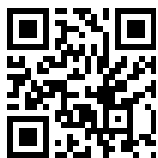


STUDY

Requested by the LIBE committee



Democratic Oversight of the Police



Policy Department for Citizens' Rights and Constitutional Affairs
Directorate-General for Internal Policies
PE 703.590 - May 2022

EN

Democratic Oversight of the Police

Abstract

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, aims to provide background information concerning police ethics, accountability, and oversight across the EU. The study shows that existing EU tools and instruments can contribute to enhance police accountability. The study also identifies some gaps and weaknesses. Recommendations are provided in order to remedy the gaps and weaknesses identified.

This document was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

AUTHORS

Emmanuel-Pierre GUITTET, *Centre d'Etudes sur les Conflits, Liberté & Sécurité* (CECLS, France)

Niovi VAVOULA, *Queen Mary University of London* (United Kingdom)

Anastassia TSOUKALA, *Université Paris-Saclay* (France)

Monika BAYLIS, *University of Leicester* (United Kingdom)

ADMINISTRATOR RESPONSIBLE

Alessandro DAVOLI

EDITORIAL ASSISTANT

Ewelina MIAZGA & Ginka TSONEVA

LINGUISTIC VERSIONS

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ABOUT THE EDITOR

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To contact the Policy Department or to subscribe for updates, please write to:

Policy Department for Citizens' Rights and Constitutional Affairs

European Parliament

B-1047 Brussels

Email: poldep-citizens@europarl.europa.eu

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LIST OF ABBREVIATIONS

| | |
|----------------|---|
| ARAP | Anti-Racism Action Plan 2020-2025 |
| ARDI | European Parliament Anti-Racism and Diversity Intergroup |
| BLM | Black Lives Matter |
| BWCs | Body Worn Cameras |
| CCLEO | Code of Conduct for Law Enforcement Officials |
| CDCJ | European Committee on Legal Co-operation |
| CEPOL | EU Agency for Law Enforcement Training |
| CoE | Council of Europe |
| CPT | European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment |
| DCAF | Geneva Centre for the Democratic Control of Armed Forces |
| EACN | European contact-point network against corruption |
| ECHR | European Court of Human Rights |
| EC | European Commission |
| EC3 | European Cybercrime Centre |
| ECRI | European Commission Against Racism and Intolerance |
| ECTC | European Counter Terrorism Centre |
| ECtHR | European Court of Human Rights |
| EFEC | European Financial and Economic Crime Centre |
| EIGE | European Institute for Gender Equality |
| EMSC | European Migrant Smuggling Centre |
| ENAR | European Network Against Racism |
| ENNHRI | European Network of National Human Rights Institutions |
| ENO | European Network of Ombudsmen |
| EP | European Parliament |
| EPAC | European Partners Against Corruption |
| EU | European Union |
| EU-STNA | EU Strategic Training Assessment |
| Europol | EU Agency for Law Enforcement Cooperation |
| FRA | EU Agency for Fundamental Rights |
| GRECO | Group of States against Corruption |

| | |
|--------------|---|
| IACP | International Association of the Chiefs of Police |
| ICCPR | International Covenant on Civil and Political Rights |
| ICJ | International Commission of Jurists |
| IGEC | Interpol's International Group of Experts on Corruption |
| IOI | International Ombudsman Institute |
| IPCAN | Independent Police Complaints Authorities' Network |
| IPCB | Independent Police Complaints Body |
| IRU | EU Internet Referral Unit |
| LIBE | Committee on Civil Liberties, Justice and Home Affairs |
| LEED | Law Enforcement Education |
| LETS | Law Enforcement Training Scheme |
| NGOs | Non Governmental Organisations |
| OHCHR | Office of the United Nations High Commissioner for Human Rights |
| OECD | Organisation for Economic Cooperation and Development |
| OSCE | Organisation for Security and Co-operation in Europe |
| OTNA | Operational Training Needs Analysis |
| POBs | Police Oversight Bodies |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations |
| UNODC | United Nations Office on Drugs and Crime |

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EXECUTIVE SUMMARY

BACKGROUND

Across the EU, police are called on to respond to a wide range of challenging social issues. While police deserve recognition for the good service that they provide to their societies, they must also be held fully accountable for what they do. Indeed, in a democratic state, there is the expectation that police enforce the law fairly and protect basic rights. When officers fail to, there must be mechanisms to ensure meaningful accountability and prevent future abuses.

In most European countries, the use of force is rare compared to the total number of police–citizen encounters. However, police brutality and use of lethal force incidents have become an important element in the public discourse in recent years. Well-publicised incidents have shaped public view of the police, especially following George Floyd’s death at the knee of Minneapolis police officer Derek Chauvin on 25 May 2020. Long prior to Floyd’s death, the EU has witnessed several glaring instances in which police actions have gone beyond what is legally and ethically acceptable. These incidents shaped people’s confidence in the police and their understanding of what police is and does. There is extensive research showing that police lose legitimacy in people’s eyes if they act in ways that violate basic norms of fairness and procedural justice. Law enforcement agencies across the EU rely heavily on the consensual acceptance and support of the people. Therefore, the failure of police forces to be answerable for their acts and to act responsively upon is detrimental to public trust and therefore police legitimacy. Reducing the likelihood of law enforcement actions being perceived as biased or discriminatory and promoting good policing is a crucial and day-to-day task for every law enforcement agency across the European Union.

Policing, understood as being the enforcement of laws and rules, is more than ever expected to be performed with high degrees of legitimacy, transparency, and accountability. The development of police oversight mechanisms to effectively collect, manage and investigate complaints or, in some cases, to proactively carry out monitoring of police actions derives from a set of international and European requirements and obligations. Police codes of conduct have also been developed both at the international and European levels to clearly identify standards. These standards and codes both contribute to police accountability. They equally provide a sound basis for a proportionate use of force and building trust for the police among citizens.

Accountability pertains to a system of internal and external checks and balances aimed at ensuring that police perform the functions expected of them to a high standard and are held responsible when they fail to do so. Where the police conduct internal investigations of themselves, such investigations are often perceived as biased and spurious. Citizens’ satisfaction appears to be correlated not only with independence but also with aspects of communication, timeliness, and perceived fairness. Many studies show that complainants, in general, are neither vindictive nor punitive but want to be treated with fairness, communicate their concerns and improve police behaviour in the future. In an attempt to ensure that citizen complaints against police behaviour are effectively investigated, properly recorded, and proceed towards a fair and equitable outcome, civilian oversight of police complaints is widely recognised as an effective measure. Many administrations across EU countries have created external oversight bodies for police following problems of recurring misconduct and the failure of internal control mechanisms. These non-police oversight bodies are extremely varied in terms of mandate, investigative powers, and resources to conduct their missions. Questions inevitably follow about the effectiveness of these bodies to detect and prevent abuses of power. In order to sustain such a democratic police accountability, non-police oversight bodies should be well resourced, properly funded and with a clear mandate. The long-term legitimacy and efficiency of a civilian oversight

process clearly depends on oversight bodies subjecting themselves to similar levels of accountability to that demanded of those they oversee.

The European Commission has stepped up its efforts in tackling structural racism within the police forces. The EU Anti-Racism Action Plan 2020-2025 has emphasised the role of EU agencies, particularly the Agency for Fundamental Rights (FRA) in collecting relevant information and the Agency for Law Enforcement Training (CEPOL) in delivering training activities. The European Parliament has repeatedly called on Member States to address the issue of disproportionate use of force by the police and for taking more significant action in this field, including through the establishment of an EU Code of Police Ethics. FRA has conducted significant research in providing guidance to Member States' authorities through guides and manuals and by mapping practices on police stops highlighting ethnic profiling and discriminatory practices. The Agency should continue collecting information and could potentially follow up with Member States regarding the use and effectiveness of its outputs at national level. Europol, in line with its mandate (which includes racism and xenophobia), could step up its efforts through a dedicated centre and trainings in cooperation with CEPOL. Training activities on fundamental rights offered by CEPOL are streamlined and must run through the entirety of the curriculum on offer. The Agency has the potential to step up its efforts so that its work is in line with the calls by the EU institutions in designing and delivering various high quality activities both on site and online to maximise its audience.

The recent European Commission proposals for an EU police cooperation code are relevant to this study to the extent that the Commission package refers to the creation of a common EU culture through significantly broadening of joint training and professional development relating to cross-border operational police cooperation.

It is against this backdrop that the study recommends the following actions:

RECOMMENDATIONS

- Promoting public confidence in policing through Data collection opened to citizens' scrutiny.
- Improving Human Rights training.
- Empowering the non-police oversight bodies and strengthening the Independent Police Complaints Authorities' Network.
- Enhanced protection of presspersons.
- Promoting collaboration between researchers and police practitioners.
- Researching new technologies' possible impacts on police accountability and citizen trust.

1. BACKGROUND

1.1. Policing and police forces

Policing has changed dramatically in the past four decades. Much of this change is driven by the rapid increase in technological advances, information access and the expectation for rapid response and service. Policing organisations have been increasingly militarised, especially when it comes to crowd control operations. In the context of a perceived heightened risk of terrorism, policing has been made even more difficult by coupling local police to issues of national and homeland security.¹ Furthermore, policing has been increasingly outsourced to the private sector.² The trend towards greater private provision of policing and security services in the European Union (EU) has been well documented.³ Policing is now carried out in partnership with a wide range of agencies, and it encompasses a broader collection of actors and processes.⁴ **The police are only one of the providers of policing and one among many agencies that contribute to public safety and security.** How the police fit into this broader landscape, what is its role and missions have been the topic of many debates, including among police forces themselves.

If it is safe to say that **policing is not the preserve of police, yet police forces remain a significant player in the delivery and regulation of policing.** Perhaps, police forces are best understood as central part in the ever-evolving risk society.⁵ Indeed, police officers hold a unique place in society due to their position of authority. They are endowed with special legal powers and protections that lie outside the reach of ordinary citizens.⁶ Police officers are, in fact, one of the most visible reminders of a State's coercive power. Their abilities to use force, issue commands, and curtail liberties make them a very distinctive profession. Furthermore, police officers enjoy broad discretion in the course of their daily work as they are very often forced to make split-second judgments in circumstances that can be tense, uncertain, and frequently rapidly evolving.⁷ Discretion operates at innumerable points in police decision making and police officers possess considerable discretion to pursue variant courses of action. But discretion can also sometimes disguise or facilitate racially or ethnically discriminatory policing and provides the basis for other deviations from the rule of law.⁸ **The right to use force is one key defining feature of the police.** Policing in a democratic society is far different from that in an autocratic setting, in the sense that police agencies operating in a fully developed democratic environment must adhere to the tenets of democracy: rule of law, respect for fundamental human rights, and minimal use of deadly force.⁹ **Acceptable use of force is meant to constrain police action by protecting the public**

¹ Mbuba, J.M. (ed.) (2021). *Global perspectives in Policing and Law Enforcement*, Rowman & Littlefield.

² Dupont, B. (2014). Private security regimes: Conceptualizing the forces that shape the private delivery of security. *Theoretical criminology*, 18(3), pp.263-281; Abrahamsen, R. and Williams, M.C. (2010). *Security beyond the state: Private security in international politics*. Cambridge University Press.

³ Mark Button & Peter Stierstedt (2018) 'Comparing private security regulation in the European Union', *Policing and Society*, 28:4, 398-414; Van Steden, R. and Sarre, R., (2007). The growth of private security: Trends in the European Union. *Security journal*, 20(4), pp.222-235.

⁴ Shearing, C.D. and Johnston, L., (2013). *Governing security: Explorations of policing and justice*. Routledge; Brodeur, J.P., 2010. *The policing web*. Oxford University Press.

⁵ Ericson, R.V. and K. D. Haggerty (1997) *Policing the Risk Society*. Toronto: University of Toronto Press.

⁶ Newburn, J. T. and Smith DJ (1996) Policing and the idea of democracy. *British Journal of Criminology* 36(2):182–198.

⁷ Kleinig, J. (Ed.). (1996). *Handled with discretion: ethical issues in police decision making*. Rowman & Littlefield.

⁸ Body-Gendrot S. (2010) Police marginality, racial logics and discrimination in the *banlieues* of France, *Ethnic and Racial Studies*, 33:4, 656-674.

⁹ Bonner M.D. (2020) What democratic policing is ... and is not, *Policing and Society*, 30:9, 1044-1060; Pino, N., Wiatrowski, M. D. (eds.) (2016). *Democratic policing in transitional and developing countries*. Routledge.

from excessive use of force, while permitting proportionate use of force when necessary for the public good. While police forces are meant to be deployed for the protection of the human rights of the individual and the overall common good, they can very readily produce the opposite effect

According to Eurostat, there are about 1.49 million police officers in the EU (2019) and that number is relatively stable since 1999. It means that there is one police officer for every 299 inhabitants in the EU (average 2017-2019), or 334 police officers per 100 000 inhabitants (see figure 2).¹⁰ The lowest number of police officers per 100 000 inhabitants is in Finland (137.8), followed by Denmark (190.6), and Sweden (198.4). In nine EU Member States (Cyprus, Greece, Croatia, Malta, Portugal, Latvia, Italy, Bulgaria and Slovakia) the figure is over 400 police officers per 100 000 inhabitants.

