistics on racist violence and crime, with in some cases a complete absence of such data. Thus, Chapter 6 not only provides information on trends in racist violence and crime in Member States where they are available, but also discusses the current status of data collection in EU Member States. Special attention is drawn to vulnerable groups like asylum seekers and refugees, as well as Roma, Muslim and Jewish individuals and communities. In addition, good practice is highlighted as regards policing and data collection, the prevention of racism and extremism, and victim assistance and guidance.

Combating racism continues to be an area for a wide range of activities by the European Union, and an overview of this during 2005 is presented in Chapter 7. Here, questions of solidarity and the protection of fundamental rights are addressed as well as the specific attention that is attributed by European institutions to the situation of Roma communities in EU Member States. In addition, issues related to freedom and security have become high on the agenda of the European Union. In this context the EU continues its work to combat violent radicalism. The Commission also continues its work building on its Communication on a common agenda for the integration of immigrants via the promotion of the common basic principles for integration, adopted by the Council in 2004.

2. Legal and institutional initiatives against racism and discrimination

According to its legal basis, Council Regulation 1035/97, the EUMC is called upon to collect and process information and data concerning the extent, development, causes and effects of the phenomena of racism and xenophobia, and examine examples of good practice in dealing with them. The EUMC needs to document legislative developments and institutional initiatives in this context as possible cause and/or effect of the phenomena of racism and xenophobia and as examples of good practice. However, the EUMC is not called to give an opinion on the legality of these developments and initiatives. The assessment of the legality of legislative developments and initiatives in the Member States is the prerogative of other EU institutions like the European Commission and, in the final instance, the European Court of Justice.

The legislative sections of the 25 RAXEN national reports for 2005, on which this chapter is based, present an overview of relevant legislative and institutional initiatives. Following on from last year's Annual Report, this chapter begins by examining the state-of-play on the transposition of the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC) and focuses especially on the creation and powers of special bodies for the promotion of equal treatment designated according to the Racial Equality Directive. The chapter highlights a number of legislative and other initiatives of relevance for legal practitioners as good practices that promise to reduce the phenomena of racism and xenophobia.

2.1. The transposition of the Racial Equality Directive and the Employment Equality Directive

The relevance of the Racial Equality Directive for the work of the EUMC does not require further explanation. The Employment Equality Directive is relevant for the work of the EUMC mainly because the religious discrimination that it encompasses in some cases coincides with racism and xenophobia (for example antisemitism or Islamophobia).

The EU 15 were obliged to complete transposition of the two Directives on equal treatment by 19.07.2003 (in the case of Racial Equality Directive) and by

02.12.2003 for most of the provisions in the Employment Equality Directive, with an extended period in relation to its provisions on disability and age. In its 2005 Equality and Non-discrimination Report⁴ the Commission notes that a number of Member States did not manage to meet the deadlines for full implementation of the two Directives. In July 2004, the Commission referred five Member States – Germany, Greece, Luxembourg, Austria and Finland – to the European Court of Justice (ECJ) for not communicating transposition of the Racial Equality Directive, and in December 2004 the same five were referred to the ECJ for not communicating transposition of the Employment Equality Directive. Legislation has meanwhile been adopted in Greece and the cases concerning Greece have been discontinued. The European Court of Justice ruled in 2005 that Finland⁵, Luxembourg⁶, Germany⁷ and Austria⁸ failed to adopt all the laws, regulations and administrative provisions necessary to comply with the Racial Equality Directive before the date for transposition expired on 19 July 2003. The European Court of Justice also ruled that Luxembourg failed to transpose the Employment Equality Directive by the required date.⁹ Concerning Finland, Germany and Austria the cases concerning the Employment Equality Directive are ongoing.

The EU 10 had a later transposition deadline than the EU 15. By the end of 2004 all of the EU 10 except the Czech Republic had officially notified the European Commission that they had transposed the two directives.¹⁰

In the Czech Republic, a person of Roma origin initiated a court case against a restaurant owner who displayed a statue of a Greek goddess of antiquity holding a baseball bat in her hand with a visible inscription “Go and get the Gypsies” on the premises of his restaurant. The Supreme Court in its judgment referred to the concept of harassment in the Racial Equality Directive, even though the Racial Equality Directive had not been transposed in the Czech Republic yet. The judgment expressly includes harassment as an infringement of personality rights and, in the absence of proper definition in existing legislation, gives basic guidance to the courts on how to identify harassment¹¹

In 2005 preparatory work began at the Commission for formal stages of infringement procedures for non-conformity with the Directives.¹² This work is still ongoing. The EUMC will not comment on the conformity of the implementing

⁴ European Commission (2005). *Equality and Non-Discrimination – Annual Report 2005*, April 2004 (henceforth referred to as Equality Report 2005).

⁵ Case C-327/04 Commission v Finland, judgment of 24 February 2005.

⁶ Case C-320/04 Commission v Luxembourg, judgment of 24 February 2005.

⁷ Case C-329/04 Commission v Germany, judgment of 28 April 2005.

⁸ Case C-335/04 Commission v Austria, judgment of 4 May 2005.

⁹ Case C-70/05 Commission v Luxembourg, judgment of 20 October 2005.

¹⁰ Equality Report 2005, p. 12.

¹¹ All information on the case on file with the Centre for Citizenship/Civil and Human Rights, available on request at poradna@iol.cz.

¹² Equality Report 2005, p. 12.

measures of the Member States with the Directives in order not to duplicate the work done by the Commission. Instead this report will restrict itself to describing the situation in those Member States in which the Directives have not been implemented yet or in which there was some legislative activity concerning anti-discrimination in 2005.

In the Czech Republic, the Chamber of Deputies of the parliament adopted a bill implementing the Directives on 07.12.2005. The bill defines the term “discrimination” and prohibits any discriminatory behaviour based on race, gender, age or sexual orientation. However, the senate of the Czech parliament rejected the bill during its session on 26.01.2006 saying that the legislative norm is too vague and introduces “positive discrimination”. Thus, by the beginning of 2006, there were no signs of progress on the bill.

The Supreme Court of Denmark decided that the dismissal of an employee of a supermarket for having worn a head scarf for religious reasons in disregard of company clothing rules did not amount to discrimination. The clothing rules in the super marked applied to every employee and the rules were consequently enforced. The Court recognised that the prohibition of wearing a head scarf when having direct contact with customers mainly would affect Muslim women but found that it did not constitute indirect discrimination because the clothing rules were objectively justified.¹³

In Germany, by the end of 2005, neither Directive had been transposed into German law. The anti-discrimination bill which was introduced by the government in December 2004 and amended in March 2005 was passed by the Lower House of the Parliament (*Bundestag*), but rejected by the Upper House (*Bundesrat*). Due to a lack of time before the parliamentary elections, the bill could finally not be adopted. On 19.12.2005, the parliamentary group of the opposition party the Greens reintroduced a draft anti-discrimination law¹⁴ in the German parliament, which is worded exactly like the one which had been introduced by the former government under former Chancellor Schröder in the past legislative period.¹⁵

In Estonia, no major legislative activity to transpose the Directives occurred.

In Greece, the law for the transposition of the anti-discrimination Directives was approved during its very first session in 2005, and the two Directives were transposed by a single unified legal text.

¹³ Supreme Court UfR 2005.1265H.

¹⁴ German Bundestag, printed matter 16/297 (19.12.2005).

¹⁵ Press service of the *Bundestag* (06.01.2006).

In France, the Law n°2005-843¹⁶ of 26 July 2005 makes various measures of the Directives applicable to the public service.

The Court of Cassation in Italy decided a case of unlawful discrimination involving the proprietor of a bar in Verona who refused to serve non-EU citizens coffee and other beverages, in a move to keep them away from his bar. The earlier ruling of 4 months imprisonment was confirmed but suspended on probation.¹⁷

Latvia continued its efforts to transpose both directives. The main requirements of the Employment Framework Directive have been transposed (amendments effective 08.05.2004), but transposition of the Racial Equality Directive is still ongoing.

In Lithuania, the parliament amended the Code of Administrative Violations with provisions¹⁸ that foresee fines for violations of the Law on Equal Treatment.¹⁹ Between the coming into force of the Law on Equal Treatment on 01.01.2005 and this amendment on 27.09.2005, the Equal Opportunities Ombudsperson had no means to financially sanction those physical or legal persons who breached the law.

In Luxembourg, two draft bills were introduced to transpose the EU Equality Directives: draft bill 5248 concerning the Racial Equality Directive and draft bill 5249 concerning the Employment Equality Directive, both dated 21.11.2003. Following a critical opinion on both draft bills from the Council of State (Conseil d'Etat) of Luxembourg, a new draft bill (n. 5518) was introduced to Parliament on 22.11.2005 and the earlier draft bills were withdrawn. The new draft proposes to transpose the two Directives in the framework of just *one* bill. It does not cover the public sector.

In Malta, the Ministry for Family and Social Solidarity has drafted a bill entitled "Equality Act 2005" which will transpose the remaining provisions of the Racial Equality Directive that are not yet covered by existing legislation. The first reading of this draft bill took place in Parliament on 27.06.2005.

In Austria as of October 2005, the last remaining federal province ("Bundesland") to transpose the Directives is Salzburg, which has so far presented a draft. The provinces Carinthia, Vienna, Tyrol and Lower Austria went beyond the minimum standards of the directives by extending the non-employment scope of the Racial Equality Directive to all discrimination grounds.

¹⁶ Law France 2005-843 (26-07-2005)
<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=FPPX0400293L> (16.05.2006).

¹⁷ Italy / Court of Cassation / Sentence nr. 46883 (05.12.2005).

¹⁸ Law amending Articles 41(6), 187(5) and 247(6) of the Code of the Administrative Violations, Lithuania / 27.09.2005 No. X-343, (13.10.2005).

¹⁹ Law on Equal Treatment, Lithuania / 18.11.2003 No. IX-1826 (01.01.2005).

In Poland, the code of civil procedure was amended to enable social organisations dealing with protection of equality and non-discrimination to file complaints with the consent and on behalf of citizens, and join proceedings with their consent. Otherwise, no major legislative activity to transpose the Directives in Poland occurred.

In Slovenia, there are two legislative proposals that will, after they are adopted, include anti-discrimination provisions: amendments to the Public Servants Act²⁰ and a proposal of a new Religious Freedom and Religious Communities Act.²¹

In December 2005, the European Court of Human Rights (Court) judged on the case of *Bekos and Koutropoulos vs. Greece*²². The Court found the Greek state responsible for the inhuman and degrading treatment which two Roma men suffered at the hands of the police in violation of Article 3 (prohibition of torture and inhuman and degrading treatment), as well as the subsequent failure to conduct an effective official investigation. The Court also found a violation of the procedural guarantee against racial discrimination contained in Article 14 of the European Convention of Human Rights.

In Slovakia, the constitutional court decided on 18.10.2005 that a section of Slovak anti-discrimination legislation was unconstitutional.²³ The disputed section of the Anti-discrimination Act²⁴ permitted affirmative action as a tool to combat social inequalities, so called “temporary compensation measures” on the grounds of ethnic and racial background in order to ensure equality of opportunities in practice.

In Finland, the transposition of the Racial Equality Directive and the Employment Equality Directive into Åland's provincial legislation has been completed. The law on Preventing Discrimination in the Province of Åland entered into force on 01.12.2005.²⁵

In Sweden, as one further step in compliance with the Directives a draft bill has first been submitted to the Council on Legislation (Lagrådet) on 12 May 2005. The draft bill entitles the banning of discrimination and other degrading treatment of

²⁰ http://www2.gov.si:8000/zak/Pre_Zak.nsf/zak_po_UNID/C6B2ECAF6584B58CC125704B00229FC9?OpenDocument (10.10.2005).

²¹ <http://www.gov.si/uvs/predlogz.doc> (10.10.2005).

²² European Court for Human Rights, *Bekos-Koutropoulos vs Greece* (13.12.2005).

²³ Slovakia/ *Nález Ústavného súdu Slovenskej republiky* [Constitutional Court of Slovak Republic]/ PL. ÚS 8/04-202 (18.10.2005).

²⁴ Section 8, paragraph 8 of Law No. 365/2004 Coll. of Laws, the Law on Equal Treatment in Certain Areas and on Protection Against Discrimination, and on the Amendments and Supplements of Certain Other Laws.

²⁵ Åland, 66/2005 (01.12.2005).

children and students in school.²⁶ The law is supposed to enter into effect on 01.04.2006.

In the UK, 2005 saw the publication of a major piece of legislation on anti-discrimination: the Equality Bill Great Britain.²⁷ This bill establishes the Commission for Equality and Human Rights and dissolves the Commission for Racial Equality in a few years.

2.2. Specialised bodies for the promotion of equal treatment

Article 13 of the Racial Equality Directive states that Member States must designate “a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin”. Such bodies (in this chapter referred to as the ‘specialised body’) shall have competence to include:

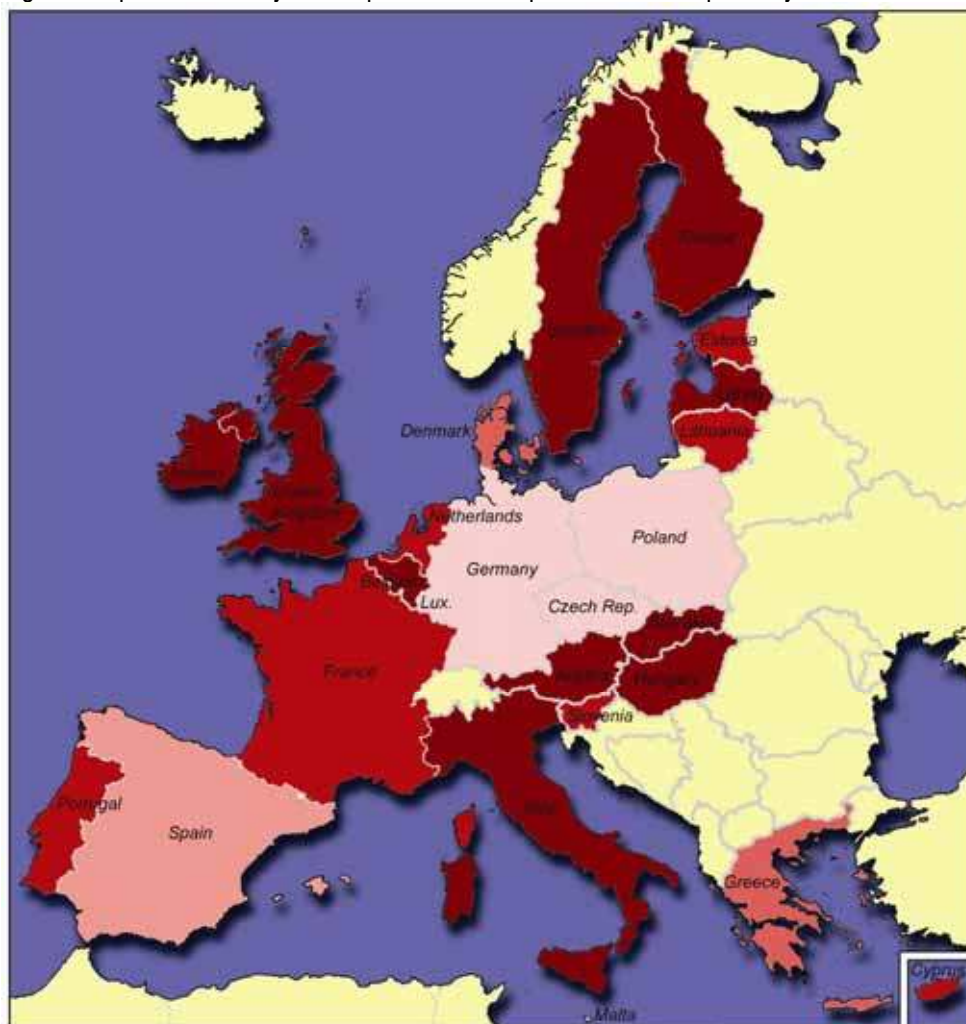
- Providing independent assistance to victims of discrimination in pursuing their complaints about discrimination;
- Conducting independent surveys concerning discrimination; and
- Publishing independent reports and making recommendations on any issue relating to such discrimination.

This section sets out the state of existing and planned specialised bodies up to the end of 2005, and presents some examples of activities carried out by some of the bodies which are up and running.

²⁶ Council on Legislation (2005), ”Förbud mot diskriminering och annan kränkande behandling av barn och elever i skolan m.m” (12.05.2005).

²⁷ The Equality Bill, 2005. [HL 17] Great Britain. Accessible at: <http://www.publications.parliament.uk/pa/ld200506/ldbills/017/2006017.pdf> (16.05.2006).

Figure 1: Specialised body for the promotion of equal treatment in place by the end of 2005



KEY:

- 1. Specialised body in place, with stronger powers to assist victims
(Belgium, Ireland, Latvia, Hungary, Italy, Austria, Slovakia, Finland, Sweden, UK)
- 2. Specialised body in place, with regular powers to assist victims
(Cyprus, Estonia, France, Lithuania, Netherlands, Portugal, Slovenia)
- 3. Specialised body in place, with some limitations in coverage (Denmark, Greece)*
- 4. Specialised body identified, but not yet in place (Spain)
- 5. No specialised body in place (Czech Republic, Germany, Luxembourg, Malta, Poland)

* In Denmark the body is limited in scope because trade union members need to access their trade union, rather than the specialised body, regarding employment cases. In Greece the body is limited in scope because it deals only with public administration.

In Poland, a specialised body had been designated in the past, but ceased to exist in 2005. The Polish Plenipotentiary for Equal Status of Women and Men had been originally designated as Article 13 body, but did in fact not deal with a single case of ethnic discrimination.²⁸ The office of Plenipotentiary for Equal Status of Women and Men was eliminated by the government in November 2005.²⁹ Therefore, as of November 2005, there is no entity in Poland fulfilling the role of the Specialised Body under Art 13 Race Equality Directive. An agreement between the Ministry of the Interior and Administration and the Union of Citizens Advice Bureaus (a non-governmental organisation that associates Citizens Advice Bureaus in Poland) was signed in July 2005. According to the agreement the Citizens Advice Bureaus in Poland commit themselves to provide free and independent assistance to victims of discrimination based on race or ethnic origin.

In the Czech Republic, Germany, Luxembourg, and Malta no specialised body had been designated by the end of 2005. In the Czech Republic, the proposed anti-discrimination law, later rejected, proposed to award the functions of the specialised body to the Public Defender of Rights (Czech ombudsperson). In Germany, draft legislation intended to set up a new federal anti-discrimination body.³⁰ This draft legislation could not be adopted before the parliamentary elections in 2005. In Luxembourg, the new draft bill (n. 5518) foresees a specialised body for equal treatment ('Centre pour l'égalité de traitement'), which will have advisory, monitoring and promoting roles, and will be allowed to receive complaints and to help victims by information and counselling. The body will comprise five members all of which will have a mandate of five years. In Malta, there are plans that the Commission for the Promotion of Equality for Men and Women set up under the Equality Act for Men and Women 2003³¹ will be designated to act as the Equality Body. The respective legislation has not been enacted yet.

In Denmark, the Danish Institute for Human Rights established the Complaints Committee for Ethnic Equal Treatment after the adoption of Act 374 of 28.05.2003 on Ethnic Equal Treatment. The Committee handles specific complaints about discrimination on the basis of race or ethnic origin. However, trade union members need to turn to their trade union regarding employment discrimination cases. The number of complaints received in the period May 2003 - January 2006 is 186 in total. Forty-eight cases are still pending. Fifty-one cases have been rejected as ill-founded or have been found to fall outside the mandate. In 50 cases the plaintiffs

²⁸ Information provided by Helsinki Foundation for Human Rights Poland dated 17.10.2005.

²⁹ Decree of the Council of Ministers dated 3 November 2005 regarding abolition of Government Plenipotentiary for Equal Status of Women and Men. Poland / Dz.U. 2005/222/1913 (04.11.2006).

³⁰ Report of the European Network of Legal Experts in the Non-Discrimination Field, *Developing Anti-Discrimination Law in Europe – The 25 EU Member States compared*, September 2005, p. 78.

³¹ Malta/ Laws of Malta, Chapter 456 Act I of 2003, the Equality for Men and Women Act (09.12.2003) available online at available online at: http://docs.justice.gov.mt/lom/Legislation/English/Leg/VOL_14/Chapt456.PDF (08.11.2005).

withdrew the complaints or did not respond to requests to provide more information. No violation of the act was found in 26 cases. In 7 cases a violation was found. Four cases have been postponed, since the plaintiff in these cases has submitted identical complaints to various complaints mechanisms.³² In only one case was free legal aid recommended by the Complaints Committee. The chair of the Committee stated that this does not mean that there has been no ethnic discrimination in other cases, but that the mandate of the Committee is too narrow.³³

In Denmark, the Complaints Committee for Ethnic Equal Treatment found sufficient proof that municipal authorities had violated the prohibition against direct discrimination, by having placed a student in a special school class for “students with significant absence”. Only students with Roma ethnic background were placed in this class.³⁴

In Estonia, the Chancellor of Justice, the specialised body in Estonia, received no complaint regarding discrimination on the basis of race or ethnic origin.³⁵

In Greece, three bodies were given the task to act as specialised bodies: the Greek Ombudsman is entrusted to deal with discrimination on the grounds of racial or ethnic origin by the public administration; the (future) Commission for Equal Treatment will deal with discrimination by private persons and entities, and the Labour Inspectorate will deal with discrimination in employment.

In Spain, the *Consejo para la promoción de la igualdad de trato y la no discriminación por motivos de origen racial o étnico* has not started working yet, as the Spanish government is in the process of drawing up a Decree which will regulate its membership and functioning.

In France, the High Authority to fight against all discriminations and for equality (“HALDE”) was created in March 2005 with the nomination of its president, Louis Schweitzer. For the period January – September 2005, 237 complaints for discrimination due to ethnic origin were registered.

In Italy, the *Ufficio Nazionale Antidiscriminazioni Razziali* (UNAR) was set up in November 2004 as part of the Department for Equal Opportunities of the Presidency of the Council of Ministers. UNAR provides free legal assistance to

³² The information on number of complaints in the period May 2003 – January 2006 has been provided by the Complaints Committee on Ethnic Equal Treatment in January 2006.

³³ Statement of Mr Claus Haagen Jensen, the head of the Complaints Committee for Ethnic Equal Treatment; reported in *Kristelig Dagblad*, 12th November 2005, *Discriminated complain in vain (Diskriminerede klager forgæves)*.

³⁴ Complaints Committee for Ethnic Equal Treatment/ Journal no. 730.7./Decision of 5. December 2005.

³⁵ Estonia/Legal Chancellor; written communication no. 5-3/0503214 of 14.06.2005.

victims of discrimination and has set up a toll free call centre to guarantee an immediate access for victims, and to provide them with information and support. UNAR also offers legal assistance. 2005 was the first year of activity of UNAR. In December 2005, a decree has been published, presenting a list of 320 associations which are enabled to defend victims of discrimination according to Art 7/2 of the Race Equality Directive.

In December 2005, the Court of Cassation of Italy issued a ruling stating that the expression “dirty nigger” is not a racist abuse but a “generic manifestation of aversion, intolerance or refusal”³⁶. The Court cancelled a penalty of 15 days of jail ordered on a young Italian citizen, for having shouted at some Colombian girls: “What are you doing here, dirty niggers?”

In Latvia, on 15.12.2005, the amendments to the Law on the National Human Rights Office were adopted in third final reading in the parliament. The amendments foresee the expansion of the Office's functions in the area of anti-discrimination.³⁷ At the same time, the draft amendments to the Ombudsman Law passed second reading in the parliament. The draft amendments foresee the transformation of the Latvian National Human Rights Office into an ombudsman institution and provide that its staff may lodge an application at court on the behalf of the alleged victim and present victim's interests at court.³⁸ On 16.11.2005, the Latvian National Human Rights Office opened a new unit – the Discrimination Prevention Department. The key tasks of the unit are to provide support to persons subjected to discrimination, promote tolerance in society and raise public awareness about discrimination. There are four staff members in the department.³⁹

In Lithuania, the Equal Opportunities Ombudsperson received four complaints alleging discrimination in employment on the grounds of ethnic origin, race or religion: the investigation of three cases was discontinued because discrimination was not found or the nature of the complaint was beyond the competences of the Office of the Equal Opportunities Ombudsperson; in one case, a warning was issued.

In Hungary, the Equal Treatment Authority began its work on 01.02.2005.

In Austria, one Ombudsperson (Gleichstellungsanwalt) has been created for discrimination for all discrimination grounds (except gender) in employment and

³⁶ “«Sporco negro»: non è razzismo”, in: *Il Manifesto* (06.12.2005).

³⁷ “Paplašina Valsts Cilvēktiesību biroja funkcijas diskriminācijas novēršanā” in: *National News Agency LETA* (15.12.2005).

³⁸ “Parlaments akceptē Tiesībsarga likumu otrajā lasījumā,” in: *National News Agency LETA* (15.12.2005).

³⁹ Homepage of the Latvian National Human Rights Office, <http://www.vcb.lv/eng/default.php?open=jaunumi&this=221105.204> (27.01.2006).

one Ombudsperson for discrimination on the ground of ethnic origin in other fields than employment. Both these bodies started to work in March 2005.

In Slovenia there are two Art 13 bodies: the Council for the Implementation of the Principle of Equal Treatment and the Advocate of the Principle of Equal Treatment.⁴⁰ The Council held its first meeting on 10.05.2005. Also the Advocate of the Principle of Equal Treatment began to work in 2005. From forty complaints received by the Advocate, only one was deemed to be based on the grounds of ethnicity and race. This one case was discontinued.⁴¹

In Finland, in the autonomous island of Åland, the Law on Discrimination Ombudsman entered into force on 01.12.2005.⁴² It creates the Discrimination Ombudsman to promote and safeguard non-discrimination who is expected to begin work in February - March 2006.⁴³ In addition, the decree on Discrimination Board entered into force on 01.12.2005.⁴⁴ It provides that a Discrimination Board consisting of four to eight members will assist the Discrimination Ombudsman in his/her functions. The Discrimination Board is appointed for a period of two years by the provincial parliament of Åland on the proposal of the Discrimination Ombudsman.

In the UK, the Equality Bill Great Britain foresees the creation of the Commission for Equality and Human Rights and the dissolution of the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission.⁴⁵

In terms of the powers of specialised bodies, it is noticeable that some provide assistance to victims of discrimination in the form of support in taking legal action – as in Belgium, Ireland, Latvia, Hungary, Austria, Slovakia, Finland, Sweden, and UK.⁴⁶ The strong powers of these specialised bodies to provide legal assistance to victims of discrimination puts them in a good position to contribute positively to the effectiveness of anti-discrimination legislation in the Member States.

⁴⁰ See Act Implementing the Principle of Equal Treatment 2004, Art 9 and 11.

⁴¹ Information provided by the Advocate of the principle of Equal Treatment on 09.10.2005.

⁴² Åland, 67/2005 (01.12.2005).

⁴³ Information obtained by e-mail from Deputy Auxiliary Legal Advisor of the Government of Åland, Ms Alexandra Oksman on 18.01.2006.

⁴⁴ Åland, 75/2005 (01.12.2005).

⁴⁵ The Equality Bill. 2005. [HL 17] Great Britain. Accessible at: <http://www.publications.parliament.uk/pa/ld200506/ldbills/017/2006017.pdf> (16.05.2006).

⁴⁶ Report of the European Network of Legal Experts in the Non-Discrimination Field, *Developing Anti-Discrimination Law in Europe – The 25 EU Member States compared*, September 2005, p. 79.

2.3. Good practices

2.3.1. Concerning equal treatment

Whilst the French data protection law⁴⁷ states in article 8 that data collection and dissemination of data which reveal, directly or indirectly, racial or ethnic origins is prohibited, in July 2005 a recommendation by the Commission Nationale de l'Informatique et des Libertés (“CNIL”) declared, in a recommendation of 09.07.2005, that the French data protection legislation does not hinder the “temporary” collection of certain information related to the ethnic origin of individuals if the aim is to take action against discrimination. Certain conditions (the list is not exhaustive) need to be met however:

- Data collected and used need to be directly linked with the objective;
- Individuals concerned as well as staff representatives need to be informed (before the data processing is started);
- The data processing must remain confidential;
- The statistics must relate to a group of more than 10 people;
- The individual data files must be destroyed once the desired statistics have been produced; and
- CNIL needs to be informed.

This recommendation is of great importance in France, since it will enable, to a certain extent, some data collection on discrimination and diversity, and this will allow more precise surveys and better detection of problem areas.

In Lithuania, on 01.04.2005, the NGO Human Rights Monitoring Institute launched the Roma Rights programme of legal assistance to Roma.⁴⁸ The lawyer group at the Roma Rights programme mainly focuses on problems that affect Roma in general, however, assistance in individual cases is also provided. This is the first non-governmental initiative in Lithuania of this kind.

In Hungary, the new specialised body for equal treatment is the Equal Treatment Authority. The Equal Treatment Authority is noteworthy for its far reaching powers in support of victims of discrimination. It may intervene in the judicial review of an administrative decision made by another public administration body concerning the principle of equal treatment. It may also act as a representative of the victim of discrimination before courts if authorised by the victim of

⁴⁷ Law France n° 20004-801 (06-08-2004) relative à la protection des personnes physiques à l'égard des traitements de données à caractère personnel et modifiant la loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés
<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=JUSX0100026L> (16.05.2006).

⁴⁸ Available at:
http://www.hrmi.lt/downloads/structure//Romu_padeties_analize_20050412%20ENG121.pdf
(15.10.2005).

discrimination. It may also take legal action in the public interest to protect the rights of persons and groups whose rights have been violated. Although the Authority had not yet prepared its first annual report,⁴⁹ it has, in a number of occasions, ruled on discriminatory practices. Another example of a specialised body with strong powers to support victims of discrimination in the EU 10 is the Slovak National Centre for Human Rights.

In the Netherlands, a national telephone number – 0900-235435 (0900-belgelijk) – and the website www.belgelijk.nl was set up in June 2004 as a central contact point for complaints of discrimination. Also the campaign “Discrimination? Bel gelijk!” was launched to make the phone number and website better known.⁵⁰ Research shows that since the start of the campaign the national phone number has been called approximately 80 times a month and the number of visitors to the internet site has risen from 227 in June 2004 to 2,612 in January 2005.⁵¹

Also in the Netherlands, the Centre for Work and Income (CWI) is the national employment authority.⁵² The CWI non-discrimination code 2005 went into effect on 6 March 2005.⁵³ The code is focused on the CWI’s relationship with its customers. If there are complaints of discrimination against the CWI itself, it is always possible to lodge a complaint within the CWI. If there are complaints of discrimination by an employer or job seeker, the CWI can be informed of the fact and a complaint can be lodged with the Dutch Equal Treatment Commission.⁵⁴

In Sweden, the city of Stockholm adopted a policy in January 2005 to include anti-discrimination clauses in all of the city’s public contracts.⁵⁵ Those holding contracts with the city are put on notice:

- That an integral part of the contract is the agreement to follow the existing Swedish laws concerning discrimination due to sex, ethnicity, religion or other belief, disability or sexual orientation;
- That the clause is to be applied to sub-contractors;
- That the city retains the right to request that the contractor explain in writing how it is complying with these laws; and
- That the city retains the right to cancel the contract if the contractor violates the above provisions.