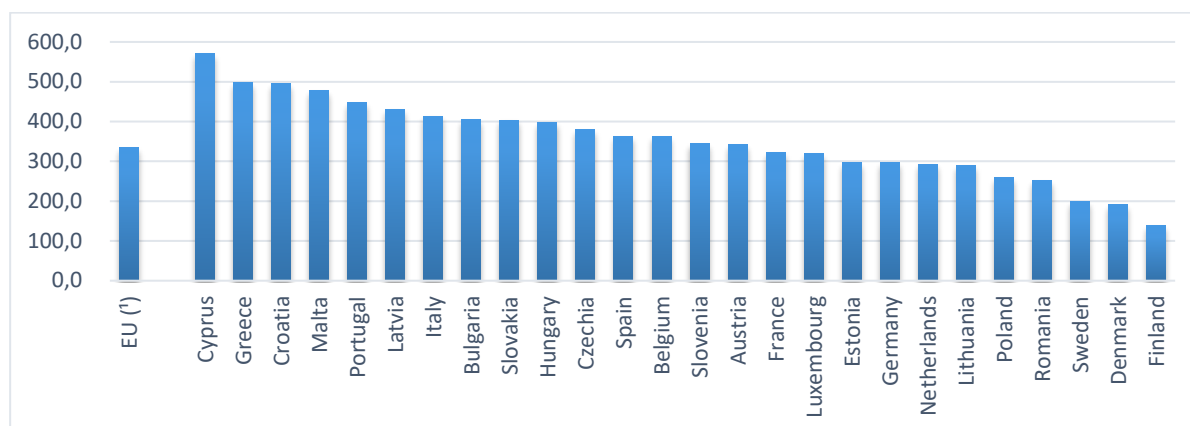


Figure 1 - Police officers, average 2017-2019 (per hundred thousand inhabitants)

Source: Eurostat

The history, development and structure of law enforcement agencies vary from one Member State to another. Police organisations across the EU form a wide spectrum from highly centralised institutions with a small number of national police forces (such as France, Italy, and Spain), regional centralisation under federal authority (like Germany, the Netherlands or Austria) and decentralised police systems (like Belgium). These differences laid aside, **every single law enforcement agency across the EU relies heavily on the support and acceptance of the people.** *“All democratic police systems share the ideal that police powers are to be used according to the rule of law and not according to the whims of the ruler or the police agent.”*¹¹ Across Europe, police forces have sought to fulfil this mandate by bolstering their use-of-force policies, amending hiring and recruitment practices, and instituting new training methods and priorities. However, George Floyd’s killing by Minneapolis police, in May 2020, has sparked more public displays of indignation than any instance of police brutality in our own EU countries. His death resonated and fuelled a new level of awareness across the EU for tackling unfair policing and promoting police oversight and accountability.

The crisis of confidence in police and in the legitimacy of their actions that has characterised the post-Floyd era cannot be ignored. When police officers fail to be moral exemplars, are negligent in their duties, and abuse their powers, their action undermines the legitimacy of law enforcement institutions. Hence, the requirement for a democratically responsive policing is of utmost importance. Well-handled police-public interactions are vital for public confidence in the police. From the point of

¹⁰ Data available at: <https://ec.europa.eu/eurostat/statistics-explained/>. The definition of police used in Eurostat could be challenged. However, looking for an unanimously accepted definition of police is probably wishful thinking due to differences in policing structures across EU Member States. See infra footnote 44.

¹¹ Gary T. Marx, ‘Police Power’, in Seymour Martin Lipset (ed.), *Encyclopaedia of Democracy*, 1995.

view of effective police work, good and confidential relationships with citizens are of primary importance.

1.2. Objectives and methodology

Reducing the likelihood of law enforcement actions being perceived as biased or discriminatory and promoting good policing is a crucial and day-to-day task for any law enforcement agency across the European Union.

It is in this context, and 20 years after the publication of the *European Code of Ethics*, that the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) requested a study on democratic oversight of the police. The aim of this study is to provide the LIBE Committee with:

- An analysis of the various international and European tools, instruments and guidelines concerning police oversight and police ethics;
- An assessment of police accountability and transparency in the EU with a focus on the police oversight bodies, the instruments, and procedures for complaints against the police combined with an analysis of cases of police brutality and racial and ethnic profiling in selected EU countries;
- An evaluation of the existing EU instruments and tools and how EU agencies such as CEPOL could deliver better operational support, expertise, and training to Member States' law enforcement authorities in the field of police oversight and police ethics; and
- Recommendations on how to implement a more effective police oversight across the EU.

The study is based on a literature survey of academic publications and documents that were produced by national authorities, European institutions, and NGOs on the subject of police ethics, accountability, and oversight in Europe. This review has been complemented with several interviews with national police experts, police officers and representatives of police oversight bodies.¹²

The first chapter of the study provides background information, and describes its objectives and methodology. The second chapter aims to delve into police brutality and citizens' trust in their police forces. The third chapter aims to **clarify what ethical principles should guide police**. The fourth chapter is dedicated to **police accountability** with a specific concern on police oversight. Based on examples, we **outline the benefits as well as the key challenges such oversight encounters**. The fifth chapter explores how EU instruments and tools could be applied to greater effect to **enhance police democratic oversight and accountability** in the EU. In the final chapter, we suggest policy recommendations.¹³

¹² See Annex 1

¹³ In order to guarantee a coherent and high-level academic analysis, an advisory board of experts reviewed the academic quality and policy relevance of the Study. The Advisory Board consisted of Prof. Didier Bigo (Sciences-Po Paris, France), Prof. Laurent Bonelli (University of Nanterre, France) and Prof. Valsamis Mitsilegas (Queen Mary University, UK).

Working definitions

A large amount of literature has been written on police accountability, ethics, integrity, misconduct, and oversight. For the purpose of the present study, we use the following definitions:

Police Accountability: it encompasses all procedures and methods which can be deployed to render an individual police officer, and the police authority as whole, answerable to another person or body whether that person or body is located inside or outside the police force in question. **Police Ethics:** making the right judgements and doing the right actions for the right reasons. **Police Integrity:** it is the normative inclination among police to resist temptations to abuse the rights and privileges of their occupation. Police "ethics" and "integrity" are often used interchangeably in discussions about misdemeanours and wrongdoing. **Police Misconduct:** a police act or omission that violates legal rules. It includes, inter alia, forms of corruption, inappropriate use of force, sexual violence, police perjury and racial profiling. **Police Oversight:** to ensure that the police are operating with integrity and accountability.

Box 1 - working definitions

2. POLICE BRUTALITY AND TRUST IN THE POLICE

KEY FINDINGS

- In most European countries, the use of force is rare compared to the total number of police–citizen encounters. However, over the past decade, the EU has witnessed several glaring instances in which police actions have gone beyond what is legally and ethically acceptable.
- These incidents shaped people’s confidence in the police and their understanding of what police is and does. There is extensive research showing that police lose legitimacy in people’s eyes if they act in ways that violate basic norms of fairness and procedural justice.
- Law enforcement agencies across the EU rely heavily on the support and acceptance of the people. Therefore, the failure of police forces to be answerable for their acts and to act responsively upon is detrimental to public trust and therefore police legitimacy.
- Reducing the likelihood of law enforcement actions being perceived as biased or discriminatory and promoting good policing is a crucial and day-to-day task for every law enforcement agency across the European Union.
- Attitudinal data showed few differences between male and female police officers in their views of ethical conduct and the stated willingness to report a fellow officer known to have behaved inappropriately. Little is known of the attitudes that officers hold when they begin their careers

2.1. Police brutality and breaches of integrity

Misconduct and breaches of integrity have been central concerns of police for as long as the institution has existed. Indeed, the history of modern police, across Europe and beyond, is flooded with many and various examples of impunity, cases of corruption, heavy-handed law enforcement actions and cases of police mistreatment. But equally, the history of policing comes with inquiries and commissions into those matters, police reforms and wide-ranging changes to the recruitment and training of police officers, with the widely shared view that only well trained and educated officers who have the highest levels of professional integrity should be employed. Nonetheless, **police brutality and use-of-lethal force incidents have become an important element in the public discourse in recent years.**

Well-publicised incidents have shaped public view of the police, especially following George Floyd’s death at the knee of Minneapolis police officer Derek Chauvin on May 25, 2020.¹⁴ His death ignited a summer of nationwide protests in the United States against police use of deadly force against African Americans¹⁵ and exported the Black Lives Matter (BLM) movement worldwide. In the midst of a global pandemic, mass protests and demonstrations occurred nearly all across European Countries.¹⁶ Across

¹⁴ According to *Mapping Police Violence*, the number of individuals killed by police each year in the US remained steady, at over a thousand a year. See <https://mappingpoliceviolence.org/> See also the Police shootings database produced by the *Washington Post*: <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>

¹⁵ <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>

¹⁶ Beaman, J. (2021) "Towards a Reading of Black Lives Matter in Europe." *JCMS: Journal of Common Market Studies* 59,103-114.

the European Union, Floyd's death has galvanised people to protest not only against police brutality but also against racism and racial discrimination: '*globally relevant antiracist frames interacted with national cultures of protest and domestic debates, including issues such as post-colonialism, antifascism, protest against police*'.¹⁷ The significance of the BLM movement is undeniable.¹⁸ Indeed, the **brutal killing of George Floyd has brought the issue of racism and discrimination into the spotlight**, including into the hemicycle of the European Parliament. Perhaps one of the most poignant moments was during the opening of the June 2020 plenary session, where MEPs debated racism, discrimination, and police violence, with Council and Commission representatives. Following a minute of silence in memory of George Floyd and all victims of violence and discrimination, Pierrette Herzberger-Fofana, Germany's first MEP of African origin, told her peers that she had suffered a humiliating experience at the hands of Belgian police.¹⁹ The subsequent vote of a resolution strongly condemning "*the appalling death of George Floyd*" and stressing that police and law enforcement authorities must have "*an exemplary record on anti-racism and anti-discrimination*"²⁰ surely sent a signal of support to anti-racism protesters. As the European Network Against Racism (ENAR) underlined, the European Parliament resolution acknowledged "the urgency of tackling racism."²¹ President Von der Leyen's speech in June 2020 was equally crucial since, for the first time, a President of the European Commission stood before the European Parliament and acknowledged the extent of the issues at stake.²² Her speech was quickly followed by the September 2020 *European Commission Anti-racism action plan*²³ and the appointment in May 2021 of Ms Michaela Moua, the very **first EU Anti-Racism coordinator**. While these developments have been surely welcomed, challenges are still ahead. Racism, discrimination, and police brutality are very much a European issue.

Long prior to Floyd's death, the EU has witnessed several glaring instances in which policing of demonstrations has gone beyond what is legally and ethically acceptable. The 2001 G8 Summit in Genoa, culminating in the death of 23-year-old protestor Carlo Giuliani, went down in history for the scale of police brutality. In 2017, the *European Court of Human Rights* (ECHR) condemned Italy over a police raid in which riot police kicked, punched, and hit dozens of protesters who had gathered inside the Diaz-Pertini school in Genoa during the G8 Summit.²⁴ The deaths of two teenagers who were electrocuted after running away from police in a Paris suburb in 2005, triggered the biggest wave of civil unrest France had witnessed since 1968.²⁵ The suburbs of Paris were ablaze, and the fever spread

¹⁷ Milman, N., Ajayi, F., della Porta, D., Doerr, N., Kocyba, P., Lavizzari, A., Płucienniczak, P., Reiter, H., Sommer, M., Steinhilper, E. and Zajak, S. (2021) 'Black Lives Matter in Europe. Transnational Diffusion, Local Translation and Resonance of Anti-Racist Protest in Germany, Italy, Denmark, and Poland'. *DeZIM Research Notes #06/21*. Berlin: German Center for Integration and Migration Research (DeZIM). Available at: https://www.dezim-institut.de/fileadmin/Publikationen/Research_Notes/DeZIM_Research_Notes_06_RZ_210702_web-1.pdf

¹⁸ On the origins of the movement in 2013 and its connections with 1960s Civil Rights Movement, the 1980s Black Feminist movement and Pan-African movement, see Lebron, Christopher J. (2017) *The making of black lives matter: A brief history of an idea*. Oxford University Press.

¹⁹ <https://www.theparliamentmagazine.eu/news/article/meps-condemn-george-floyd-killing-in-plenary-debate>

²⁰ https://www.europarl.europa.eu/doceo/document/B-9-2020-0196_EN.html

²¹ <https://www.enar-eu.org/European-Parliament-anti-racism-resolution-Words-need-to-be-followed-up-with>

²² https://ec.europa.eu/commission/presscorner/detail/en/speech_20_1114

²³ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-anti-racism-action-plan-2020-2025_en

²⁴ The case, *Bartesaghi Gallo and Others v. Italy*, concerned the beating and arrest of 42 demonstrators inside a school that was serving as a headquarters for civil society activists and other peaceful demonstrators. The court's verdict held that the abuse against them amounted to torture.

²⁵ The dynamics of contention that unrolled in the French riots of 2005 in France were hardly the first of their kind, but the intensity, contagion, locations, and scale of disruption that followed the horrifying deaths of two youths chased by the police in Clichy-sous-Bois were unusual and became imbued with symbolic significance. See Body-Gendrot, S, Savitch, HV

uncontrollably to Lyon, Strasbourg and Rouen in a matter of days. The faces of Zyed Benna, 17, and Bouna Traoré, 15, have continued to symbolise the dire relations and extreme mistrust between police and youths living in France's tower blocks. In Greece, the fatal shooting of 15-year-old Alexandros Grigoropoulos in December 2008 by a police officer sparked an immediate and widespread response in the form of angry demonstrations and riots in many Greek cities. Grigoropoulos' death triggered the worst riots seen in Athens since the fall of the Greek dictatorship in 1974. Every year since, on December 06, clashes broke out between protesters and Greek police.

More recently, **many recorded videos emerged, showing police officers hitting protesters with batons, pepper-spraying, pushing, or dragging them.** In its 2019 Concluding Observations on Poland, the Committee against Torture expressed its serious concern about reports of excessive use of force by the police, including with electric discharge weapons (tasers), against arrested persons who were handcuffed or otherwise immobilized, despite the fact that the law stipulates that force may be used only to ensure compliance with police orders.²⁶ In Austria, in May 2019 during a demonstration on climate change, police officers were captured on video striking activists. Videos showing a police officer hitting a protester who had been pinned to the ground, and a police van almost running over the head of another man while he was being restrained by officers went viral. The release in 2021 of a video showing Bulgarian police kicking and punching handcuffed detainees during a 2020 anti-corruption protest triggered uproar across the country.²⁷ In February 2021, amid a public outcry over police's heavy-handed handling of an anti-corruption demonstration in Cyprus²⁸, Ombudswoman Maria Stylianou Lottides has asked police to explain their actions. In October of the same year, a video showing a German police officer kicking a man in the head during an arrest drew widespread criticism on social media.²⁹ Since the start of the "Yellow Vest" protest in France in December 2019, journalist David Dufresne has recorded 4 deaths and 344 head injuries. According to his data, demonstrators represent the vast majority of the victims, but journalists, high school students and passer-by are also to be accounted for.³⁰

The **treatment of persons while in police detention is another case in point.** Ill-treatment, sometimes lethal, occurred in several EU Member states. 1999 is the year in which Marcus Omofuma, a rejected asylum seeker from Nigeria, died after being bound and gagged during his attempted deportation by Austrian police. In 2005, Sierra Leonean asylum-seeker Oury Jalloh was found burned to death in his German jail cell. The circumstances of Jalloh's death have long been seen as suspicious. In January 2021, in Belgium, Ibrahima Barrie died while in police detention. Another serious form of police misconduct is violence targeting minorities, in particular Roma people. In Greece, for instance, regular threats and racially motivated ill-treatment of migrants and Roma people by members of the police and coast guard have been reported. In June 2020, a Bosnian volunteer has handed over more than 1,600 pages of media reports and personal testimonies to Austria's Parliament, documenting the brutality of Croatia's border police against irregular migrants.³¹ In July 2020, eight Vienna police officers

(2012) Urban violence in the US and in France: Comparing Los Angeles (1992) and Paris (2005). In: Mossberger, K, Clarke, S, Jones, P (eds) *Oxford Handbook of Urban Politics*. Oxford: Oxford University Press, 504–519; Mohammed, M, Mucchielli, L (2006) La police dans 'les quartiers sensibles': Un profond malaise. In: Le Goaziou, V, Mucchielli, L (eds) *Quand les banlieues brûlent ... Retour sur les émeutes de novembre 2005*. Paris: La Découverte.

²⁶ Committee against Torture, Concluding observations (2019) CAT/C/POL/CO/7.

²⁷ <https://www.politico.eu/article/police-violence-video-triggers-uproar-in-bulgaria/>

²⁸ <https://knews.kathimerini.com.cy/en/news/protesters-accuse-cops-of-police-brutality>

²⁹ <https://www.aa.com.tr/en/europe/video-shows-police-brutality-in-germany/2402407>

³⁰ <https://www.davduf.net/alloplacebeauveau.fr>

³¹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25976>

have been suspended and prosecutors have launched an investigation after a video surfaced that appeared to show police beating a 28-year-old Chechen man in Vienna in January 2019. More recently, in June 2021, the death of Stanislav Tomáš has sparked widespread criticism against discrimination faced by the Roma in the Czech Republic.

Across the EU, several reports point to **ethnic profiling resulting in abusive stops and searches targeting minorities and migrants**. In 2009, Amnesty International released a report on racial discrimination in Austria.³² In its sixth report on Austria released in June 2020, the *European Commission against Racism and Intolerance* (ECRI) unequivocally said that “accounts of alleged practices of ethnic profiling by the police, against persons belonging to Black and Muslim communities in particular, continue to be reported.”³³ In a recent report on France, the *Open Society Justice Initiative* highlighted the very negative impact of this practice on “entire sectors of the population [who] are left feeling that no matter what they do, they will always be second-class citizens”.³⁴ In Amnesty International report on *Policing the pandemic*, some of the most shocking examples concern the mistreatment of Roma communities.³⁵ The scale of the discrimination faced by people from minority ethnic backgrounds at the hands of European police forces has been detailed in a paper published by the *European Union Agency for Fundamental Rights* (FRA) and based its *Fundamental Rights Survey* (2020),³⁶ *EU Minorities and Discrimination Survey* (2017)³⁷ and its *Roma and Travellers Survey* (2020).³⁸ In *Your rights matter: police stops* paper, FRA reveals the differences between people’s experiences with police stops.³⁹ It shows that Black people, Asians and Roma are still more likely to be stopped and searched by police, which also affects their trust in policing. Over the past two years, several harrowing videos that have emerged captured abusive police behaviour in the Paris suburbs during the coronavirus lockdown. The UN’s special rapporteur on torture has sharply criticized the German police over **excessive use of force during anti-lockdown and anti-vaccination protests**. According to Amnesty International, the pandemic has led to greater “marginalisation, stigmatisation and violence.”⁴⁰ In its report on policing the pandemic, Amnesty International has verified 15 videos of unlawful use of force or racist and homophobic insults by law enforcement officials from 18 March to 26 April 2020 in 15 French cities. Six of these involved enforcement of lockdown rules.

Despite a growing awareness around violence against women, **gender-biased policing is also another crucial point at stake**. In October 2021, French police have been under fire for crude treatment of rape victims.⁴¹ When Anna Toumazoff learned that a 19-year-old woman who filed a rape complaint in the southern city of Montpellier was asked by police in graphic terms whether she experienced pleasure during the assault, she launched the hashtag #DoublePeine (#DoubleSentencing). Thousands of French women have then come forward to give their experiences of how their complaints were botched or dealt with inappropriately by police officers. In the United

³² Amnesty International, *Austria: Victim or suspect – A question of colour: Racial discrimination in the Austrian justice system*, 2009. Available at: <https://www.amnesty.org/en/documents/EUR13/002/2009/en/>

³³ Report available at : <https://www.ecoi.net/en/file/local/2030758/AUT-CBC-VI-2020-024-ENG-color+version.pdf>

³⁴ Report available at: <https://www.justiceinitiative.org/publications/equality-betrayed-impact-ethnic-profiling-france>

³⁵ <https://www.amnesty.org/en/documents/eur01/2511/2020/en/>

³⁶ <https://fra.europa.eu/en/project/2015/fundamental-rights-survey>

³⁷ <https://fra.europa.eu/en/publication/2017/second-european-union-minorities-and-discrimination-survey-main-results>

³⁸ <https://fra.europa.eu/en/publication/2020/roma-travellers-survey>

³⁹ https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-fundamental-rights-survey-police-stops_en.pdf

⁴⁰ <https://www.amnesty.org/en/documents/eur01/2511/2020/en/>

⁴¹ <https://www.france24.com/en/europe/20211019-after-metoo-now-doublepeine-french-women-accuse-police-of-downplaying-rape>

Kingdom, the murder of Sarah Everard by Met Police officer Wayne Couzens sparked national outrage. Further investigations have found that no less than 160 Metropolitan Police officers have been accused of sexual assault, sexual harassment, and other forms of sexual misconduct between 2019 and 2020. Serious questions have been raised about why the force failed to carry out a full criminal investigation, leading some to ask whether the force was maybe profoundly misogynistic.⁴²

Box 2 - #Prends ma plainte - Domestic violence in France and victims' trust in the police

Victims' trust in the public force seems to be declining across Europe, as cases of domestic abuse are reportedly not treated with the appropriate diligence. France's *National Observatory of Violence Against Women* has estimated that at least 220,000 adult women suffer domestic violence every year. According to a French study conducted by #NousToutes (#all of us women, in French) and released in March 2021, **66% of domestic violence victims say that their cases are not treated adequately by the French police**. The most frequent accusations being normalisation of the abuse, discouragement of the victim to file a complaint, and victim-blaming.⁴³ More recently, in February 2022, in an article titled "*Big whore*": the insult of a police officer about a complainant for sexual assault the investigative website Mediapart revealed a recording in which a police officer is heard insulting a 34-year-old woman who had just filed a complaint for sexual assault. Although the *General Inspectorate of the National Police* (IGPN) has been seized and the police officer suspended,⁴⁴ the case still raises questions about the **work environment** where a police officer felt he could talk like that about a victim in front of his colleagues.

Corruption among police forces is another salient issue. In February 2020, and following allegations of widespread corruption, cronyism and financial wrongdoing amongst the political and business elite, half of Malta's traffic police force, including its chief, have been arrested for suspected overtime fraud.⁴⁵ In June 2021, corruption charges are being drawn up against the former head of the Maltese police's anti-money laundering unit.⁴⁶ In July 2020, an urban police unit north of Paris has been partially dismantled after a string of high-level investigations found officers had been systematically extorting money from drug traffickers.⁴⁷ According to *Transparency International's* Global Corruption Barometer-EU, a third of European citizens think corruption is getting worse in their country. Interestingly though, according to Transparency International, police forces are not the worst public institutions when it comes to European citizens' worries about unchecked abuses of power.⁴⁸ Yet, on a regular basis, the Council of Europe's *Group of States against Corruption* (GRECO) reports points to where improvements should be made, both in legislation and in practice, in order to prevent corruption in the police. In its different Round Evaluation Reports, GRECO rightly put the emphasis on the relationship between risks of corruption and the low level of trust in the police.

⁴² <https://www.theguardian.com/society/2022/feb/01/revealing-the-rot-police-misogyny-runs-deeper-still>

⁴³ See Nous Toutes. (2021). #PrendsMaPlainte. Retrieved from: https://www.noustoutes.org/ressources/resultats_enquete_prendsmaplainte.pdf

⁴⁴ <https://www.mediapart.fr/journal/france/150222/grosse-pute-l-insulte-d-un-policier-propos-d-une-plaignante-pour-agression-sexuelle>

⁴⁵ <https://www.reuters.com/article/us-malta-fraud-idUSKBN2060ZD>

⁴⁶ <https://timesofmalta.com/articles/view/former-top-police-officer-to-be-charged-with-corruption.878867>

⁴⁷ https://www.lemonde.fr/societe/article/2020/06/30/une-compagnie-de-policiers-de-seine-saint-denis-au-c-ur-d-un-scandale_6044748_3224.html

⁴⁸ <https://www.transparency.org/en/gcb/eu/european-union-2021/results/mlt>

2.2. Decline of Public confidence in the police

A significant portion of the rhetoric surrounding policing during those last years has been exceptionally negative: “All Cops Are Bastards” or “ACAB” became rapidly a rallying cry among some radical critics of policing.⁴⁹ The motto may not mean consistent things to everyone who uses it, but the underscoring purpose is to mark down that the abuse of authority by police is not accepted.⁵⁰ The hashtags “abolish the police” and “defund the police” have gained salience too. Should we think afresh about the funding allocation between police and other agencies of frontline care and control? Would wider investments that foster and sustain secure and cohesive societies be a viable solution? In many respects, the “abolish the police” and “defund the police” movements convey a common frustration with policing, expressing the view that ordinary array of police reforms will be ineffective in reducing abusive policing: “The problem is not police training, police diversity, or police methods. (...) The problem is policing itself.”⁵¹ The defund and abolish the police movements come with some deep intellectual disagreements and practical concerns on how to proceed. Nonetheless, one could say that **these radical positions epitomise the view that police brutality and police misconducts are an indication of systems failure in the police forces rather than acts of individuals perceived as “rotten apples”**.

The idea that a small number of “rotten apples” are responsible for an outsize share of those complaints against police officers has gained considerable traction over the course of the last years in government reports, police unions declarations or popular media accounts. This metaphor, often used defensively following a major incident, conveys that the issue is one of individual failure, confined to a small number of reprehensible yet unrepresentative elements of the law enforcement agency under consideration. Stressful background conditions and a lack of resources can help explain such violations without excusing them. Indeed, the “rogue agents” explanation is certainly not always unfounded but usually misuses how cases of police misconduct are very often related to more structural and organisational issues. The rotten apple view is a comfortable perspective to adopt for any organisations as it allows them to look no further than suspect individuals. Research studies, national or local commissions on police misconduct clearly underline the impact of police sub-culture, the complicated working environment, and the ways in which the police may reflect cultural stereotypes and prejudices in their day-to-day interactions with the community. Besides, whatever the number of so-called “bad apples”, where there is an alleged or confirmed deviant conduct on the part of an individual official, it very often damages the reputation of honest and hard-working police officers and, by extension, is detrimental to the institution entirely; as the 19th century original saying goes, *a rotten apple quickly infects its neighbour*. Indeed, **these incidents shaped people’s confidence in the police and their understanding of what police is and does**.

Citizens’ attitudes towards the police or their satisfaction with police work have long been largely focused on the USA and on the UK. However, and over the past two decades or so, European comparative research have expanded significantly.⁵² Notwithstanding the inherent qualities of these

⁴⁹ Poulter, J. (2020). How ‘ACAB’ became the universal anti-police slogan. *Vice*. Available from: <https://www.vice.com/en/article/akzv48/acab-all-cops-are-bastards-origin-story-protest>

⁵⁰ Constantinou, A.G. (2021), *Applied Research on Policing for Police: The case of Cyprus*, Springer International, p.5

⁵¹ Vitale, Alex S. (2017). *The end of policing*. New York and London: Verso. See also Maher, Geo (2021) *A World Without Police: How Strong Communities Make Cops Obsolete*. London: Verso.

⁵² Jaeyong Choi & Nathan E. Kruis (2021) Social integration and confidence in the police: a cross-national multi-level analysis, *Policing and Society*, 31:6, 751-766; Schaap D, Scheepers P., “Comparing Citizens’ Trust in the Police Across European Countries: An Assessment of Cross-Country Measurement Equivalence”, *International Criminal Justice Review*, 24(1), 2014,

studies, two common shortcomings should be highlighted here: firstly, the function of the police varies significantly across Europe. Police in some countries have a much wider role than in others. Indeed, national police organisations can be distinguished in terms of their legitimacy, structure, and function thus making any comparison delicate. Secondly, and more importantly, 'trust', confidence', 'satisfaction' and 'cooperation' with the police are multifaceted phenomenon, hard to grasp and therefore hard to measure. It is beyond the scope of the present study to explore these two points in great details.⁵³ Much is to be done in order to clarify every aspect of the issues at stake. However, the literature offers some robust analysis on public confidence in their police. Based on the literature dedicated to European Member States, one can underline four major elements: Police forces all over Europe have been concerned at some point about a loss of 'trust' from the public; the degree of 'trust' and/or 'confidence' in the police varies greatly between and within European societies; the degree of 'trust' and/or 'confidence' in the police is not stable over time, nor it is among segments of the population under consideration; and, there is relation between 'trust' in the political system and 'support' for the police. There is not a single and straightforward explanation for these variations across EU Member States. But clearly trust cannot be taken for granted. Understanding the determinants of these variations of confidence in the police is of utmost importance.⁵⁴

Research has clearly shown that news coverage of police brutality or police misconduct can have an adverse effect on public attitudes toward the police. The relationship between the public and police across the United States was brought into sharp focus over the course of 2020 and 2021 following the high-profile killings of several Black Americans by police, including George Floyd and Breonna Taylor, and the worldwide protests that followed. Unsurprisingly, confidence in the police fell dramatically. According the 2020 Gallup poll, American's confidence in police is at its lowest level.⁵⁵ Similarly, trust in police among minority ethnic British people has dropped sharply in the past year – with most now no longer having faith in UK police forces. According to the latest YouGov survey released in October 2021, only 44% of people from minority backgrounds trust the police.⁵⁶ According to recent studies, European citizens' assessments of fair, careful and respectful treatment from the police play a greater role in public confidence in police agencies.

pp. 82-98; Kääriäinen, J. T. (2007), "Trust in the police in 16 European countries: A multilevel analysis", *European journal of criminology*, 4(4): 409-435.