⁴⁹ Preliminary reports (in Hungarian) may be found at <http://www.egyenlobanasmod.hu/> (30.09.2005).

⁵⁰ Kortenbach, A., *Discrimination? A call away*, Equal Rights in Practice, key voices 2005 Access to Justice, p. 6, 2005.

⁵¹ See press release 05/053, Ministry of Social Affairs and Employment: “Meer mensen vinden meldpunt discriminatie op werk” (More people finding discrimination complaints bureau at work), The Hague, March 2005.

⁵² See <http://www.cwinet.nl> (16.05.2006).

⁵³ *Staatscourant* (Government Gazette) 2005, no. 45.

⁵⁴ Non-discrimination code CWI 2005, CWI 2005/004.

⁵⁵ Stockholm municipal council (2005) *Protokoll, sammanträde 2005-01-2*, available at: www.stockholm.se (01.11.2005).

The city of Stockholm has also decided to include anti-discrimination conditions in liquor permits granted to restaurants. This is intended to curb the ethnic discrimination that is reported to occur at various popular nightclubs. Another related condition is the setting up of signs that outline the conditions of entry.

2.3.2. Concerning integration

In Greece, one year after the 2004 national election, PASOK, the Greek socialist party, has invited and elected third country nationals to become members of the party and its main organs for the first time in Greek political history. In fact, a notable number of third country nationals have been elected as party members, as well as members of party's committees.⁵⁶

In Spain, in September 2005, the Spanish Government approved the III National Action Plan on Social Inclusion of the Kingdom of Spain 2005-2006.⁵⁷ It aims "to ensure equal opportunities by following the corresponding European strategies, and specifically those regarding immigrants, ethnic minorities, and other people or groups".

In France, a law ("Borloo Law") was adopted on 18.01.2005 with the objective of breaking the vicious circle of exclusion, of unemployment and discrimination. To achieve this goal, the law proposes to act on employment, housing and equal opportunity. The law creates the "Agence Nationale de l'Accueil des Etrangers et des Migrations" (ANAEM – National Agency of the Reception of Foreigners and Migrations). ANAEM will be in charge of welcoming third country nationals who hold a residence permit. It will propose to them a "contract of reception and integration" and will ensure its follow-up. The law also aims at equality for youth by measures to strengthen educational success in some difficult urban zones or schools in priority education zones.

Also in France, on 20.03.2005 the "Fondation pour les oeuvres de l'Islam en France"⁵⁸ was created, which is a private institution financed by private donations, but financially managed by the "Caisse des Dépôts" (a major public financial institution). The funds collected by the foundation will allow for the building of mosques and training of French imams.

⁵⁶ 'Pasok party sends invitation to migrants', *Athens News* (21.01.2005), 'Papandreou met immigrants-members of PASOK's National Council', *Athens News* (21.03.2005).

⁵⁷ Ministerio de Trabajo y Asuntos Sociales (2005), *III National Action Plan on Social Inclusion of the Kingdom of Spain 2005-2006*, available at: <http://www.mtas.es/SGAS/ServiciosSocDep/inclusocial/plannacional/IIINAP.pdf> (05.01.2006).

⁵⁸ Official statement of the Home Office (21.03.2005), http://www.interieur.gouv.fr/rubriques/c/c2_le_ministere/c21_actualite/2005_03_21_CFCM (04.05.2005).

In Italy, a number of cases arose concerning municipalities granting voting rights in municipal elections to third country nationals. Most public debate concerned the case of Genoa where the municipal council had granted voting rights in municipal elections to third country nationals. In July 2005, Turin adopted similar legislation. Following the Genoa case the national government enacted a decree⁵⁹ in August 2005 to invalidate this rule on the basis of “illegitimacy” and in order to protect the unity of the national institutions. The decree is based on an advisory opinion by the State Council, which stated that only the national parliament can decide on issues relating to voting rights of third country nationals. The national government announced that it will try to stop the Municipality of Turin as in the case of Genoa. In August 2005 the Municipal government of the city of Ancona deliberated to grant voting rights to immigrants in the municipality. The Ancona authorities stated publicly that the Genoa example could not be automatically transferred to other municipalities and stressed that the advisory opinion of the State Council is non-binding. The constitutional debate was ongoing at the end of 2005.

Also in Italy, the Ministry of the Interior issued a decree⁶⁰ setting-up a Consultative body on Italian Islam, located within the same ministry and headed by the Minister of the Interior. The functions of this new body include analysis and research on topics identified by the minister, formulation of views and proposals aimed at promoting institutional dialogue with Muslim communities in Italy, and improving knowledge of integration problems so as to facilitate a harmonious integration of Muslim communities in the national society, while respecting the Constitution and laws of the Republic.

In the Netherlands, the Broad Initiative for Social Cohesion, which comprised the Dutch Cabinet and social and religious organisations, met in 2005 in order to reinforce the connection between individuals and groups with Dutch society. The main focus of these meetings was to discuss initiatives which members of the Dutch public had set up in order to promote cohesion within Dutch society.⁶¹

In Portugal, the Bar Association’s Human Rights Commission (BAHRC) has created the Juridical Office for Foreigner Consultation and Support. This office has operated experimentally for a month and, according to a BAHRC’s report, the results were positive and it will function on a permanent basis⁶².

⁵⁹ Italy / Decree of the President of the Republic of 17th August 2005 "Annullamento straordinario a tutela dell'unita' dell'ordinamento, a norma dell'articolo 2, comma 3, lettera p), della legge 23 agosto 1988, n. 400, della deliberazione del consiglio comunale di Genova n. 105 del 27 luglio 2004, in materia di elettorato attivo e passivo per gli immigrati” (17.08.2005), in: Official Gazette nr. 205 (03.09.2005).

⁶⁰ Italy / Ministerial Decree of 10th September 2005 (10.09.2005): Istituzione presso il Ministero dell’Interno della Consulta per l’Islam italiano (*Decree of 10th September 2005: setting-up within the Ministry of the Interior, of a Consultative body on Italian Islam*).

⁶¹ Source: www.zestienmiljoenmensen.nl and www.justitie.nl (16.05.2006).

⁶² <http://www.oa.pt/genericos/detalheArtigo.asp?idc=4&scid=1939&ida=29431> (10.12.2005).

2.3.3. Other initiatives

In Austria, one development concerns compensation of victims of the Nazi regime. In December 2005, all claims in the United States pending as of 30.06.2001 against Austria or Austrian companies arising out of or related to the National Socialist era were finally dismissed. The achievement of legal peace (*Rechtsfrieden*) before the courts in the US was the precondition to start with the payments from the General Settlement Fund⁶³, which was established in 2001 in order to provide for compensation for the victims of the Nazi regime. With the declaration of the legal peace on 13.12.2005 a 30-days time limit started for the Republic of Austria and Austrian companies to fill the fund with the required amount of US \$ 210 mio.⁶⁴ The first payments to victims of persecution of the Nazi regime who filed an application with the fund were carried out at the end of December 2005.⁶⁵ Ariel Muzicant, president of the Jewish Faith Community, expressed his gratification that individual persons would finally receive due compensation.⁶⁶

In Slovenia, an NGO Asylum Group was formed by a group of non-governmental organisations dealing with the rights of immigrants, asylum seekers and refugees who joined their efforts in an informal coordination group in order to have a stronger impact in joint actions. The most visible members of this group are organisations such as Amnesty International Slovenia, Association Mozaik, Foundation GEA 2000, Legal Information Centre for NGOs, Peace Institute, Slovenian Philanthropy. Organisations comment on proposed legislation, meet regularly with state officials, monitor implementation of laws, draft press releases and hold press conferences in situations of their concern.

In the UK, the Racial and Religious Hatred Bill 2005⁶⁷ was introduced in parliament on 09.06.2005, before moving to the House of Lords on 11.07.2005. The Bill applies to words or behaviour and the display, publication, broadcast or distribution of words or behaviour that are likely to stir up religious or racial hatred. The Home Office, in the Explanatory Notes accompanying the Bill as laid before Parliament, explained that the bill is an extension of existing protection against stirring up racial hatred. Under earlier racial hatred laws, Sikhs and Jews as mono-ethnic religious groups are protected as racial groups whereas Muslims, Hindus, and Christians are not. The Bill is intended to extend protection to all religious groups. In 2005 the proposed legislation was defeated in the House of

⁶³ *Salzburger Nachrichten*, (14.12.2005), „Entschädigungen beginnen“, p. 2.

⁶⁴ *ORF ON*, (14.12.2005), „30-Tage-Frist für Einzahlung in Fonds“, available at: <http://volksgruppen.orf.at/integration/stories/43093> (13.01.2006).

⁶⁵ *Der Standard.at*, (12.01.2006), „Entschädigungsfond ist seit Mittwoch gefüllt“, available at: <http://derstandard.at/?url=/?id=2303381> (13.12.2006).

⁶⁶ *Bundeskanzleramt*, (19.12.2005), Informationen aus Österreich: „NS-Entschädigung: Auszahlungen beginnen noch in diesem Jahr“, available at:

<http://www.bka.gv.at/DesktopDefault.aspx?TabID=4951&Alias=BKA#id14241> (13.01.2006).

⁶⁷ See: <http://www.publications.parliament.uk/pa/cm200506/cmbills/011/2006011.htm> (16.05.2006).

Lords. In early 2006, attempts to strike a compromise prompted a double defeat in the House of Commons on 31 January 2006.⁶⁸ This effectively means that the resulting legislation constitutes a "watered down" version of the original Bill brought before Parliament. The amendments mean that intentionally threatening language will be outlawed, but not words that are insulting and abusive, or not intentionally threatening.

⁶⁸ http://news.bbc.co.uk/1/hi/uk_politics/4668868.stm (16.05.2006).

3. Racism and discrimination in the employment sector, and initiatives on how to prevent it.

Last year's EUMC Annual Report underlined the patterns of labour market inequality that exist in the EU regarding migrants and minorities, who generally experience far greater levels of unemployment than majority workers, receive lower wages, and are significantly over-represented in the least desirable jobs within a labour market segmented by ethnic and national origin. The statistics drawn upon for this year's Annual Report confirm these patterns of inequality.

As little has changed in such patterns over one year, this section of the Annual Report will not repeat these kinds of findings for each country. Instead, a few selected examples will be mentioned in Section 3.2 to set the background issues for the chapter. Most of the chapter will focus instead on developments during 2005 in the various Member States regarding the analysis of, and response to, these statistics of inequality, and including a range of "good practices" against employment discrimination.

3.1. Patterns of inequality – some examples

One of the most commonly quoted indicators of labour market inequality is the rate of unemployment for immigrants and/or minorities. For example, it was reported in 2005 that the unemployment rates for such groups were all significantly higher than for the majority population in Belgium⁶⁹, Denmark⁷⁰, Germany⁷¹, Estonia⁷², Latvia⁷³ and Finland.⁷⁴ In the majority of EU Member States, unemployment and

⁶⁹ Okkerse, L. & Termote, A (2004) Statistische studiën nr 111: Hoe vreemd is vreemd op de arbeidsmarkt / Etudes statistiques n° 111: Singularité des étrangers sur le marché de l'emploi. [Statistical studies nr 111: Pecularity of foreigners on the labour market], Brussels: Nationaal Instituut voor de Statistiek / Institut National de la Statistique. http://statbel.fgov.be/studies/study111_nl.asp (Dutch version) and http://statbel.fgov.be/studies/study111_fr.asp (French version) (23.09.2005).

⁷⁰ IntegrationsStatus 1. halvår 2005. Catinét Research a/s.

⁷¹ Germany, Federal Statistical Office (2005), Strukturdaten und Integrationsindikatoren über die ausländische Bevölkerung in Deutschland 2003, p. 127.

⁷² Estonia/Statistical Office of Estonia, public database at <http://www.stat.ee> (01.10.2005).

⁷³ Statistics for the year 2002 – see Mihails Hazans Unemployment and the Earning Structure in Latvia funded by the World Bank, and Mihails Hazans Looking for the Workplace: the Elderly, Discouraged Workers, Minorities, and Students in the Baltic Labour Markets prepared under the European Commission's 5th Framework Programme.

other official statistics do not register the ethnic or national origin of people. However, in the UK, official statistics do record ethnic origin rather than simply nationality, and can therefore show more complex patterns, and with greater accuracy. For example, statistics show that there has been considerable progress over the last 15 years, with Indian and Chinese people now experiencing unemployment rates close to those of white people. However, Pakistani, Bangladeshi, Black-Caribbean and Black-African people still experience unemployment rates 2½ or 3 times that of the white majority.⁷⁵

Some of the highest and most persistent rates of unemployment in Europe can be found amongst Roma and Traveller groups. A Czech report in 2005⁷⁶ shows that only 26 per cent of the economically active Roma population have *not* experienced unemployment, and statistics in Ireland showed unemployment among male Travellers measuring 73 per cent compared to a national level of 9.4 per cent.⁷⁷

In France, two studies in 2005 deriving from the 1999 census⁷⁸ showed not only that the foreign population or people of foreign origins are faced with an unemployment rate far higher than for people born in France, but that the employment situation is notably worse for young people of north-western African origins than their equivalent counterparts from southern Europe. Whilst statistics of unemployment inequality do not in themselves represent evidence of discrimination, and lack of success in the labour market is often related to levels of skill and qualification, some analyses are able to control for such variables, indicating that human capital characteristics cannot explain all these differences. For example, the above French studies showed that even when education levels are similar, people of non-EU foreign origin still experience higher unemployment

⁷⁴ Statistical data provided by the Ministry of Labour on the unemployment rate of foreigners (i.e. non-Finnish citizens with continuous residence permits) in 2004: http://www.mol.fi/mol/fi/99_pdf/fi/04_maahanmuutto/08_mahanmuuttotilastot/tilkint.pdf (17.10.2005).

⁷⁵ Ethnic Minority Employment Task Force (2005) *Equality. Opportunity. Success. Year 1 progress report*, available online at <http://www.emetaskforce.gov.uk/pdf/EMETF.pdf> (16.05.2006); Strategy Unit (2003) *Ethnic Minorities and the Labour Market: Final Report*, London: Cabinet Office, available online at <http://www.emetaskforce.gov.uk/pdf/The%20Strategy%20Unit%20Report%20on%20Ethnic%20Minorities%20in%20the%20Labour%20Market.pdf> (16.05.2006).

⁷⁶ Czech Republic, Inter-ministerial Commission for Roma Community Affairs (2005), *Report on the situation of Roma communities in the Czech Republic in 2004*, acknowledged by the government on 09.03.2005, available at <http://wtd.vlada.cz/scripts/detail.php?id=7721> (16.05.2006).

⁷⁷ Central Statistics Office (2004) *National Census 2002 – Irish Traveller community*, released 29 January 2004.

⁷⁸ Lainé F., Okba M. and Rosbapé S. (April 2005) « Les difficultés des étrangers sur le marché du travail: effet nationalité, effet quartier ? », in *Premières synthèses informations*, DARES ; Lainé F., Okba M. (April 2005) *L'insertion des jeunes issu de l'immigration : de l'école au métier*, CEREQ.

rates. The same finding was made in the above-mentioned Belgian, Danish and UK studies, and a further survey in Finland.⁷⁹

3.2. Statistics on ethnic and national origin

The limitation of statistics to non-nationals means that they do not cover all those who are subject to racial discrimination. One way of getting a clearer picture of inequality in the labour market is to have the variable of ethnic and national origin identified in statistics, but most Member States do not collect statistics on this basis. Sometimes it is reported that domestic legislation makes the collection of such data impossible, such as in Luxembourg,⁸⁰ Finland⁸¹ and Slovakia. Nevertheless, a paradox pointed out in Slovakia (and elsewhere) is that although information cannot be collected on an ethnic basis, at the same time, one can find the information that “the Roma represent 80 per cent of the unemployed.”⁸²

Whilst ethnic monitoring continues to be a controversial issue in many Member States, there were signs in 2005 that authorities in some countries were starting to look differently at this option. In Belgium the Interministerial Conference on integration asked the Belgian equality and anti-racist body⁸³ to consult people of foreign origin on the issue of ethnic monitoring. Discussions between advocates and opponents of monitoring were anticipated to start before the end of the year.

Even in France, a country where traditionally the strongest principled objections to such data have been voiced, some of the INSEE (French National Institute of Economic and Statistical Information) general surveys now for the first time include variables allowing the identification of immigrants' children: the INSEE yearly surveys on Employment and Housing (2005) include references to the parents' birthplaces. This information allows more accurate analyses of the situation of the ‘second generation’ in the job market. Furthermore, some employers in France are reported to be contemplating starting a policy of internal recruitment and promotion which takes into account the diversity of the social or ‘ethnic’ origins of the French population. This policy will be based on statistics which show ‘the diversity of the origins’ of their staff and applicants for posts. The growing interest in the measurement of ethnic diversity has led to the launching of

⁷⁹ Joronen, T. (2005), "Työ on kahden kauppa – maahanmuuttajien työmarkkina-aseman ongelmia", (Employment is a Bilateral Deal – Problems with Immigrants' Position in the Labour Market) pp. 77-78, in: Paananen, S. (ed.) *Maahanmuuttajien elämä Suomessa*, Helsinki: Statistics Finland, pp. 59-82.

⁸⁰ Luxembourg/law 02.08.2002.

⁸¹ Finland, 523/1999 (24.11.2000).

⁸² Slovakia, Government of Slovak Republic (2005), Information on the Reach and Effectiveness of the Changes of the Social System on Roma Communities Residing in Select Settlements; pp. 5, 8.

⁸³ Centrum voor gelijkheid van kansen en racismebestrijding (CGKR)/ Centre pour l'égalité des chances et la lutte contre le Racisme (CECLR) [Centre for Equal Opportunities and Opposition to Racism (CEOR)].

a survey on this question, organised by the Ministry for Equal Opportunities and the National Institute of Demographic Surveys (INED, *Institut National d'Études Démographiques*) which was started in 2005, to report in 2006.

Statistical data can often provide *indirect* evidence of discrimination. *Direct* evidence can be found in recorded incidents and court cases, and in evidence from research. This Annual Report looks next at examples of this kind of evidence that emerged in 2005.

3.3. Incidents, complaints and court cases

Complaints about discrimination can come to light either through the work of official bodies or through NGOs. In Ireland, the Equality Tribunal figures for the third-quarter of 2005 showed a marked rise in the number of complaints since the previous year,⁸⁴ with complaints on the grounds of 'race' in relation to employment increasing by 43 per cent from 37 to 53. Similarly, in the Netherlands the annual reports of the Equal Treatment Commission show an increase in the number of rulings on the basis of 'race' in employment in 2004 (38) in comparison with 2003 (26). The number of rulings on the basis of religion has also risen significantly, from 1 in 2001 to 16 in 2004. It is difficult to draw conclusions from this, as the number of rulings has fluctuated over the four year period. However, other research suggests that the increasing number of complaints in the area of religion could be a reflection of the fact that since the September 2001 attacks in the US, many Dutch people have begun to think more negatively about Islam, and especially after the murder of filmmaker Theo van Gogh in November 2004.⁸⁵

In Belgium in 2005, the CEO of a Flemish private company constructing sectional gates stated that his company refused to recruit non-white employees for the installation and repair of its gates, on the grounds that his Belgian customers would prefer this. This was strongly condemned in the Belgian media, and a discrimination complaint was filed with the CEOOR.⁸⁶ After a successful negotiation, the CEO publicly retracted his statements. In addition, together with the representative organisation for the Flemish *Unie van Zelfstandige Ondernemers* (UNIZO) [Union of self-employed employers] and the CEOOR, the company agreed to draft a diversity programme aimed at both staff and management. The CEOOR stated that it will watch that the agreement is implemented and will start a legal procedure in the case of non-compliance

⁸⁴ <http://www.equalitytribunal.ie/index.asp?locID=80&docID=330> (16.05.2006).

⁸⁵ Kanne, P. (2005) *Gevoelens van autochtone Nederlanders ten opzichte van moslims. Een half jaar later* (Feelings of the native Dutch with regard to Muslims: Six months later), Amsterdam: TNS NIPO, 2004.

⁸⁶ Centre for Equal Opportunities and Opposition to Racism.

In some countries there were no reported cases of employment discrimination at all in 2005. In others there were just a handful – in Lithuania four complaints,⁸⁷ in Finland five.⁸⁸ There were significantly more in Sweden, 322 cases, a small decrease from the 353 cases in same period a year earlier.⁸⁹ By far the highest number of cases was reported in the UK, where the Employment Tribunals Service disposed of a total of 3,080 cases alleging racial discrimination during 2004-2005. Of these, 31 per cent were withdrawn, 17 per cent were dismissed at the hearing and only 3 per cent of cases were successful.⁹⁰ The single most common outcome was a settlement, which was conciliated in 40 per cent of cases.

In Denmark in January 2005 a company located in Copenhagen advertised in a newspaper for 10 new staff. The advertisement asked for people aged 18 to 30 years old, and stated that they had to be Danish. The advertisement was reported to the police according to section 5 of the Danish Act on equal treatment in respect of employment and occupation. Eventually the company was fined 950 euro by the City Court of Copenhagen for violation of the Act on equal treatment in respect of employment and occupation section 5, for violation of the ban against discriminatory job advertisements.

In Portugal the absence of any complaints filed by Roma was noted, and similarly the Irish Equality Tribunal also noted the complete absence of any decisions relating to the Traveller ground under the Employment Equality Act, probably signifying the low participation of Travellers in mainstream employment. If complaints by the Roma do not figure highly with official complaints bodies, they seem more likely to come to light through NGOs. In Spain the *Fundación Secretariado Gitano* (FSG) detected 29 clear examples of discrimination against Roma in employment in 2004.⁹¹ Responses were recorded such as “I don’t recruit Roma because they always have some sick relative”; “I don’t want them because I trade with expensive objects and they might rob me”, or “I know them, you can’t trust them” pronounced by employers or by temporary employment agencies.

In Luxembourg, the NGO ‘Mobbing asbl’⁹² counselled 146 victims of workplace harassment during the year, 12 per cent⁹³ of these being cases of racism, with a

⁸⁷ Communication of NFP-Lithuania to the Equal Opportunities Ombudsperson (11.10.2005).

⁸⁸ Keränen, T. (2005), *Poliisin tietoon tullut rasistinen rikollisuus Suomessa 2003*, Espoo: Poliisiammattikorkeakoulun tiedotteita 39:2005, p. 43. Keränen, T. (2005), *Poliisin tietoon tullut rasistinen rikollisuus Suomessa 2004*, Espoo: Poliisiammattikorkeakoulun tiedotteita 40:2005, p. 55.

⁸⁹ Covering the period September 2004 to August 2005. Information available on the Swedish Ombudsman for Ethnic Discrimination website <http://www.do.se> (16.05.2006).

⁹⁰ Employment Tribunals Service (2005) *Annual Report & Accounts 2004-5*. Accessible at: http://www.employmenttribunals.gov.uk/publications/annual_reports/etsar04-05.pdf (16.05.2006).

⁹¹ Fundación Secretariado Gitano, *Discriminación y comunidad gitana. Informe anual FSG 2005*, Madrid, available at: <http://www.gitanos.org/publicaciones/discriminacion05> (02.01.2006).

⁹² MOBBING asbl (2005) *Rapport 2004*, Luxembourg.

doubling of complaints in the construction sector, where many foreigners work. In Estonia, the Legal Information Centre for Human Rights started to receive discrimination-related complaints through a hotline, and in June-August 2005 there were 77 calls alleging employment discrimination, (mostly on the grounds of ethnic origin or first language).⁹⁴

In Estonia a woman of Russian origin with high level of proficiency in the Estonian language applied for the position of an accountant, advertised in a newspaper. During the phone conversation, the employer's representative noticed her accent and asked about her ethnic origin. On finding out that she was a Russian, the employer rejected her application with an explanation that Russian people were not needed for that position.⁹⁵

In Austria the only systematically documented evidence comes from the NGO ZARA, which in 2004 documented around 50 incidents of employment discrimination, some relating to harassment and physical violence. ZARA also noted that employment agencies in Austria would regularly announce job vacancies including the words "Natives only".

3.4. Research evidence for discrimination

There were research projects reported in many Member States in 2005 that provided direct evidence of racial discrimination in employment. Belgian research⁹⁶ in the Brussels-Capital region found that 50 per cent of the job seekers of foreign origin closely monitored over three months had at least once been confronted with discrimination during their applications, and that 45 per cent of the 115 applications invoked a discriminatory response when both native Belgian and people of foreign origin were involved in the same application. In Luxembourg, research⁹⁷ from 2005 found that the few cases of discrimination which did exist concerned black people, Maghrebians, and, to a lesser extent, the Portuguese, and that the private sector recorded more acts of discrimination, although this may reflect the fact that part of the public sector is inaccessible to non-nationals.

⁹³ The percentage is low as compared to 75 per cent who mentioned abuse of power or 50 per cent who mention working conditions.

⁹⁴ Estonia/LICHR; Database of anti-discrimination hotline (05.10.2005).

⁹⁵ Estonia/LICHR; Database of anti-discrimination hotline (05.10.2005).

⁹⁶ Research presented in January 2005, carried out by the University of Brussels and the University of Leuven for the ORBEM/BGDA [Brussels Regional Employment Office] in the context of the *Social Pact for the employment of Brussels citizens*. K.U. Leuven – ULB (2005) *Etnische discriminatie op de arbeidsmarkt in het Brussels-Hoofdstedelijk Gewest / Discrimination des personnes d'origine étrangère sur la marché de travail de la Région Bruxelles-Capitale*. Brussel, BDGA/ORBEM, http://www.bgda.be/Observatoire/pdf/Discrimination_ethnique.pdf, (04.05.2006).

⁹⁷ Besch, S., Bodson L., Hartmann-Hirsch C., Legrand M. (2005, to be published) *Discrimination à l'emploi*, Luxembourg/Ministère de la Famille.

In Spain the NGO *S.O.S. Racismo* collected examples of discrimination and racism in Catalonia.⁹⁸ The use of nationality as a criteria for access to employment was found to have been sanctioned by the Catalan government on several occasions. One enterprise in the region was found to have committed discrimination in recruitment by favouring workers with Spanish nationality. A Catalan town council (Cardedeu) committed discrimination when publicising job advertisements stating “Maghrebians need not apply”.

Research in the Netherlands⁹⁹ found that the reasons for the disadvantaged position of ethnic minorities in the labour market included negative stereotyping and discrimination. Many employers were found to give preference to native Dutch people “to avoid risks” (although employers who had experience with employees from ethnic minority groups were much more positive). Employers in services such as banks and employment agencies reported that their customers sometimes make it known in advance that they do not want to encounter ethnic minority employees. In Sweden, interviews with recruitment personnel show that the combination of informal recruitment practices, the emphasis on social characteristics of the applicants and culturalist-based prejudice are important aspects of the discrimination process.¹⁰⁰

3.4.1. Discrimination testing

One of the most effective ways of identifying discrimination at the recruitment stage is to use discrimination testing¹⁰¹, an experiment in real life setting in which pairs of applicants (one with majority and one with minority background) with the same qualifications or *curricula vitae* contact employers and apply for positions.¹⁰² Results demonstrate the extent to which applicants are rejected on the grounds of ethnic/national origin alone. During 2005 it was reported that the French Ministry of Employment (the DARES) had invited the ILO (International Labour Organization) to carry out testing in six cities in France during 2006, and in the same year the Swedish Integration Board asked the ILO, with support of Swedish

⁹⁸ Federaci3n de Asociaciones de SOS Racismo del Estado espa1ol (2005), *Informe anual 2004 sobre el racismo en el Estado espa1ol*, Barcelona: Icaria editorial.

⁹⁹ Klaver, J., et al. (2005), *Etnische minderheden op de arbeidsmarkt. Beelden en feiten, belemmeringen en oplossingen* (Ethnic minorities in the labour market: Pictures and facts, obstacles and solutions), Amsterdam: Regioplan Beleidsonderzoek.

¹⁰⁰ Knocke, W. et al. (2003) "Retorik och praktik i rekryteringsprocessen." *Arbetsliv i omvandling 2003.*; Neergaard, A. (2005 under publication) "Rasifierad rekrytering i storstadskommunen: Mellan exkluderad och inkluderad underordning". In Gunnarsson, E., Neergaard, A. & Nilsson, A (eds) *Skillnader p3 kors och tv3rs: Arbetsliv, storstad och makt*. Stockholm: Normal.

¹⁰¹ Otherwise known as 'situation testing'.

¹⁰² Zegers de Beijl, R. (ed) (1999) *Documenting discrimination against migrant workers in the labour market*. ILO: Geneva.

researchers, to carry out a project of discrimination testing in three cities in Sweden, with results to be presented to the government in the autumn of 2006.¹⁰³

In the Netherlands in September 2005, the Islamic website www.elqalem.nl published the results of a series of discrimination tests. 150 CVs, adapted to published job vacancies, were sent to a number of companies in the Netherlands. Half carried a traditional Dutch name and the other half a foreign/Islamic-sounding name. Of the 75 “Dutch” CVs, 69 persons were invited for a job interview. Of the 75 “foreign” CVs, 33 persons were invited. All the job interviews were attended. After the interviews were held, 51 of the Dutch respondents were hired as opposed to only two of the ethnic minority respondents. The names of the worst and the best companies were published on the website.

3.4.2. Research on experiences and attitudes

Whilst discrimination testing provides an ‘objective’ indication of the phenomenon of discrimination, research can also be used to provide a subjective dimension, notably through surveys of the perceptions and experiences of victims. There were far more of these reported during 2005 than in the previous year. For example, surveys of Russian speakers in Estonia,¹⁰⁴ immigrants in Denmark,¹⁰⁵ Turks in Germany,¹⁰⁶ Serbs and Bosniacs in Slovenia¹⁰⁷ and Somalians, Russians, Estonians and Vietnamese in Finland¹⁰⁸ all reported experiences of discrimination. In France, immigrants and descendants of immigrants reported¹⁰⁹ that they were routinely subjected to negative treatments related to their origin, skin colour, name or speech. Sensitivity to these kinds of experiences was shown to be greater with the second, younger generation even though the intolerant attitudes and negative experiences they encounter may be less serious than they had been for the older, first generation.¹¹⁰

¹⁰³ Dagens Nyheter (2005) FN wallraffar på svenska jobbmarknaden. <http://www.dn.se/DNet/jsp/polopoly.jsp?d=148&a=463091> (16.09.2005).

¹⁰⁴ Estonia/LICHR and Saar Poll; Sociological study in Tallinn, September 2005. Database of the study; Question 6b.

¹⁰⁵ Catinét Research, quoted in *Copenhagen Post* 30 Nov - 6 Oct 2005.

¹⁰⁶ ZfT Multi-Topic Survey: Goldberg, A.; Sauer M. (2004) Die Lebenssituation von Frauen und Männern türkischer Herkunft in Nordrhein-Westfalen. Ergebnisse der 6. Mehrthemenbefragung, Duisburg-Essen: Stiftung ZfT.