⁵³ Roché et al. (2018) aptly highlight the different methodological difficulties when it comes to analyse trust and confidence in the police, but also underline the necessity to incorporate a broader social context into the police-community relations. See Roché, Sebastian, and Dietrich Oberwittler (ed.). *Police citizen relations around the world. Comparing sources and contexts of trust and legitimacy*. Routledge, 2018.

⁵⁴ Schaap, D. (2020). Citizens' trust in the police and police trust-building strategies. *European Law Enforcement Research Bulletin*, (19), 27-37

⁵⁵ Confidence in the police fell five points to 48%, marking the first time in the 27-year trend that this reading is below the majority level. See <https://news.gallup.com/poll/317135/amid-pandemic-confidence-key-institutions-surges.aspx>

⁵⁶ See <https://yougov.co.uk/topics/politics/articles-reports/2021/10/06/more-britons-now-unconfident-confident-police-deal>

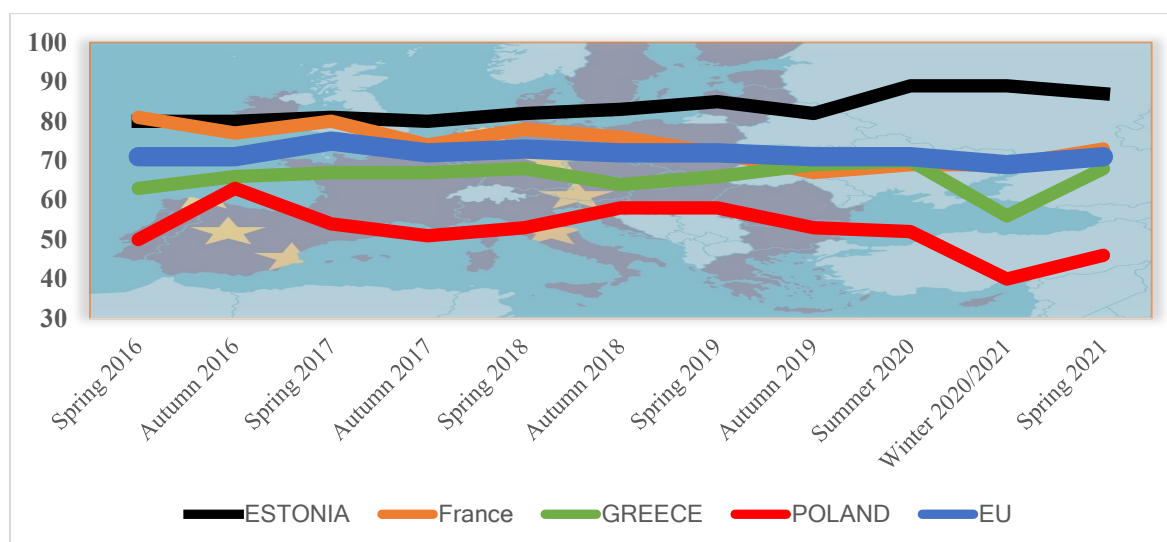


Figure 2 – Examples of European Citizens' trust in their police forces (2016-21)

Source: Eurobarometer

A comparative analysis between Western and Eastern Europe, shows a **close relationship between Europeans' trust in police officers and their opinions on satisfaction with the treatment received from the police**.⁵⁷ A recent study of community policing, with young minority ethnic people in nine European countries, suggests that experiences and perceptions of timely responsiveness and efficiency, through following formal procedures, are integral to public confidence.⁵⁸ Indeed, it is clear across the literature that poorly handled encounters with the police can have a significant negative impact on subsequent confidence. Researchers have shown that public perceptions of the ways people are treated by police officers are important in influencing ideas both about the legitimacy of the authority and subsequent cooperation with it. If people feel they are treated fairly and decently, they are more likely to comply with officer's instructions. Undoubtedly, whether treatment is objectively fair or is subjectively perceived to be fair is related to sociodemographic factors such as gender, ethnicity, and age.⁵⁹ Location (rural/urban areas, high/low crime areas) and levels of education equally influence perceptions of confidence and procedural fairness. Many studies indeed show that social exclusion and inequality create distrust towards the police.⁶⁰ Across the numerous local, national, and European attitude surveys produced over the past 20 years, it seems pretty clear that, despite these relational factors, 'being taken seriously' is by far one of the most important factors for people's assessments of their encounters with police forces.

Unfair and disrespectful police behaviour impacts upon people's trust and cooperation. And so does aggressive street-level law enforcement that is very often directed at ethnic minority groups than majority populations.

⁵⁷ Staubli, S. (2017) *Trusting the police: comparisons across Eastern and Western Europe*. transcript Verlag.

⁵⁸ Aston EV, O'Neill M, Hail Y, Wooff A. (2021) Information sharing in community policing in Europe: Building public confidence. *European Journal of Criminology*. September 2021.

⁵⁹ Farren, D., Hough, M., Murray, K. and McVie, S., (2018). Trust in the police and police legitimacy through the eyes of teenagers. In *Minority Youth and Social Integration* (pp. 167-192). Springer, Cham.; Bonnet, F. and Caillault, C. (2015). 'The invader, the Enemy within and They-who-must-not-be-Named: How Police Talk about Minorities in Italy, the Netherlands and France'. *Ethnic and Racial Studies*, 38(7): 1185–201.

⁶⁰ Fassin D. (2013). *Policing Order: An Ethnography of Urban Policing*. Malden, MA: Polity.

Police officers' attitudes toward citizens

Both real and perceived improper police behaviour can seriously impact public attitudes toward police. But how citizens are perceived by police officers and how such perceptions affect their subsequent behaviours? **Studies on police attitudes toward citizens remains limited.** However, they generally suggest that police officers view the public negatively. Ethnographic and observational research concludes that police officers share common values and norms that comprise "police culture" and a strong sense of solidarity with fellow officers.⁶¹ While this plays a positive role in enhancing police officers' safety, with officers feeling secure that they will be 'backed up', the solidarity of **police culture has also been criticised for perpetuating misconduct through a 'code of silence'.** Negative attitudes are believed to increase over time, as officers become more socialised into the culture.⁶² Scholars have asserted that how police officers carry out their duties and see their public is equally influenced by the organisational and ecological contexts in which they operate. Other studies have shown that perception of danger and the need to maintain authority lead to a cultural belief that officers must 'maintain the edge' over citizens.⁶³ **Citizens are therefore very often seen as a problem to be circumvented or overcome, not as partners in a collaborative project to maintain law and order.**⁶⁴ At the extreme, some officers believe some people are beyond or simply not deserving of help, let alone suitable partners in policing activity.⁶⁵ Most of the literature on police culture and police attitude toward citizens focuses on experienced male officers. Attitudinal data showed few differences between male and female police officers in their views of ethical conduct and the stated willingness to report a fellow officer known to have behaved inappropriately. Little is known of the attitudes that officers hold when they begin their careers.⁶⁶

Box 3 - Police officers' attitudes toward citizens

When interaction with police forces become more hostile it usually results in spiral of violence that is quite detrimental to the police but also to the society more broadly *i.e.*, when the sense of citizenship is weaken or broken. Finally, research shows that the lack of interest or the **failure of police forces to be answerable for their acts and to act responsively upon are usually quite detrimental** to public trust and therefore police legitimacy.

⁶¹ Brough, P., Chataway, S., & Biggs, A. (2016). 'You don't want people knowing you're a copper!' A contemporary assessment of police organisational culture. *International Journal of Police Science & Management*, 18(1), 28–36.

⁶² Chan, J., Devery, C., & Doran, S. (2003). *Fair cop: Learning the art of policing*. Toronto, Canada: University of Toronto

⁶³ Ingram, J. R., Paoline, E. A., & Terrill, W. (2013). A multilevel framework for understanding police culture: The role of the workgroup. *Criminology*, 51(2), 365–397.

⁶⁴ Moon, B. and Zager, L.J. (2007), "Police officers' attitudes toward citizen support: Focus on individual, organizational and neighborhood characteristic factors", *Policing: An International Journal of Police Strategies & Management*, Vol. 30 No. 3, pp. 484–497.

⁶⁵ Reiner, R. (2010), *The Politics of the Police*, Oxford University Press, Oxford.

⁶⁶ Porter LE, Alpert GP (2017). Understanding Police Recruits' Attitudes Toward Public Interactions: An Australian Example. *Police Quarterly*. 20(4):449-48.

3. POLICE ETHICS AND INTEGRITY: INTERNATIONAL AND EUROPEAN STANDARDS

KEY FINDINGS

- Policing, understood as being the enforcement of fundamental social laws and rules, is more than ever expected to be performed with high degrees of legitimacy, transparency, and accountability.
- The development of police oversight mechanisms to effectively collect, manage and investigate complaints or, in some cases, to proactively carry out monitoring of police actions derives from a set of international and European requirements and obligations. Police codes of conduct have also been developed both at the international and European levels to clearly identify standards.
- These standards and codes both contribute to police accountability. They equally provide a sound basis for a proportionate use of force and building trust for the police among citizens.

3.1. International tools and instruments

The most authoritative source of international instruments that are pertinent to democratic policing is the *United Nations* (UN). The 1945 Charter of the United Nations requires of all members states a binding commitment to promote and practice respect for human rights and fundamental freedoms for all regardless of race, language, sex, or religion⁶⁷. The ***Universal Declaration of Human Rights (UDHR)*** adopted by the U.N. General Assembly on 10 December 1948 established a set of universal rights held by all humans irrespective of their roles in society. The UDHR provides necessary **protections against arbitrary actions by law enforcement** by making it clear which rights cannot be restricted:

- Everyone has the right to life, liberty and security of person (Article 3);
- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5);
- All are equal before the law and are entitled without any discrimination to equal protection of the law (Article 7);
- No one shall be subjected to arbitrary arrest and detention (Article 9);
- Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which they have had all the guarantees necessary for their defence (Article 11);
- Everyone has the right to freedom of opinion and expression (Article 19);
- Everyone has the right to freedom of peaceful assembly and association, and no one may be compelled to belong to an association (Article 20).

⁶⁷ United Nations, UN Charter, Article 1, Paragraph 3: 'To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion'.

There are two key UN-brokered sets of standards specifically devoted to delineating good conduct by law enforcement officials:⁶⁸

- The 1979 *United Nations Code of Conduct for Law Enforcement Officials*;⁶⁹
- The 1990 *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*.⁷⁰

The **UN Code of Conduct for Law Enforcement Officials** is a resolution of the United Nations General Assembly that was adopted on December 17, 1979. The resolution by which the code was accepted globally included, as part of the precept: *'That, like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole.'* The Code is not legally binding for member states, but rather a set of guidelines in eight articles that the General Assembly encourages and recommends that Member States follow or incorporate into their national law. The Code of Conduct **provides a standard for outlining the responsibilities and duties for law enforcement officials** within Member States. The Code of Conduct is intended to cover the full range of authorities that enforce the law, including any state security forces, police, or the military (Article 1). The rules similarly apply to any private security company to which the state or one of its organs has delegated police powers. It states that those who exercise police powers shall *"respect and protect human dignity and uphold human rights of all persons"* (Article 2). It places limits on the use of force by explicitly stating that officials *"may use force only when strictly necessary,"* (Article 3) while also applying the principle of proportionality. Acts of torture and cruel and degrading treatment are expressly forbidden by the Code, and under no circumstances can threats to national security be used as justification (Article 5). The U.N. Code also provides guidelines for the management of persons in custody, specifying that all persons should receive impartial medical treatment when required (Article 6), and Law enforcement officials are forbidden from engaging in corruption. They are also instructed to actively seek to combat corrupt practices (Article 7). The Code includes a specific section on reporting breaches of the Code. It states that officials are expected to report breaches to superiors or review bodies (Article 8). The Code also offers some protection to whistle-blowers, stating that they should be given support (article 8(b)). The 1989 *Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials* stipulates that, effective mechanisms need to be established to ensure the internal discipline and external control as well as the supervision of law enforcement officials.

While the UN *Code of Conduct for Law Enforcement Officials* describes the basic function of law enforcement and the responsibilities of police officers, the 1990 **UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials** cover the 'qualifications, training and counselling' relevant for police officers as well as 'reporting and review procedures' related to the use of firearms. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials was adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders and was

⁶⁸ Other relevant standards include the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Declaration on the Protection of All Persons from Enforced Disappearance; Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions; United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"); United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("Havana Rules"); United Nations Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice; Istanbul Protocol; Declaration on the Rights of Indigenous Peoples; United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice; Revised United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR Revised or Nelson Mandela Rules); United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

⁶⁹ <https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx>

⁷⁰ <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>

welcomed by the General Assembly of the UN in resolution 45/166 in 1990. It seeks to further clarify aspects of the Code of Conduct for Law Enforcement Officials on the principle of necessity on the use of force. Principle 9 of the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* stipulates that: 'Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives.' Each of the scenarios established in this principle 9 assumes that firearms are to be discharged, not with the intention to kill, but only to stop a suspect. Indeed, the 1990 Basic Principles reaffirms the **principles of necessity and proportionality** mentioned in the 1979 code, as key dimensions on how and when force may be used lawfully during policing actions. The principle of necessity holds that force used for the purpose of law enforcement must be necessary in the circumstances. A second element of the principle of necessity is that each use of force, whatever its nature and extent, must be for a legitimate purpose. Law enforcement officials may use force only to the extent required for the performance of their duty. Accordingly, force may never be applied in a discriminatory manner, or against an individual who offers no resistance. While law enforcement officials shall avoid the use of force, where that is not practicable, they are invited to 'restrict such force to the minimum extent necessary. Proportionality comes into play when the principle of necessity has been met, but when acting in accordance with the principle of necessity may render necessary force unlawful. As 1990 Basic Principle 5 stipulates: 'Whenever the lawful use of force and firearms is unavoidable, law enforcement officers shall act in proportion to the seriousness of the offence and legitimate objective to be achieved.'

Beyond the UN Code of Conduct for Law Enforcement Officials and the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, a series of UN treaties and principles, though not solely focused on the police, refer to prohibited police behaviours and desirable police: the 1965 *International Convention on the Elimination on All Forms of Racial Discrimination*;⁷¹ the *International Covenant on Civil and Political Rights*, adopted in 1966 and entered into force in March 1976;⁷² the 1979 *Convention on the Elimination of All Forms of Discrimination against Women*;⁷³ the 1989 *Convention on the Rights of the Child*;⁷⁴ and the *International Code of Conduct for Public Officials*, agreed in 1996.

The United Nations Office on Drugs and Crime (UNODC) and the United Nations High Commissioner for Human Rights (OHCHR) have developed technical tools and manuals for law enforcement professionals based on international human rights law and UN standards and norms: the *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*⁷⁵; the *Handbook on Police Accountability, Oversight and Integrity*⁷⁶, and the *Resource book on the use of force and firearms in law enforcement*.⁷⁷ The **OHCHR's Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials** has been released in 1997. It is organised into major human rights topics of concern to the police, such as investigations, arrest, detention, and the use of force. This manual is

⁷¹ <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

⁷² <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁷³ <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

⁷⁴ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁷⁵ <https://www.ohchr.org/EN/PublicationsResources/pages/TrainingEducationthree.aspx>

⁷⁶ UNODC (2011), *Handbook on Police Accountability, Oversight and Integrity*. Available at: https://www.unodc.org/pdf/criminal_justice/Handbook_on_police_Accountability_Oversight_and_Integrity.pdf

⁷⁷ UNODC (2017) *Resource book on the use of force and firearms in law enforcement*. available at: <https://www.un-ilibrary.org/content/books/9789213630945>

one component of a three-package of material for human rights training for police. While law enforcement officials are duty bearers with an obligation to protect the human rights of others, the OHCHR's manual clearly underlines that they are rights holders as well and States have a responsibility to respect and protect their rights too.⁷⁸ Creating an environment in which law enforcement officials are aware of their rights and see their rights and concerns respected is an important factor in ensuring they carry out their work with confidence and with the commitment to protect the rights of others. The 2011 UNODC *Handbook on Police Accountability, Oversight and Integrity* provides detailed guidance to Member States on comprehensive structures for police accountability, obligations under international law, before police operations and actions, establishing internal and external oversight bodies and complaint mechanisms, internal accountability and police integrity, accountability to the State and to civil society as well as a roadmap towards police integrity and accountability. As such, the 2011 UNODC Handbook focuses more on the core aspects of police work and powers, such as the use of force, the power to arrest and detain, and non-discrimination principles and list detailed standards of conduct and prohibitions. The 2017 *Resource book on the use of force and firearms in law enforcement* is the result of a joint effort by the UNODC and the OHCHR. It **provides guidance on the use of force, human-rights based approaches to policing, the responsibility of law enforcement authorities**, an overview of instruments of force, use of force in different policing situations, as well as accountability for the use of force and firearms by law enforcement. It further highlights good practices in relation to protests and relations between law enforcement and journalists and other media. Finally, it provides guidance on how to ensure that the law enforcement work force is representative of the communities served, including by highlighting that arbitrary or excessive use of force is often found to target communities that are underrepresented within the law enforcement agencies.

The ***Organisation for Security and Co-operation in Europe (OSCE) Guidebook on Democratic Policing*** sets out a similar structure in respect of the characteristics of democratic policing.⁷⁹ Published in 2007, the guidebook articulates the objectives of democratic police services and forces, the importance of their commitment to the rule of law, policing ethics, and human rights standards, the essential nature of police accountability to the law and to the society they serve; as well as the need for their co-operation with the communities, recognizing that effective policing requires partnership with the communities being served. Furthermore, the guidebook elaborates on structural and managerial aspects within the police which are considered necessary to achieve and sustain democratic policing.

The UN Code of Conduct for Law Enforcement Officials, the UN Standard Minimum Rules and the UN Body of Principles set out several important principles and prerequisites for the humane performance of law enforcement functions, including that: firstly, every law enforcement agency should be representative of, and responsive and accountable to, the community as a whole. Secondly, every law enforcement agency should discipline itself to uphold international human rights standards and the actions of law enforcement officials should be open to public scrutiny. In addition to these requirements, they also prohibit police officers from accepting bribes, revealing confidential information, or harassing people. Thirdly, standards for humane conduct of law enforcement officials lack practical value unless their content and meaning become part of the doctrine of every law enforcement official, through education and training.

Professional international police organisations have also developed codes of ethics and standards for police officers. The ***International Association of the Chiefs of Police (IACP)***, the world's largest and

⁷⁸ See OHCHR, *Human Rights and Law Enforcement, A Manual on Human Rights Training for Law Enforcement Officials*, 2017, chapter 20 (Rights of Law Enforcement Officials).

⁷⁹ <https://www.osce.org/secretariat/23804>

most influential professional association for police leaders, adopted a *Police Code of Ethics* during its 64th Annual conference in 1957. The IACP Code of Ethics has been revised a first time in 1989 and a second time in 1991. In 2009, the IACP Police code has been renamed "*Law Enforcement Code of conduct*".⁸⁰ IACP presents its code as "*a preface to the mission and commitment law enforcement agencies make to the public they serve.*" It is formulated as an oath of ethics: "*As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.*" It outlines basic principles of law enforcement, such as serving and protecting the community; keeping one's private life beyond reproach; and upholding the public trust. The code also recognise that **police officers must operate within the Law and that the use of force should be proportionate.**

Since its creation in 1923, Interpol has steadily expanded its membership and extended its mandate in the area of international police objectives.⁸¹ A declaration of intent for law enforcement, encompassing a code of ethics and a code of conduct, was adopted in 1999 by Interpol. The **Interpol Code of Ethics for Law Enforcement Officers** is complemented by a code of conduct which sets value-based aspirations for police conduct, covering issues of honesty and integrity, fairness and tolerance, use of force and abuse of authority and performance of duties: "*The primary duties of law enforcement officers are the protection of life and property, the preservation of public peace, and the prevention and detection of criminal offences. To fulfil these duties law enforcement officers are granted extraordinary powers; citizens therefore, have the right to expect the highest standards of conduct from them.*"⁸² Interpol's International Group of Experts on Corruption (IGEC) developed a set of **Global Standards to Combat Corruption in Police Forces/Services** that has been adopted by Interpol's General Assembly in 2002.⁸³ This set of Global standards aims at ensuring that each Interpol member country demonstrate high standards of honesty, integrity, and ethical behaviour in the performance of their police functions, as well as to promote measures to bring to justice any officers who are corrupt.

3.2. Council of Europe

The **European Convention on Human Rights (ECHR)** is an international treaty created by the *Council of Europe* (CoE). It entered into force in 1953 and protects the human rights and fundamental freedoms of every person in every member state of the Council of Europe. States have a positive obligation to ensure that the rights and freedoms guaranteed by the *European Convention on Human Rights* (ECHR) are protected (article 1). The Convention guarantees the fundamental rights, such as the right to life (article 2), the prohibition of torture (article 3), the right to liberty and security (article 5), the right to a fair trial (article 6), the right to respect for private and family life (article 8), freedom of expression (article 10), and the prohibition of discrimination (article 14). The Convention is supplemented by various Additional Protocols, which extend the catalogue of protected rights. All Council of Europe member states have ratified the ECHR and are, therefore, legally bound by this treaty. **Article 2 establishes legal protection for the right to life, but the article makes allowances for the use of lethal force by the state in narrowly defined circumstances of absolute necessity** (article 2, §2): "*Deprivation of*

⁸⁰ <https://www.theiacp.org/resources/law-enforcement-code-of-ethics>

⁸¹ Anderson, Malcolm. *Policing the world: Interpol and the politics of international police co-operation*. Oxford: Clarendon Press, 1989.

⁸² Excerpt from Interpol Code of conduct for law enforcement officers - The Principles

⁸³ Available at: <https://www.interpol.int/content/download/6179/file/GA-2001-70-RES-04%20-%20Global%20Standards%20to%20Combat%20Corruption%20in%20Police%20ForcesServices.pdf>

life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.” Even in these circumstances, the force used must be essential and strictly proportionate. Furthermore, in fulfilling the requirements of Article 2, signatory states are inferred to have a duty to ensure adequate effective investigation of deaths resulting from the actions of state agents, both from the use of lethal force, and also in situations arising from the negligence of agents that leads to a death.⁸⁴ The Convention **for the Prevention of Torture and Inhuman or Degrading Treatment or punishment** was opened for signature to Member States of the Council of Europe on 26 November 1987. It entered into force on 1 February 1989 upon the ratification of 7 states. As of February 2022, all Member States of the Council of Europe had ratified the Convention. In its preambular paragraph 3 the Convention recalls that under Article 3 of the European Convention on Human Rights and Fundamental Freedoms, ‘no one shall be subject to torture or to inhuman or degrading treatment or punishment.’ According to Article 2 of the Convention, the States Parties are obliged to permit visits to ‘any place within (their) jurisdiction where persons are deprived of their liberty by a public authority’. The provision is broad enough so as to include places where persons are held in custody or imprisoned as a result of conviction for an offense or held in administrative detention. The Council of Europe Parliamentary Assembly, Resolution 690 (1979) on the **Declaration on the Police** provides a series of rules with which police forces in Europe should Comply. Drawing upon the principles of the 1979 UN Code for Law Enforcement Officers, the European declaration provides basic standards for the operation of legitimate law enforcement. The *European Declaration on the Police* contains sections on ethics, police status, and the police in wartime and in other exceptional situations. **The rules were designed both to help protect human rights and to improve the status of police officers.** It recognizes that the existence of the police must not limit the full exercise of human rights and fundamental liberties: “A police officer shall fulfil the duties the law imposes upon him by protecting his fellow citizens and the community against violent, predatory and other harmful acts, as defined by law.” Police officers are to be controlled by appropriate rules of conduct defined independently, to avoid human rights violations in the exercise of police functions. As such, the Declaration echoes the broader promotion of international protocols and guidance on human rights for policing through the United Nations during the latter half of the 20th century. Yet, it clearly marked also a **first attempt at establishing ethical standards for police forces at European level.** Also, of relevance to the police in Europe is the Council of Europe’s Recommendation No. R (2000) 10 on **Codes of Conduct for Public Officials**. The recommendation was preceded by a comprehensive report of the Project Group on Administrative Law (CJ-DA), set up under the authority of the European Committee on Legal Co-operation (CDCJ).⁸⁵ The Council of Europe’s recommendation provides that raising ethical values are important means to prevent corruption. It has three objectives: to specify the standards of integrity and conduct to be observed by public officials, to help them meet those standards of integrity and to inform the public of the conduct it is entitled to expect of public officials. Member states governments have to promote, subject to national legislation and the principles of public administration, the enactment of national codes of conduct for public officials based on this Recommendation. The Group of States against Corruption (GRECO) monitors the implementation of this Recommendation.

⁸⁴ Juliet Chevalier-Watts, *Effective Investigations Under Article 2 of the European Convention on Human Rights: Securing the Right to Life or an Onerous Burden on a State?* *European journal of international law*, 2010, vol. 21, no 3, p. 701-721

⁸⁵ Available at: <https://rm.coe.int/1680534424>

The adoption of the **European Code of Police Ethics** is an important step in promoting the principles of the Council of Europe regarding the police in the member states. The European Code of Police Ethics was established by the Recommendation Rec (2001)10, adopted by the Committee of Ministers of the Council of Europe on 19 September 2001.⁸⁶ The European Code of Police Ethics aims to provide a **set of principles and guidelines for the overall objectives, performance, and control of the police in democratic societies**. The sixty-six articles of the European Code of Police Ethics fall under seven headings: the objectives of the police (article 1); the legal basis of the police (articles 2–5); the police and criminal justice system (articles 6–11); the organisational structures of the police (articles 12–34); guidelines for police action and intervention (articles 35–58); accountability and control of the police (articles 59–63); and, research and international co-operation on police ethics (articles 64–66). The 2001 European Code of Police Ethics was complemented by an Explanatory Memorandum. Some parts of the text are intended to serve as model provisions for national legislation and codes of conduct as well as principles for ethical policing. According to some, the code is, “*no less than a Magna Charta of “good policing” on the background of recent and not so recent experiences with oppressive and unfair policing.*”⁸⁷ Indeed, **The Code sets the foundations of an ideal democratic, European police model**. Guiding principles relevant to the police have been also developed by the *European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (CPT): with the *Developments concerning CPT standards in respect of police custody* (2002),⁸⁸ the *Effective investigation of ill-treatment. Guidelines on European standards* (2009), and *Combating ill-treatment in Prison* (2016). The *European Commission against Racism and Intolerance* (ECRI) has equally developed principles for the police in its specific field of competence with its Recommendation N°11 *on combating racism and racial discrimination in policing* (adopted on 29 June 2007). The Council of Europe’s responses to member states’ accountability further include the **Platform to Promote the Protection of Journalism and Safety of Journalists**. Among incidents reported in the Platform, there are many police misconduct incidents against presspersons across the EU that, occasionally, have aroused concerned state’s response. Raising awareness about fundamental freedoms and rights at stake when presspersons are attacked by law enforcers does not however always imply that states will share the Council of Europe’s concerns.⁸⁹

There is a body of **jurisprudence from the European Court of Human Rights** (ECtHR) on the **liability of police officers** for ill-treatment and unlawful killings as well as on responsibility for the planning and control of individual operations and proper legal frameworks for the use of force and firearms.⁹⁰ Substantive rights that are of particular importance to a human rights-based approach to police complaints are the **right to life**, under Article 2 of the ECHR, and **prohibition of torture, inhuman or degrading treatment or punishment**, under Article 3. Furthermore, the Court has relied on the obligation on states to secure to everyone within their jurisdiction the rights set out in the ECHR (Article 1), the rights of protestors to demonstrate under Article 11, and the **right to an effective remedy** (Article 13). Emphasis has also been placed on Article 14 of the ECHR on the prohibition of

⁸⁶ Available at: <https://rm.coe.int/16805e297e>

⁸⁷ Failla, S. (2020) “The European Code of Police Ethics 20 Years on - A View from a Training Angle.” *European Police Science and Research Bulletin*, 20: 45-52

⁸⁸ Available at: <https://www.coe.int/en/web/cpt/police-2>

⁸⁹ This point is illustrated by the photojournalist Yannis Liakos case (Greece no 26/2021), victim of police brutality on 10 February 2021. On 19 March 2021, the Ministry of Citizen Protection and Greek Police replied to the Council of Europe and affirmed that “a preliminary administrative inquiry [...] was currently in progress”. On 28 February 2022, Liakos informed us that he had not been called to testify and was not aware of a disciplinary investigation in progress.