¹⁰⁷ Komac, M., Medvešek, M. (eds.) (2004), *Percepcije slovenske integracijske politike*, Ljubljana: Inštitut za narodnostna vprašanja, pp. 580-583.

¹⁰⁸ Sutela, H. (2005), "Maahanmuuttajat palkkatyössä", p.100, in: Paananen, S. (ed.) *Maahanmuuttajien elämää Suomessa*, Helsinki: Statistics Finland, pp. 83-110.

¹⁰⁹ Algalva, E., Beque ; M. (February 2004) « Le vécu des attitudes intolérantes ou discriminatoires : des moqueries aux comportements racistes », in *Etude et Résultats*.

¹¹⁰ Beque, M. (September 2005) « Le vécu des attitudes intolérantes ou discriminatoires par les personnes immigrées et issues de l’immigration », in *Etude et Résultats*.

Research carried out on the attitudes and practices of the majority, rather than the experiences of the minority, can also have implications for discrimination. One of these was a survey of employers carried out in Malta¹¹¹ where 93.9 per cent of the respondents stated that they would *not* recruit refugees for professional/technical posts, compared to 100 per cent who would recruit refugees for unskilled jobs.

3.5. Legal status and vulnerability

There were many references in 2005 to the problem of those migrants working in legally restricted situations who are less able to resist exploitation and discrimination. The worst conditions are experienced by immigrant victims of forced labour and trafficking, several instances of which were mentioned in 2005. In Spain a network was exposed which had transported migrants, most Romanians, to be employed in the agricultural sector earning only 2 or 3 euros per day because they had to pay for food, transport and accommodation.¹¹² In 2005 a research study estimated the number of people working as forced labour in Germany to be around 15,000, mainly female, and mostly forced to work in the sex business. Men are forced to work predominately on construction sites and in agriculture.¹¹³ In Italy, forced labour was found in many Chinese-owned textile workshops where workers – mostly women – are employed for as long as twelve hours a day. In many cases their labour serves to pay back travelling expenses, hence they receive no wages, but only food and a place to sleep. In Austria, the *Interventionsstelle für Betroffene des Frauenhandels* (IBF), a counselling unit for female victims of trafficking, registered an increase in victims of trafficking employed in private households¹¹⁴ since 2004. Similarly in Belgium, information from the three Belgian reception centres for victims of human trafficking shows that there has been a steady increase in the number of victims known to them. In this context, Council Directive 2004/81/EC(1) on residence permits for victims of trafficking and Council Framework Decision 2002/629/JHA(2) on combating trafficking in human beings remain two of the main relevant instruments.

Whilst the legal status of many migrants working with restricted employment or residence permits renders them vulnerable, sometimes the actions of authorities push them further into vulnerability or illegality. For example, in Italy asylum seekers are prohibited from working¹¹⁵ until a decision on their asylum application

¹¹¹ Polidano, Alison (2005), “Journey of ‘Hope’ Refugees in the Maltese Labour Market”, unpublished long essay submitted in part fulfillment of the requirements for the Diploma in Social Studies (Occupational Guidance and Career Counselling), University of Malta, p. 32.

¹¹² (2005) “Una red esclaviza a cientos de inmigrantes en labores agrícolas”, in: *El País* (16.12.2005).

¹¹³ Cyrus, N. (2005b) *Menschenhandel und Arbeitsausbeutung in Deutschland. Sonderaktionsprogramm zur Bekämpfung der Schwarzarbeit*, Geneva: ILO.

¹¹⁴ Phone call to a representative of IBF – LEFÖ (06.10.2005).

¹¹⁵ CIR (2005) “Accesso all’occupazione del richiedente asilo alla luce del D.L. del 10 settembre 2003 n. 276”, <http://www.stranieriinitalia.it/briguglio> (05.07.2005).

is made. The fact that this¹¹⁶ could take as long as two years has forced many asylum seekers to seek employment as undocumented labour.¹¹⁷ (In 2005, Article 11 of Legislative Decree no. 140/2005 improved the procedure: after six months from the presentation of an asylum application, and if no decision has been made, the temporary permit is renewed for another six months with the possibility for the applicant to work until the end of the examination of their application.)¹¹⁸ It should be noted that EU Directive 2003/9 on reception conditions of asylum seekers provides that Member States are obliged to grant access to the labour market if the decision on the asylum application was not taken within 12 months.

Some irregular migrants in Spain were reported as being blocked from becoming regularised by a number of town councils, who rejected their applications to be registered in the municipal census, or asked for requirements that the law does not stipulate, such as a ‘certificate of good behaviour’, in the hope that they would move to other localities.¹¹⁹

Even for regular workers the tightening of work or residence permits renders them less able to resist discrimination or exploitation. In Italy provisions outlined in the “Testo Unico Immigrazione” rigidly subordinate a prospective migrant’s access to a legal entitlement to stay in the country to the availability of a job, and this puts immigrant workers in even weaker positions than they were in the past. An example of the vulnerability of such workers can be illustrated by an incident in Greece in 2005 where the local mayor issued an announcement that if the Albanian agricultural workers in Thessaly continued in their claim for higher wages he would expel them, and hire Polish workers.¹²⁰ (After a local and national campaign that included Greek agricultural unions he withdrew his threat). In Portugal¹²¹ and Austria¹²² research was published on migrant women in domestic work describing their bad working conditions, and that they often work without a contract, which increases their vulnerability to exploitation.

¹¹⁶ Regarding the examination of applications, Local Commissions have now taken the place of the National Commission for the Right of Asylum.

¹¹⁷ Medici Senza Frontiere (2005), *I frutti dell’ipocrisia. Storie di chi l’agricoltura la fa. Di nascosto*, research report. The report, fruit of a study on the living and health conditions of immigrant workers seasonally employed in agriculture, in particular in southern Italy, reveals that 23.4% of the interviewees (not one of whom possessed a job contract for seasonal work) were asylum seekers.

¹¹⁸ European Migration Network Synthesis Report for Small Scale Study I: “Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the Reception System in the EU Member States”, MIGRAPOL Doc 83, May 2006.

¹¹⁹ A certain number of irregular migrants cannot register in municipal censuses because they cannot present either a rental agreement or a title deed of a flat in order to prove that they live in a particular municipality.

¹²⁰ Vounatsos (2005), Parerminesate tis dilosi mou lei tora o Nasikas (My words have been misinterpreted, says Nasikas), In: *Ta Nea* (10.05.2005), ‘Ekviazoun tous metanastes gia merokamata pinas’ (They are blackmailing immigrants for bare subsistence wages) In: *Rizospastis*, (07.05.2005).

¹²¹ Sertório, E., Pereira, F. S. (2004), *Mulheres Imigrantes*, Lisboa: Ela por Ela.

¹²² Ripota, P. (2005) „Das ist wie früher, Könige und ihre Bediener ...“, in: *Arbeitskreis Emanzipation und Partnerschaft Information*, 32. Jahrgang, Nr. 4/2005, pp. 46-48.

In Cyprus the standard contract prepared by the immigration authorities for the employment of migrant domestic helpers prohibits the employee from having any participation in any political or trade union activity.¹²³ Breach of these terms leads to automatic termination of the employment, of the residence permit and of the work permit of the employee. In November 2005 the Equality Body criticised this prohibition, underlining that it violates Article 21 of the Cyprus Constitution which guarantees freedom of assembly and association including the right to form and to join trade unions, and which applies to Cypriots and non-Cypriots alike. In addition, the new laws transposing EU Directives 2000/43/EC and 2000/78/EC prohibit any discrimination on the ground of national or ethnic origin in terms of employment, including participation in trade unions.¹²⁴ The Equality Body concluded that the standard contracts of all migrant workers employed in all fields should be revised to exclude these restrictions of rights.

Generally, migrant workers in irregular or legally constrained situations are not in labour market competition with majority workers. However, there came to notice in 2005 incidents where employers brought in foreign workers to directly replace national workers, in contracts that provided lower wages and worse working conditions. For example, in October 2005 a Belgian food company was accused of bringing in Polish workers to replace recently dismissed temporary workers and paying wages beneath the Belgian guaranteed minimum income. After complaints by trade unions and much press interest, one of the fears expressed in the Belgian Chamber of Deputies was the possible negative impact on the perception of foreign workers in Belgium. At the same time, there was a similar case in Ireland, when Irish Ferries planned to replace their workforce with cheaper migrant labour, to the outrage of trade unions. Whilst the Labour Relations Commission successfully mediated on the issue, it was noted that one result of this case was an increase in anti-migrant discourse by some politicians and in the media.

In more than one case quoted in 2005 it was the intervention of a trade union which counterbalanced the legally weak situation of the migrants and addressed the discrimination in wages and working conditions. However, often workers in a weak legal position do not feel able to join unions. In one country – Austria - there was even a legal constraint on migrants' ability to represent their peers. Austria until recently was the only country in the EU where third country nationals were legally excluded from becoming works council members, which is one reason why

¹²³ The Greek version of the standard contract contains a prohibition for both political as well as trade union activity. The English version of the same document forbids only political activity and makes no reference to trade union activity. Employees are asked to sign both the English as well as the Greek text.

¹²⁴ Cyprus/ The Combating of Racial and Some Other Forms of Discrimination (Commissioner) Law No. 42(1)/ 2004 (19.03.2004), Section 6(1); Cyprus / The Equal Treatment in Employment and Occupation of 2004 No. 58 (1)/2004 (31.3.2004), Article 4(c) (d).

there are virtually no migrants that can be classified as activists in the unions¹²⁵. In 2004, the European Court of Justice¹²⁶ made clear that Austria could no longer deny eligibility in works council elections to citizens of states with Association Agreements, and in 2005, a private bill¹²⁷ to change this was launched, and assigned to the appropriate committee of the Austrian parliament.

An exception to the statement that migrant workers who are legally constrained into an alternative labour market are not normally in competition with national workers is shown in a report on the situation of Roma communities in the Czech Republic,¹²⁸ which describes how some employers prefer to illegally hire foreigners without work permits, rather than employing Roma, not only because of lower costs, but also because of their anti-Roma prejudices.

In Greece in 2005 a new legal restriction was introduced by the government that limits immigrants' entrepreneurship¹²⁹ by requiring Greek or EU citizenship, or Greek ethnic origin, for access to some self-employed occupations¹³⁰. As the first Annual Equality Body Report of the Greek Ombudsman warns,¹³¹ as long as in Greece access to certain fields of employment continues to be tied to Greek citizenship, "the preconditions are created for extensive discrimination against foreigners due to race or national origin."

In the context of the above discussion on legal restrictions to employment, and the vulnerability of some legally restricted migrant workers, attention should be drawn to the relevance of Council Directive 2003/ 109/ EC concerning the status of third-country nationals who are long-term residents. According to this Directive, long-term residents will have a right of access to the labour market on the same conditions as nationals, (with an exception regarding those activities involving exercising of public authority). The Directive provides that long-term residents will have the right to the same conditions of work and employment as nationals, and

¹²⁵ Fulton, L. (2003), *Migrant and ethnic minority workers: Challenging trade unions*, available at: <http://www.etuc.org/IMG/zip/migrant.zip> (06.10.2005), p. 43.

¹²⁶ ECJ / C-465/01, (16.09.2004), available at: <http://curia.eu.int/jurisp/cgi-bin/gettext.pl?lang=en&num=79959083C19010465&doc=T&ouvert=T&seance=ARRET> (06.10.2004).

¹²⁷ Antrag der Abgeordneten Mag. Tancsits, Walch und Kollegen betreffend ein Bundesgesetz, mit dem das Arbeiterkammergesetz 1992 und das Arbeitsverfassungsgesetz geändert werden, (11.05.2005), available at: http://www.parlinkom.gv.at/pls/portal/docs/page/PG/DE/XXII/A/A_00607/fname_040954.pdf (07.10.2005).

¹²⁸ Czech Republic, Government Council for Roma Community Affairs (2005), *Report on the situation of Roma communities in the Czech Republic in 2004*, available at <http://wtd.vlada.cz/scripts/detail.php?id=7721> (16.05.2006).

¹²⁹ Through provisions of the new migration bill (law n.3386/2005):

¹³⁰ According to a Minist.Ddecision (K1-186/18-1-06) open market sellers' license is reserved to persons of Greek citizenship, or of EU countries or immigrants of Greek ethnic origin. A similar decision by the Education Minister has limited access to musical schools to teachers of greek or EU citizenship or of Greek ethnic origin leading in this way open market immigrant petty sellers and music teachers already employed to loose their jobs.

¹³¹ The Greek Ombudsman, http://www.synigoros.gr/docs/discrimination_ish_metaxeirish.pdf

that they will have freedom of association and affiliation and membership of an organisation representing workers.

3.6. Preventing employment discrimination

One category of ‘good practice’ examples are those measures introduced by Member States to combat the discrimination and exclusion from the labour market suffered by members of their Roma population. For example, in Spain the Acceder Operational Programme,¹³² during its more than four years of existence, has assisted 25,190 individuals, 67.6 per cent of whom are Roma, providing training, and for many people their first experience of work. Projects and initiatives to improve the access of Roma to the labour market, by means such as training, and developing links with employers, were reported in Lithuania,¹³³ Hungary,¹³⁴ and the Czech Republic.¹³⁵ In Poland, Polish language lessons (including teaching reading and writing) are being provided to adult Roma, many of whom are illiterate. Within the programme for the Roma communities in Poland, opportunities were created for Roma workers to take part in vocational training. In Slovakia the Ministry of Labour, Social Affairs and Family established in 2005 the Social Development Fund¹³⁶ as a tool for financing small projects aimed at increasing the level of employment and social inclusion of vulnerable and socially excluded groups into the society, many of whom are Roma.

The next examples are those projects which can be categorised specifically as combating racism and discrimination in employment, rather than, for example, those initiatives which seek to provide extra training for members of excluded groups.

In Belgium, since April 2005, the *Cel Kleurrijk ondernemen/Cellule entreprise multiculturelle* [Unit colourful enterprising] has been inserted in the organisational chart of the Federal Administration *Werkgelegenheid, Arbeid en Sociaal Overleg/SPF Emploi, Travail et Concertation Sociale* [Employment, Work and

¹³² Fundación Secretariado Gitano (2004-2005), “Programa Acceder: Balance a diciembre de 2004”, in *Gitanos. Pensamiento y Cultura*, Madrid, issue number 30 and <http://www.fsgg.org/acceder/default.htm> (23.08.2005).

¹³³ “Development of a support mechanism for Roma integration into the labour market”, BNS (2004), *Lietuvos romai mokysis įvairių specialybių*, DELFI (28.09.2005), available at: <http://www.delfi.lt/archive/article.php?id=7589591> (04.10.2005).

¹³⁴ http://www.ofa.hu/index.php?WG_NODE=WebSearch&WGSEARCH_Text=roma&WGSEARCH_Class=PAL (30.09.2005), see also http://www.ofa.hu/index.php?WG_NODE=WebSearch&WGSEARCH_Text=roma&WGSEARCH_Class=PAL (30.09.2005) and http://www.ofa.hu/index.php?WG_NODE=WebSearch&WGSEARCH_Text=roma&WGSEARCH_Class=PAL (30.09.2005).

¹³⁵ See the new working group for Roma affairs established by the Ministry of Labour and Social Affairs.

¹³⁶ <http://www.fsr.sk/> (09.03.2006).

Social Dialogue].¹³⁷ One result of the 2005 activities is the drafting of a template collective agreement for the fight against racism, to be made use of by social partners designing their specific sectoral non-discrimination clause.

In Germany, the trade union IG Metall signed an agreement with employers associations in the metal industry to implement a discrimination-free system of wages in multicultural enterprises. Starting with a questionnaire, data on the job position, language skills, qualification, and other experiences of all employees have been collected in order to find out about potential mismatches of job position, wages and competences.

In Estonia, with the assistance of European Social Fund resources, several projects have been launched during the years 2004-2005 aiming at the improvement of the situation of non-Estonians in the labour market. The activities are carried out by Employment Offices (as of 2006, renamed as regional departments of the Labour Market Board) as well as NGOs and municipalities. The projects combine several labour market measures, such as counselling and training programmes, combined with language learning. There are altogether 10 projects targeted at unemployed non-Estonians, with approximately 2500 beneficiaries.

In Spain a project Arena (2001-2004)¹³⁸ was set to assist migrants' labour integration in Andalusia. Its general aim has been alerting both migrant and Spanish populations to the danger of racism and xenophobia and promoting the participation in equality of conditions of the migrant population in Andalusia, particularly in the employment field. In addition, one of its specific aims has been to detect any signs of discrimination

In Ireland in August 2005 the Government launched a recruitment campaign to encourage people from minority ethnic groups to join *An Garda Síochána*, the Irish national police force. An information campaign was launched, and application requirements have been changed so that the Irish language is no longer an entry requirement, rather, applicants will be required to speak two languages, one of which must be English or Irish.

In Cyprus in June 2005, an intensive two-day seminar was held in the buffer zone of Nicosia,¹³⁹ attended by representatives of fifty NGOs from both north and south of the divide, offering training in combating discrimination on the grounds of, *inter alia*, racial or ethnic origin.

¹³⁷ See <http://meta.fgov.be/pc/pce/pcec/nlcec11.htm> (28.09.2005) (Dutch) and <http://meta.fgov.be/pa/paa/framestfref00.htm> (28.09.2005) (French).

¹³⁸ Agrupación de Desarrollo Mosaico, Equal-Arena, available at: <http://www.equal-arena.org> (13.09.2005).

¹³⁹ Mapping capacity of civil society dealing with anti-discrimination, (VT/2004/45). The project was managed by human european consultancy (www.humanconsultancy.com) in partnership with the Migration Policy Group (www.migpolgroup.com) and was carried out in the 10 new EU member states and Bulgaria, Romania and Turkey.

In the Netherlands the project “Discriminatie? Niet met mij!”¹⁴⁰ is being carried out by the National Bureau against Racial Discrimination in collaboration with the Ministry of Social Affairs. Participants are trained in awareness about the law, in recognising discrimination and in coping strategies. The aim is for victims (and potential victims) to become more capable of exposing the discriminatory behaviour of others, so as to promote equal opportunities and remove obstacles in the job market.

In Austria a series of workshops organised by the Ludwig Boltzmann Institute of Human Rights and focusing on the new provisions of the Equal Treatment Act were offered in the period from April to October 2005, six of which dealt with discrimination on the labour market.¹⁴¹

In Finland in 2005 the ETMO project – Making multiculturalism a resource in work communities – was completed.¹⁴² The project aimed at developing, producing and testing methods of work, materials, training and good practices in order to achieve a multicultural and non-discriminatory work place, and develop operational models for the creation of non-discriminatory work cultures.

In Sweden in June 2005 a governmental inquiry was set up with the task of devising a recruitment method with what is called “de-identified applications”.¹⁴³ The aim is to build on the increasing interest in recent years in using of blind (de-identified) applications in recruitment processes in order to avoid discrimination and enhance ethnic diversity.

In the UK the West Midlands Forum (a group of six local authorities) revised its Common Standard for Equalities in Public Procurement in June 2005. The objective is to establish a national common standard that promotes equality for all across age, disability, gender, race, religion and sexual orientation for participating local authorities and their service providers. It enables local authorities to assess whether service providers can demonstrate compliance with race, gender and disability equality legislation.¹⁴⁴

Finally, as well as the kinds of anti-racism and anti-discrimination projects set out above, there was clearly a growing interest in policies of diversity management in several Member States. In Belgium there are many developing initiatives directed towards employers and company directors on how to develop diversity management in their respective companies. In 2005 approximately 50 employers in the Brussels-Capital Region signed a “Charter for Diversity”, and the

¹⁴⁰ Discrimination? Not me you don't! See: <http://www.lbr.nl/?node=3478> (18.08.2005).

¹⁴¹ For further information see: <http://www.univie.ac.at/bim/workshopreihe/> (08.10.2005).

¹⁴² Funded by the European Union Community Initiative Programme EQUAL through the European Social Fund (ESF): <http://www.kio.fi/Resource.phx/project/project-etmo/english.htm> (17.10.2005).

¹⁴³ Sweden, Kommittédirektiv (2005) Avidentifierade ansökningshandlingar. Dir. 2005:59r.

¹⁴⁴ The document can be downloaded from: http://www.cre.gov.uk/council_contracts.pdf (09.03.2006).

Interministerial Conference on integration and employment developed a ‘diversity trademark’, to be awarded to companies in Belgium that can clearly demonstrate the practical ways they promote diversity within and outside their organisation. In Denmark there is the annual MIA prize¹⁴⁵ for diversity, now awarded to companies by the Danish Institute for Human Rights.

The year 2005 also showed a growing diversity consciousness¹⁴⁶ amongst private companies in France, where a "charter for diversity"¹⁴⁷ was signed by 270 companies aiming "to support pluralism and to seek diversity through recruitment and career management", these being recognised as relevant to the success of the company. The Italian national equality body UNAR provided training for business managers on the value of cultural diversity in the business context. And in Ireland in 2005 Fáilte Ireland, the official Irish Tourism body, launched its strategy of ‘Cultural Diversity’ aimed at addressing the needs of the Irish Tourism and Hospitality Industry and the management of a culturally diverse workforce. This reflects the fact that a growing proportion of employment sourced in the Irish Tourism industry covers people from cultural and ethnic minorities, with an estimated 25,000 non-Irish nationals employed.¹⁴⁸

¹⁴⁵ <http://www.miapris.dk/> (09.03.2006).

¹⁴⁶ Also refer to: Bébéar C., (2004) *Des entreprises aux couleurs de la France. Minorités visibles : relever le défi de l'accès à l'emploi et de l'intégration dans l'entreprise*, Paris : Entreprise et Cité.

¹⁴⁷ Faure, S. et Platat, S. (2005) « L'entreprise prend des couleurs », in *Libération* (26.09.2005) <http://www.liberation.fr/page.php?Article=326355> (26.09.2005).

¹⁴⁸ Fáilte Ireland, (2005). *Cultural Diversity. Strategy and Implementation Plan*, available at: <http://www.failteireland.ie/> (19.10.2005).

4. Racism and discrimination in the housing sector and initiatives on how to prevent it

This chapter offers an overview of the situation and trends in housing discrimination and segregation in 2005. It begins by focusing on the existing sources of data, highlighting the need for enhancing and improving data collection in the field of housing inequality and exclusion. Covering both direct and indirect discrimination, it looks into differential access to the housing market, disparities in housing quality and spatial segregation patterns, and adds a specific focus on the asylum seekers' and refugees' access to accommodation. Several case studies are used to illustrate good practices that were either carried out and assessed, or are still being tested. It is expected that these examples can be used as benchmarking in Member States where the housing situation of immigrants and ethnic minorities is yet to be appropriately addressed.

4.1. Types of data and information available

Most countries still identified serious gaps in data related to immigrants and ethnic minorities in the housing sector. There is a paucity of data on the private market, and even in the public sector, which is better monitored, data is unsystematic and sometimes inconsistent. Information on direct discrimination is also lacking in most countries, especially in the new Member States. Whilst discrimination testing has sometimes been carried out – often in a rather less-than-scientific way by the media – in some countries there are examples of a more reliable and sound methodology being used. In France and Italy discrimination testing has been carried out, confirming evidence of discrimination in housing (see Section 4.2.1), and in Sweden, testing is currently being considered by the Swedish authorities. However, many of the examples have had only a regional scope, and national level data is therefore needed in order to make a compelling demonstration of discriminatory practices in the housing market.

New sources of information on the housing situation of migrants and ethnic minorities have emerged during 2005, and a range of new concepts and tools were launched as part of Government programmes.

In Austria the establishment of the Ombudsman for Equal Treatment Irrespective of Ethnic Belonging in Other Areas (OET III), which was established in March 2005, is likely to generate more data on housing, although the publication of its first report is only scheduled for 2007. In the Czech Republic the anti-discrimination law, when adopted, would be expected to shed more light on the

level of discrimination in housing. Meanwhile, the Government introduced a key programme to face the difficulties experienced by the Roma population in the areas of employment and housing¹⁴⁹. In Denmark the government used the concept of “ghettoisation” as an important tool to combat spatial segregation and established a list of indicators of ghettoisation as part of its action plan to “promote integration”. Furthermore, the public institute, the Danish Building Research Institute (Statens Byggeforskningsinstitut), in 2004/2005 created a new database containing detailed information from 2004 on each housing department in the social housing sector¹⁵⁰. The database can among other things be used for making analyses of segregation in the housing sector. In France the urgent need for implementing new mechanisms to collect data on housing discrimination was acknowledged. The urban disturbances of November 2005 drew attention to the fact that there is a significant dearth of data and that existing knowledge should be deepened.

Member States can be roughly categorised according to the character of their institutional covering on housing information and the type of data collected. The first group is where official monitoring mechanisms have been set up and are capable of collecting statistical information on direct discrimination in housing. This group comprises Denmark, Ireland, Netherlands, Sweden and the UK. A second group consists of Belgium,¹⁵¹ Germany, France and Austria¹⁵² where, albeit having data from grass-root organisations and research centres, the necessary official monitoring mechanisms are still not effective, mostly because no system of categorisation is yet in place. The third and final group consists of all the other countries, which face a serious lack of data of any kind. Many Member States still do not collect information on housing inequalities and information on discrimination in housing in a systematic way.

In conclusion, most countries have serious gaps in data on immigrants and minority ethnic groups’ position in the housing market and even more so in data related to direct or indirect discrimination. These shortcomings are exacerbated by the lack of ethnic categories in official statistics which makes it impossible to track the second and third generations’ developments in terms of housing. Exceptions should be noted, as the UK and Netherlands do have such a classification, thereby enabling the collation of national and longitudinal data in this area. Furthermore, research projects on migrants and minorities in housing seem to have been scarce in 2005.

¹⁴⁹ Czech Republic, Inter-ministerial Commission for Roma Community Affairs (2005), *The Roma Integration Policy Concept*, available at <http://wtd.vlada.cz/scripts/detail.php?id=8150> (15.11.2005). accepted by the Government Decision from 04.05.2005, emphasises the problem of marginalisation of the Roma while recognising that they are the most vulnerable group regarding housing.

¹⁵⁰ Ugebrevet A4, No 25, 15.08.2005, pp. 15-19.

¹⁵¹ In Belgium data on discrimination in housing are based on complaints received by the CEOOR, a semi-official body, and the NGO MRAX.

¹⁵² Therefore the counselling organisation *Wohndrehscheibe* as well as *Zara* are still the main providers of evidence of racial discrimination perpetrated by gate keepers in the housing market.

4.2. Data on direct and indirect discrimination

4.2.1. Direct discrimination

Advertisements using wording explicitly rejecting foreigners could be found in some Member States. Expressions such “no foreigners” or “migrants excepted” were found in newspapers in Spain, Italy and France. Although these forms are in theory punishable by law it seems that this has not acted completely as a deterrent to this practice. In Belgium, rack-renting and refusal by landlords to let apartments to people with foreign names are pointed out as the main problems. In Denmark and in Finland cases of discrimination in access to housing were reported. In Denmark a housing association was found to have discriminatory criteria with regard to waiting periods while in Finland a municipal accommodation agency placed barriers in the way of Roma to the access of flats.

Evidence from discrimination testing shows that immigrants continue to be treated differently by landlords and accommodation agencies. In France, discrimination affecting the middle class was the object of a recent study where testing was utilised as one component of the research methodology.¹⁵³ This survey, carried out in various districts in Paris and Lyon, found that accommodation agencies tended to offer poorer quality neighbourhoods to foreign clients.

In Italy researchers carried out discrimination testing to see if non-EU foreigners in some cities in the south of the country encounter more difficulties than Italians in securing accommodation to rent¹⁵⁴. Following up 365 newspaper adverts of houses to let, two actors – one Italian and the other a non-EU immigrant - contacted by phone the landlords or estate agents that placed the announcements. The results from the two sets of telephone contacts were compared. In the city of Naples, 31 per cent of respondents discriminated against the non-EU caller, either explicitly (“we do not rent to foreigners”) or more subtly, giving “sorry it’s gone” type of responses. In the city of Palermo the rate of discriminatory responses was 40 per cent while in Bari and Catania it was 60 per cent and 62.5 per cent respectively.

¹⁵³ Chignier-Riboulon Franck (dir.), Belmessous Fatiha, Belmessous Hacène, Chebbah-Malidet Laure-Leyla (August 2004), *Les discriminations à l'encontre des catégories moyennes étrangères ou perçues comme étrangères sur le marché du locatif privé*, in *Migrations Etudes*, n°125.

¹⁵⁴ Polo Contro la Discriminazione (2004) *Una casa per gli immigrati: il problema degli affitti - Napoli, Bari e Campania*, research report, April 2004 and Polo Contro la Discriminazione (2004), *Una casa per gli immigrati: il problema degli affitti - Palermo e Catania*, research report, November 2004.

A survey conducted in Malta also showed the unwillingness of Maltese to accept non-nationals as neighbours.¹⁵⁵ According to this survey the level of acceptance denotes significant differences between groups. While Europeans elicit a level of rejection of 5 per cent, the level of rejection targeting other groups is as follows: 95.3 per cent for Palestinians; 93.7 per cent for Arabs other than Palestinians; 90 per cent for Africans; 89 per cent for Jews. In Denmark, the findings from the six monthly multi-topic survey carried out by Cätinet Research show a decrease in the overall perceived discrimination; however an increasing trend is detected for discrimination experienced when looking for accommodation.¹⁵⁶ In Sweden the findings of qualitative research based on interviews in disadvantaged areas in Stockholm, Malmö and Göteborg reveal that people explain their living in run-down areas as a result of “a set of discriminatory practices from landlords, politicians, the media and public servants, among other actors.”

In Germany the survey from Ztf shows a positive tendency regarding integration, albeit levels of perceived discrimination while looking for an apartment are still at approximately 50 per cent.¹⁵⁷ Luxembourg reports on a survey on perceived discrimination by migrant groups which shows that 9.2 per cent of respondents felt discriminated when trying to rent or buy a home, and this perception is particularly strong among Cape Verdeans and people from the former Yugoslavia.

4.2.2. Indirect discrimination

Indirect forms of discrimination¹⁵⁸ are usually not as conspicuous as direct ones. For instance, State provisions can affect disadvantaged groups indirectly as an unintended consequence of their enforcement. Though they may not have had, at the outset, discriminatory intent, they can result in unequal conditions for minority households. In this sense, the fact that access to housing can be made dependent upon nationality, period of residence, language proficiency, economic or legal status may create a disadvantage situation for immigrants and minority ethnic groups.

Examples are found in Austria where new criteria were set for Council flats that demand that the applicant and all other dwellers have been living together at the

¹⁵⁵ Vassallo, M (2005), Racism in Malta, unpublished survey carried out for The Sunday Times; conclusions published in The Sunday Times (2005), "Maltese intolerant towards foreigners", in: *The Sunday Times* 14.08.2005, Malta: Allied Newspapers Limited p.1; and The Sunday Times (2005), "Racism survey conclusions", in: *The Sunday Times* 14.08.2005, Malta: Allied Newspapers Limited p.8, available online at: <http://www.timesofmalta.com> (17.08.2005).

¹⁵⁶ IntegrationsStatus 1. halvår 2004, Cätinet Research, 2004, Copenhagen.