⁹⁰ See https://www.echr.coe.int/Documents/Handbook_European_Convention_Police_ENG.pdf

discrimination. For example, in *R. R. and R. D. v. Slovakia*, the ECtHR found that failing to investigate the applicants' allegation of police racism violated Article 14 of the ECHR on, in conjunction with Article 3 of the ECHR on the prohibition of torture.⁹¹ Additionally, in a landmark judgment in 2019, the ECtHR used the term 'ethnic profiling' for the first time and found the practice discriminatory. In *Lingurar v. Romania*, the ECtHR found that the police discriminated against Roma families by using ethnic profiling to justify raids on their homes.⁹² The Court found that the ill-treatment of the applicant family during the raid violated Article 3 of the ECHR (prohibition of inhuman or degrading treatment). It also found two violations of Article 14 in conjunction with Article 3 because of the racial motive. As held by the Court, the manner in which the authorities justified and executed the police raid shows that the police had exercised their powers in a discriminatory manner, expecting the applicants to be criminals because of their ethnic origin. The applicants' behaviour was extrapolated from a stereotypical perception that the authorities had of the Roma community as a whole.

International law requires that the investigation is effective, comprehensive, and independent, as well as prompt and transparent. The European Court of Human Rights has developed five key principles for the effective investigation of complaints against the police:

- *Independence*: There must be no institutional or hierarchical connections between the investigators and the police officer subject of the complaint, amounting to a real, practical independence;
- *Adequacy*: the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible;
- *Promptness*: the investigation should be conducted promptly and expeditiously in order to maintain confidence in the rule of law;
- *Public scrutiny*: procedures and decision-making should be open and transparent in order to ensure accountability; and,
- *Victim involvement*: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests

3.3. EU tools and instruments

The **Charter of Fundamental Rights of the European Union (CFR)** entails the full recognition of fundamental rights in the EU legal order. According to the 2000 EU CFR, States are obligated both to refrain from limiting human rights unduly (obligation to respect) and to act to secure human rights (obligation to protect). Police practices may engage the protection of a number of rights envisaged in the Charter, namely the right to life (Article 2); the prohibition of inhuman and degrading treatment (Article 3); the principle of non-discrimination (Article 21) and the right to an effective remedy (Article 47). The obligations to respect and to protect human rights also extend to police officers as they are authorities appointed by the state.

In response to concerns regarding the risks of profiling for non-discrimination and equality, in 2010, the **EU Agency for Fundamental Rights (FRA)** published the guide 'Towards more effective policing, Understanding and preventing discriminatory ethnic profiling'.⁹³ The **Guide focused on the use of ethnic profiling by the police in the context of general policing, including counter-terrorism, concentrating in particular on the exercise of stop and search powers**. The Guide aimed to give

⁹¹ *R. R. and R. D. v. Slovakia*, Application no. [20649/18](#), Judgment of 1 September 2020.

⁹² *Lingurar v. Romania*, Application No. 48474/14, Judgment of 16 April 2019.

⁹³ FRA, 'Towards More Effective Policing Understanding and Preventing Discriminatory Ethnic Profiling: A Guide' (2010).

mid-level officers a deeper understanding of the theory and practice of profiling, and to illustrate in concrete terms how profiling can be avoiding discriminatory practices based on ethnicity in particular. Furthermore, it provided examples and 'case studies' to illustrate police practices and operations that have produced both negative and positive results. For example, it explained that to avoid being discriminatory any decision to exercise police powers should be based on factors additional to a person's race, ethnicity or religion, even when race, ethnicity or religion are relevant to the particular operation or policy. In terms of concrete recommendations, the **Guide referred to a number of measures taken at both management and operational levels** such as:

- (a) issuing clear guidance to officers issued as to when reliance on racial, ethnic or religious characteristics is permissible, for example through codes of conduct;
- (b) training that allows officers to develop good relations with communities (cultural or diversity training), where members of different communities participate in their delivery;
- (c) recording the use of stop and search powers accompanied by adequate internal oversight and complaints mechanisms to identify and rectify discriminatory policing practices;
- (d) the use of good intelligence and, in particular, good suspect descriptions.

In 2018, another Guide was released, which took a more holistic approach to unlawful profiling (including in the context of border management) and discriminatory profiling on all grounds, including nationality, age and gender, in addition to ethnic origin, and algorithmic, or computer-based, profiling.⁹⁴ **This comprehensive approach aimed primarily to take into account technological developments rather than as a response to specific worrying practices at the national level.** This Guide was primarily designed for those responsible for training law enforcement and border management officials. Furthermore, as with the previous one, it may also directly support officers in mid-level positions to implement profiling techniques lawfully. It also aimed to question the effectiveness of using profiling in increasing the success rate (or 'hit rate') of law enforcement operations. Emphasis in the Guide has been placed on the ethical and fundamental rights standards that must be applied, for example by making explicit reference to Recommendation 44 of the *European Code of Police Ethics*. Compared to the previous one, FRA itself also provides concrete guidance on respectful encounter with individuals and input on the types and characteristics of guidance and involvement of stakeholders, for example by making the guidance available with the communities and requesting feedback. Similarly this Guide concentrated on the need for training of police officers, which should take into consideration the organisational culture and offer courses that incorporate strategies to replace stereotypes. FRA draws the attention to the fact that evaluating the impact of training is crucial to monitor how training contributed to changing officers' perception and improving their practice, and to identify gaps where further training may be required. Accountability mechanisms, in particular internal monitoring, body-worn cameras and complaints mechanisms, as discussed in the next Section, also feature prominently. A more general manual for police trainers has also been drafted in 2019.⁹⁵ It is designed **to assist police academies in integrating human rights into police training, rather than relegating such training to an optional add-on.** The Manual emphasises the rights of non-discrimination, dignity and life that may assist in cultivating trust in the police and explains the

⁹⁴ FRA, 'Preventing unlawful profiling today and in the future: A guide' (2018).

⁹⁵ FRA, 'Fundamental rights-based police training A manual for police trainers' (2019).

fundamental rights implications of real-life situations. It is a great source for police academies to foster a human rights perspective on policing through practical, comprehensive, and simplified guidance.

4. POLICE ACCOUNTABILITY AND TRANSPARENCY

KEY FINDINGS

- Accountability pertains to a system of internal and external checks and balances aimed at ensuring that police perform the functions expected of them to a high standard and are held responsible when they fail to do so. In an attempt to ensure that citizen complaints against police behaviour are effectively investigated, properly recorded, and proceed towards a fair and equitable outcome, civilian oversight of police complaints is widely recognised as an effective measure.
- Many administrations across EU countries have created external oversight bodies for police following problems of recurring misconduct and the failure of internal control mechanisms. These non-police oversight bodies are extremely varied in terms of mandate, investigative powers, and resources to conduct their missions. Questions inevitably follow about the effectiveness of these bodies to detect and prevent abuses of power.
- In order to sustain such a democratic police accountability, non-police oversight bodies should be well resourced, properly funded and with a clear mandate. The long-term legitimacy and efficiency of a civilian oversight process clearly depends on oversight bodies subjecting themselves to similar levels of accountability to that demanded of those they oversee.

The need for the police to account for their actions has been at the centre of policing debates and politics since the inception of modern policing in Europe. The **topics of police accountability and police governance have grown even more significantly over the past decades**. The use of new technologies, the development of heavily armed police units, the use of lethal and semi-lethal weaponry in forces, a greater input of the private sector in the delivery of police services and the expansion of cross-border cooperation between police forces across have indeed generated substantial debates in regard to how ensuring the efficient discharge of the police function on one hand, and promoting values such as transparency, responsiveness and the maintenance of professional, ethical and human rights standards in policing on the other. **Police governance and police accountability are interconnected terms**. The former applies to questions on how to make the police an efficient, effective force that operates according to accepted ethical and professional standards and the latter refers to the mechanisms, structures, and instruments under which the police can be called to account for not complying with performance requirements, legal duties, and professional standards. Amongst all of the components that constitute democratic policing, accountability and governance are equally important. Yet, the **notion of accountability stands as pre-eminent**. As Loader rightly underlines, *'Policing cannot adequately contribute to the realization and protection of political freedom, to sustaining forms of democratic common life, and in these terms to the security of citizens, without police governance arrangements being treated and acted upon as an indispensable dimension of how policing in democratic societies is thought about and performed.'*⁹⁶ To put

⁹⁶ Loader I (2006). Policing, recognition and belonging. *The Annals of the American Academy of Political and Social Science* 605(1): 213.

it otherwise, key to police accountability is the principle that **policing can only be fair and just where police actions are subject to democratic review.**

4.1. Principles of Police Accountability

The **accountability of the police to democratic processes has been and continues to be one of the central issues confronting the police throughout modern times.** Markham and Punch concisely suggest that *"Policing is accountability, for without it there is no legitimacy; and without legitimacy the police cannot function adequately within a democratic state."*⁹⁷ Yet, accountability is far from being a simple and straightforward term: it is *'a complex and chameleon-like term.'*⁹⁸ Indeed, it encompasses concepts such as answerability, responsibility, liability, sanction, duty, oversight, investigation, and control. If accountability is not precisely a settled term,⁹⁹ it is, however, commonly viewed as a **system of internal and external checks and balances.** Accountability exists therefore in a relationship between two parties where one has expectations of the other, and the other is obliged to provide information about how they have met these expectations or face the consequences of failing to do so. As such, there are two major components in accountability: *Answerability*, understood as providing information and justification for how one's actions align with expectation; and *Enforcement*, understood as being subject to, and accepting the consequences of failing to meet these expectations. In regard to police then and following the previous section on international and European instruments and guidelines, democratic accountability aims at ensuring that **police carry out their duties properly and are held responsible if they fail to do so.** If it is the role of the police to hold citizens to account for their behaviour when they break the law, citizens do expect the police to have the same standards and perhaps more.¹⁰⁰ In each European Member State, citizens expect police officers to not only enforce the laws but to be of the highest ethical standard. Such a system is based on a clear understanding of the rule of law as a check on power, requiring equal subjection of everyone to the law, and is meant to uphold police integrity, to deter misconduct and to restore or enhance public confidence and trust in policing. Thus, accountable policing means that there is no such thing as impunity. The police accept being questioned about their decisions and actions and accept the consequences of being found guilty of misconduct, including sanctions. Police accountability therefore operates at two levels: Holding the police agencies accountable for the services they deliver; Holding individual police officers accountable for how they treat citizens including use of brutal or deadly force, discriminatory or disrespectful behaviour, and any other conduct that breaches code of conducts and Human rights. The added-value of democratically accountable police is equally clear. Any police service that is indeed accountable, independent, and respects and protects transparency and human rights will be able to build constructive relations with the public and society. The key questions are then **accountable to whom, how and for what?**¹⁰¹

⁹⁷ Markham, G., & Punch, M. (2007). Embracing Accountability: The Way Forward – Part 2. *Policing: A Journal of Policy and Practice*, 4(1): 300.

⁹⁸ Mulgan, Richard. "'Accountability': an ever-expanding concept?". *Public administration* 78.3 (2000): 555-573.

⁹⁹ See for instance Dubnick, M. J., & Frederickson, H. G. (Eds.). (2014). *Accountable governance: Problems and promises*. London and New York: Routledge; Bovens, M. (2010). Two concepts of accountability: Ac-countability as a virtue and as a mechanism. *West European Politics*, 33(5), 946-967.

¹⁰⁰ Garland, D. (2001). *The Culture of Control*. Oxford, Oxford University Press.