¹⁵⁷ Goldberg, A.; Sauer M. (2004) *Die Lebenssituation von Frauen und Männern türkischer Herkunft in Nordrhein-Westfalen*. Ergebnisse der 6. Mehrthemenbefragung, Duisburg-Essen: Stiftung ZfT.

¹⁵⁸ Where regular or normal housing practices, requirements and conditions adversely impact on exclusion of minority households.

same address for two consecutive years¹⁵⁹. In the Czech Republic certain municipalities have, without making it public, established criteria in access to housing, such as not being long-term unemployed or not having shared an apartment with a bad payer in the past, which discriminate against Roma. In the Netherlands the residence history as a criterion to access low-rent public housing is considered to be discriminatory not only between immigrants and the majority but also between different immigrant groups which have diverse migrant histories. Language skill as a condition is reported in Belgium, in the Flemish region, where a basic knowledge of Dutch was proposed as an eligibility criterion for social housing¹⁶⁰. The final decision on this policy will only be known in 2006. In general, access to housing can also be restricted according to economic criteria.

In the Netherlands, NGOs have considered as indirect discrimination on the basis of nationality, race and sex the new bill adopted by the Senate, the so-called “Rotterdam Act” following the new policy set up by the city of Rotterdam¹⁶¹. This concerns the designation of “opportunity zones” that are supposed to become attractive for investors. The bill imposes certain demands on people interested in settling in these areas. Accordingly, dwellings are only allocated to households with at least 120 per cent of the minimum wage. The measure will disproportionately affect members of ethnic minority groups since they are more likely than native Dutch (autochthonous) persons to have lower than average income. A number of senators voted against the bill, because they were of the view that fundamental rights will be violated if the law takes effect¹⁶².

In Italy, a number of regional governments have been gradually implementing restrictive measures aimed at limiting access to public housing. The requirement of a minimum period of five years residence and a stable job for non-EU citizens was implemented in the Lombardy region and in the Municipality of Parma¹⁶³. The Marche region introduced a system to assign points according to years of residence instead of the number of children, and in Brescia, application for public housing was made dependent upon the existence of a bilateral agreement with the immigrant’s country of origin.

¹⁵⁹ Volkshilfe Österreich, Wohndrehscheibe, Jahresbericht 2004, Wien: Volkshilfe, available at: http://www.volkshilfe.at/contentthema/download/wds_jahresbericht_2004_web.pdf (06.10.2005), p. 45.

¹⁶⁰ The Minister of Social Integration and Housing issued a press release on 24.01.2005 on the insertion of a language criterion as an eligibility criteria in social housing.

¹⁶¹ Netherlands/Parliamentary Documents II, 2004-2005, 30 091, no. 1.

¹⁶² See “Rotterdamwet leidt tot discriminatie” (Rotterdam law leads to discrimination), <http://www.lbr.nl/?node=3609> (30.08.2005).

¹⁶³ However, the Administrative Tribunal of Lombardy ruled that the possession of a legal title to stay is a necessary and sufficient condition to be entitled to reside in the municipality.

4.3. Inappropriate housing conditions and inferior terms of contract

4.3.1. Immigrant workers' housing conditions

Across the EU, immigrants and settled minorities appear to live in poorer housing conditions, overcrowded flats and suffer from a lack of the most basic facilities. Disparities between immigrants and ethnic minorities and the majority of the population regarding housing quality are noticeable.

In France a series of fires during 2005 drew attention to the lack of decent housing conditions of many immigrant families. In April 2005, 22 people died in a fire in a Paris hotel, half of whom were children, and 60 people were injured. Later that same year, in August, 17 people, including 14 children, died in a fire in a residential building in Paris. In both cases, most victims were African nationals, legally residing in France for several years. NGOs have criticised the fact that many immigrant families are placed in inappropriate buildings and that further accidents are to be feared.

In Spain the extremely high prices in the housing market reduce the range of housing options, particularly for newly-arrived migrants. Overcrowded flats are often as the result of sub-letting (that can go from sub-letting rooms to beds, chairs or even balconies). There is the renting of inappropriate spaces such as garages or derelict rural housing, or the reported renting to Romanian people of flats in Catalonia at 700 € per month for each person, are a reflection of the unprotected situation of immigrants in the housing market. Another illustration is the results of the census carried out by the Barcelona town council which show that a total of 1,464 flats are occupied by between eleven to twenty individuals of immigrant origin.

Overpriced housing in deteriorating conditions accompanied with job precariousness forces immigrants to find unlawful solutions.¹⁶⁴ In Portugal, NGOs and other grass-roots organisations report on the extreme difficulties experienced by Eastern countries' immigrants in finding lodging. Immigrants were found living in garages, in their work places and have been increasing the numbers of homeless people in the major cities. Additionally, evidence from the Eastern European press (mainly Russian) printed in Portugal shows that there is a parallel market which supplies mainly rooms and beds for renting. Another study based on a survey of 1600 interviewees reveals low quality housing and overcrowding as the main

¹⁶⁴ Ares2000 Onlus (2005) *Indagine sugli affitti. Canoni liberi, concordati o ... sociali?*, Roma: Ares2000, available at: <http://www.ares2000.net/ricerche/dossieraffitti.htm> (03.10.2005).

characteristics of immigrants' accommodation.¹⁶⁵ In the Netherlands, most minority groups are concentrated in low cost housing, in neighbourhoods where severe structural problems remain such as criminality, poverty and pollution.

In Italy, a report¹⁶⁶ by *Médecins sans Frontières* on the conditions in which foreign seasonal workers in the agricultural sector live, based on interviews with 770 seasonal workers, describes evidence of crude discrimination overlapping with exploitation. Forty per cent of the sample lived in abandoned houses, 35 per cent had rented accommodation and 5 per cent had no accommodation at all. The kinds of places rented included warehouses, garages and shacks, all in very poor conditions: 50 per cent had no water supply, 30 per cent had no electricity and 43 per cent had no bathroom. Overcrowding was found to be a major problem: 70 per cent of the sample shared the room where they lived with at least 4 other people and 30 per cent shared a bed with another person.

4.3.2. Roma and Travellers' housing conditions

Roma and Travellers are more likely to live in sub-standard housing, often shanty-towns, segregated from urban centres. Data collected through research carried out in some Member States provide evidence of large discrepancies between the Roma housing standards and the majority of the population.

In Hungary there are 557 Roma settlements¹⁶⁷. Research shows that one third of Roma suffer from severe shortage of amenities. Data from 2005 highlights that, though an improvement can be detected, extreme disparities in terms of facilities between Roma housing and the rest of the housing stock still remain¹⁶⁸. Approximately 40 per cent of all Roma households do not have essential facilities including toilet and running water, and the situation deteriorates considerably regarding segregated Roma settlements. In Lithuania research shows that Roma are more likely to dwell in sub-standard housing compared with the national average. Roma households lack access to amenities and dwell in more cramped spaces with a higher occupation rate¹⁶⁹. In Slovakia the quality of housing in Roma

¹⁶⁵ Fonseca, M. L., "Reunificação Familiar e Imigração em Portugal" [Family reunification and immigration in Portugal], ACIME, October 2005. Available at http://www.oi.acime.gov.pt/docs/Estudos%20OI/Estudo_OI_15.pdf (09.03.2006).

¹⁶⁶ MSF (2005), *I frutti dell'ipocrisia. Storie di chi l'agricoltura la fa. Di nascosto*, Research Report, March 2005, available: <http://www.msf.it> (07.09.2005).

¹⁶⁷ The research did not cover the full area of Hungary, so it cannot be treated as an estimation for the total number of settlements.

¹⁶⁸ Comparing the results of the Third Roma Survey and the findings of the study carried out by Delphoi Consulting bearing in mind that this comparison is merely indicative. See *Babusik, F. (2005): A szegénység csapdájában, Budapest: Delphoi Consulting, and Kemény, I–Janky, B. (2003) "Települési és lakásviszonyok" in: Beszélő, Vol. IX. No. 4.*

¹⁶⁹ The report *Lithuanian Roma and Statistics* was released in an electronic version in May 2005. The report is mainly based in census data from 2001.

settlements is extremely poor. The majority are shacks without facilities such as running water and sanitation.

Travellers in the UK and Ireland face hardships regarding accommodation. Research on Travellers by the NI¹⁷⁰ in the UK reveals that for 94 per cent of those interviewed, accommodation is the most pressing problem. In Ireland the three Traveller national organisations in a joint communication stated that “22 per cent of Traveller families, still [live] without permanent quality accommodation five years after the adoption of Local Authority Traveller Accommodation Programmes.”¹⁷¹ Another report emphasises sub-standard conditions of Traveller sites where the most basic amenities are missing¹⁷².

In the Czech Republic out of the 80,059 members of the Roma communities recorded in the records of municipalities, only 31 per cent live in housing of a reasonable standard, and 23 per cent live in socially excluded communities¹⁷³. In Greece while a considerable effort was put into accommodating Roma families in the past years, that the loan programme reached only 36 per cent of all applications made by Roma families.¹⁷⁴ In addition, forced evictions were carried out – especially in the region of Patras - without providing alternative means of accommodation. In Finland, the poor housing conditions of Roma, and the lack of support from official bodies, are criticised by Roma organisations, and backed up by the last report of the Ombudsman for Minorities¹⁷⁵.

Also in Portugal, Spain, and Italy the situation of Roma has not seen great improvement. Roma continue to live segregated and in bad housing conditions. Even after implementation of re-housing programmes, Roma communities still live in very substandard conditions and are often victims of “ghettoisation” by municipalities.

¹⁷⁰ The Office of the First Minister and Deputy First Minister (NI). See <http://www.newtsni.gov.uk/travellersconsultation/accommodationrec.htm> (16.05.2006).

¹⁷¹ Letter to An Taoiseach, (Prime Minister) Bertie Ahern TD by Traveller Organisations, November 2004.

¹⁷² Traveller Health Unit Eastern Region, (2004). *Environmental Health Concerns of Travellers*.

¹⁷³ Survey on municipal employees’ knowledge of the situation of Roma communities, internal material of the Inter-ministerial Commission for Roma Community Affairs (2003).

¹⁷⁴ According to the National Action Plan Social Inclusion 2001-2003 “the objective is that all Greek Gypsies should have access to permanent housing. It is anticipated that by the end of 2005 no Greek Rom family will be living in tents or makeshift accommodation”, quoted from *National Action Plan for Social Inclusion 2001-2003*, p. 41.

¹⁷⁵ See section on inappropriate housing conditions.

4.3.3. Asylum seekers

This section focuses on asylum seekers, who represent an increasing component of what has been termed ‘post-industrial migration’¹⁷⁶. As a group they seem to face particularly adverse accommodation-related conditions, a fact which is underlined by all Member States. In a number of Member States efforts are made to house asylum applicants in accommodation other than special reception centres (e.g. private and rented accommodation, or with relatives), as well as to provide free health care, vocational skills training, or schooling.¹⁷⁷ However, reception centres are usually not adequately resourced, which leads to overcrowding and to an unhygienic environment. Furthermore, defective housing conditions can contribute to boosting racist stereotypes towards asylum seekers and refugees.

There is a range of shortcomings reported in all Member States which receive a significant number of asylum seekers. Deteriorating facilities in detention centres (Greece, Hungary, Poland, Portugal, Slovenia,) cramped spaces or insufficient capacity in reception centres (Austria, Denmark, Cyprus, Luxembourg, Malta), inappropriate treatment by authorities and understaffed centres (Poland, Lithuania), a lack of housing provision to accommodate refugees as well as failed asylum seekers (UK) rank highest in terms of problems identified. Negative reactions from local communities are also reported in some Member States.

In Austria it is reported that the process of criminalising asylum seekers and refugees in public discourse has provoked conflicts over their accommodation. In Floridsdorf, a district of Vienna, the lodging of 150 Chechen asylum seekers met opposition from neighbours.

In the UK attention is directed to the unsatisfactory housing conditions of asylum seekers, either those for which the support received from the National Asylum Support Service (NASS) is not enough to secure proper accommodation, or failed asylum seekers who are denied access to social benefits¹⁷⁸. In France an alert was made regarding the steep increase of failed asylum seekers reaching roughly at 60.000 cases that many may be at risk of becoming homeless.

¹⁷⁶ It consists of a mixture of high-skilled labour, clandestine and asylum migration. White, P. E., 1993. ‘The social geography of immigrants in European cities: the geography of arrival’, in R. King (ed), *The New Geography of European Migrations* pp. 47-66. London: Belhaven.

¹⁷⁷ European Migration Network Synthesis Report for Small Scale Study I: “Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the Reception System in the EU Member States”, MIGRAPOL Doc 83, May 2006

¹⁷⁸ *Meeting basic needs? Exploring the survival strategies of forced migrants: summary of findings.* Accessible at: [\(http://www.leeds.ac.uk/sociology/people/pddocs\)](http://www.leeds.ac.uk/sociology/people/pddocs) (09.03.2006).

In Austria, the governor of Carinthia issued an instruction for the closure of the accommodation of 35 asylum seekers in the Carinthian village of Döbriach, (commune Radenthein). He justified his decision by stating that there was a common agreement that asylum seekers should not permanently be accommodated in tourist areas.¹⁷⁹ In 2004, the FPÖ city councillor of Radenthein and owner of the camping site in Döbriach had collected 800 signatures in support of this closure.¹⁸⁰ In summer 2004, about 20 youngsters of Sub-Saharan origin attended a language course in *Döbriach* and the FPÖ city councillor warned that “hundreds of black Africans” would populate the village.¹⁸¹ The home was closed and the asylum seekers were partly resettled elsewhere in Carinthia and in the neighbouring federal province of Styria¹⁸².

4.4. Segregation

Spatial segregation results from different residential distribution patterns according to the clustering of certain population traits. Spatial segregation based on 'race' or ethnicity is generally the result of barriers faced by immigrants and minority ethnic groups to opportunities.

The problem of Roma exclusion in the housing market is noted in all countries where a sizable Roma population resides. In Slovenia conflicts and demonstrations against Roma settlements driven by local populations have become common. A report issued by the Council of Europe concludes that Roma live in substandard conditions and have to deal with the fact that settlements became illegal after 1991¹⁸³. It emphasises that this situation has been addressed poorly by local authorities.

In the Czech Republic, displacement of Roma families to the outskirts of the major cities, and ghettoisation, which reinforces the process of Roma segregation, is reported. Also in Italy, Portugal, Spain, Lithuania, Latvia and Slovakia, Roma face acute spatial segregation. However, there are a number of ongoing initiatives implemented by Governments in order to counteract the pervasive exclusion of Roma, several of which are highlighted in the later section of this chapter on 'good practices'.

¹⁷⁹ *kleinezeitung.at*, (26.04.2005), „Asylheim muss schließen“, available at: www.kleinezeitung.at, (26.04.2005)

¹⁸⁰ *ORF ON*, (25.04.05), „Döbriach – Nach Protesten: Asylheim muss zusperren“, available at: <http://kaernten.orf.at/oesterreich.orf?read=detail&channel=9&id=37763326>, (25.04.2005)

¹⁸¹ Barth, J. (2005) „Vertreibung aus dem Paradies (Asylwerber)“, in: *profil* no 22, (30.05.2005), pp. 34-35

¹⁸² *ORF ON*, (31.05.05), „Geschlossen – Aus für Asylheim ‚Ernesto‘“, available at: <http://kaernten.orf.at/oesterreich.orf?read=detail&channel=9&id=383081>, (31.05.2005)

¹⁸³ Council of Europe – Advisory Committee on the Framework Convention for the Protection of National Minorities (2005), *Second Opinion on Slovenia*, pp. 16-17.

In Slovakia, according to a report published in 2004,¹⁸⁴ more than 80 per cent of Roma settlements are located in rural areas or outside municipalities. Whilst electricity is on hand in 91 per cent of settlements, almost 81 per cent of Roma settlements have no sewage system at all, and in 37 per cent the water supply is missing.¹⁸⁵ Almost one third of structures in Roma settlements are illegal. The most common type of illegal structures are shacks, which constitute almost 16 per cent of all housing structures, and which house 14 per cent of inhabitants of Roma settlements.

In this context, the problem of Roma families' evictions is noted as a particularly grave one in Greece and Hungary. In Greece "violent evictions of Roma families without providing alternative means for housing" are reported. Additionally, a worrying trend has been detected – the main target of these evictions are the Albanian Roma. In Hungary, Roma families are over-represented in disadvantaged areas and face more often eviction than non-Roma.¹⁸⁶ In Budapest the number of evictions reaches approximately 250 homes annually affecting approximately 1.000 people. In total over 10.000 people risk eviction.

Some governments see residential concentration as the antithesis of integration and attempt to manipulate distribution accordingly.¹⁸⁷ The new policy of the Danish Government aiming at fostering integration pays special attention to 'ghettoisation', aiming to stop the influx of disadvantaged groups into residentially segregated areas and simultaneously improving the living conditions of its inhabitants, who are comprised of 80 per cent immigrants. This strategy entails a new model for allocating social housing, one that gives the municipality the right to remove people from the waiting lists,¹⁸⁸ and obliges the municipality, to a certain extent, to provide another apartment to the rejected applicant. In the Netherlands the government has adopted a policy aiming at creating a more balanced housing supply in poor urban areas by building a mix of low-cost and more expensive houses in order to prevent or discourage concentrations of disadvantaged people. In Germany, Denmark and the Netherlands involuntary social mixing has been carried out by housing companies (public and private) through the imposition of implicit or explicit quotas. In Germany, housing companies are reported to use distributional criteria when allocating dwellings to immigrants and minority ethnic

¹⁸⁴ Jurásková, M. – Kriglerová, E. – Rybová, J. (2004) "Romas" in: Kollár, M. - Mesežnikov, G. (eds) *Slovakia 2004. Global Report on the State of Society*, Bratislava: Institute for Public Affairs, p. 238

¹⁸⁵ Sociographic Mapping of Roma Communities. Office of the Representative of the Government of the Slovak Republic for Roma Communities/IVO/KCpRO/S.P.A.C.E., 2003/2004.

¹⁸⁶ Setét, J. (2005): Kilakoltatással fenyegetett családok vizsgálata Budapesten 2004 – összegzés <http://www.romapolgarjog.ingyenweb.hu/keret.cgi/?/2004.html> (20.09.2005).

¹⁸⁷ Questions about the wisdom of forced distribution as a means of integration are raised in the EUMC's 2005 comparative housing report *Migrants, Minorities and Housing: Exclusion, Discrimination and Anti-discrimination in 15 Member States in the European Union*.

¹⁸⁸ In case they have received social benefits for more than 6 month or the housing unit is located in an area with a high percentage of jobless people.

people. In Germany attempts to maintain the “right mixture” between Germans and non-Germans are found to be common practice among various housing companies. A threshold of no more than 20 per cent of “foreigners” by each apartment complex was established by some companies. Trying to find the “right mixture” implies, apparently, to be particularly cautious with people from Islamic countries as well as with non-ethnic Germans.¹⁸⁹

In France, the foreign population is still over-represented in ‘problem’ urban areas. Foreign households are twice as likely to be in those areas than they are in other areas. One possible explanation for this lies in the high occupancy rate of council housing considering that 51,5 per cent of the foreign households residing in council flats live in problem urban areas against 31,7 per cent of French households. In these areas youth unemployment borders the level of 40 per cent.¹⁹⁰

In the UK housing differentials between ethnic groups remain large, even after controlling for variations in demography and in household structure patterns. A report from the Office of the Deputy Prime Minister (ODPM)¹⁹¹ concludes that a much higher percentage of the population of the most deprived areas is from an ethnic minority community – 22 per cent compared with the England average of 9 per cent. According to the report, nearly a quarter of the Asian and black population of England live in these deprived areas. Minority ethnic people households are over-represented amongst the homeless (although not necessarily as rough sleepers) and failed asylum seekers are likely to become homeless when leaving the support programme.

4.5. Preventive initiatives, good practice and programmes of awareness raising

At an EU level, two recent Directives are relevant to the area of housing. Directive 2003/109 grants to long term residents rights to social security, protection and assistance which might improve the material situation of migrants and in consequence their housing conditions. Also Directive 2003/9 on reception conditions to asylum seekers provides that Member states should ensure a standard of living adequate for the health of applicants and capable of ensuring asylum seekers' subsistence.

¹⁸⁹ Mersmann, A. (2005) „Migranten in Wohnungsunternehmen, Wohnungsvergabepraxis und Partizipationsansätze“, in: Schader-Stiftung et al. (eds.) *Zuwanderer in der Stadt. Expertisen zum Projekt*, Darmstadt: Schader-Stiftung, pp. 175-210. See also Planerladen e.V. (ed.) (2005) *Migranten auf dem Wohnungsmarkt: Befragung von Wohnungsunternehmen zu „Migranten als Mieter, Käufer, Kunden“*. Ergebnisbericht, Dortmund.

¹⁹⁰ The percentage is 36 per cent for males and 40 per cent for females within the active population between 15-25 years of age. Available at <http://www.fondation-copernic.org/Flash-Novembre2005.pdf> (09.03.2006).

¹⁹¹ *Making it happen in neighbourhoods: the national strategy for neighbourhood renewal*, January 2005, p. 43: available at www.neighbourhood.gov.uk (16.05.2006).

A number of significant practical initiatives at national and local level were launched during 2005, and others were underway during that year.

4.5.1. National and local governmental organisations

The *Wohndrehscheibe*, a counselling organisation in Austria working on improving the housing access for refugees and immigrants, observes that the introduction of emergency flats provided and allocated by the city of Vienna greatly improved their housing situation as the number of people “needing to move to a new flat for reason of their current accommodation being hazardous to their health has remained stable at a low level.”¹⁹² In view of the positive results achieved with this measure, the city council has already expressed the intention to increase the number of emergency flats. In Belgium, the Law of 10.08.2005 on the fight against human smuggling, human trafficking and dishonest landlords entails new initiatives to criminalise practices of landlords who let houses/apartments in very poor condition at high prices to undocumented tenants who cannot find other suitable accommodation.

In Ireland, the National Action Plan Against Racism launched in January 2005 has set out an intercultural approach to housing policy; addressing housing inequalities impacting on minority ethnic people; setting up statistical programmes and data systems; paying special attention to Traveller accommodation programmes; ensuring that asylum seekers are treated on an equitable basis, and developing the potential of estate management policies to combat racism.

Regarding initiatives focusing on the Roma community, a variety of them are worth mentioning. The Housing and social integration model programme of residents of Roma communities¹⁹³ launched by ICSSZEM¹⁹⁴ in Hungary aims at improving live chances and mobility of Roma living in segregated communities. This programme entails renovation of the housing stock and, if needed, the moving of Roma families into mixed neighbourhoods. The strategy is twofold: local governments elaborate and lead projects on a number of critical areas for Roma living conditions and at the same time privileging a bottom-up approach by giving the Roma residents the possibility of choosing a representative that will act as a mediator between Roma inhabitants and local governments. Furthermore, all these projects engage an independent expert and social workers to facilitate implementation. Nine settlements were chosen by the Ministry to take part on the project which will involve approximately 4,500 persons.

¹⁹² Volkshilfe Österreich, *Wohndrehscheibe, Jahresbericht 2004*, Wien: Volkshilfe, available at: http://www.volkshilfe.at/contentthema/download/wds_jahresbericht_2004_web.pdf (06.10.2005), p. 51.

¹⁹³ http://www.romaweb.hu/doc/kormanyzat/telep/Telep_hatter.doc (27.09.2005); <http://www.icsszem.hu/main.php?folderID=1055&articleID=5013&ctag=articlelist&iid=1&accessible=0> (27.09.2005).

¹⁹⁴ Ministry of Youth, Family, Social Affairs and Equal Opportunities.

In Poland, as part of the government *Programme for the Roma Community in Poland*, funds were granted to a number of entities in 19 localities for housing refurbishment as well as providing basic infrastructure to Roma settlements. The authorities are also proceeding with a property inventory for the regulation of estate ownership. In Slovakia, the Government has adopted as from 2005 the “*The Long-term Housing Development Strategy for Marginalized Population Groups*” (hereafter referred to as *the Strategy*),¹⁹⁵ laying out the framework for addressing housing marginalisation. The Strategy proposes solutions for two categories of Roma: those living in municipal and district concentrations and those living in segregated settlements. On one hand, the “Strategy” sets out several measures ranging from the renewal of old flats to the housing stock ownership and management, such as the imposition of a ceiling on rents according to household income. On the other hand, it establishes a trade-off, making housing-related obligations and engagement in community life mandatory. As to segregated settlements the “Strategy” foresees an improvement in social and health conditions by the construction of basic infrastructure and new rental flats. In Lithuania the *Municipal Roma Integration Programme*¹⁹⁶ aims to assist Roma who wish to leave impoverished zones on the outskirts of Vilnius. Finally, in Spain, the town council of Avilés in Asturias has in co-operation with the Department of Housing of the Government of Asturias initiated a pioneer action in to help Roma youth facing discrimination in the housing market to find accommodation. Flats have been rented at market prices which are then sub-let at affordable prices, while guaranteeing to their owners that they will recover their flats exactly as they were delivered.

4.5.2. Joint initiatives

In Germany the project “Migrants in the City” coordinated by the Schader Foundation is a nationwide initiative which deals with the spatial integration of migrants. In February 2005, the expert forum of the programme released comprehensive recommendations on concrete approaches to promote the integration process of migrants in the neighbourhood.¹⁹⁷ The forum addresses its recommendations to organisations at the local level ranging from municipal

¹⁹⁵ The solutions for the Roma situation foreseen in the “Strategy” have been considered in the scope of the *National Action Plan of the Slovak Republic Regarding the Decade of Roma Inclusion 2005 – 2015*; available at

http://www.government.gov.sk/orgovanova/dokumenty/akcny_plan_eng.rtf (09.03.2006).

¹⁹⁶ Vilnius city municipality council, Programme of Surveillance and Security of the Vilnius Roma Community and Territories near the Encampment and the Reduction of Roma Segregation for 2005-2010, decision No. 1-838, confirmed on 22.06.2005, available at: <http://kristoforas.tic.lt/VA/doc.aspx?id=30075568> (30.09.2005).

¹⁹⁷ Schader-Stiftung et al. (eds.) (2005) *Zuwanderer in der Stadt. Empfehlungen zur stadträumlichen Integrationspolitik*, Darmstadt: Schuleri-Hartje, U.-K.; Reimann, B. (2005) „Zuwanderer in der Stadt – Integration trotz Segregation Ausgangslage“, in: *ZAR*, No. 5/2005, pp. 164-167, here p. 167.

authorities to housing companies, immigrants' organisations and the general population. The main points of the programme can be set out as the follows:

- Education and language learning programmes in the neighbourhood
- Support for self-employed migrants
- Easy access to different forms of participation
- Increasing the sense of security in the neighbourhood
- Providing areas of free spaces in the neighbourhood to be used by the inhabitants
- Increasing house ownerships among migrants

The initiative "Migration in the City" is particularly relevant in that it brings together all the significant expert organisations in the field of urban development, and combines practical and scientific expertise in an exemplary way.

4.5.3. Non-governmental organisations

In Germany, Italy and France there are some examples of good practices in the private housing market.

In Germany, inhabitants of the City of Karlsruhe founded the private housing cooperative *MiKa*¹⁹⁸ (*Wohnungsgenossenschaft*) and organised the redevelopment of an old military area into an apartment complex. All members of *MiKa* have agreed on the articles of the association, which bans disadvantaged treatment due to someone's "origin, sex, outer appearance, age or social status". Members of minority groups are explicitly encouraged to participate. Meanwhile 150 adults and 80 children have taken up residence in the *MiKa* apartment complex, with 30% of them having a migration background. The *MiKa* initiative was presented as one of 28 best practice projects by the Schader Foundation in the context of the programme "Migrants in the City," on the grounds of its holistic and communicative approach to participation.¹⁹⁹

In Italy the A.I.S.A.²⁰⁰ (*Agency for Social Mediation in the Housing sector*), a non-profit organisation made up of individual state operators in the Veneto region, offers financial guarantees to landlords and social support to migrant tenants. In order to facilitate access to housing the organisation provides various services: it grants small loans without requesting for collateral; gives additional small mortgages to make up the part not covered by banks; pays the bank monthly instalments which the beneficiaries are unable to pay; helps migrants identify

¹⁹⁸ www.mika-eg.de (06.10.2005).

¹⁹⁹ Petendra, B. (2005) Sozialräumliche Integration von Zuwanderern. best-practice-Projekte, Darmstadt: Schader-Stiftung.

²⁰⁰ <http://www.agenziaisa.org> (07.10.2005).

houses that match their needs and offers temporary accommodation in cases of homelessness.

In France, the project ATECCOD²⁰¹ combines initiatives in the employment sector, training and housing. The project targets immigrants and French of foreign origin living in the Ile-de-France region and aims at developing and implementing the concept of “equal opportunities” as well as counteracting discrimination and segregation in the housing market. To carry out this objective the partners involved have agreed to set up “territorial centres for equal opportunities” which will be the basis for employment and housing support. This project is innovating in combining trade union initiatives with the entrepreneurial world in a common design.

Asylum seekers have been the target of supporting initiatives by many NGOs. In this context, one should mention Cyprus where asylum seekers are reported to face serious difficulties in finding suitable accommodation. NGOs have submitted proposals to the Asylum Unit of the Cyprus Ministry of the Interior to include in the prescribed activities of the forthcoming European Refugee Fund project the setting up of a mechanism to collect information about and inspect properties offered for rent, so as to offer them to refugees at fair market conditions. In the UK one particular example stands out, the *Refugee housing integration programme* by the Housing Associations’ Charitable Trust (*hact*)²⁰² which aims to improve the amount and quality of housing for refugees. The sustainability of such an endeavour rests upon the development of partnerships and the building up of networks.

²⁰¹ ATECCOD (“Agir sur des territoires pour l’égalité des chances et contre les discriminations” joins the CFDT of Ile-de-France, the Abbé Pierre Foundation and the MEDEF (Mouvement des Entreprises de France) Essonne and Est Parisien under the auspices of the EQUAL programme.

²⁰² See: www.hact.org.uk (09.03.2006).

5. Racism and discrimination in the education sector and initiatives on how to prevent it

Education should be seen as pivotal point for social integration or, in the negative case, segregation. In addition, it constitutes a field that bears exceptional opportunities for programmatic, legal and financial intervention by governmental and non-governmental institutions. Therefore, besides referring to vulnerable groups and topical issues related to discrimination in the education sector, a major focus of this chapter will be to highlight examples of good practice promoting equal opportunities and combating racism and discrimination.

5.1. General overview and information available

5.1.1. Overview

European policies on education were strongly influenced by a number of issues and events in 2005. The results of the 2003 PISA education performance study were published at the end of 2004 and pointed to the fact that certain types of school systems, namely highly differentiated ones, lead to a widening of the gap between disadvantaged and privileged groups as regards educational attainment. A study by the Danish Technological Institute substantiates this fact, stressing that barriers to educational success that are inherent in schools systems particularly hit migrant and minority groups.²⁰³ The Danish Technological Institute recommends countries with highly differentiated school systems, like Belgium, the Czech Republic, Germany, Luxembourg, Hungary, the Netherlands, Austria and Slovakia, to adopt existing models of comprehensive school systems.