¹⁰¹ Mashaw, J (2006) Accountability and institutional design: Some thoughts on the grammar of governance. In: Dowdle, MW (ed.) *Public Accountability: Designs, Dilemmas and Experiences*, New York: Cambridge University Press, pp. 115–156; Cheung, J (2005) Police accountability. *The Police Journal* 78(1): 3–36. Mashaw refers to six elements to explain the accountability process: who is accountable; to who are they accountable; for what are they accountable; by what standards of appraisal; through what processes are they held accountable; and what consequences may follow. Cheung

Body Worn Cameras and police accountability

Can Body Worn Cameras (BWC) reduce the use of force by officers, deter civilian assaults on officers, and have a mitigating effect on complaints against officers? Head-mounted camera pilots began in the U.K. in 2005 but it was the events of Ferguson Missouri in 2014, when a police officer shot and killed an unarmed black teenager, that BWCs started to be seen as the ultimate technological solution to inadequate police accountability. The use of such technology has increased largely all over the world since, under the assumption that police performance, conduct, accountability, and legitimacy, in the eyes of the public, are enhanced as a result of using these devices. Alongside the widespread deployment of body-worn cameras, empirical research into the impacts of their use also has been expanding rapidly. Scholars have investigated body camera impacts on officer behaviour (e.g., use of force, stop-and-frisks, making arrests) and citizen complaints, officer attitudes towards camera adoption, and camera impacts on public opinion, criminal justice processing, and domestic abuse cases. More recently, new studies have also investigated the effects of electronic performance monitoring on employee well-being. **Results from published research on the effects of BWCs on police-public engagements are rather mixed.** Indeed, current research and studies both support and challenge the so-called deterrence hypothesis of BWCs. According to Ariel (2016), body worn cameras have a “cooling off effect”.¹⁰² BWCs caused officers to become more accountable, because the odds of “getting caught” using force—now on videotape—substantially increased. Braga et al. (2017) show that BWC comes with a significant decrease of the use of force as well.¹⁰³ However, Cubitt et al. (2016) conclude that “the evidence around BWCs is largely weak”.¹⁰⁴ Yokum and al. (2017) are even more sceptical. They clearly demonstrate that Law enforcement agencies that are considering adopting BWCs “should not expect dramatic reductions in use of force or complaints, or other large-scale shifts in police behaviour, solely from the deployment of this technology”.¹⁰⁵ Equally, Lum et al. (2019) argue that the anticipated effects of BWCs have been overestimated and that behavioural changes in the field are rather “modest and mixed.”¹⁰⁶ As Sutherland et al. (2018) aptly highlight, “the intended and unintended consequences of using this emergent technology in policing remain unclear”.¹⁰⁷ **BWCs may curb some of the worst police behaviours but like every tool, it comes with limitations. Positive outcomes of BWCs are by no means guaranteed.** Whether police accountability or their relationships with the public are improved by use of BWCs is still a moot point. However, since the use of BWCs is widespread in policing and other sectors, **greater emphasis should be placed on assessing their effectiveness.**

Box 4 - Body Worn Cameras and Police Accountability

As we discussed previously, the development of police oversight mechanisms to effectively investigate complaints or, in some cases, to proactively carry out monitoring of police actions derived from a set of international and European requirements and obligations. The conduct of the police can also be

refers to four questions: *Who* is accountable? *For what* is one accountable? *To whom* is one accountable? and *How* can that accountability be enforced?

¹⁰² Ariel, Barak (2016). "Police body cameras in large police departments." *The Journal of Criminal Law and Criminology*, 106(4): 729-768.

¹⁰³ Braga, A. A., Coldren, J. R., Sousa, W. H., Rodriguez, D. et Alper, O. (2017). *The benefits of body-worn cameras: New findings from a randomized controlled trial at the Las Vegas Metropolitan Police Department*. CNA Analysis & Solutions.

¹⁰⁴ Cubitt, T. I., Lesic, R., Myers, G. L., and Corry, R. (2017). Body-worn video: A systematic review of literature. *Australian and New Zealand Journal of Criminology* 50 (3): 379-396.

¹⁰⁵ Yokum, D., Ravishankar, A., & Coppock, A. (2017, October 20). Evaluating the effects of police body-worn cameras. Retrieved from http://bwc.thelab.dc.gov/TheLabDC_MPD_BWC_Working_Paper_10.20.17.pdf

¹⁰⁶ Lum, C., Stoltz, M., Koper, C. S., & Scherer, J. A. (2019). The research on body-worn cameras: What we know, what we need to know. *Criminology and Public Policy*, 18(1): 93-118.

¹⁰⁷ Ariel, B., Sutherland, A., Henstock, D., Young, J., & Sosinski, G. (2018). The deterrence spectrum: Explaining why police body-worn cameras ‘work’ or ‘backfire’ in aggressive police–public encounters. *Policing: A Journal of Policy and Practice*, 12(1): 6–26.

judged from the internal rules and regulations of the police forces, in relation to the codes of conduct, internal informal police standards and working rules and, last but not least, police code of ethics. Multiple bodies may be able to impose accountability by monitoring and assessing police officers' behaviour. A distinction is often made between **internal and external accountability**.¹⁰⁸ Internal accountability is associated with organizational responsibility, supervision, performance evaluations, codes of conduct, the disciplinary system, loyalty, and control (including peers debriefing), whereas external accountability refers to public hearings, annual reports, conferences, civilian oversight agencies and criminal and/or civil litigation. Thus, **the first degree of control in any police accountability system is the internal control mechanisms within the police service**. Internal accountability involves personal accountability, the chain of command, policies, and procedures and complaints procedures. Across all police forces, individual police officers can be held accountable through an internal investigation which can result in an acquittal or some form of criminal or disciplinary sanction, typically ranking from reprimand to demotion and eventually termination of employment. On paper, Police internal affairs departments or other dedicated law enforcement services should conduct investigations against an officer in much the same way as any other investigation conducted by a police agency. **How internal misconduct investigations are performed varies from a situation to another**.¹⁰⁹ However, when police investigate police, one could say that four major deficiencies usually mar the process: Levels of independency and impartiality; Skills and mandates of the investigators; Timeliness of the process; and Transparency.

When looking at the principles that contribute to a properly functioning internal complaint system, surely the independency, experience, competence, and resilience of the investigator would be among the most important ones.¹¹⁰ Indeed, and quite notably across all police forces, the **role of internal affairs investigators has always been and still is very often perceived with contempt by other police officers**: they are part of the "rat squad", they are the "head-hunters". The timeliness of investigating complaints of police misconduct is certainly also one important characteristic.¹¹¹ **Protracted delays in internal investigations have significant costs** for complainants and for the police organisation itself—both in terms of resources and the likelihood of a reasonable and just outcome.¹¹² Since the complaint process is designed to hold individual officers accountable, **any delay in investigating officer misconduct may fail to correct officer behaviour**. Citizens may also have a cynical view of the complaint process which might delay their decision to report incidents of officer misconduct.¹¹³ Furthermore, when stories of police misconduct dominate the news, it is important for agencies to **remain transparent with the public and address problematic officer behaviour**. The nature and quality of police internal investigations of citizen complaints have been a major part of the

¹⁰⁸ Den Boer, M. (2002). Towards an accountability regime for emerging European Policing governance. *Policing and Society*, 12(4): 275-89.

¹⁰⁹ Lamboo, T (2010) Police misconduct: Accountability of internal investigations. *International Journal of Public Sector Management* 23(7): 613–63.1.

¹¹⁰ Miller, S., 2010. What makes a good internal affairs investigation?. *Criminal Justice Ethics*, 29(1), pp.29-40.

¹¹¹ Walker, Samuel E., and Carol A. Archbold. *The new world of police accountability*. Sage Publications, 2018.

¹¹² Thomassen, G. 2002. Investigating complaints against the police in Norway: an empirical evaluation. *Policing and Society*, 12(3): 201–210.

¹¹³ Mrozla, T., Huynh, C. and Archbold, C.A., 2021. What Took You so Long? An Examination of Reporting Time and Police Misconduct Complaint Dispositions. *Deviant Behavior*, pp.1-15.

police-community relations problem over the past decades. **Where the police conduct internal investigations of themselves, such investigations are often perceived as biased and spurious.**¹¹⁴

4.2. Police Independent Oversight Bodies

In an attempt to ensure that citizen complaints against police behaviour are effectively investigated, properly recorded, and proceed towards a fair and equitable outcome, civilian oversight of police complaints is widely recognised as an effective measure. **Independent oversight institutions are indeed critical components** of the accountability landscape in modern democracies.¹¹⁵ In an open democratic society and with the growth of executive spheres at all levels of the government, the need for oversight and accountability has become more and more obvious. Article 59 of the European Code of Police Ethics stipulates that *'the Police shall be accountable to the state, the citizens and their representatives. They shall be subject to efficient external control.'* The Council of Europe's Commissioner for Human Rights described effective independent police complaints systems as *'of fundamental importance for the operation of a democratic and accountable police service'*.¹¹⁶ Such oversight is consistent with democratic conception of the rule of law, where, as Greene (2007) reminds us, *'the law is visible, transparent, and managed through overlapping institutions that provide sufficient check and balances to ensure legal compliance and democratic consensus.'*¹¹⁷ One could say that there are five common goals of civilian oversight that could benefit a society: Discouraging police misconduct; Ensuring an accessible complaint process; Delivering fair and thorough investigations; Enhancing transparency; and improving public trust.¹¹⁸

Civilian oversight of police investigations of citizens' complaints as well as police practices have become a key element in European debates about police accountability and about public trust in the police. Since the introduction of the *Police Complaints Board for England and Wales* in 1977¹¹⁹, the number of non-police oversight bodies across European jurisdictions has grown exponentially. In 1980, only one Member State out of nine had a non-police oversight body, i.e., the UK *Police Complaints Board* (PCB). In 1995, there was 6 oversight bodies dealing with police complaints as part of their mandates among the 15 member states: the Swedish Parliamentary Ombudsman, the Finnish Parliamentary Ombudsman, the *Police Complaints Authority* (PCA) in the UK, the *National Ombudsman* in the Netherlands, the Spanish *Defensor del Pueblo*, and the Portuguese Ombudsman. Currently, in 2022, **25 European countries out of 27 Member States have an independent police oversight organisation** (See annex 2). Almost all these European non-police oversight bodies are members of one or several of the following organisations: the *International Ombudsman Institute* (IOI); the *European Network of Ombudsmen* (ENO); the *European Network of National Human Rights Institutions* (ENNHRI);

¹¹⁴ Decker, S. H., & Shjarback, J. A. (2020). Options for increasing civilian oversight of the police. In C. M. Katz & E. R. Maguire (Eds.), *Transforming the police: Thirteen key reforms* (pp. 113–125). Waveland Press.

¹¹⁵ Prenzler, T. 2009. *Ethics and accountability in criminal justice. Towards a universal standard*, Brisbane: Australian Academic Press.

¹¹⁶ Commissioner for Human Rights, Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints against the Police, Council of Europe, Strasbourg (2009)

¹¹⁷ Greene, J. R. (2007). Make police oversight independent and transparent. *Criminology & Public Policy*, 6(4), 747–754.

¹¹⁸ Hope Sr, K. R. (2021). Civilian oversight for democratic policing and its challenges: Overcoming obstacles for improved police accountability. *Journal of Applied Security Research*, 16(4), 423–455. See also Porter, L. E. (2013). Beyond 'oversight': A problem-oriented approach to police reform. *Police Practice and Research*, 14(2), 169–181.

¹¹⁹ The *Police Complaints Board* (PCB) was the first organisation tasked with overseeing the system for handling complaints made against police forces in England and Wales. PCB was replaced by the *Police Complaints Authority* (PCA) in 1985. It was then itself replaced by the *Independent Police Complaints Commission* (IPCC) in 2004. IPCC was replaced by the *Independent Office for Police Conduct* (IOPC) in 2018.

and the *Independent police complaints authority network* (IPCAN) (see box 5 below). Germany and Italy are two notable exceptions to this general trend toward the implementation of civilian oversight bodies among EU Member States. In Italy, cases of alleged misconduct or violations committed by police forces are investigated by the Judicial Police, which is composed by members of regular police forces under the direction of the Ministry of Justice. However, Italian regional ombudsmen can deal with complaints against local police. In Germany, the police forces are ruled by the *Länders*.¹²⁰ Following revelations of very serious malpractice within the Hamburg police in 1994, the city experimented a *Polizeikommission* in 1998. However, the project has been terminated in 2001. Regional Committees on Petitions are competent however to deal with complaints against the police. The Committee on Petitions of the Bundestag deals with complaints against the Federal Police. But these regional committees on Petitions and the Committee on Petitions of the Bundestag do not amount to external, independent oversight. International and German civil liberties groups are actively campaigning for non-police oversight in Germany.

The Independent Police Complaints Authorities' Network (IPCAN)

The Independent Police Complaints Authorities' Network (IPCAN) is an **informal network of exchange and cooperation amongst independent structures in charge of external control of security forces**. IPCAN was set up in 2013 at the initiative of Jacques Toubon, the French Defender of Rights (*Défenseur des Droits*) in order to allow bodies with similar or related missions to exchange on issues of common interest, promote best practices and adopt common high standards. Since 2013, IPCAN organised yearly seminars on issues related to police accountability, police ethics and police-citizens trust. In October 2019, a joint seminar has been organised with the FRA on the police-population relations and challenges and in June 2020, members of the network adopted the [Paris Declaration](#). **The Paris Declaration recommends twenty actions to be implemented in terms of police checks, management of demonstrations and reception of the public, in order to improve relations between the police and the population.** The latest IPCAN Seminar, hold in December 2021, was dedicated to "External and independent mechanisms of monitoring of police". As of today, IPCAN is composed of 22 members, mainly European bodies.

Box 5 - The Independent Police Complaints Authorities' Network (IPCAN)

Source: <https://ipcan.org/>

These non-police oversight bodies across the EU are different from one to the other. They **are different in terms of mandate, investigative powers, and resources** to conduct their missions. A number of academic writers have tried to describe the variety of mandates of these independent oversight of policing organisations. Some scholars consider five distinct comparative model types of civilian oversight of the police while others would consider three.¹²¹ According to others, if agencies can be categorised in quite different ways, a better approach would be to create a form of **continuum between two polar types**: a 'minimal review model' and a 'civilian control model'. In the minimal review model, external agencies are restricted to auditing police internal investigations and recommending modifications to police disciplinary decisions. In the civilian control model, external agencies conduct independent investigations of police, making use of significant powers in areas such as compulsory hearings and covert surveillance.¹²² Independent oversight body models vary from

¹²⁰ Aden, H. (2004) "Fédéralisme et sécurité publique: Spécificité des politiques de sécurité en Allemagne," in Sebastian Roché (ed.), *Réformer la police et la sécurité: Les nouvelles tendances en Europe et aux États-Unis*, Paris: Odile Jacob:169-187.

¹²¹ Kempe Ronald Hope Sr. (2021), Op. Cit.; Roach, K. (2014). Models of civilian police review: The objectives and mechanisms of legal and political regulation of the police. *The Criminal Law Quarterly*, 61(1), 29–73.