Discrimination and segregation of Roma pupils is another issue on the educational agenda of EU Member States. Although some steps have been taken in previous years to reduce segregation, discrimination and educational underperformance, the situation for Roma pupils is still a precarious one and needs further attention.

The question of permitting or prohibiting the displaying of religious symbols in the education sphere has led to new legislation and new debates in 2005. Policies in Member States range from nationwide prohibition of displaying any religious

²⁰³ Danish Technological Institute (2005), Explaining Student Performance, available at: http://www.danishtechnology.dk/_root/media/19176%5FFinal%20report%20web%20version.pdf (17.01.2006).

symbol in public schools, to complete freedom of pupils and teachers to wear any religious symbol. In between are policies that leave decisions to federal states or individual schools or that prohibit only certain religious symbols, while others are not considered as subject to regulation.

Besides referring to the topical issues outlined above, this chapter will examine available indicators and information on racism and discrimination in the education sphere. In addition, the social groups most affected will be addressed and several themes of particular interest will be discussed from the perspective of the policies and debates in the 25 EU Member States. Furthermore, selective examples of good practice against discrimination and segregation will be provided.

5.1.2. Availability of data on racist incidents

There is still a lack of systematic recording of racist and discriminatory incidents in the field of education in most Member States. In some countries, like in Greece, Spain, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Malta, Poland and Slovakia, there are no available official or unofficial statistical data on racism and discrimination in education at all. In several countries, like in the Czech Republic, Estonia, Hungary and Austria it is predominantly NGOs that register cases of racism and discrimination in education. Some Member States, like Germany and France, have a reporting system based on School Inspection Agencies or education ministries. Official or semi-official (autonomous) bodies collecting or publishing data – of varying scope and quality - on racism and discrimination in education operate in Belgium, Denmark, Ireland, Netherlands, Portugal, Slovenia, Finland, Sweden and the UK. Further sources of information are research studies related to segregation, discrimination and attainment in education.

In Belgium, a complainant stated that she was racially discriminated by her teachers, causing her to fail in her final exams on nursery care. The autonomous public service organisation CEOOR contacted the accused school and they agreed to re-assess the exam results of the complainant.²⁰⁴

²⁰⁴ Centre for Equal Opportunities and Opposition to Racism, Jaarverslag 2004/Rapport annuel 2004, p. 16.

5.2. Direct and indirect measurements of discrimination

Direct indicators of discrimination in education focus on individual acts and institutional practices of a racist and xenophobic character. This includes: racist violence, unequal treatment, verbalised prejudice, or harassment based on ethnicity, culture or nationality. It also includes forms of segregation, exclusion and limited access to educational institutions.

Indirect indicators of discrimination are those which allow a reasonable supposition to be made that members of a group are experiencing unequal treatment and inequalities based on their ethnicity, culture or nationality. A main indicator may be the educational underachievement of ethnic or national groups, i.e. lower school leaving credentials, over-representation in schools with lower academic demands, over-representation in special education, or disproportionately early dropout and disproportionately high expulsion rates.

5.2.1. Discriminatory incidents

Most Member States were either unable to provide statistics on discriminatory incidents in 2005 or were only able to provide incomplete and/or tentative results. We will therefore refrain from presenting and comparing statistical figures that cannot provide a representative image of discriminatory incidents in the EU. Instead, a typology of incidents reported to the EUMC shall be listed, as well as some examples of cases which emerged in 2005.

The following types of direct discriminatory incidents were registered in EU Member States in 2004/2005 and reported by the NFPs to the EUMC:

- Racist and/or antisemitic behaviour/acts by school teachers or students (Belgium, Germany, France, Ireland, Netherlands, Austria, Sweden, UK)
- Violation of the Act on Equal Treatment (Denmark)
- Extreme-right-wing incidents at school (Germany)
- Discriminatory content in schoolbooks (Cyprus, Hungary)
- Bias in school registration and admission policies (Belgium, Greece, Ireland, Netherlands)
- Schools failing to secure work-based internships for ethnic minority students (Netherlands)
- Children prevented from using their mother tongue (cases in Denmark, Germany, Austria)
- Discriminatory dress codes (Netherlands, UK)

In Ireland in 2004 the Equality Tribunal filed a case of a claim of 'indirect discrimination' under the Equal Status Act concerning fees for university education. The complainant was a Russian national of Chechen-Ingush origin, and had been accorded refugee status in Ireland. When she applied for a postgraduate course at Trinity College, she was charged fees at a higher rate, applicable to 'non-EU applications'. The complainant argued that this was discriminatory, since the Refugee Act 1996 provided that 'a refugee in relation to whom a declaration is in force shall be entitled [...] to have access to education and training in the State in the like manner and to the like extent in all respects as an Irish citizen.' The Equality Officer who dealt with the case concluded that the practice was indeed discriminatory and awarded the complainant €4,000 compensation.

5.2.2. Educational opportunities and attainment

Indirect discrimination manifests itself not through concrete incidents, but through provisions and structures that lead to an unequal distribution and an unequal achievement of pupils of different background in the education system. Consequently, indirect discrimination in education leads also to unequal opportunities in the employment market. Since not all Member States collect data on the distribution and performance of minority groups, it is only possible to provide a rough image of the extent to which the interplay between indirect discrimination in education and other factors, like the housing situation, the employment status of parents and the general social environment, lead to systems that produce and reproduce inequality.

In most European countries there is an overrepresentation of minority groups and foreign nationals in primary and secondary education special schooling. At the same time, students of foreign origin are underrepresented in higher education. In Denmark, a comparatively high percentage of students with minority background choose not to attend the leaving examination in one or more subjects.²⁰⁵ Germany is one of the Member State with a highly differentiated school system. According to German enrolment statistics, the majority of non-German pupils take classes in the *Hauptschule* (secondary modern school), whereas the majority of German pupils attend *Gymnasium* (grammar school). However, between 1992/93 and 2004/05 the proportion of foreign pupils who attend *Hauptschule* has dropped significantly.²⁰⁶ A study on vocational training concluded that non-Germans have lower chances of finding a place for their apprenticeship than Germans, even when

²⁰⁵ The Ministry for Refugees, Immigrants and Integration (2005) Udlændinge på ungdomsuddannelserne. pp. 32-41, available at: http://www.inm.dk/publikationer/taenketank_ungdom_uddannelse/index.htm (17.11.2005).

²⁰⁶ Germany, Federal Statistical Office, Fachserie 11, Reihe 1, Tab. 6.4.

their performance at school is higher.²⁰⁷ In the Dutch educational system, work-based internships are an important part of the compulsory curriculum. Since the year 2004, Muslim students indicated that they were having problems in their search for internships. They suspected negative stereotyping and discrimination as the cause and they complained about the fact that there was no strong effort by the school to react to indications or suspicions of discrimination. The Equal Treatment Commission has ruled that schools are obliged to take measures targeting the employers of interns who are not acting in compliance with equal treatment legislation.²⁰⁸ In Spain, there is a great concentration of Roma and foreign students in public schools.²⁰⁹ In Italy, a local survey carried out in Florence shows that about 85 per cent of migrant pupils whose first entry into Italian schools took place between 2001 and 2004, were placed into classes below their age.²¹⁰ In Luxembourg, the repetition and early school leaving rate is particularly high among Portuguese, former Yugoslavian and Cap Verdean pupils.²¹¹ In Poland, less than half of children from refugee centres attend school.²¹² In Portugal, one study found the success rate of Angolans and Cape Verdeans to be lower than the national overall rate, although it showed an improvement in the school performance of Roma and Timorese.²¹³ The UK is one of the few Member States with a comprehensive data collection system on attainment in education. This provides the UK with the necessary analytical tools to effectively identify and counter practices and structures that produce and reproduce inequality. As a result, there has been a general narrowing of the gap in school performance between ethnic groups. Nevertheless, some of the differences are still quite marked, particularly as regards the comparatively weak performance of Black boys (of Caribbean origin), Pakistani and Bangladeshi pupils as well as pupils of Roma and Traveller background.²¹⁴

²⁰⁷ Lehmann, R. et al. (2005) Untersuchung der Leistung, der Motivation und Einstellungen zu Beginn der Ausbildung.

²⁰⁸ Equal Treatment Commission ruling 2005-91.

²⁰⁹ Ministerio de Educación y Ciencia (2005), Datos avance del curso 2004-2005, Madrid, available at: <http://wwwn.mec.es/mecd/jsp/plantilla.jsp?id=311&area=estadisticas> (08.09.2005).

²¹⁰ Omodeo M. et al. (2005) Gli adolescenti d'origine straniera nella piana fiorentina e a Prato: una realtà da conoscere per prevenire rischi di disagio, in: Commissione regionale pari opportunità donna-uomo - ASL 10 (2005) *Maternità and scuola nella popolazione immigrata*, Florence: ASL 10, pp. 87-94.

²¹¹ UNSEN M., VALLADO D. (2005) Etude sur les élèves quittant prématurément nos écoles- Principaux résultats (Study on students leaving our schools prematurely – Main results), MENFP, Luxembourg. See also : MENFP, Education préscolaire, enseignement primaire et spécial, éducation différenciée, 2003, 2004 and 2005.

²¹² According to a report by the Legal Intervention Association in October 2005.

²¹³ Data from 1992/93 to 2000/01 by the Office for Information and Evaluation of the Educational System, a Ministry of Education organism whose portfolio overlaps with that of the former *Entreculturas*.

²¹⁴ Statistical First Release “National Curriculum Assessment, GCSE and equivalent attainment and Post-16 attainment by pupil characteristics in England, 2004”, at <http://www.dfes.gov.uk/rsgateway/DB/SFR/s000564/index.shtml> (02.10.2005).

5.3. Social groups most vulnerable to racism and discrimination

Across the Member States, a number of different social, national, ethnic and religious groups are mentioned as being at risk of being directly or indirectly discriminated against. Particularly, but not only, children with a migrant background from (present or former) non-EU-countries as well as ethnic and language minorities are reported as being most exposed to discriminatory practices and structures. In addition, religious minorities, particularly Muslims and Jews are subject to discriminatory treatment and/or Islamophobic or antisemitic insults. However, the group most vulnerable in many of the Member States as regards direct and indirect discrimination in education are Roma, Sinti and Travellers. Fifteen of the 25 Member States reported about the problematic situation of Roma, Sinti and Travellers with regard to direct and indirect discrimination in education. We will therefore deal first in the following subsection with practices and developments affecting the situation of Roma, Sinti and Travellers in education.

5.3.1. Roma, Sinti and Travellers

The problem of Roma segregation

The segregation of Roma children from the regular school system is identified as one of the most serious problems with regard to the educational attainment and subsequent employment opportunities of Roma. Particularly, the widespread practice of shifting off Roma pupils to special schools, instead of integrating them into regular schools, has led to a highly disadvantaged position of Roma. For example, in the Czech Republic, more than half of the Roma school population is educated in special schools.²¹⁵ In Hungary, many Roma children have been labelled as mentally handicapped without proper justification.²¹⁶ In addition, Roma segregation also takes place in regular schooling. In Slovakia, the forming of school classes is in many cases based on criteria that have led to an isolation of Roma pupils.²¹⁷ On the other hand, in Denmark, temporary classes only consisting of Roma children were closed with the end of 2005. In Ireland, the system of segregated classes for Travellers was dropped.

²¹⁵ According to a research study by the European Roma Rights Centre, available at: <http://www.errc.org/> (16.02.2006).

²¹⁶ <http://www.romaweb.hu/romaweb/index.jsp?p=hir&sp=view&tema=1&id=2658> (30.09.2005).

²¹⁷ Slovakia, Slovak National Centre for Human Rights (2005) *Rights of Children in Roma Settlements*, p. 28.

In Cyprus, the parents' association of an elementary school closed down the school, demanding that the Cyprus Ministry of Education should suspend the attendance of Roma pupils until confirmation was made that none of them suffers from Hepatitis. Authorities agreed to the parents' demand to submit the Roma pupils to blood tests. After the blood tests had shown that none of the Roma pupils suffered from Hepatitis, they were allowed to return to their school.

Discriminatory incidents against Roma

In Greece, discriminatory incidents occurred in the context of the registration and participation of Roma children in primary schools. Roma children were obstructed from going to school by parents of ethnic Greek immigrant children. Tensions escalated and led the Roma Association to request separate enrolment of their children. The Ministry of Education, although opposed to such a “ghetto-solution”, agreed to provide such an option.²¹⁸

In Hungary, the case of a school book containing a chapter on the Roma which was extremely offensive to people of Roma origin, was reported. In addition, the Hungarian Roma Anti-discrimination Customer Service Network at the Ministry of Justice reported a technical school that sent some Roma students home on the grounds that they had head lice. Parents took the children to doctors, who provided a medical certificate that the children did not have lice, but dandruff.

Performance of Roma in education

A recent study conducted in Catalonia, Spain, shows that 80 per cent of Roma pupils drop out of school before 14 years old and that 11 per cent of Roma are illiterate and only 0.02 per cent have a higher studies degree.²¹⁹ The 2002 Census in Ireland shows that for 55 per cent of Travellers, primary school education was the highest level of education they obtained and that 63 per cent of Traveller children had completed their education before the age of 15, compared with 15 per cent of the national population. In Hungary, by 2003, more than 80 per cent of young Hungarians continued their studies in a higher secondary school. The corresponding rate for Roma was 16 per cent.²²⁰ Also in Portugal, the educational success rate of Roma is comparatively low, while drop-out rates are high. A recent report of the EU Network of Independent Experts on Fundamental Rights notes

²¹⁸ Vradelis S., ‘Into the ghetto by their own will’, *Ta Nea* (27.10.2005).

²¹⁹ Sánchez Aroca, M. (Dir.) (Fundació Pere Tarrés) (2003), *Estudi sobre la població gitana de Catalunya*, Barcelona: Generalitat de Catalunya, Departament de Benestar i Família.

²²⁰ Kertesi, G – Kézdi, G (2005) *A foglalkoztatási válság gyermekei. Roma fiatalok középiskolai továbbtanulása az elhúzódó foglalkoztatási válság idején*, Budapest: MTA Közgazdaságtudományi Intézet.

that a disproportionate number of Roma youngsters in Finland do not finish their schooling.²²¹ The report points to the structural and self-perpetuating, rather than transitional, character of the disadvantages faced by Roma children in education. In the UK, statistics indicate Roma and Travellers as the lowest achieving minority group.²²²

In Slovenia, an incident where a Roma parent assaulted a teacher at an elementary school, sparked off a series of events. A group of non-Roma parents initiated a petition arguing that their children were not safe at school and that the quality of education was affected. They demanded that Roma pupils be spread across other elementary schools and that separate Roma classes be introduced. In reaction, the Minister of Education and Sport presented a proposal for the introduction of separate study groups for pupils with severe learning difficulties for subjects “where command of Slovenian language is necessary for successful advancement“. The proposal raised serious concerns by prominent education experts, who argued that the proposed model was contrary to existing legislation and to anti-segregation policies.²²³ It was now Roma parents who decided to keep their children from going to school. After a meeting, Roma parents agreed to send their children back to school. Four additional teachers and three Roma assistants were provided.

Good practices directed at Roma

Several Member States have launched legislative measures, financial programmes and social initiatives in order to abolish discriminatory practices and improve the situation of Roma in the education system. For example, the Czech Republic has updated its Roma Integration Policy Strategy²²⁴. The strategy aims to stop the segregation of Roma in schools, which until 2004 had been called ‘special schools’, to obtain financial support for students for high school and further education, to establish preparatory classes, to support cooperation between schools and Roma children’s families and to increase parents’ motivation towards education for their children. The Estonian Ministry of Education and Research launched an initiative to set up support centres for Roma families. In Slovenia, a

²²¹ EU Network of Independent Experts on Fundamental Rights (2005), Thematic Comment N° 3: The Protection of Minorities in the European Union, p. 47, available at: http://europa.eu.int/comm/justice_home/cfr_cdf/doc/thematic_comments_2005_en.pdf (17.10.2005).

²²² Statistical First Release "National Curriculum Assessment, GCSE and equivalent attainment and Post-16 attainment by pupil characteristics, in England, 2004", available at <http://www.dfes.gov.uk/rsgateway/DB/SFR/s000564/index.shtml> (02.10.2005).

²²³ Krek, J. (2005) “Izvedbeni model izobraževanja romskih učencev za OŠ Bršljin”, in: Poročilo skupine za spremljanje nestrpnosti, No. 4, pp. 8-9.

²²⁴ Czech Republic, Inter-ministerial Commission for Roma Community Affairs (2005), The Roma Integration Policy Strategy, available at <http://wtd.vlada.cz/scripts/detail.php?id=8150> (15.11.2005).

National Action Plan for the education of Roma was adopted, outlining priority goals for the next five years, including early inclusion/integration of Romani children into pre-school education; introduction of Roma assistants in kindergartens; Slovenian language lessons for Romani pupils; introduction of Romani language; teaching of Romani culture, history and identity; employment of Roma assistants; review of school placement procedures; and establishing a network of schools with Romani pupils for the exchange of experience and good practice. In Lithuania, a pre-school education programme is conducted for Roma. Since 2004 a programme for the Roma community in Poland has been implemented in which educational objectives are set out as a priority. Further good practices directed at Roma are highlighted in the section “Preventive initiatives and good practice against discrimination and exclusion” below.

5.4. Issues and debates concerning racism and discrimination in 2005

5.4.1. The issue of segregation

Today, most Member States see segregation in the sphere of education as a problem rather than as a possible way to countering the vulnerable position of migrant and minority groups. In particular, the shifting off of children with migrant and minority background to special schools is no longer perceived as an acceptable practice. Nevertheless, school segregation is still a prevailing phenomenon in large parts of the European Union.

The complexity of the issue of segregation in education is displayed through the fact that one has to distinguish between, on the hand, total and permanent separation between population groups through, for example, faith schools or ethnic minority schools and, on the other hand, an interim separation of pupils through, for example, preparation or transition classes. In addition, separation between social and ethnic groups may not be based on explicit policies, but emerges as the result of barriers in the education system – not leading to a total, but a partial segregation. The latter is the case in highly differentiated schools systems that do not offer all social and ethnic groups the same educational opportunities.

Adding to the overall complexity of the issue, there are some observations calling into question the effectiveness of anti-segregation measures. For example, according to the authors of a study published by the Dutch Social and Cultural Planning Office (SCP), student populations in schools simply reflect the housing segregation in the surrounding districts. The researchers believe, it is more effective to keep investing in “Black” schools with funds to combat learning disadvantages of ethnic minority students than implementing anti-segregation measures. In the UK, the Chair of the Commission for Racial Equality (CRE) initiated a debate about the desirability of teaching Black boys separately – an approach he favoured –, referring to recent data on the persistent underachievement of Black male in the British education system.

Some Member States found themselves in a conflicting situation when they attempted to take measures against segregation. For example, in the Netherlands, city councils and school boards have been attempting to create a more even distribution of educationally disadvantaged ethnic minority students. However, this policy has been assessed by the Equal Treatment Commission as violation of equal treatment legislation.

5.4.2. The issue of religious symbols

While in some Member States the presence of religious symbols in school is a heavily debated issue, in others the choice of clothes or clothes accessories – including religious symbols – is left to the decision of each pupil or his/her parents.

Among those Member States that issued rulings with regard to displaying religious symbols in the education sphere, there are a broad range of different approaches. In Belgium in practice it belongs to the individual right of every school to ban certain religious symbols. In the last five years the number of French Community schools that banned head covers increased from 41 per cent to 71 per cent.²²⁵ In Germany it is the right of every state (Land) to pass a law prohibiting the display of religious symbols by teachers or other state officials in public service. In France, the law on the application of the principle of secularity in public schools forbids the wearing of signs or clothes by which students ostentatiously manifest a religious belief. In June 2005, there was the first evaluation of the application of the law.²²⁶ According to this report, the majority of pupils agreed to withdraw their religious signs. The positive assessment of the law by the Ministry of National Education is disputed by several associations pointing to “quiet exclusions” (i.e. abandoning of schooling, schooling in private schools or in schools abroad). In the Netherlands, schools are allowed to prohibit religious symbols if they can provide objective justification as to why these pose problems. As a rule, veils which cover the face are prohibited in schools, whereas schools can only prohibit headscarves when they contradict the religious principles of the school, when these are actively promoted. A specific case of an equal treatment ruling concerned an Islamic school that turned down a Muslim female applicant for an Arabic language position, after she made clear that she did not want to wear a headscarf whilst teaching. The Equal Treatment Commission ruled that the school had no legal grounds for turning down the applicant.²²⁷

²²⁵ Le Soir, (26.08.2005) “L’école sans voile se généralise” (The school without scarf becomes more common).

²²⁶ Bronner, L. (2005) “Un rapport dresse un bilan positif de la loi sur le voile à l’école”, in Le Monde (27-08-2005).

²²⁷ More info www.cgb.nl (25.01.2006).

5.4.3. The issue of minority languages

In the Baltic states of Estonia and Latvia, with a large Russian-speaking minorities, Estonian and Latvian are about to become or have already become the main languages of instruction in public secondary schools. There is still some concern that transition periods might be too short to ensure equal opportunities for minority pupils. According to the Swedish National Agency for Education, only every fourth Roma and less than half of Finns and Meäkiele take lessons in their mother tongue. The reasons for this are: (1) municipalities do not properly inform potential students about their opportunities and rights; (2) there are problems in recruiting teachers; (3) there are few available teaching aids; (4) minority groups face prejudices, negative attitudes and discrimination.²²⁸

5.4.4. Further issues

In Denmark, a new regulation tightens language proficiency demands for persons applying for Danish citizenship. In the future, most immigrants will have to pass a test designed for participants with a vocational, bachelor or higher education background from their country of origin, and who can be expected to be relatively quick learners.²²⁹ In France, Article 4 of the law of 23.02.2005²³⁰ asking school readers to stress the “positive aspects” of the French colonisation triggered a debate on how France should face its responsibilities in the colonisation process and the institutionalisation of slavery, and how these issues should be dealt with in school. Several historians and associations called for the abrogation of Article 4.

5.5. Preventive initiatives and good practice against discrimination and exclusion

There is a range of political measures and tools that can be applied in order to improve the situation of migrants and minorities in the education sector. However, it should be kept in mind that recent research studies on institutional barriers for migrants and minorities in the field of education have come to the conclusion that selective support measures alone have in many cases only little impact on improving the position of migrants and minorities. Rather, changes in the whole education system – towards a more integrationist and less differentialist education

²²⁸ The Swedish National Agency for Education (2005), press release: *Brister i utbildningen för minoriteter*, 21.10.2005, Available at: <http://www.skolverket.se> (06.01.06).

²²⁹ The Ministry for Refugees, Immigrants and Integration: http://www.inm.dk/imagesUpload/dokument/Aftaletekst_nye_retningslinjer_for_naturalisation.pdf (06.01.06).

²³⁰ Law FR-2005-158, (23.02.2005). <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=DEFX0300218L> (06.01.06).

system – accompanied by improving the possibilities for bilingual tuition²³¹ and by setting selective support measures, bear the potential of reducing barriers and promoting educational success.²³²

The examples of good practice presented below should be considered by all Member States as potential role models for their education policies.²³³ Some of the measures aim at establishing a positive environment and atmosphere for migrant and minority pupils; others concern individual support for pupils with language and/or learning difficulties. In addition, there are programmes for the support of parents and teachers. Other approaches make use of financial programmes, either in the form of grants and scholarships for pupils or in the form of incentives for companies to invest in apprenticeships for children with migrant/minority background. Moreover, Member States provide funding for projects aimed at enhancing the position of migrants and minorities in the education sector. Important in many Member States are governmental measures against segregation in education. In contrast, affirmative action is an instrument rarely applied in the EU.

5.5.1. Programmes for awareness raising

While most governments and NGOs run national awareness-raising campaigns on equality, diversity and non-discrimination in the field of education, there are also some transnational projects. Examples for the former are the STOP-campaign in Finland, the “Czechkid-Project” in the Czech Republic and the “Human Rights Olympics” in Slovakia. The STOP-campaign, which has been running in Finland since 2001, entered in 2005 into its fifth phase, focusing on mainstreaming equality and non-discrimination in teacher training.²³⁴ In Prague, the Faculty of Humanity

²³¹ The importance of availability of adequate bilingual tuition is supported by evidence from diverse studies and reports, e.g. Danish Technological Institute (2005), *Explaining Student Performance*, p. 105. Available at:

http://www.danishtechnology.dk/_root/media/19176%5FFinal%20report%20web%20version.pdf (17.01.2006); Thomas, W. P. and V. P. Collier, 2001. “A National Study of School Effectiveness for Language Minority Students’ Long-Term Academic Achievement. Available at: http://www.crede.org/research/llaa/1.1_final.html (14.03.2006); Stephen Krashen, 1999. “Bilingual Education: Arguments For and (Bogus) Arguments Against”, University of Southern California. Available at: <http://ourworld.compuserve.com/homepages/jwcrawford/Krashen3.htm> (14.03.2006).

²³² See Gomolla, M. (2005) *Schulentwicklung in der Einwanderungsgesellschaft*, Münster: Waxmann, pp. 264 ff. See also Danish Technological Institute (2005), *Explaining Student Performance*, available at: http://www.danishtechnology.dk/_root/media/19176%5FFinal%20report%20web%20version.pdf (17.01.2006).

²³³ We do not want to imply that good practices can simply be transferred from one country to another without taking into account different socio-historical contexts. Rather good practice examples should serve as model for developing context-sensitive approaches to promoting equal opportunities and combating discrimination in education.

²³⁴ <http://www.join.fi/seis> (17.10.2005).

Studies has organised a project called “Czechkid”, preparing a web page displaying the life of young immigrants and members of minorities in the Czech Republic. Methodical materials for teachers will be part of the web page, too.²³⁵ The “Human Rights Olympics” are part of a project called “Life without prejudice and aim at raising awareness about human rights issues. An example for a project that has transcended borders is “School without racism”, which has started in 1988 in Belgium and is currently being implemented in more than 400 schools of Belgium, Germany, Spain, the Netherlands and Austria.²³⁶ Its aim is to remove xenophobic stereotypes, prejudices and attitudes from schools. Schools are provided with tools and materials and with a list of activities suggested to combat racism and intolerance, but it is each school that decides how to implement this initiative.

5.5.2. Programmes for the individual support of pupils

Some Member States have established new teacher and/or assistant positions within their school system in order to support migrant and minority children. This is for example the case in the Czech Republic²³⁷, Germany, Finland, Poland and Slovenia. All these programmes aim at offering pupils tutoring by persons with the same ethnic background. Another approach introduced in several Member States is the setting up of preparatory classes for migrant/minority children before they enter the regular school system. An alternative to preparatory classes and a supplement to regular education are projects aimed at providing migrant and minority children with difficulties with individual help when preparing for secondary education.

5.5.3. Programmes for the support of teachers and parents

In several Member States, in addition to the support of pupils, also teachers are provided with counselling, training and/or teaching material. Moreover, mentoring and counselling programmes for pupils are in many cases accompanied by the involvement of the pupils’ parents. They are encouraged to take part in parental meetings in order to exchange their experiences and receive further information on the educational system. Examples for this are the German mentoring programme for migrant pupils and the Latvian “Romani child in welcoming school” programme that both include support for parents.

²³⁵ <http://www.fhs.cuni.cz/kos/vyzkum.asp> (17.01.2006).

²³⁶ <http://www.schoolwithoutracism-europe.org/> (11.01.2006).

²³⁷ Czech Republic, Ministry of Education (2001), Strategie pro zlepšení vzdělávání romských dětí verze 2001, p. 8, available at http://www.msmt.cz/Files/DOC/STRATEGIE_ZVRD_2001.doc (15.11.2005).

5.5.4. Financial aid programmes for pupils

In Germany, the START-project provides scholarships to young migrants who come from families with low financial resources and display an above-average performance at school.²³⁸ The Hungarian Academy of Sciences established a special scholarship for Roma students called “Roma Academic Scholarship”. The Polish government launched in 2005 the second edition of a scholarship competition for Roma college students. In the UK, vulnerable children can benefit from grants available to Local Education Authorities.²³⁹

5.5.5. Financial incentive programmes

In July 2005 the Danish Government established a scheme rewarding companies setting up additional training places for apprentices with minority background. In Greece there is an incentive programme for teachers in order to make them choose to work in minority schools.

5.5.6. Affirmative action

In Greece, provisions according to which 0.5 percent of all higher education vacant student posts (or at least one per department) are reserved for Muslim minority students, have been extended to the holders of a Technical Secondary Education degree wishing to be admitted to technological faculties of higher university education.²⁴⁰ Still, these provisions are very restricted in their scope.

5.5.7. Anti-segregation measures

In reaction to the result of the PISA Study, the French Community Government in Belgium has issued a so called “Contrat pour l’ecole”. One priority of this contract is to reduce the number of ghetto schools, where low-skilled, deprived students are concentrated.²⁴¹ In the Czech Republic a new Educational Law²⁴² came into effect that legalises the end of so called special schools and prioritises the integrated

²³⁸ Önen, K. (2005) „Die Integrationsprojekte der Gemeinnützigen Hertie-Stiftung“, in: ZAR No. 1, pp. 27-28.

²³⁹ See: <http://www.dfes.gov.uk/educationprojects/index.cfm> (02.10.2005); see also: <http://www.standards.dfes.gov.uk/ethnicminorities/> (02.10.2005).

²⁴⁰ Law n.2341.

²⁴¹ See <http://www.contrateducation.be/index.asp>, (23.09.2005).

²⁴² Law No. 561/2004 Coll. at: <http://www.msmt.cz/Files/HTM/PKT0602senatspodpresidenta.htm> (15.11.2005).

education of students with special needs. In Slovakia a project has been started to achieve greater objectivity in the process of evaluation of children.²⁴³

5.5.8. Measures establishing or improving data collection on discrimination

In the Netherlands, the Schools Inspectorate discrimination complaints bureau has reopened after giving up the task of registering complaints of discrimination in schools in 2002. A central collection point for such information has proved necessary in order to obtain insight into the nature and extent of problems related to interethnic tension and discrimination.

5.5.9. Recent activities in the field of Holocaust education

In Austria, the project “National Socialism and the Holocaust: Memory and Present”²⁴⁴ elaborates new teaching approaches on the Holocaust. In Germany, Holocaust education is an inherent part of the curricula of all school types in Germany.²⁴⁵ Additionally, numerous projects on antisemitism and the Holocaust have been initiated in schools.²⁴⁶ In Latvia, the Education Development Centre implemented the project “Development of teaching aids on the Holocaust for social science and Latvian history classes.” In Poland, the subject of the Holocaust has been introduced in the basic educational curriculum in middle and high schools. In Belgium an educational project ‘schools for democracy’, in the framework of the Federal ten points plan against racism, includes visits to World War II memorials and Auschwitz.

5.5.10. Further activities aimed at enhancing the position of migrants and minorities

Rounding off the listing of good practices, three media education projects shall be mentioned: In Finland a media education, training and work placements project for immigrants and ethnic minorities started in May 2005.²⁴⁷ The “Mundo project” offers students broad-based media training during which they will work in television, radio and newspaper and learn to create services on the Internet. In

²⁴³ Slovakia, VUDPAP (2005), Integration of Roma Children in to Regular Schools, Introductory Report, p. 8.

²⁴⁴ *Nationalsozialismus und Holocaust – Gedächtnis und Gegenwart*, <http://www.erinnern.at>, (11.10.2005).

²⁴⁵ German Parliament, printed matter 15/5149 (2005) p. 3.

²⁴⁶ Between 2001 and 2004, more than 3,600 projects and measures were supported within this Action Programme.

²⁴⁷ <http://www.yle.fi/mundo> (17.10.2005).

Hungary, an internship programme for Roma has been set up. Five young Roma journalists receive a scholarship for doing a one-year training programme at the Hungarian Public Television (MTV).²⁴⁸ In Slovenia an educational project of the Peace Institute, carried out in September 2005, addressed the issue of media integration with an educational two day workshop for editors and contributors to media of ethnic communities of former Yugoslavia in Slovenia.

²⁴⁸ <http://www.romaweb.hu/romaweb/index.jsp?p=palya&sp=view&id=562> (12.01.2006).

6. Racist violence and crime

This chapter variously describes manifestations of racist violence and crime reported by official data collection mechanisms and unofficial non-governmental sources in the period 2004-05. The chapter focuses on available official and unofficial data with a view to exploring current limitations in the EU's knowledge about racist violence and crime. Information is presented in tabular form to highlight the diverse and uneven practice of data collection across the EU. Towards the end of the chapter reference is made to a range of 'good practice' initiatives in Member States.

6.1. Official data collection mechanisms

Available information indicates that racist violence and crime is an on-going problem in the EU25, with evidence that it emerges in different forms which are generally under-documented by official data collection mechanisms.

What we know about the extent and nature of racist violence and crime from official sources is dependent on the quality of existing data collection mechanisms: Do they encourage members of the public to report incidents; are they able to record a wide or narrow range of incidents; are the police and other criminal justice agents trained and encouraged to accurately record incidents as 'racist' or as contravening the law with respect to, for example, 'hate crimes' and extremism. Bearing this in mind, Table A presents a summary of official data collection in the EU25.

Table A: Data on racist violence/crime, and related activities, reported by official sources in the EU 25 for the years 2004-2005²⁴⁹

MEMBER STATES ²⁵⁰	Official Data Source	2004 Data 2005 data, where specified
Belgium	Administration of Justice, criminal policy section	2,605 complaints under general 'discrimination' recorded (may include incidents of racist violence and crime, but not specifically identified)
Czech Republic	Ministry of Interior	<u>2004</u> – 364 crimes recorded with extremist background, and/or motivated by racial, national or other social hatred <u>2005</u> – 253 crimes recorded with extremist background, and/or motivated by racial, national or other social hatred
Denmark	Police PET (Civil Security Service)	<u>2004</u> – 36 criminal incidents suspected racial/religious motive <u>2005</u> – 81 criminal incidents suspected racial/religious motive
Germany	Federal Ministry of Interior	<u>2004</u> – 12,533 crimes registered under general heading 'politically motivated – right wing': Of which – 832 were 'violent'; 12,051 were 'extremist'; 776 were 'extremist violent'; 2,553 were xenophobic; 368 were xenophobic extremist violent crimes; 1,346 were antisemitic; 37 were antisemitic violent crimes <u>2005</u> – 15,914 crimes registered under general heading 'politically motivated – right wing' Of which – 1,034 were 'violent'; 15,361 were 'extremist'; 958 were 'extremist violent'; 2,493 were xenophobic; 355 were xenophobic extremist violent; 1,682 were antisemitic; 49 were antisemitic violent.
Estonia	Security Police	Investigations related to incitement to social hatred <u>Sep 2002-July 2004</u> - 8 criminal investigations started <u>Sep 2004-July 2005</u> - 1 investigation started
Greece	–	NO data available

²⁴⁹ The data in this table is not directly comparable between Member States as it is taken from different sources (RAXEN NFP reports). It should also be noted that when NFPs provided a range of data – for example, on complaints as well as recorded offences – then the higher figure was taken in order to give a 'best estimate' of reporting and recording practices.

²⁵⁰ Listed alphabetically using spelling of source language.

Spain	–	NO data available
France	Ministry of the Interior	<p><u>2004</u> – 1,574 racist, xenophobic and antisemitic acts and threats reported</p> <p>Of which, 970 were antisemitic acts/threats (200 violent acts and 770 threats); 595 were ‘racist’ acts/threats (169 violent acts and 426 threats).</p> <p><u>2005</u> – 974 racist, xenophobic and antisemitic acts and threats reported</p> <p>Of which, 504 were antisemitic acts/threats (98 violent acts and 406 threats)</p>
Ireland	Police NCCRI (semi-official) National Consultative Committee on Racism and Interculturalism	<p><u>2004</u> – 84 racially motivated crimes reported; 28 crimes detected (perpetrator identified and penalised)</p> <p><u>2005</u> – 94 racially motivated crimes reported; 45 crimes detected (perpetrator identified and penalised)</p> <p><u>Nov 2003-April 2004</u> – 42 incidents reported - mostly related to general discrimination; <u>May-Oct 2004</u> – 70 incidents; <u>Nov-Dec 2004</u> – 22 incidents; <u>Jan-June 2005</u> – 81 incidents.</p>
Italy	–	NO data available
Cyprus	–	NO data available
Latvia	Security Police/Ministry of Interior	<u>2005</u> – 13 criminal cases initiated and/or investigated for incitement to ethnic and racial hatred
Lithuania	Ministry of Interior, Centre for Crime Prevention and National Courts Administration	<p><u>2004</u> – 5 crimes registered relating to incitement to national, racial, ethnic or religious hatred; 2 crimes relating to disturbance from performing religious worship/ceremonies; 2 crimes for keeping or disseminating ‘hate’ material</p> <p><u>2005</u> – 2 crimes registered relating to incitement to national, racial, ethnic or religious hatred; 2 crimes disturbance religious ceremony; 1 crime keeping or disseminating ‘hate’ material</p>
Luxembourg	Ministry of Justice	<p><u>2004</u> – 7 complaints to police re racial discrimination</p> <p><u>2005</u> – 9 complaints to police re racial discrimination</p>
Hungary	Chief Prosecutor’s Office	<p><u>2004</u> – 24 cases identified re violence against a ‘member of a national, ethnic, racial or religious group’ or ‘incitement against a community’</p> <p><u>2005</u> – 11 cases identified as above</p>
Malta	–	NO data available

Netherlands	National Discrimination Expertise Centre (LECD) - part of Public Prosecution Service	214 discriminatory cases registered, which can include incidents of racist violence and crime
Austria	Ministry of Interior/ Ministry of Justice	322 complaints against individuals related to a range of prohibited racist/xenophobic acts 229 incidents recorded with extremist right-wing, xenophobic or antisemitic motivation. Specifically: 189 right-wing extremist; 23 xenophobic; 17 antisemitic (note – incidents can contain several complaints/offences).
Poland	Police Headquarters Office Team for Monitoring Racism and Xenophobia Issues	2004 – 107 'racist' crimes reported under different legal articles <u>2005</u> – 156 'racist' crimes reported under different legal articles
Portugal	Police CICDR (Commission for Equality and Against Racial Discrimination)	4 cases registered by police relating to racial or religious discrimination <u>Up to Sep 2005</u> – 48 cases pending concerning racist or ethnic discrimination. Of which, 2 relate to 2005 and none involve violence.
Slovenia	Police	<u>2004</u> – 8 cases investigated concerning alleged violation of prohibition of incitement to ethnic, racial or religious hate, discord or intolerance; 3 criminal charges filed with district attorney <u>2005</u> – 8 cases investigated; 5 criminal charges filed
Slovakia	Police Ministry of Justice	<u>2004</u> – 79 racially motivated crimes reported/registered <u>2005</u> – 121 racially motivated crimes reported/registered <u>2004</u> – 57 racially motivated crimes cleared <u>2005</u> – 82 racially motivated crimes cleared
Finland	Police	<u>2004</u> – 558 incidents of racist crime reported to police Of these 558, 110 were 'assault and battery'

Sweden	Swedish Security Police The Swedish Integration Board	<u>2004</u> – 2,414 reported incidents with xenophobic or antisemitic motive (2,263 xenophobic; 151 antisemitic – of which 1,266 White Power related) <u>2004</u> – 42 racist related verdicts – commonly incitement to racial hatred
UK (data for England and Wales only) ²⁵¹	Police – England and Wales CPS (Crown Prosecution Service) Home Office – British Crime Survey (England and Wales)	<u>April 2003-March 2004</u> – 54,286 racist incidents recorded; 34,996 racially or religiously aggravated offences recorded <u>April 2004-March 2005</u> – 57,902 racist incidents recorded; 37,028 racially or religiously aggravated offences recorded <u>2004</u> – 7,276 persons cautioned or prosecuted for racially aggravated crimes <u>BCS 2003-04</u> – 206,000 racially motivated incidents estimated <u>BCS 2004-05</u> – 179,000 racially motivated incidents estimated

The data presented in Table A reflects the application of diverse laws and criminal justice practices in different jurisdictions and, therefore, cannot be read at 'face value' as a comparative overview of the extent of racist violence and crime in the EU. If this were the case we might wrongly conclude that five Member States – namely, Greece, Spain, Italy, Cyprus and Malta – had no discernible problem with racist violence and crime in the period 2004-2005. Yet, as reports by the media, local NGOs, and IGOs such as ECRI testify, along with occasional evidence from official sources dating from previous years, this is clearly not the case. For example, in Italy, for the years 2002 and 2003, the National Institute of Statistics (ISTAT) published data on criminal justice statistics, including information about the number of crime complaints, charges, persons charged and sentenced for 'racial discrimination' under the criminal law.

A first stumbling block to comprehensive data collection on racist violence and crime is the narrow way in which existing laws are applied in practice. Although a

²⁵¹ In 2004-05 the Police Service Northern Ireland (PSNI) introduced data collection for crimes with racial or homophobic motivation. PSNI data for the period 1 April 2004 – 31 March 2005 indicates 813 recorded racist 'incidents' and 634 recorded racist 'crimes'. In the period 1 April 2005 – 31 March 2006 the number of racist 'incidents' is 936 and the number of racist 'crimes' 746; with a total of 70 incidents and 78 crimes recorded with a faith/religion motive (for more information see http://www.psni.police.uk/3_hate_incidents_and_crimes-3.pdf). In Scotland the police have been recording racially aggravated offences since 2000/01, with a total of 3,856 racially aggravated offences recorded for the 12 month period 2004 – 05 (for more information see <http://www.scotland.gov.uk/Publications/2005/10/19155942/59475>).

Member State's laws may be adequate, in theory, to punish a range of racist offences, their application in practice may result in few successful convictions. In addition, data collection on racist violence and crime is constrained by how cases are categorised on incident forms and in case files. Incidents involving racial or religious aggravation can 'disappear' in criminal justice data collection systems that do not pursue a proactive policy of recording them as 'hate' or 'faith' related crimes.

Many Member States' official data on racist violence and crime is reduced to the number of cases prosecuted with respect to specific legislation. For example, official data collection mechanisms in Estonia and Hungary are limited to a few cases that come to the attention of the criminal justice system as violating specific legislation; namely: in Estonia, 8 criminal investigations in the period Sep 2002-July 2004, and 1 investigation in the period Sep 2004-July 2005; and, in Hungary, a total of 24 cases were identified in law in 2004, and 11 cases in 2005.

As a counterpoint to this, and reflecting a rigorously pursued criminal justice policy to combat extremism, Germany registered 12,533 crimes in 2004 under the general heading of 'politically motivated – right wing', of which 12,051 were classified as 'extremist', and 15,914 crimes in 2005 under the general heading 'politically motivated – right wing'. However, one can speculate that the number of registered crimes might increase if existing laws, which are well placed to prosecute a range of 'racist' crimes, were applied more broadly to 'everyday' racism that is not affiliated to the activities of extremist groups.

The UK records a broad range of 'racist' incidents as they are reported by the public to the police and, importantly, before they are classified by the police themselves as crimes under particular sections of the criminal law. Reflecting this approach, the UK's official data collection system is able to capture more 'racist' incidents in a single twelve month period than the remaining 24 Member States combined – 54,286 'racist' incidents were recorded in the period 2003-2004 (mid year readings) and 57,902 in the period 2004-2005 (mid-year readings). This situation has arisen primarily because the UK has adopted the most generous working definition of a 'racist incident' in the EU²⁵², which, as the EUMC's report on 'Policing Racist Crime and Violence' indicates²⁵³, is applied broadly by both the public and the police.

However, as Table A indicates, one current benefit of official data collection mechanisms that focus on prohibited activities by, typically, right-wing extremists, is that their data collection categories reflect legislation prohibiting antisemitism. As a result, Germany, France, Austria and Sweden are able to record how many

²⁵² Macpherson, W. (1999) *The Stephen Lawrence Inquiry: Report on an Inquiry* by Sir William Macpherson of Cluny (Cm 4262), London: The Stationary Office: Chapter 47, para.1: '[a racist incident is] any incident which is perceived to be racist by the victim or any other person.' Ireland has followed the UK's lead by adopting a similar definition of a racist incident for use by criminal justice personnel.

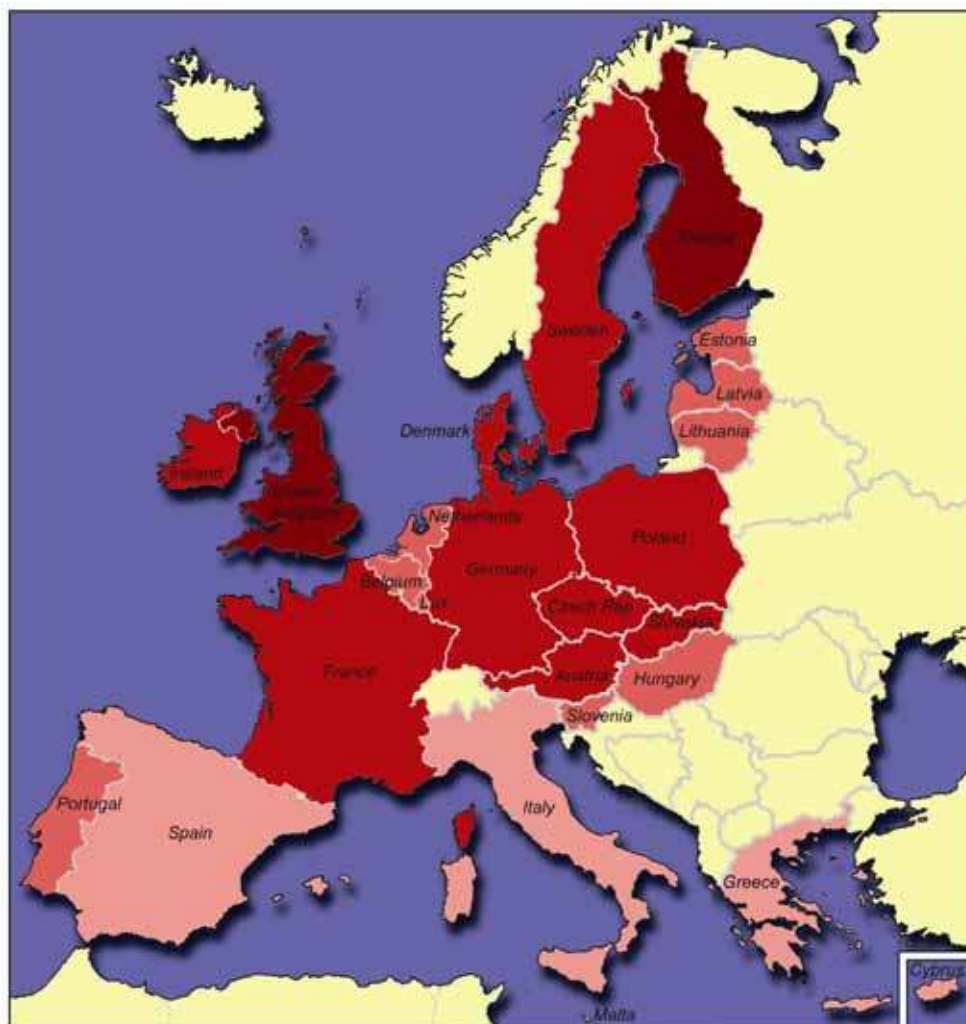
²⁵³ EUMC (2005) *Policing Racist Crime and Violence: A Comparative Analysis*: Vienna: EUMC.

incidents are antisemitic, and can provide detail about whether incidents can be attributed to extremist groups. Member States do not record whether incidents are Islamophobic in nature; although the UK does record 'faith hate' crimes that are both antisemitic and Islamophobic in nature. In France the police are able to record whether crime is targeted against people from the Maghreb (North Africans who are typically Muslims). However, this information is not obligatory in France, and, as a result, there is no publicly available official data in France that can indicate the likely number of 'Islamophobic' incidents.

6.1.1. Status of data collection

High official figures *do* indicate a problem with racist violence and crime. However a different way of interpreting them, which provides a useful benchmark when looking at diverse recording practices across the EU, is to see high figures as representing effective data collection. In this regard, Member States with high officially recorded figures – relative to the size of their population and, more importantly, their vulnerable immigrant and ethnic minority populations – can be interpreted as having effective data collection mechanisms. In comparison, those Member States with low or non-existent figures – relative to population sizes – can be read as having ineffective data collection mechanisms. With this in mind, Table B attempts to classify the status of official criminal justice data collection mechanisms on racist violence and crime on the basis of both the extent and nature of Member States' data collection.

Figure 2: Status of official criminal justice data collection mechanisms on racist crime/violence 2004-2005



KEY: (See Table B)

- 1. Comprehensive - Extensive data collection, with detail about victim characteristics, place of victimisation, etc. (*Finland, UK*)
- 2. Good - A system exists to register incidents/crimes, and/or focuses on right-wing extremism/hate crimes. (*Austria, Czech R, Denmark, France, Germany, Ireland, Poland, Slovakia, Sweden*)
- 3. Limited - Limited reporting on investigations and court cases, or focus on general discrimination. (*Belgium, Estonia, Hungary, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Slovenia*)
- 4. No data - No official data available for period 2004-2005. (*Cyprus, Greece, Italy, Malta, Spain*)

Table B: Status of official criminal justice data collection mechanisms on racist crime/violence in EU25 – 2004-2005

No official data available No official data available for period 2004-2005	Limited Limited reporting on investigations and court cases, (or focus on general discrimination*)	Good A system exists to register incidents/crimes, and/or system focuses on right-wing extremism/hate crimes	Comprehensive Extensive data collection, with detail about victim characteristics, place of victimisation etc.
Cyprus Greece Italy Malta Spain	Belgium* Estonia Hungary Latvia Lithuania Luxembourg* Netherlands* Portugal Slovenia	Austria Czech Republic Denmark France Germany Ireland Poland Slovakia Sweden	Finland UK

While five Member States are categorised as having 'no official data available' for 2004-05, the majority of Member States' official data collection mechanisms are classified under one of two categories – 'limited' or 'good'. 'Limited' mechanisms indicates that systems focus either on a limited range of investigations and court cases, or report more generally on 'discrimination' rather than, specifically, racist violence and crime. Member States are classified as having 'good' mechanisms on the evidence that their system is capable of registering a range of violent racist incidents and crimes, or is able to offer detailed information with respect to extremism and hate crime. Finland and the UK are classified as having 'comprehensive' data collection mechanisms on the basis that detailed data collection takes place that can also provide insights into victim characteristics.

In Finland, official data collection provides detailed information about the characteristics of crimes; namely: the type of offence, where it occurred, when it occurred, the victim's immigrant or non-immigrant status, their nationality, ethnicity, gender and age, and whether they have been victimised on more than one occasion. The same kind of information is collected with respect to offenders. The UK also collects detailed information about victim characteristics, including ethnicity. This kind of data collection is rare among the EU25, and is particularly

important because it can inform criminal justice policy about 'who' victims and offenders really are.

Finally, another stumbling block to effective official data collection in the area of racist violence and crime is the legal and social resistance to data collection on ethnic origin that exists in most Member States. This means that the ethnicity of citizens and non-citizens is not recorded in cases of 'racist' crime. Absence of data on ethnic origin serves to hide vital intelligence about the characteristics of a large group of victims.

6.1.2. Trends in racist violence and crime

Given the difficulties faced when looking to compare data and data collection mechanisms between Member States, a more meaningful way of interpreting data on racist violence and crime is to look at trends over time within the same country.

Table C: Trends in officially reported/recorded racist violence and crime (and associated activities) for the period 2000-2005²⁵⁴

	2000	2001	2002	2003	2004	2005	% change mean average 2000-2005
Czech Rep	364 crimes	452	473	335	364	253	-4.4%
Denmark	28 incidents	116	68	52	36	81	+68.7%
Germany	–	14,725 crimes	12,933	11,576	12,533	15,914	+3.1% 2001-2005
France	903 reports	424	1,317	833	1,574	974	+34.3%
Ireland	72 reports	42	100	62	84	94	+21.2%
Austria	450 complaints	528	465	436	322	–	-6.7% 2000-2004
Poland	206 crimes	97	85	108	107	156	+1.3%
Slovakia	35 crimes	40	109	119	79	121	+43.1%
Finland ²⁵⁵	402 incidents	448	348	522	558	–	+11.5% 2000-2004
Sweden ²⁵⁶	2,703 crimes	2,785	2,391	2,436	2,414 reports	–	-2.5% 2000-2004
UK (Eng & Wales) ²⁵⁷	47,829 incidents	53,060	54,858	49,340	54,286	57,902	+4.2%

For the eleven Member States in Table C for which data is available on racist violence and crime (and related activities) from the same national source, a trend analysis of the period 2001-2005 can be made (based on the fullest available data for each Member State, which in some cases covers only 2000-2004 or 2001-

²⁵⁴ The data in this table is not directly comparable between Member States as it is taken from different sources. Sources: RAXEN NFP reports. When NFPs provided a range of data – for example, on complaints as well as recorded offences – then the higher figure was taken in order to give a ‘best estimate’ of reporting and recording practices.

²⁵⁵ Caution should be exercised when looking at trends as the data collection system on racist violence and crime was taken over by the Police College of Finland in 2003 from the Police Department of the Ministry of Interior

²⁵⁶ Caution should be exercised when looking at trends as the data collection system on racist violence and crime changed slightly after 2003

²⁵⁷ Unlike most Member States, figures for England and Wales are not reported by calendar year. The figures presented in the table refer to the following periods: 2000 = April 1999 - March 2000; 2001 = April 2000 - March 2001; 2002 = April 2001 - March 2002; 2003 = April 2002 - March 2003; 2004 = March 2003 - April 2004; 2005 = March 2004 - April 2005 (clarification offered by Home Office; note: in the Home Office's publication on 'Statistics on Race and the Criminal Justice System - 2005' [published in 2006] tables refer simply to reporting periods as, for example, 2003/04 or 2004/05).

2005). By calculating an average of the year-by-year percentage changes for the period we get rid of some of the peaks and troughs in data that can occur from one year to the next, and instead are left with a more representative overview of racist crime trends, which is shown as a mean average percentage change. On this basis we can say that:

- Eight of the eleven Member States experienced a general upward trend in reported/recorded racist crime during the period 2000-2005: Denmark, Germany, France, Ireland, Poland, Slovakia, Finland and the UK (England and Wales).
- Three of the eleven Member States experienced a general downward trend in reported/recorded racist crime during the period 2000-2005: Czech Republic, Austria and Sweden.

Trends can reflect an actual increase or decrease in racist violence and crime. However, with scant insight provided by official sources as to 'why' reports have increased or decreased, any analysis of trends needs to be undertaken cautiously. First, consideration needs to be given to the fact that those Member States reporting consistently low actual figures - such as Denmark, Ireland or Slovakia - can report dramatic upward or downward trends on the basis of a few cases. As an example, Slovakia went from 35 recorded crimes in 2000 to 121 in 2005 – a difference of 86 – which is reported as an overall mean average percentage increase of 43.1 per cent for the period 2000-2005. In comparison, the UK (England and Wales) went from 47,829 incidents in 2000 to 57,902 incidents in 2005 – a difference of 10,073 – which is reported as an overall mean average percentage increase of 4.2 per cent for the period 2000-2005.

Due consideration also needs to be given to the fact that changes in the law and recording practices can dramatically alter the number of recorded incidents from one year to the next. In this regard, those Member States that have undergone changes or are in transition towards a new recording regime should be closely monitored to gauge the impact of these initiatives on recording practice.

Finally, any analysis of upward or downward trends in reports of racist violence and crime needs to take into consideration the impact of national and international events on manifestations of racism.

On 7th July a series of bomb attacks on London public transport killed 52 people and injured hundreds. The bombers were young British-Muslim men, but their victims included both Muslims and people of other faiths. On 21st July there were four more attempted attacks on London's public transport system, which resulted in no injuries or deaths.

In the aftermath of the bombings there was an upsurge in 'faith hate' crimes against Muslim targets. The London Metropolitan Police recorded 'faith hate' incidents in the period following the bombs as follows (with figures for the same period in 2004 in brackets): 4-10 July 2005 – 68 (11); 11-17 July 2005 – 92 (22); 18-24 July – 67 (20); 25-31 July – 79 (19); 1-7 August – 60 (7); 8-14 August – 35 (9); 15-21

August – 28 (10)²⁵⁸. As the tail end of these figures indicates, the number of reported incidents reduced to 'normal levels' a few weeks after the bombings.

In November 2005 the EUMC published the report 'The Impact of 7 July 2005 London Bomb Attacks on Muslim Communities in the EU'²⁵⁹. The report states that: 'the strong stand taken by political and community leaders both in condemning the attacks and defending the legitimate rights of Muslims saw a swift reduction in such [racist] incidents'²⁶⁰. Community and political leaders were quick to distance the actions of a few British-Muslim bombers from the Muslim community in general. This message was picked up and repeated by the British and foreign media and served not to 'demonise' the Muslim community in Britain.

In sum, looking at trends in official reports of racist violence and crime needs to take into account a number of influences on any given set of figures. Data reveals as much about the mechanisms that are in place to collect information, and the impact of significant events on reporting practices, as it does about the actual extent of crime.

6.2. Unofficial data collection mechanisms

A number of unofficial mechanisms for data collection exist in the EU that offer an alternative source of information on racist violence and crime to that reported by official sources. Some Member States have a comprehensive range of alternative data collection sources, while others are limited to one or two, and in some cases must rely on media reports.

NGOs provide a platform for monitoring a range of incidents. For example, the NGOs ZARA in Austria and SOS Racismo in Spain both provide a comprehensive and diverse data collection service as an alternative to any official data collection. There is also provision for specialist data collection in some Member States; either as part of an NGO's generic work (for example, in Denmark DACoRD can provide information on anti-Semitic and Islamophobic incidents) or as the work of a specialist NGO (for example, in Austria the Forum Against Antisemitism).

²⁵⁸ EUMC (2005) The Impact of 7 July 2005 London Bomb Attacks on Muslim Communities in the EU, Vienna: EUMC.

²⁵⁹ <http://eumc.eu.int/eumc/material/pub/London/London-Bomb-attacks-EN.pdf> (11.05.2006).

²⁶⁰ EUMC (2005) The Impact of 7 July 2005 London Bomb Attacks on Muslim Communities in the EU, Vienna: EUMC, p. 3.

Table D: Overview of unofficial data collection mechanisms on racist crime/violence in EU25²⁶¹ – excluding reports from IGOs, the media, and reports commissioned by the EUMC

Limited No or few unofficial sources		Sufficient – Good Some sources	Comprehensive A range of sources, some with extensive data collection
Czech Republic	Belgium	Denmark	Netherlands
Estonia	Luxembourg	Germany	UK
Greece	Hungary	Spain	
Ireland	Malta	France	
Italy	Poland	Austria	
Cyprus	Portugal	Finland	
Latvia	Slovenia		
Lithuania	Slovakia		
	Sweden		

Table D presents an overview of unofficial data collection mechanisms on racist violence and crime in the EU25. Member States are classified broadly according to whether their unofficial data collection mechanisms are 'limited', 'sufficient to good', or 'comprehensive'.

A general pattern can be observed that those Member States with good or comprehensive official data collection also tend to have a range of alternative data collection sources. This would suggest that in those Member States where racist violence and crime is responded to as a serious criminal and social problem, State and non-governmental initiatives can complement each other to produce a fuller account of the situation.

This characterisation might be considered unfair for those Member States that have traditionally had small potentially vulnerable populations and, as a reflection of this, limited official and unofficial sources for documenting racist crime and violence. However, as Europe's population becomes more diverse, and acknowledging that no Member State is immune from manifestations of racially or religiously aggravated crime, there is an obvious need for both official and unofficial sources to monitor incidents across the EU – for which identification of gaps in data collection can highlight where resources are needed in individual Member States. But *unofficial* data sources, which are typically supplied by NGOs

²⁶¹ Excluding reports from IGOs and the media, as well as special reports by RAXEN NFPs for the EUMC.

with limited resources, cannot be expected to fill the knowledge gap left by ineffective official data collection.

Whereas most *official* data on racist violence and crime informs us about a narrow range of reported or prosecuted cases, NGOs and independent research provides a wealth of insights that allows us to form a picture of 'who' victims are²⁶².

NGOs widely report that 'visibly different' minorities and foreigners, such as North Africans, are more likely to be victimised than groups that are visibly similar to the majority population in each Member State. NGOs also report that the following 'groups' are particularly vulnerable to racist violence and crime; namely (in English alphabetical order): asylum seekers and refugees; Jews; Muslims; and 'Roma'²⁶³.

Evidence from NGOs and research studies also points to continuing hostilities, including instances of racist violence and crime, between 'Russians' and residents of Baltic States – with reports of Russians as both victims and victimisers. For example, in Estonia, there is evidence of anti-Russian graffiti, as well as internet postings, and a newspaper article. At the same time, the Security Police have brought a charge against the Deputy Chairman of the Russian Party in Estonia for incitement of social hatred²⁶⁴.

6.3. Vulnerable groups

6.3.1. Asylum seekers, refugees and immigrants: focusing on malpractice by public officials

A 'group' that is particularly vulnerable to racist violence and crime are asylum seekers and refugees. Their vulnerability is heightened for a number of reasons; for example: they may look visibly different from the majority population in a Member State; they are often used as scapegoats for a country's political, social and economic ills; they are typically poorly integrated into their host society, with many living in prison-like holding centres; many have had bad experiences with public officials in their country of origin and, therefore, are less likely to report victimisation; their temporary status makes them less likely to report victimisation. These characteristics may be shared by other groups, but they are often particularly acute among asylum seekers and refugees, and, in combination, serve to enhance these groups' likelihood of victimisation.

²⁶² Peucker, C.; Gaßebner, M; Wahl, K. (2001) „Analyse polizeilicher Ermittlungsakten zu fremdenfeindlichen, antisemitischen und rechtsextremistischen Tatverdächtigen“, in Wahl, K. (ed.): *Fremdenfeindlichkeit, Antisemitismus, Rechtsextremismus. Drei Studien zu Tatverdächtigen und Tätern*, Berlin, pp. 12-88, here pp. 52-53.

²⁶³ 'Roma' is the term used here to collectively refer to Roma, Sinti or 'Gypsies'.

²⁶⁴ Estonia/Põhja Politseiprefektuur, Ida Politseiosakond; Written communication no. PHJ 11.4-1.13/52 of 26 July 2005. Estonia/RT I 2003, 88, 589, (29.12.2003).

Disturbingly, asylum seekers and refugees appear to be particularly vulnerable to racist victimisation at the hands of public officials – including the police, immigration officers, the army, and detention centre personnel. Evidence from local NGOs and the media has highlighted a number of instances of abuse. Among the 25 NFP reports, over a third refer to abuse and malpractice by public officials; for example:

Greece: In January 2005, two police officers were formally charged with torture and assault against irregular Afghan immigrants.²⁶⁵

Spain: Several incidents involving public officials as perpetrators of racist violence and crime have been documented by the NGOs SOS Racismo and Movimiento contra la Intolerancia. For example, in January 2004 a Colombian couple were insulted with racist expressions and seriously attacked by two police officers in the town of l'Hospitalet de Llobregat (Catalonia). In addition, a number of incidents have been documented concerning security guards on the Barcelona and Madrid undergrounds.

Italy: A reporter from the Italian weekly L'Espresso pretends to be an illegal immigrant from Iraq and is held for a week in a detention centre. He reports on his own experiences or having witnessed a range of abuses against detainees, which encompass threatening and violent behaviour and racist insults²⁶⁶.

Cyprus: NGOs and the Ombudsman have criticised the police for their heavy-handed approach in detaining asylum seekers and deporting third country nationals.

Malta: Criminal proceedings are pending against a member of the armed forces of Malta who is accused of inciting racial hatred and slightly injuring a Liberian man in the town of Sliema in 2005.

Austria: In 2004, the NGO ZARA reported that nine per cent of the incidents it documented, or 81 cases, involved complaints about police conduct, including allegations of ill-treatment²⁶⁷.

UK: The Home Office has asked to see undercover evidence from a BBC documentary of alleged racism and related violence by security staff at an asylum seeker detention centre near Cambridge. Fifteen members of staff at the centre have been suspended from duties²⁶⁸.

²⁶⁵ 'Persecutions against police officers for torturing Afghan immigrants', *To Vima* (18.01.2005), 'Two policemen charged for ill-treatment of Afghans', *Eleftherotypia* (14.01.2005), '2 police charged with torturing Afghan migrants', *ATHENS NEWS* (21. 1.2005).

²⁶⁶ Gatti, F. (2005) *Io, clandestino a Lampedusa*, in: *L'Espresso*, nr. 40, (13.10.2005), pp. 36-50.

²⁶⁷ ZARA (2004) Racism Report, p. 4, <http://www.zara.or.at/materialien/rassismus-report/racism-report-2004.pdf> (11.10.2005)

²⁶⁸ See: http://news.bbc.co.uk/1/hi/programmes/real_story/4310361.stm (07.10.2005).

Given that vulnerable minorities – such as immigrants, asylum seekers, and Roma – are less likely to report experiences of racist violence and crime when the perpetrators are public officials, it is highly likely that many cases of abuse by public officials go undocumented and unpunished throughout the EU.

6.3.2. The Jewish communities

Given Europe's history, many unofficial data collection mechanisms – like their official counterparts – target their data collection on antisemitic incidents. At present, NGOs have the capacity in nine Member States to collect information about antisemitic incidents. For example: Bejt Praha in the Czech Republic, Conseil Représentatif des Institutions Juives en France in France, and the Community Security Trust in the UK.

Between these organisations there is great diversity with respect to the number of recorded incidents, the type of information that is recorded, and whether this information is readily accessible in the public domain. For example, while the UK's Community Security Trust systematically records antisemitic incidents and publishes this information in an annual report – recording 532 incidents in total in 2004²⁶⁹ – other NGOs do not have the resources to thoroughly document incidents, tending instead to focus on descriptive lists or providing a much needed advice and support role for victims.

6.3.3. The Muslim communities

Unofficial data collection on anti-Muslim ('Islamophobic') incidents is in its infancy across the EU. Only a handful of Member States have NGOs that specifically collect information on incidents against Muslims or Muslim targets, mostly as part of their general monitoring.

A rare example of an NGO working to document Islamophobic incidents is the NGO CCIF in France. The Collectif contre l'islamophobie en France (Organisation against Islamophobia in France) monitors acts of intolerance and discrimination against Muslims. Between October 2003 and August 2004, CCIF registered 26 cases of verbal and physical assaults against Muslims – 4 of which were considered 'serious', and over 70 per cent of which were targeted at Muslim women wearing headscarves; 28 cases of vandalism and attempted arson against Mosques; and 11 cases of desecration of Muslim graves²⁷⁰. In the UK, which is well-served compared to most Member States, a number of organisations exist that are able to

²⁶⁹ See http://www.thecst.org.uk/downloads/Incidents_report04.pdf (11.05.2006).

²⁷⁰ CCIF (Collectif contre l'islamophobie en France), (2004) Rapport d'étape du CCIF sur l'islamophobie en France 2003/2004, Paris: CCIF <http://www.islamophobie.net/CCIF%20-%20Rapport%20Islamophobie%20en%20France%202003-2004.pdf> (06.05.2005).

record incidents; for example: The Islamic Human Rights Commission, The Muslim Line, and FAIR. In the period 2004-2005, FAIR recorded over 100 cases of verbal threats and abusive behaviour aimed at members of the Muslim community²⁷¹.

6.3.4. The Roma communities

The Roma experience racist violence and crime throughout the EU, but their victimisation is noted most often in some of the ten Member States that joined the EU in 2004, and also in southern European Member States where there is a sizeable Roma presence. While the Roma are often stereotyped as criminals, the reality is that many Roma are victims of crime. For example:

In Spain: On 16 January 2005 in Cortegana (Andalusia), a large group of people set fire to dwellings and cars belonging to local Roma in the wake of murders that were attributed to the Roma.

In Hungary: The NGO NEKI reports that, in 2004, a court sentenced policemen to imprisonment for aggravated assault and abuse of authority for their maltreatment of a Roma woman and her family.

Slovenia: Between 6 May and 1 July 2005, bomb attacks on three Roma settlements resulted in the death of two women, with a further two people injured. After the bombings a leaflet was distributed containing threatening anti-Roma text²⁷².

NGOs in central and eastern European Member States are particularly active in documenting incidents against Roma; for example: 'Tolerance and Civil Society' in the Czech Republic and NEKI in Hungary. The Hungarian based European Roma Rights Centre also acts as an international focus for Roma advocacy and research, and publishes information about human rights abuses against the Roma throughout Europe²⁷³.

²⁷¹ FAIR's report 'Research: Islamophobia in the Media'.

²⁷² Information submitted to the NFP by the Office of the General State Attorney upon request.

²⁷³ In Finland, where comprehensive official data exists on ethnicity, data for 2004 reveals that the Roma were victims in 15 per cent of all racist crimes reported to the police (including discrimination); with this figure being 10 per cent in 2003. In comparison, in 2004, official data indicates that racist crimes against Finland's traditional ethnic minorities other than the Roma – namely Swedish-speaking Finns, Jews, Tatars, 'Old' Russians, and Sami – amounted to less than 2 per cent of all racist crimes.

6.4. Good practices

As a counterpoint to on-going incidents of racist violence and crime, many Member States are able to offer examples of 'good practice' initiatives that variously set out to respond to the problem. These can range from data collection initiatives and Action Plans through to concrete examples of practical interventions with offenders or on behalf of victims.

6.4.1. Policing and data collection

The EUMC's report on 'Policing Racist Crime and Violence' (September 2005) presents an overview of existing police practice in the EU25 in the years 2004-05. The report states that: 'A handful of Member States identified examples of 'good practice', but most policing initiatives do not provide a comprehensive response to racist violence. Typically, examples of local initiatives exist, but these tend to focus on 'multiculturalism' and 'racism' rather than on the specific subject of racist crime and violence or racism within the police'²⁷⁴.

What follows is a brief overview of some of the latest developments in the area of policing and data collection.

Belgium: As part of its Federal Ten Point Plan against Racism, Belgium has indicated that, as of 1st January 2006, police reports on criminal offences will include a field to complete on whether 'discrimination' played a part in a particular offence.

Czech Republic: Since January 2005 a method for recording whether crimes are motivated by religious or 'ethnic' hatred has been introduced into the 'Evidence Statistic System' of the police head office.

Ireland: The Garda (police) research unit published findings from the 2005 Garda Public Attitudes Survey, which included questions on experiences of racist incidents.

Cyprus: Following on from a 2004 Action Plan, in 2005 the police established a mechanism for recording incidents as 'racist'. However, despite the Ombudsman's recommendations that particular incidents be recorded as 'racist', no offence has yet been recorded as 'racist'.

Poland: A new 'team' for monitoring racism and xenophobia has been established within the Department of Denominations and National Minorities, which is a part of the Ministry of the Interior and Administration. The team's task is to build a

²⁷⁴ EUMC (2005) 'Policing Racist Crime and Violence: A Comparative Analysis', Vienna: EUMC, p. 4.

database on racial discrimination and violence cases, with provision for making the database partially publicly available.

Sweden: In the period 13 February – 9 May 2004, the police authority in Stockholm ran a project to promote the recording of ‘hate crimes’ (including racist and xenophobic crimes)²⁷⁵.

UK (Scotland): In September 2004 the Scottish Executive (Scottish government) published its 'Working Group and Hate Crime Report' detailing recommendations in the areas of legislation and criminal justice agencies, including areas outside the criminal justice system²⁷⁶.

6.4.2. Prevention of racism and extremism

Germany: In Lower Saxony the ‘Clearing Body for the Prevention of Right-Wing Extremism’ (CST) was established at the State Prevention Council in April 2004. The CST’s main task is to support 170 local prevention councils by offering advice about how to implement concrete measures against right-wing extremism in civil society.

Spain: The city council of Sabadell (Catalonia) published a report in 2005 about the activities of the extreme right in the city. Following on from the report a pilot action plan has been initiated to prevent young people from becoming involved in neo-Nazi groups, and guidelines have also been developed for victim assistance.

Slovakia: A seminar for police representatives was organised in March 2005 on solving and documenting criminal activities motivated by racial, national or other intolerance, and extremist groups. The seminar was followed by a series of one day seminars in 8 regional police directorates, which were attended by 160 participants and accompanied by the publication ‘Racial extremism in the Slovak Republic – Neo-Nazis, their Movements and Aims’.

6.4.3. Victim assistance and guidance

Germany: In Brandenburg the police have developed a ‘Police Concept on Victim Protection’ which prescribes that all police officers should be able to ‘deal competently with victims’ and explicitly refers to, among others, victims of xenophobic crimes.

²⁷⁵ Polismyndigheten i Stockholms län (2005), Kartläggning av hatbrott – Rädsla för det främmande.

²⁷⁶ <http://www.scotland.gov.uk/library5/justice/wgohcr.pdf> (07.10.2005).

Finland: The Finnish Refugee Advice Centre has received funding for a year (June 2005-May 2006) from the Ministry of Education for a project that will help to set up a national helpline providing legal advice to victims of racist violence.

Sweden: The Swedish Crime Victim Compensation and Support Authority, which is based in Umeå, issued a document for victims of crimes of a xenophobic or racist nature.

7. Combating racism in the European Union – developments in policy and legislation

The fight against racism and xenophobia continues to be an area of comprehensive activity by the European Union (EU). Working within the area of solidarity the Union aims to promote common values, consolidate and advance the prospects for economic and social cohesion. Solidarity is complemented by activities to guarantee freedom and security. This framework is geared to ensure that all of its citizens benefit from its action. Activity takes the form of legislative and policy measures and a variety of supporting action to increase information and capacity of the key actors in society. The main focus of EU activity to combat racism and promote racial equality within the Union continues to be in fields related to non-discrimination and equality, justice, freedom and security. Anti-racism is further mainstreamed across a variety of target groups and areas such as youth and education. The information below provides a selected overview of the activity undertaken by the EU institutions and its advisory bodies.

7.1. Solidarity

7.1.1. Equality and non-discrimination, social inclusion

In 2005, the Commission adopted the Communication Non-discrimination and equal opportunities for all - a framework strategy. The framework strategy follows up the Commission's Green Paper "Equality and non-discrimination for all in an enlarged EU".

The Communication was accompanied by the Proposal for a Decision of the European Parliament and the Council on the European Year of Equal Opportunities for All (2007) Towards a Just Society COM(2005) 225 final - 2005/0107 (COD). The European Year 2007 is the centre piece of a framework strategy designed to ensure that discrimination is effectively tackled, diversity is celebrated and equal opportunities for all are promoted. The strategy is set out in a Communication adopted by the European Commission in June 2005. The strategy also looks at what more the European Union can do to tackle discrimination and promote equality, beyond legal protection of people's rights to equal treatment.

Parliament approved the Commission's Proposal for a *Year of Equal Opportunities for All* (2007).²⁷⁷ It particularly sought to lay emphasis on addressing issues of multiple discrimination, defined as discrimination on the basis of two or more grounds listed in Article 13 of the EC Treaty. A new article was added on gender mainstreaming, so that the European Year takes into greater account the different ways in which women and men experience discrimination.

The Committee of the Regions issued its Opinion on the Communication on 16 November 2005. The Opinion agrees that it is difficult for legislation alone to tackle deep-rooted patterns of inequality experienced by some groups and that mainstreaming tools should be developed to promote mainstreaming of non-discrimination. This should also help focus on situations of multiple discrimination.

The European Parliament's other key contribution to anti-discrimination policy-making at EU level was its non-legislative resolution on the protection of *minorities and anti-discrimination policies in an enlarged Europe*.²⁷⁸

The Resolution asserted that minority issues had not been high enough on the agenda of the Union. It also stated that greater attention was needed through the adoption of legislative measures and the provision of financial support. Late or incomplete transposition of the anti-discrimination directives, the failure to set up equality bodies and the difficulties in gathering information were seen as frequent problems in the Member States. The Resolution called for a coherent, integrated approach to equality and non-discrimination. This approach would, in particular, respond to situations of multiple discrimination (e.g. against women belonging to national minorities).

Parliament pointed to the inconsistency of policy towards minorities. It stressed that while protection of minorities is part of the Copenhagen criteria, there is no standard for minority rights in Community policy nor is there a Community understanding of who can be considered a member of a minority. Parliament recommended using a definition based on the Council of Europe Recommendation 1201(1993).

In addition, the Resolution (Minority protection and non-discrimination) "recommends the further development of guidelines for the collection of data on racist incidents by the EUMC in accordance with data protection safeguards and in tandem with law enforcement agencies such as the police and public prosecution services; encourages the development of alternative mechanisms to collect data, such as racist crime surveys".

²⁷⁷ EP legislative resolution on the proposal for a decision of the European Parliament and the Council on the European Year of Equal Opportunities for All (2007) - Towards a Just Society (COM(2005)0225 – C6-0178/2005 – 2005/0107(COD)).

²⁷⁸ EP resolution T6-0228/2005, adopted on 8 June 2005, publication in OJ pending

The Commission set up in 2005 a high-level group of experts to analyse the social inclusion of ethnic minorities in the EU. The group, established under Commission strategy for tackling discrimination, comprises ten eminent personalities from business, local politics, civil society, the academic world and the media, headed by former President of the German Parliament, Rita Süßmuth.²⁷⁹

Roma

The situation of the Roma community continues to be high on the political agenda of the European Union. Specific measures and activities were highlighted in 2004 in the Commission's report on the Roma in the enlarged Union and 2005 saw further action by the EU.

The European Parliament strongly condemned all forms of discrimination faced by the Roma people in the EU, including "racist attacks, hate speech, physical attacks by extremist groups, unlawful evictions and police harassment motivated by Anti-Gypsyism and Romaphobia".²⁸⁰ Parliament asked Member States and Candidate Countries to strengthen national legislation and administrative measures to counter Anti-Gypsyism/Romaphobia and prohibit discrimination of Roma, whether direct or indirect, in all spheres of public life. It specifically called for action against discrimination of Roma on the labour market and in housing, ensuring equal access to health care and desegregating education systems in Member States in which Roma children are taught in segregated classes with lower standards. It called on the Commission to prepare a communication and an action plan on how the EU could promote efforts to bring about better economic, social and political integration of the Roma.

The Commission encouraged national authorities to take account of the needs of Roma communities when drafting their national action plans for employment and social inclusion. It stepped up efforts to monitor respect for socially disadvantaged ethnic minorities, including Roma, and the protection they receive as part of the EU accession process. In addition, it set up a Roma Portal which aims to provide information on the EU's activities in support of the Roma, Gypsy and Traveller community across Europe²⁸¹ and has provided ten Romani university graduates with in-work training in Commission services.

²⁷⁹ <http://www.europa.eu.int/rapid/pressReleasesAction.do?reference=IP/06/149&format=HTML&aged=0&language=EN&guiLanguage=en> (16.02.2006).

²⁸⁰ EP resolution T6-0151/2005, adopted on 28 April 2005, publication in OJ pending.

²⁸¹ http://europa.eu.int/comm/employment_social/fundamental_rights/roma/index_en.htm (16.02.2006).

7.1.2. Protecting fundamental rights

On 27 April 2005, the Commission adopted a mechanism to systematically screen all legislative proposals for their compatibility with the Charter on Fundamental Rights of the European Union.²⁸² The Communication suggests three interrelated objectives: allowing Commission departments to check systematically that all the fundamental rights concerned have been respected in all draft proposals; enabling Members of the Commission, in particular the group of Commissioners responsible for fundamental rights, anti-discrimination and equal opportunities, to follow the results of the scrutiny and to promote a fundamental rights culture; and enhancing the visibility, for the other institutions and the general public, of the results of this process, thereby also ensuring compliance with fundamental rights in the activities of the two branches of legislature.

In addition, the Commission submitted to the Council its proposals promoting liberty, security and justice under the next financial framework for the period from 2007 to 2013. In order to implement fully the concept of European citizenship, the Commission proposes establishing the Framework Programme on fundamental rights and justice. The programme will enable actions to be developed which would be less effective at national level, (e.g. judicial cooperation in both civil and criminal matters), allow private individuals and undertakings to assert their civil and commercial interests in other Member States and guarantee that crime and criminals will never go unpunished.

In the field of fundamental rights, the ultimate objective is to create a real fundamental rights culture among all the peoples in Europe. The proposal for a specific Programme Fundamental Rights and Citizenship includes a general objective to fight racism, xenophobia and anti-Semitism. This should be done by fostering the interfaith and multicultural dialogue at EU level.

Fundamental Rights Agency

With regard to developments to establish a Fundamental Rights Agency building on the work of the European Monitoring Centre on Racism and Xenophobia, a public hearing on the Communication on the Fundamental Rights Agency²⁸³ took place on 25 January 2005. The Commission adopted on 30 June 2005 proposals for a Council Regulation establishing a European Union Agency for Fundamental Rights and for a Council Decision empowering the Agency to pursue its activities

²⁸² Communication from the Commission on "Compliance with the Charter of Fundamental Rights in Commission legislative proposals. Methodology for systematic and rigorous monitoring", of 27.4.2005, COM(2005) 172
http://www.europa.eu.int/comm/employment_social/fundamental_rights/pdf/legnet/05lawrev2_en.pdf (16.02.2006).

²⁸³ Communication from the Commission: The Fundamental Rights Agency: Public consultation document {SEC(2004)1281}; COM(2004) 693 final Brussels, 25.10.2004.

in areas referred to in Title VI of the Treaty on European Union. Among other things, the Commission proposes that the multi-annual framework for the Agency should always include fight against racism and xenophobia.²⁸⁴

The European Parliament addressed the issues related to the proposed Fundamental Rights Agency through a number of resolutions. It expressed a positive view about the creation of a ‘Fundamental Rights Agency’ in its key *resolution on the promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency*.²⁸⁵ Parliament argued for the Agency to have a strong mandate according to three main functions: promoting fundamental rights, monitoring the observance of fundamental rights and raising awareness among Member States, EU institutions and citizens. Its mandate should include the collection and analysis of data and information regarding the respect of fundamental rights in Member States, with annual reports submitted to Parliament. Parliament called for the Agency to have a proactive role in human-rights policy making and to be empowered to make recommendations to Parliament, Council and Commission. Parliament also stressed that the protection of ethnic and national minorities should be one of the Agency's specific tasks.

Equally the Committee of the Regions strongly urged that adequate resources are provided for the new Agency in order for it to fully play its part in the fight against discrimination.

7.1.3. Youth

In 2005, the fight against discrimination and in particular against racism and xenophobia were priorities within the youth sector at European level. The Commission and the Member States thus responded to a Declaration of Youth Ministers from 28 May 2004²⁸⁶ about the role of young people in combating racism and intolerance.

The Commission organised a conference in cooperation with the German authorities on “*Youth in Action for Diversity and Tolerance*”.²⁸⁷ The conference brought together 200 young participants and experts from 41 Member States of the European Union and the Council of Europe. The conference focused on the evaluation of progress reached since the conference in 2001 on implementing the Declaration of the Youth Ministers of 28 May 2004, and on the elaboration of the Declaration and an Action Plan, as well as on the exchange of good practice.

²⁸⁴ http://www.europa.eu.int/comm/justice_home/doc_centre/rights/doc/com_2005_280_en.pdf (13.02.2006).

²⁸⁵ EP resolution T6-0208/2005, adopted on 26 May 2005, publication in OJ pending.

²⁸⁶ Declaration of the Council and of the Representatives of the Governments of the Member States meeting within the Council on Racism and Intolerance in relation to Young People of 28 May 2004, 9405/04, JEUN 39

²⁸⁷ <http://www.youth-against-racism.net/> (11.05.2006).

In the framework of the European Youth Week an award was attributed to a project of young people against racism and xenophobia which was supported by the YOUTH Programme.²⁸⁸

7.1.4. Remembrance of the Holocaust

On 27 January 2005, the sixtieth anniversary of the liberation of Nazi Germany's death camp at Auschwitz-Birkenau, Parliament adopted a *resolution on remembrance of the Holocaust, anti-semitism and racism*.²⁸⁹ The Resolution urged the Council, Commission and Member States to reinforce measures against anti-semitism and against attacks on minority groups “including Roma and third-country nationals in the Member States”. It encouraged Holocaust education through memorial institutions and by making it a standard element in school curricula throughout the EU. Parliament suggested declaring 27 January European Holocaust Memorial Day.

7.2. Freedom and security

7.2.1. Hague Programme (2005-2009)

In November 2004, with the Union's initial five year policy on justice and internal affairs coming to an end (1999-2004), the Hague Council adopted a new programme for the Union to run from 2005 to 2009. The ‘Hague programme’ covers all aspects of policies in the area of freedom, security and justice and includes inter alia fundamental rights and citizenship, integration, the fight against terrorism, judicial and police cooperation, and civil law. The programme therefore represented a key priority for Union's agenda in 2005.

The Commission presented in May 2005 an action plan with a set of detailed measures defined around 10 specific priorities and a calendar to implement the programme.²⁹⁰ At the meeting on 2-3 June 2005 the European Council approved the Action Plan.

The European Parliament responded in its *resolution on progress made in 2004 in creating an area of freedom, security and justice (AFSJ)*. Parliament restated its “firmly held view” that establishment of the AFSJ demands a greater commitment

²⁸⁸ More information on the European Youth Portal and youth week
http://europa.eu.int/comm/youth/youthweek/index_en.html (14.02.2006).

²⁸⁹ EP resolution T6-0018/2005, adopted on 27 January 2005, publication in OJ pending.

²⁹⁰ Communication from the Commission to the Council and the European Parliament - The Hague Programme: Ten priorities for the next five years The Partnership for European renewal in the field of Freedom, Security and Justice /* COM/2005/0184 final */
<http://www.europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:52005PC0184:EN:HTML> (14.02.2006).

on the part of European and national institutions to promote protection of fundamental rights.²⁹¹ The Resolution stressed that a European integration policy needed to provide for proper integration on the labour market, the right to education and training, access to social and health services, and immigrants' participation in social, cultural and political life. The nexus between integration and anti-discrimination was upheld in a subsequent *resolution on legal and illegal migration and the integration of migrants*, which considered “action to combat discrimination, racism and xenophobia to be an essential component of integration policy”.²⁹²

A Common Agenda for Integration

The Commission Communication of 1 September 2005 ‘A Common Agenda for Integration: Framework for the integration of third-country nationals in the EU’ includes elements of combating racism and xenophobia. In particular, the common agenda promotes the implementation of the common basic principles on integration which includes preventing discrimination on the labour market and monitoring the application of EU legislation which safeguards immigrant rights, notably on the status of long-term residents. Combating discrimination, racism and xenophobia is specifically highlighted under the third common basic principle.²⁹³

Fight against terrorism

An area of continuing concern to the Union and which was demonstrated forcefully by the terrorist attacks in Madrid in 2004 and the bombings in London in early July 2005, is the fight against terrorism. Terrorism not only impacts on the freedom and security of the Union's citizens, but is an affront to the universal values on which the Union is based. The Union's policy therefore while aiming to protect its citizens and respond to terrorism also must work within its human rights architecture. The Union is therefore undertaking a delicate balancing of factors and priorities.

The Commission prepared a Communication on “Terrorist Recruitment: addressing the factors contributing to violent radicalisation”²⁹⁴. It proposes possible ways in which work could be channelled into addressing the issue in various fields, inter alia, broadcast media and internet, inter-cultural and inter-faith dialogue, education, integration policies, cooperation between law enforcement authorities and secret services of the Member States on the subject, and external relations. The

²⁹¹ EP resolution T6-0227/2005, adopted on 8 June 2005, publication in OJ pending.

²⁹² EP resolution T6-0235/2005, adopted on 9 June 2005, publication in OJ pending.

²⁹³ http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005_0389en01.pdf (13.02.2006).

²⁹⁴ http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005_0313en01.pdf (14.02.2006).

Communication stresses the need for data collection on racism and xenophobia and other fundamental rights issues and calls for closer attention to the phenomena of racism and xenophobia.

The balancing is aptly reflected in the Opinion of the Economic and Social Committee on the Hague Programme²⁹⁵, which states that the study of the roots of the violent radicalisation of vulnerable groups, and terrorist recruitment methods should go hand in hand with promotion of and political commitment to an ongoing and open dialogue between religions and cultures, combating intolerance, racism, xenophobia and violent extremism.

7.2.2. Police and judicial cooperation

Council Framework Decision on combating racism and xenophobia

At the Council Meeting Justice and Home Affairs (JHA Council) held on 24 February 2005, the Council decided to resume examination of the Framework Decision on combating racism and xenophobia as a matter of urgency. To give the new Member States time to examine the text, the Council requested its preparatory bodies to examine the draft Framework Decision on the basis of the text put before the JHA Council at its meeting on 27 and 28 February 2003. At the JHA Council Meeting on 2-3 June 2005, Ministers re-examined the text of the Framework Decision on combating racism and xenophobia, but failed to reach an agreement.

In 2005, Parliament repeatedly expressed its support to a Council Framework Decision on combating racism and xenophobia, as proposed by the Commission in 2001.²⁹⁶ In its *resolution on minority protection and anti-discrimination policies*, Parliament considered the Framework Decision an “important step towards establishing a framework for punishing racist/xenophobic violence as a criminal offence across the EU and recognising racist and xenophobic motivation as aggravating circumstances, leading to longer sentences”.²⁹⁷

²⁹⁵ COM(2005) 184 final.

²⁹⁶ EP resolution T6-0151/2005, adopted on 28 April 2005; EP resolution T6-0227/2005, adopted on 8 June 2005; EP resolution T6-0228/2005, adopted on 8 June 2005; EP resolution T6-0235/2005, adopted on 9 June 2005.

²⁹⁷ EP resolution T6-0228/2005, adopted on 8 June 2005, publication in OJ pending.

8. Conclusions

This year's EUMC Annual Report has gathered information from 25 Member States with widely different histories of and responses to issues related to immigration and ethnic diversity, and very different traditions of anti-racism and anti-discrimination awareness and activity. Despite the variety in the nature of the information that has been collected, there are some cross-national themes which stand out during 2005, which are common to many, and in some cases the majority, of the Member States.

The recognition of discrimination in employment

A major division both within research and public policy debates in interpreting the ethnic division of the labour market and the excluded and subordinated position of immigrants and minorities has centred on to what extent this situation should be explained through educational or other deficits within migrant populations ('supply side' factors) or through exclusionary practices among employers and the institutions of society ('demand side' factors). An assumption of the deficits within migrant and minority populations has traditionally been most dominant in public consciousness, and it is often only when research or special investigations into discrimination are carried out and published, and when anti-discrimination legislation is enacted and cases come to court, that previous blanket assumptions about 'supply-side deficits' become balanced by a greater awareness of the operation of exclusion and discrimination. There were several developments mentioned in 2005 which suggested that an awareness of discrimination and the need to do something about it was growing in the minds of policy makers in a number of Member States, including new initiatives to collect official statistics or to commission research which will more accurately identify the scale and nature of the problem.

One reason for this apparent growth in awareness regarding racial/ethnic discrimination might be the introduction of the Racial Equality Directive, which needed to be transposed by July 2003. As described in Chapter 2 on Legislation, in 2005 the transposition process of the Racial Equality Directive was completed in some Member States (the Commission was at the end of 2005 in the process of analysing the correctness of the transposition) and still underway in others, with draft legislation introduced in parliament in the majority of EU Member States. Specialised bodies for the promotion of equal treatment were designated by most Member States, and some have been given powers to take legal action on behalf or in support of victims of discrimination which go beyond the minimum standard required by the Racial Equality Directive. If these powers are exercised, this will contribute positively to the effectiveness of the Directives and will also help to further raise public awareness on the issues.

Another stimulus to public awareness is the Community Action Programme to combat discrimination, which was launched following the passing of the two Equality Directives. The programme is designed to support activities combating discrimination on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation. Part of the programme is the EU-wide information campaign “For Diversity – Against Discrimination”, which promotes a positive message on diversity and provides facts and information on discrimination.²⁹⁸

Uneven transposition of the Racial Equality Directive

However, despite the growth in awareness of discrimination, there remain problems in some areas. In its 2005 Equality and Non-discrimination Report the Commission notes that a number of Member States did not meet the deadlines for communication of transposition of the Racial Equality Directive to the Commission, and in 2005 the European Court of Justice ruled that four countries had failed to honour their obligations in this respect. The question has to be considered as to whether these delays in some cases reflect a low official priority at national level regarding the issue of anti-discrimination. Whilst there continued to be a great deal of discussion at national and at EU level during 2005 on the importance of measures to enhance the ‘integration’ of immigrants in EU Member States, it seems that the specific importance of anti-discrimination measures as part of this process can still be underplayed. Yet without tackling the negative effects of discrimination, other integration measures will be ineffective. For example, as can be seen in Chapter 3 on Employment, several studies published during 2005 in different Member States came to similar conclusions – that education in itself is not enough to close the gap, and that inequality in labour market attainment remains even for those migrants and minorities who have educational qualifications equal to the majority. Such results do not disprove the connection between employment and education, but rather point to the need for additional measures on the part of the authorities to facilitate the access of immigrants to the labour market. In particular, they show the need for measures to tackle racist and xenophobic attitudes and discriminatory practices. This issue is particularly significant since so much of the integration discourse in migrant-receiving states of the EU has been dominated by the idea that integration is achieved via the labour market, and that access to the labour market is achieved through education.

Inadequacies of data

Unfortunately, the effective identification and tackling of discriminatory practices is amongst other things dependent on adequate data in the area. As with previous Annual Reports, this report confirms that many Member States still have

²⁹⁸ <http://www.stop-discrimination.info/> (16.05.2006).

inadequate systems to record racist and discriminatory incidents in employment, housing and education. The relatively low awareness of the problem of discrimination in some Member States is linked to the fact that patterns of inequality which indicate the operation of discrimination cannot be demonstrated.

The urban disturbances in Paris, for example, drew attention to the fact that there is little official data on housing inequalities and employment discrimination partly because there is no system of categorisation of groups in place. When such data on ethnic/national origin is absent, this reduces the ability to identify inequality, to draw attention to suspected processes of direct and indirect discrimination, and to evaluate successfully policies against discrimination. This is not just an issue in the employment and housing spheres. Chapter 5 on Education notes that there is a lack of recording of racist and discriminatory incidents in the field of education in most EU Member States. In addition, data on the educational attainment of different ethnic/national groups is in most Member States either only partial or not available. As with employment and housing, such statistics would be valuable in order to gain reliable information on instances of direct and indirect discrimination, and could also significantly raise the accuracy and effectiveness of good practice measures.

Member States often genuinely feel they have good reasons for not collecting such data. Some argue that it is not a passive omission but an active policy to avoid such statistics. For example, the Council of the European Union's 1995 Directive on Data Protection is cited by some as a barrier to data collection on ethnicity because it prohibits use of personal information where individuals are identified or can be identified²⁹⁹. However, the Directive specifically exempts data that has been made anonymous. This would seem to provide scope for ethnic data collection for statistical purposes. In this regard it is particularly significant that in France the *Commission Nationale de l'Informatique et des Libertés* (CNIL) declared in a recommendation in 2005 that the French data protection legislation does not hinder the "temporary" collection of certain informations related to the ethnic origin of individuals strictly limited to the purpose of antidiscrimination, if certain safeguards which ensure the anonymity of statistics are ensured.

There were signs in 2005 that some Member States, including France, were looking more sympathetically at issues of recording ethnic/national origin than they were in previous years. For example, in France, it was reported that some official surveys are now using categories close to these variables, and that some employers are starting to note the 'diversity of the origins' of their staff and applicants for posts. A French survey in 2005 found that in the context of the discrimination they felt they had suffered in the job market, 80 per cent of graduates of black African and Maghrebian origin would be ready to have their ethnic origins counted.³⁰⁰

²⁹⁹ EU Directive on Data Protection – 95/46/EC – paragraph 26; see http://europa.eu.int/comm/internal_market/privacy/law-en.htm (11.05.2006).

³⁰⁰ *Enquête sur la France de la diversité* carried out by Sopi, <http://www.sopi.fr/> (11.05.2006).

The need for action on racist violence

Similarly, one of the main conclusions of Chapter 6 on Racist Violence and Crime is that at present, most Member States have inadequate and ineffective data collection mechanisms in place that, at best, can only provide a partial picture of the extent and nature of racist violence and crime. To some extent unofficial data sources from bodies such as NGOs are able to fill the gap left by official data collection, but they cannot be expected to provide information that should be the remit of the State to provide. It is more properly the task of Member States, following the lead of the European Commission, to give adequate priority to data collection on racist crime with a view to improving criminal and social justice responses to it. Improved official data collection mechanisms would be able to provide criminal justice agencies and policy makers with in-depth data to allow them to more accurately target their resources against the problem of racist violence and crime. Another benefit of improved data collection is that it will promote the message that racism is taken seriously as a social and criminal ‘ill’.

Against this background of diverse data collection in different EU jurisdictions, the Commission’s 2001 Proposal for a Council Framework Decision on Combating Racism and Xenophobia³⁰¹ proposes to establish a European framework for punishing racist and xenophobic offences. A central purpose of the Framework Decision is to reinforce criminal law measures aimed at the approximation of Member States’ laws with respect to racist and xenophobic offences. If adopted, the Framework Decision would be a step in the right direction towards a common minimum standard on data collection on racist violence and crime. At the time of writing, this ambition is some way off as various Member States have raised objections and concerns with respect to the content and wording of the Proposal³⁰². Nevertheless the issue was still on the EU’s agenda, being highlighted for discussion at a conference in Vienna in 2006 under the Austrian Presidency.

As Chapter 6 on Racist Violence and Crime points out, certain immigrant and ethnic minority groups continue to be particularly vulnerable to racist and xenophobic victimisation – both at the hands of the general public and at the hands of public officials, including the police. Vulnerable groups include asylum seekers, refugees and undocumented migrants, Roma, Jews and Muslims. The vulnerability of these groups is pointedly highlighted by the absence of a clear ‘top-down’ response by criminal justice authorities – from the police to the judiciary – to the problem of racist violence and crime in the majority of Member States. As evidenced by the lack of adequate official data collection on the phenomenon of racist violence and crime, it would appear that victims are inadequately served by

³⁰¹ COM (2001) 664 final – Proposal for a Council Framework Decision on Combating Racism and Xenophobia.

³⁰² EU Network of Independent Experts on Fundamental Rights (28 November 2005) ‘Combating Racism and Xenophobia through Criminal Legislation: The Situation of EU Member States’; <http://cridho.cpd.r.ucl.ac.be/Avis%20CFR-CDF/Avis2005/CFR-CDF.Opinion5-2005.pdf> (11.05.2006).

criminal justice systems through much of the EU. Until changes are made, NGOs will continue to fill some of the gaps in both data and service provision in a number of Member States.

The value of research

In the absence of more detailed official statistics, it is often the case that specialised research can give a better insight into ethnic inequality and the reasons for it, either because researchers can get permission to access more detailed existing official data on ethnic/national origin than is routinely made available publicly, or because researchers can build in variables of ethnic/national origin into their own samples. Specialised research can fill the gaps in knowledge about victims' experiences of racism and discrimination, highlighting what does not otherwise easily come to public awareness through court cases. Cases reported by victims present only a partial picture of the problem of racism and discrimination, as there are many social and institutional forces which affect the likelihood of them reporting it. Therefore one method of getting more information is to carry out surveys of those social groups most vulnerable to discrimination. Chapter 3 on Employment notes that such studies of 'victims' experiences were carried out in six different Member States during 2005, far more than were reported in previous years.

Another type of research mentioned in 2005 is discrimination testing, where equally matched pairs of applicants from minority and majority backgrounds are sent to apply for jobs or accommodation. The most significant sponsor of such tests in the employment sphere has been the ILO, which in the recent past has carried out testing itself in five European countries and served as the model for such tests in others. Last year's EUMC Annual Report referred to many discrimination tests carried out in 2004, though these were mainly carried out by journalists on a rather small scale. This year there were far fewer such tests reported. Nevertheless, there were important developments reported in two countries notably missing from the ILO's earlier programme of tests, namely Sweden and France. Authorities in both these countries had in previous years declined the opportunity to participate in such experiments, for different reasons. However in 2005 both governments invited the ILO to carry out a discrimination testing programme in a number of cities, with results to be reported to them in 2006. This development might be taken as further indication of official recognition of the need to take seriously the problem of employment discrimination, and the importance of collecting data on it. Similarly with regard to the area of access to housing, Chapter 4 notes that such testing is also being considered by the Swedish authorities, and has already been carried out in 2005 by researchers in Italy and France, the tests showing that foreigners and immigrants continue to be treated differently by landlords and accommodation agencies. Testing remains a valuable method for drawing public attention to a largely hidden problem, and in some countries the results of such tests can be drawn on as evidence in legal proceedings.

Dealing with segregation

Segregation is an issue which is mentioned in both the education and housing chapters of the Annual Report. The issue of partial or even total segregation in education is still an issue of great concern in many parts of the EU. As shown in Chapter 5 on Education, an analysis and overview of the Europe-wide PISA education performance study and others concluded firmly in 2005 that highly differentiated and segregationist school systems produce and reproduce inequality. Particularly affected by segregation and other forms of discrimination are the Roma in a number of Member States. Although some steps are being taken to reduce segregation, discrimination and educational underperformance, the situation for Roma pupils is still a precarious one and will need further attention for many years yet.

Segregation is also an issue which is raised in Chapter 4 on housing. Migrant and minority groups are over-represented in poor quality accommodation, often concentrated in relatively segregated geographical areas, and this often reflects not only a lack of access to resources, but also active discrimination on the part of gatekeepers. However, whilst the need for active social policies of desegregation is generally recognised as socially desirable in the area of education, the picture is more complex regarding the area of housing, not least because sometimes minorities find that living amongst reasonable concentrations of their own kind can provide a degree of safety against physical manifestations of racism. In 2005 in at least three Member States there were reported active policies of involuntary social mixing by national/municipal governments or housing associations, to foster 'integration' or 'social balance'. However, as concluded by the authors of the EUMC's comparative housing report,³⁰³ published in 2005, the appropriateness of this is by no means clear. For one thing, the idea of 'integration' by such methods can become heavily politicised. The comparative report concludes that at the neighbourhood level, there is a danger that active 'population mixing' can be identified by policy-makers as means by which minorities could be controlled and led to assimilate to a supposedly single, universal mainstream culture and politics. The report could find little solid evidence that could justify seeing involuntary spatial mixing as an appropriate route towards social integration.

The French urban disturbances in late 2005 might be considered the direct outcome of durable patterns of segregation. As presented in Chapter 4 on Housing, studies have shown that the foreign population is greatly over-represented in so-called 'problem urban areas' where youth unemployment reaches the level of 40 per cent. Despite the fact that housing issues have received high priority, it is reported that social exclusion has increased due to location on large peripheral housing developments remote from employment and other facilities.³⁰⁴ The chapter quotes

³⁰³ <http://eumc.eu.int/eumc/material/pub/comparativestudy/CS-Housing-en.pdf> (11.05.2006).

³⁰⁴ Edgar, B. (2005), *Policy measures to ensure access to decent housing for migrants and ethnic minorities*, Joint Centre for Scottish Housing Research, European Commission - DG for Employment and Social Affairs.

research which highlights the gap between immigrants and French nationals concerning housing conditions, with, for example, half of the population of African origin ‘very badly housed’, compared with 11 per cent of the French population³⁰⁵, and with immigrants, particularly from the Maghreb region, far more likely to live in overcrowded accommodation, with their residential mobility circumscribed within a smaller perimeter than the national population³⁰⁶.

Diversity of practice regarding religious symbols

The question of permitting or prohibiting the display of religious symbols in both the education and employment sphere has led to new legislation and new debates in 2005. Regarding education, policies in Member States range from nationwide prohibition of displaying any religious symbol in public schools to complete freedom of pupils and teachers to wear any religious symbol they desire. In between are policies that leave the decision to federal states or individual schools, or that prohibit only certain religious symbols, while others are not considered as subject for regulation. In theory the prohibition of religious symbols could be classified as indirect discrimination, if it is not sufficiently justified. Interpretation of this can vary in practice. With regard to the area of employment, in one Member State (Denmark) a long running dispute over the right of a supermarket to dismiss an employee for wearing a headscarf for religious reasons was decided by the Supreme Court, which ruled that the dismissal was justifiable and did not constitute discrimination. In another Member State (the Netherlands) it was ruled that an Islamic school had no legal grounds for rejecting a job applicant on the grounds that she did *not* want to wear a headscarf at work.

The widely different approaches in terms of policy responses to the wearing of headscarves in schools or at work between various Member States seems to be reflected in an equally wide gap in public attitudes on the issue. According to a 17 nation Global Attitude Survey carried out in 2005, in response to a question as to whether banning Muslim headscarves was a ‘good idea’, 78 per cent of French respondents agreed, compared to only 29 per cent of UK respondents, with other EU countries falling in between these extremes.³⁰⁷

Legal status, equality and vulnerability

Directly related to issues of integration and equality regarding immigrants and minorities is the question of legal status. Access to the labour market is linked directly to the type of work or residence permit held by a migrant worker. Other

³⁰⁵ GELD (Groupe d’Etude et de Lutte contre les discriminations) 2001, Les discriminations raciales et ethniques dans l’accès au logement social” Note de synthèse n.3.

³⁰⁶ INSEE, Enquête logement 2002.

³⁰⁷ 17 Nation Pew Global Attitudes Survey, Nation Pew Global Attitudes Project, Washington DC, July 2005: <http://www.pewglobal.org> (11.05.2006).

rights may also be affected – for example, in 2005 the case came into public discussion again of workers without Austrian citizenship being legally prevented from being elected to works councils in Austria. Legal status can determine whether migrants are allowed to change employers or sectors of the economy. Even when third country nationals are legally and permanently resident in a Member State, laws and regulations restrict their rights of access to employment. Whereas third country nationals can't be excluded from employment opportunities on the grounds of, for example, their ethnic origin or religion, they can be excluded on the grounds of their citizenship status in the cases of certain categories of jobs, notable in the public sector. (In France, for example, some 7 million positions - over a quarter of the work force - remain closed to some, or all, non-nationals.) Neither are they free to seek work in another Member State.

In the context of legal restrictions on access to employment, and the vulnerability of some legally-restricted migrant workers, attention should be drawn to the relevance of Council Directive 2003/ 109/ EC concerning the status of third-country nationals who are long-term residents. According to this Directive, long-term residents will have a right of access to the labour market on the same conditions as nationals (with an exception regarding those activities involving exercising of public authority). The Directive provides that long-term residents will have the right to the same conditions of work and employment as nationals, and also allows a limited right to mobility between Member States for those third country national who are long-term residents. The deadline for the implementation of this Directive was January 2006 - however, by the end of 2005 only a minority of Member States had notified the Commission of its transposition

There were several reports in 2005 of groups of migrant workers working in legally constrained situations, perhaps sub-contracted, and less able to resist extremes of exploitation. Migrants and refugees without permanent status are often working in a different labour market, in that they are not competing with the majority population for these jobs. In such circumstances conventional anti-discrimination protection is almost irrelevant. As foreigners, they may not be aware of the local rules and norms regarding wages and working conditions, and when they are in a legally-restricted situation they are less able to refuse inferior working conditions. Sometimes government actions themselves can exacerbate the situation, such as in Italy, where legal trends in 2005 were reported as continuing in the direction of excluding immigrants from the “normal” labour market. Furthermore, governments can directly and intentionally increase the vulnerability of groups of legally-constrained workers, such as in the case of the new official contracts for domestic workers in Cyprus which forbid such workers from participating in any trade union or political activity, on pain of automatic termination of the work and residence permit. In this respect it should be noted that Council Directive 2003/109/EC provides for *long-term* residents freedom of association and affiliation and membership of an organisation representing workers.

During 2005 there were events which led commentators to emphasise the importance of maintaining minimum standards of working conditions where migrants are employed so as to avoid the generation of racist discourse. On two

occasions during 2005, in two different countries where there were similar instances of groups of foreign workers introduced to replace and undercut the wages and conditions of national workers, fears were raised about the implications of this for the growth of anti-immigrant sentiments. In one of these countries, Ireland, the National Economic Social Council recognised the danger in the potential growth of negative attitudes to immigrants and concluded that the “maintenance and enhancement of standards within the economy and society is a more effective way of preventing such a negative dynamic than seeking to prevent the arrival of migrants themselves.”³⁰⁸

Going beyond anti-discrimination

The Annual Report refers in its thematic chapters to a wide range of anti-discrimination measures that were applied by EU Member States in 2005 in order to improve the socio-economic as well as the political situation of migrants and minorities. In addition, the report highlights some good practices on integration which go beyond what is conventionally understood as anti-discrimination. For example, it is noteworthy that in Greece, PASOK, the Greek socialist party, has invited and in fact elected third country nationals to become members of the party and its main organs. Another theme of integration measures in 2005 was the role of Islam in European societies. In France, the “Fondation pour les oeuvres de l’Islam en France” was created, which is a private institution financed by private donations. The funds collected by the foundation will allow for the building of mosques and training of French imams which was seen as an important step towards the emergence of a European version of Islam. In Italy, a Consultative body on Italian Islam headed by the Minister of the Interior was set up to promote institutional dialogue with Muslim communities in Italy and to improve knowledge of integration problems.

Another way of going beyond conventional anti-discrimination practices is for national or local government to provide encouragement for companies to take on board anti-discrimination awareness and practice through ‘contract compliance’ measures. Two related developments were reported in 2005. In Sweden, a policy concerning anti-discrimination clauses in public contracts was introduced, which obliges all contractors of the city of Stockholm to operate according to anti-discrimination criteria in the performance of the contract. For example, if they are judged not to be in compliance with anti-discrimination legislation they will be ineligible for future contracts from the authority. (Another initiative in Stockholm is to include anti-discrimination conditions in liquor permits granted to restaurants.) In the UK six local authorities in the West Midlands collectively reviewed their Common Standard for Equalities in Public Procurement. It enables local authorities to assess whether service providers bidding for a contract with the

³⁰⁸ National Economic Social Council (2005) NESC Strategy 2006: People, Productivity and Purpose, No. 114.

authority can demonstrate compliance with race, gender and disability equality legislation, and the common standard means that employers will not have to add unnecessarily to their efforts when dealing with different local authorities.³⁰⁹

³⁰⁹ The document can be downloaded from: http://www.cre.gov.uk/council_contracts.pdf (09.03.2006).

9. Opinions

General comment

In its Annual Report for 2005, the EUMC identified a variety of measures and practices which would support combating racial discrimination and exclusion in the fields of employment, housing and education through policy initiatives. It highlighted areas in support of legislative measures to improve the tackling of racist violence and crime. A common thread running through the EUMC's findings was that data collection systems and mechanisms in the Member States were still inadequate and needed to become a policy priority in itself. Data collection remains a valuable and at times crucial tool to inform effective policy development. Overall, in 2006, the situation has not changed with regard to the opinions expressed by the EUMC in its Annual Report 2005 - Part 2. The EUMC is therefore still calling for more effective and comprehensive data collection systems to be established by the majority of European Union Member States, including monitoring, review and assessment mechanisms. On a more positive note, the EUMC has seen that the Racial Equality Directive (2000/43/EC) is beginning to have some impact on the thinking of policy makers in relation to the need for data to support the assessment and impact of provisions in national legislation and supporting measures.

The EUMC had called in 2005 for an improvement in the coordination of government departments tasked to deliver racial equality. In 2006, the EUMC is addressing Member States in two areas, firstly, extending inter-departmental coordination to bodies tasked to collect data on racism and secondly, designating or establishing a coordinating mechanism for all data on racism. Furthermore, the EUMC is aware that Government departments and data collecting bodies need to develop expertise in data collection related to racism, particularly reporting methodology, benchmarking, indicators and monitoring mechanisms and that this will require training and guidance. The EUMC notes that the European Commission has published studies on data collection and plans to publish a Handbook on the measurement of discrimination in 2006.

Furthermore, in support of data collection necessary to combat discrimination, the EUMC is placing greater emphasis on the use of discrimination testing and encouraging Member States to join the International Labour Organisation's programme of activities and develop national level expertise to extend discrimination testing to other areas beyond employment.

Another area where the EUMC believes that Member States can make greater use of the provisions of the Racial Equality Directive is in the area of positive action to compensate for disadvantages linked to racial or ethnic origin. The EUMC has noted that there is still a lack of proper understanding of positive action and it can be confused with positive discrimination or affirmative action. It is quite different and is well documented as a means not only to compensate for disadvantages

linked to racial or ethnic origin and related inequalities, but supports better targeting of policies, improves perceptions of public services and contributes to the overall aims of social inclusion and community cohesion ³¹⁰.

The EUMC is expressing opinions on the diversity of practice regarding religious symbols in the Member States and also with regard to the vulnerability of the situation of immigrants and some minorities residing in Member States without citizenship rights.

The EUMC recognises the important role of the European Parliament to maintain scrutiny on the delivery and assessment of European Union policies to tackle racial discrimination and promote racial equality. The EUMC believes that this scrutiny role will be enhanced by more focused cooperation between national parliaments, the EU's advisory bodies, namely the Committee of the Regions and the Economic and Social Committee, and the European Parliament. The EU's advisory bodies bring the delivery level experience at the local level of national and European policy and should be very much a part of the top down and bottom up approach which is required for more informed scrutiny and improved delivery of results of racial equality policies. In addition, the feedback of policy delivery at the local and regional level can play a part in supporting the citizen centred approach to communication about the added value of the EU for the citizen. Government policies on racial equality should also be part of the agenda in the cooperation between the European Parliament and national parliaments.

The year 2006 marks the fifth anniversary of the Durban Declaration and Programme of Action which resulted from the World Conference against Racism, Racial Discrimination, Xenophobia and related Intolerance, held in Durban, South Africa on 31 August – 8 September 2001. An important component of the Durban Programme of Action was the recommendation that States establish and implement without delay national policies and action plans. National Action Plans provide the opportunity for States to develop focused and coordinated responses to tackling racism across a wide range of fields, involving a variety of government departments and civil society representatives. Within the EU, the development of National Action Plans by Governments is uneven and not systematic.

³¹⁰ For further reading on issues related to positive action, positive discrimination and affirmative action see, Khan, Omar. *Why Preferential Policies Can be Fair – Achieving Equality for Members of Disadvantaged Groups*. London: Runnymede Trust, 2006

Enhanced policy coordination to address data deficit

The EUMC is of the opinion that inter-departmental working groups dealing with racism should coordinate their activities to include the national body or bodies tasked to collect and analyse data on racism, such as national statistical offices, statistical teams in policy units, racial equality bodies or their equivalent. The aim is to ensure that data collection and those tasked to oversee racial equality address the data deficit from the outset and there is a better link between data collection and analysis and policy development. An integrated approach needs to be the norm in policy development and adequate resources allocated.

The EUMC is also of the opinion that Governments should designate or establish a coordinating mechanism for data on racism. This coordinating mechanism should act as a one stop shop for all available national data related to racism which has been collected by a variety of official and State supported/recognised reliable unofficial sources.

In addition, where tasks to collect and analyse data on racism have not been assigned to a specific body or bodies, they should be assigned to an appropriate body or bodies such as national statistical offices, policy units, racial equality bodies or their equivalent.

Training at the national level to collect data on racial discrimination and racist violence

The EUMC is of the opinion that EU Governments and the European Commission should promote training on data collection in the key policy areas of employment, education, housing and racist violence among others. In addition, that training modules be established to develop expertise and encourage common reporting standards and guidelines at the national level. This should be supported by the European Commission's planned Handbook on the measurement of discrimination.

Discrimination testing

The EUMC draws once again attention to the programme of discrimination testing of the International Labour Organisation (ILO). Discrimination testing is a valuable tool for detecting discrimination, collecting data on discrimination and supporting legal action to address discrimination. The EUMC welcomed therefore the extension of the ILO's programme to two additional EU Member States in 2005.

The EUMC calls on Members States who have not done so already to join the ILO programme and to make use of the ILO expertise in discrimination testing in employment.

The EUMC calls on Member States to train people to carry out discrimination testing. In addition, to consider the setting up of units specialised in the testing to develop the expertise and capacity to carry out discrimination testing in a systematic and regular way. The key policy areas for testing are employment and occupation, education, housing and accommodation, healthcare and access to goods and services.

Positive action

The Racial Equality Directive allows for positive action to ensure full equality in practice. Positive action means in effect the maintaining or adopting of specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin.

It can cover a variety of measures such as abolishing height restrictions for entry into the police force, making information about public services and welfare rights available in the languages of the ethnic minority communities, and targeting specific ethnic minority groups with information to encourage them to apply for employment in key sectors where they tend to be underrepresented, such as the public services, the educational services and the criminal justice system.

The EUMC is therefore calling on Member States to make positive action measures an integral component of their racial equality policies, to outline the types of action and report back periodically and publicly on the impact of the measures taken.

Member States should also launch information campaigns explaining the reasons for positive action and supporting a better and much wider understanding of the concept, the practice and its benefits.

Practice regarding religious symbols

The EUMC believes that it is important for the Member States, irrespective of the policy choices they make, to explain clearly, and in a way which does not lead to the stigmatisation of affected individuals or the communities to which they belong, the reason for the policy and its wider benefits for society as a whole.

The EUMC is of the opinion that Member States should examine their policies on this matter with a view to ensuring that it is consistent with non-discrimination and equality legislation and principles.

The EUMC is further of the opinion that Member States should conduct research and monitoring to assess the impact of these policies within the education and employment fields, and on the broader policy goals of community cohesion and

social inclusion. The results of the impact assessment should be made public and used where necessary to review the policy.

Situation of immigrants

The EUMC has noted the situation regarding the legal status of immigrants and some minorities and the possible impact in areas such as integration and employment. Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents provides rights associated with access to the labour market, conditions of work and employment and limited right to mobility between the Member States.

The EUMC joins the European Commission in calling on Member States to transpose the Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents and draws attention to the fact that the deadline for implementation was January 2006 and at the end of 2005, only a minority of Member States had notified the Commission of its transposition.

Cooperation between the European Parliament, EU advisory bodies and national parliaments

Local and regional authorities are responsible in many Member states for the delivery in the policy areas of employment (particularly as one of the largest employers in the locality or region), housing and education. Much of this experience and knowledge is transferred into the EU institutions via the work of the EU's Committee of the Regions (CoR) and the European Economic and Social Committee (EESC).

The EUMC is of the opinion that there remains scope to ensure that this experience and knowledge is shared in a more targeted way with the European Parliament to aid its scrutiny role. The European Parliament should therefore give consideration to participation by relevant members of the Committee of the Regions and the Economic and Social Committee in some of its informal inter-groups.

The European Parliament should involve on a regular basis members of the CoR and EESC in their hearings related to racism and emphasis more the impact of policy delivery at the local and regional level.

The EUMC is of the opinion that parliamentary scrutiny of the delivery results of racial equality policies is in general hampered by gaps in the available data. It remains important to raise the awareness of national parliaments of the need to enhance data collection in most Member States. The European Parliament should give consideration to discussing data collection and accompanying policies against racism and racial discrimination in the framework of the regular joint parliamentary meetings with national parliaments.

National Action Plans against racism (NAPs)

The EUMC is of the opinion that all EU Member States should develop and implement National Action Plans (NAPs) to combat racism, racial discrimination, xenophobia and related intolerance, and that those who have already established NAPs for a period of three years or more should review and assess the impact of the Plans with a view to improving their effectiveness.

National Action Plans against Racism should be the subject of Government inter-departmental coordination, civil society and social partner consultation and regular review. They should incorporate a data collection component and be linked and address the following policy areas at a minimum:

- Non-discrimination and equality;
- Social inclusion;
- Community Cohesion;
- Integration;
- Gender;
- Education; and
- National Action Plans on employment, as part of the European Employment Strategy

Member States should provide a public report on the progress towards establishing a National Action Plan against Racism. In addition, where NAPs have been established Member States should provide an annual implementation report of its policy related aspects and impact. These reports should be presented to Parliament and made available to the public.

Annex 1

The Methodology of the Annual Report

The findings of EUMC Annual Reports are the product of an on-going data collection exercise involving the EUMC's 25 RAXEN National Focal Points (NFPs). Each Member State has one NFP, which is responsible for collecting data under common headings in each of the five thematic areas. NFPs consist of consortia which are typically constituted by bodies such as anti-racist NGOs, university research centres, institutes for human rights, or government-affiliated organisations. The process of creating the Annual Report begins with the approval by the EUMC's Management Board of the content, structure and timetable. The NFPs are then requested to collect information in accordance with specific and common guidelines. Each NFP produces a 'National Report', and from the information in these National Reports the thematic chapters are produced. The accuracy of the information is checked by government liaison officers from each Member State. The first full draft is produced by the EUMC for comment by the members of the Management Board around June each year, and the final draft is produced for approval by the Management Board in October of the year of publication.

The 25 National Focal Points which provided the information for the Annual Report 2006 are as follows:

Austria	Ludwig Boltzmann Institute of Human Rights in cooperation with the Department of Linguistics, University of Vienna and the Institute of Conflict Research (IKF), Vienna http://www.univie.ac.at/bim/php/focalpoint
Belgium	Centre for Equal Opportunities and Opposition to Racism (CEOOR), Brussels http://www.diversiteit.be
Cyprus	Cyprus Labour Institute (INEK-PEO), Nicosia http://www.inek.org.cy
Czech Republic	People in Need (PIN), Prague http://www.clovekvtisni.cz
Denmark	Documentation- and Advisory Centre on Racial Discrimination – (DACoRD), Copenhagen http://www.drcenter.dk
Estonia	Legal Information Centre for Human Rights (LICHHR), Tallinn

	http://www.lichr.ee
Finland	Finnish League for Human Rights (FLHR), Helsinki http://www.ihmisoikeusliitto.fi
France	Centre d'Etudes des Discriminations, du Racisme et de l'Antisémitisme (CEDRA), Paris http://www.commission-droits-homme.fr/binInfoGeneFr/affichageDepeche.cfm?iIdDepeche=145
Germany	European Forum for Migration Studies (EFMS), Bamberg http://www.efms.de
Greece	ANTIGONE - Information and Documentation Centre, Athens http://www.antigone.gr
Hungary	Centre of Migration and Refugee Studies, Institute of Ethnic and National Minority Studies of the Hungarian Academy of Sciences (CMRS), Budapest, in cooperation with the Ministry of Youth, Family, Social Affairs and Equal Opportunities and the Hungarian Helsinki Committee http://www.mtaki.hu
Ireland	Equality Authority (EA) and the National Consultative Committee on Racism and Interculturalism (NCCRI), Dublin http://www.equality.ie http://www.nccri.ie
Italy	Cooperation for the Development of Emerging Countries (COSPE), Florence http://www.cospe.it
Latvia	Latvian Centre for Human Rights (LCHR), Riga http://www.humanrights.org.lv
Lithuania	Centre of Ethnic Studies - Institute for Social Research (ISR), Vilnius http://www.sti.lt
Luxembourg	International Networks for Studies in Technology, Environment, Alternatives, Development (INSTEAD), Differdange http://www.ceps.lu
Malta	Jesuit Centre for Faith and Justice (JCFJ), Valletta http://www.jesuit.org.mt

Netherlands	Dutch Monitoring Centre on Racism and Xenophobia (DUMC), Amsterdam http://www.lbr.nl
Poland	Helsinki Foundation for Human Rights (HFHR), Warsaw http://www.hfhrpol.waw.pl
Portugal	NUMENA – Research Centre on Human and Social Sciences, Lisbon http://www.numena.org.pt
Slovakia	People against Racism (PAR), Bratislava http://www.rasizmus.sk
Slovenia	Peace Institute, Institute for Contemporary Social and Political Studies (PI), Ljubljana http://www.mirovni-institut.si
Spain	Movement for Peace, Disarmament and Liberty (MPDL), Madrid http://www.mpd1.org
Sweden	Expo Foundation, Stockholm http://www.expo.se
United Kingdom	Department of Sociology, University of Warwick http://www2.warwick.ac.uk/fac/soc/sociology/research/raxen/