¹²² Prenzler, T. & C. Ronken (2001). Models of police oversight: a critique, *Policing and Society*, 11 (2):151-180.

those dependent on police as investigators through semi-independent to entirely independent bodies. Additionally, the **powers and resources of agencies vary enormously**, and many have limited capacity to conduct their own investigations or direct disciplinary actions. External police oversight is indeed spreading across the EU and throughout the world. Yet, very little is known so far on how these external oversight bodies actually perform and, more importantly, **how one could assess their efficiency and effectiveness** (see Box 6, below). Part of the problem in assessing the performance of non-police oversight bodies is the lack of common indicators. Some scholars suggest five criteria: Quantity and quality of complaints received; Complaints completion process and time; Conviction rate from complaints charges; Learning and advice for police agencies; and confidence in the police oversight agency from public and police.¹²³ These criteria are extremely interesting. However, they can be challenged. For instance, the number of cases investigated reflects more the activity of the non-police oversight body under review and its reliability in the eyes of the public than its achievement.¹²⁴ If there is one consensus within the literature dedicated to the performance of external oversight bodies is that measuring their performance requires clarity about what these agencies can be expected to achieve, in relation to their level of independency, access to information and resources.

POLDEM – A comparative study of independent police oversight authorities

POLDEM is an ongoing 18 month-long research project, that started in January 2021. It aims at comparing the role, status and staffing of independent police oversight bodies across 20 European and non-European states. Excerpt from the interview with Prof. Sebastian Roché, PI of the POLDEM Study:

What is at stake in this study? *"There is little evidence that the standards defended for independent police oversight bodies by international norms have the effects and effectiveness that they are believed to have. This is really what is at stake in our POLDEM study that we started in January 2021, thanks to funding from the French Défenseur des Droits and Sciences-Po Grenoble." (...) "The objectives are to understand how independent these bodies are, how they work in a more thorough way, by means of a comparison across Western nations."*

What is your methodology? *"We sent a very long questionnaire with more than 150 very precise questions to all the members of the IPCAN network plus a few other entities, asking them for quantitative answers rather than qualitative ones." (...) "We cover 20 countries, mainly in the EU but we also have Switzerland, Norway and Canada in our sample." (...) "There are 24 different bodies in our survey, knowing that Germany and Spain have regional organisations at the level of the Landers in Germany and at the level of the autonomous regions in Spain." (...) "By cross-referencing information on the statutes of these bodies, their history, their longevity, their budgets, their staff, their activities, the volume of complaints, the time taken to investigate, their number of contacts with the press, with other bodies at national and European level, etc., we can compare and look for benchmarks." (...) "Basically, we are trying to establish relevant indicators in order to get some kind of scoring on the independence, remit, efficiency, and good functioning of these bodies."*

What are your first conclusions? *"The work is still in progress. We have not yet received all the information we need to establish conclusive answers." (...) "But we can already ascertain that, across the board, these bodies are different from each other to a level which was not suspected. For instance, if we look only at the number of individuals making up these bodies, there is a huge difference between the Défenseur des Droits in France, which has 9 staff members, and the Independent Office for Police Conduct*

¹²³ Filstad, C. & P. Gottschalk (2011) Performance evaluation of police oversight agencies, *Policing and Society*, 21(1): 96-109.

¹²⁴ Stenning, P. (2000), 'Evaluating police complaints legislation: A suggested framework', in Andrew Goldsmith and Colleen Lewis, *Civilian oversight of policing: Governance, democracy and human rights*, 2000, Oxford and Portland: Hart Publishing, pp.148-163.

*(IOPC) in the United Kingdom, which has more than 1000+ full time equivalent." (...) "It seems clear to us that the **effectiveness of these bodies depends very much on the human and financial resources allocated to them** on the one hand, and on the remit of their mandates on the other. A major distinction is that we have bodies that are entirely dedicated to police oversight only and others with a broader mandate. The former type has more resources than the latter" (...) "On the sole basis of what we have, I would say that there is still some work to be done before many of these bodies can really be in a position to exercise their prerogatives in an effective way." Source: Interview with Prof. Sébastien Roché, PI of the POLDEM Study (Jan. 2021 – June 2022)*

Box 6 - POLDEM: A Comparative Study of Independent Police Oversight Authorities

The long-term legitimacy and efficiency of a civilian oversight process clearly depends on oversight bodies subjecting themselves to similar levels of accountability to that demanded of those they oversee. Equally, and in order to sustain such a democratic police accountability, **police oversight bodies should be well resourced, properly funded and with a clear mandate:**

- **Independency:** lack of proper independency of action can undermine the thoroughness and timelines of the execution of the functions of civilian oversight bodies. Without autonomy of action and clear mandate to investigate, the role of those providing the oversight to help ensure that police actions are fair and lawful is weakened;
- **Access to information:** The inability of civilian oversight bodies to obtain documents and information from the police in a timely fashion clearly impedes the ability of these bodies to hold police officers accountable for their actions. Any lack of proper cooperation from police services can make the oversight process ineffective and, in turn can result in public disapproval and mistrust of both the oversight body and the police;
- **Resources:** Limited human and financial resources for oversight bodies is also a crucial point at stake. Where an oversight body is not sufficiently resourced, it is unlikely that it will meet its objectives.

Having adequate jurisdiction and authority are fundamental in achieving organisational goals and ensuring the oversight agency can be responsive to citizens. Clearly, the ability to review all records relevant to an investigation or other matters within the scope of a civilian oversight agency's authority in a timely manner is essential to providing effective, informed, and fact-driven oversight. Finally, **adequate human and financial resources are essential** to ensure that the work of the police oversight body is performed thoroughly, timely, and at a high level of competency. While non-police oversight bodies might not be sufficient in themselves to ensure public confidence, evidence from many studies in public trust we discussed previously (see infra: Section 2) shows that **external complaints procedures are a necessary precondition for public trust.**

4.3. Citizens' complaints against the police

Over the past twenty years, public debates about police accountability across EU Member States have clearly revolved around the handling of citizens' complaints against the police. While citizens' complaints procedures are only one aspect of police accountability mechanisms, one could say that the **access of aggrieved citizens to challenge unacceptable police behaviour is a form of police accountability that most immediately affects the general public and mobilises public opinion.** Across the EU, every single citizen has the right to lodge a claim or a complaint against police. However, there is a wide variety of police complaint systems across the EU. In Poland, citizens' complaints are investigated by the Police. If the investigation indicates that the police officer might have acted

inappropriately, the case is passed on to the Prosecutor. A case can also be investigated by the Ombudsman.¹²⁵ In Belgium, Citizens can make a complaint against police at the local and the federal levels. At the local level, each specific police district has an Internal Control service where a citizen can lodge a claim. Citizens can also complain to the General Inspectorate of the Federal and Local Police. They have also the possibility to lodge a complaint to the Belgium external oversight body, the Standing Committee of Surveillance of the police forces ('Comité P'). In Denmark, there are different ways to complain against police, depending on the type of complaint.¹²⁶ The National Police (*Rigspolitiet*) or the Public Prosecutor (*Statsadvokaten*) deal with citizens' complaints about arrest. The Independent Police Prosecutor (*Den uafhængige Politianklagemyndighed*) is concerned with complaints about officers' behaviour and/or unnecessary use of force. If there is a basis for criminal proceedings, the complaint is then passed from the independent Police Prosecutor to the Public Prosecutor. In France, citizens can make a complaint against police forces to the Rights Defender (*Défenseur des Droits*, DDD), to the General Inspectorate of the National Police (*Inspection Générale de la Police Nationale*, IGPN) or to the General Inspectorate of the National Gendarmerie (*Inspection Générale de la Gendarmerie Nationale*, IGGN). IGPN and IGGN carry out audits as well as administrative and criminal investigations. However, they cannot impose sanctions. It is up to the General Directorate of the National Police to close a case, to issue sanctions (official warnings and reprimands), or to hold disciplinary hearings. In Ireland, citizens' complaints are dealt by the *Garda Síochána Ombudsman Commission* (GSOC). If the complaint is deemed admissible, GSOC will then decide whether it will investigate the complaint itself or whether it will 'lease' it back to An Garda Síochána (Ireland's Police Service) to investigate. If it is 'leased' back to An Garda Síochána, GSOC may still supervise the investigation, if it so wishes. In Luxembourg, citizens who consider to be in the presence of a misconduct or inappropriate behaviour by a member of the police force can lodge a claim or complaint with the IGP by email, letter or using an online complaint system. In Spain, citizens can report or make a complaint against the police to the Spanish Ombudsperson or directly to the police districts. Some of the Spanish Police districts have implemented specific police services to collect these complaints.

European citizens have indeed a right to expect that those who uphold the law on their behalf are properly held to account when their actions fall below the standards expected. Each Member State has developed mechanisms to investigate police complaints, whether those investigations are undertaken by police officers, civilian investigators, or both. Unfortunately, there is no systematic empirical study of those investigations. It is rather **difficult to assess how many complaints against police have been lodged per year across the EU and to present some comparative elements**. In many EU member states, such information is still not open to public examination (see *infra*, Box 6). Furthermore, the outcomes of police investigations following a complaint are very often kept behind closed doors. Figures for the distribution of sanctions are rarely publicised. While more and more police and non-police oversight bodies across the EU do publish yearly accounts of their actions in public reports, with, sometimes, proper statistical data on complaint handling, it is still delicate to analyse their figures in comparative terms. Indeed, it would be interesting to provide a ratio of annual complaints to size of police forces and population. However, if such exercise was possible, it would only provide information about recorded complaints. Actually, one could say that **recorded complaints represent only the tip**

¹²⁵ Baylis, M. (2021) Police and policing in Poland' in Mbuba, J. M. *Global Perspectives of Policing and Law Enforcement*. Lexington Books.

¹²⁶ Holmberg, L. (2019). In service of the truth? An evaluation of the Danish Independent Police Complaints Authority. *European Journal of Criminology*, 16(5), 592-611.

of the iceberg of public grievances against the police.¹²⁷ As discussed previously (Section 1), young people often protest that they have been harassed by the police, yet it seems that they rarely make official complaints. The following question then arises: what are the factors that influence whether or not a person will make a complaint against the police? Part of the answer is about self-confidence of the complainant on one hand, and his/her trust in the complaint system on the other. **Many citizens may feel entirely disarmed and powerless in front of an institution that is quite largely held in high esteem for the difficult job they do.** Other studies have shown that some people are reluctant to lodge a complaint against the police because they fear to be subjected to harassment, or that the police will not come to their assistance if called on for help.¹²⁸ Furthermore, it seems that for many aggrieved citizens, there seems little point in making a complaint since the investigations which ensue, when indeed they do ensue, often seem to achieve very little, if anything. Across the EU, many police and non-police oversight bodies do provide some information about how many cases were transferred to the public prosecutor (or equivalent) for criminal investigation. Yet, data are still sparse and not always consistent. Perhaps one of the most pressing questions one could ask is how to improve the structure and investigation process of police complaints in order to make sure that every citizen feels empowered?

Across the EU, progress have been made to clarify how complainants can obtain support and assistance. Most of the police and non-police oversight bodies have a dedicated website with at least basic information about who to complain to and how (see Annex 2). In some cases, that information has been also detailed on leaflets and translated in various languages like in Belgium. Some of the non-police oversight bodies have developed original ways to keep the public aware of their mandates and roles. In Austria for example, the AOB goes further with the publication of a monthly newsletter and, since 2002, with its involvement into a weekly TV show *Bürgeranwalt* (Advocate of the People).¹²⁹ In Czechia, the Ombudsman produced a weekly podcast since 2020 and entitled *Na kávu s ombudsmanem* (Have a coffee with the Ombudsman).¹³⁰ These communication strategies certainly contribute to empower citizens. Indeed, **complainants should be given a clear explanation of the criteria for accepting complaints and a step-by-step guide detailing how they will be addressed, and the standard of service and outcomes they might receive.** However, according to our findings, this information is rarely presented in police stations across the EU. As we briefly underlined earlier, European citizens have a choice of agency with which to initially file their complaint, if they choose to do so. They can complain directly to the police agency or approach an external complaint handling body. Many studies and surveys across the EU and beyond have clearly shown that **complainants' experiences are affected by the quality of treatment by the agency, perceptions of bias, and administrative inefficiencies** regardless of which system they engage (i.e., police dominated, independent or mixed systems).¹³¹ Surveys that provided complainants with the opportunity to voice their thoughts on whether police complaints should be handled by an independent body most frequently showed support for independent complaints investigations or independent monitoring of

¹²⁷ Johansen, A. (2013). *The rise and rise of independent police complaints bodies*. Abingdon: Routledge; Smith G. (2009). Why Don't More People Complain against the Police? *European Journal of Criminology*, 6(3):249-266.

¹²⁸ Smith, G. (2003). Actions for damages against the police and the attitudes of claimants. *Policing and Society* 13, 413–22.

¹²⁹ <https://tv.orf.at/buergeranwalt/index.html>

¹³⁰ <https://www.youtube.com/channel/UCdWvuDhPr0GVH1mISbWnNjQ>

¹³¹ Prenzler, T. & G. den Heyer (Eds.) (2016). *Civilian Oversight of Police. Advancing Accountability in Law Enforcement*, London, CRC Press.

police.¹³² Indeed, **the more serious the allegation against police, the more important it is that impartiality is underwritten by institutional separation between the accused and the investigator.** Regardless of which system complainants engage with and the type of complaint (a minor or a serious allegation), research has shown that communication is particularly crucial to complainants' satisfaction with the process, both the extent of communication and the manner with which they are dealt. *"Quality of treatment of the complainant by the complaint handling agency sends a strong message as to the authenticity of the process."*¹³³ **How agencies handle complaints is crucial to achieving complainant satisfaction.** In various EU countries, periods have been set within which a complaint must be dealt with, and there are deadlines for notifying the complainant and the police officers involved at various stages of the complaint investigation. It seems clear that, across EU jurisdictions, **complainants want to know that they have been heard, taken seriously, and treated impartially.**

¹³² Prenzler, T., Allard, T., Curry, S., & Macintyre, S. (2010). Complaints against police: The complainants experience. *The Journal of Criminal Justice Research*, 1(1), 1–18.

¹³³ Prenzler, T. & G. den Heyer (Eds.) (2016). Op Cit. p.90.

5. WAY FORWARD: EXISTING EU FRAMEWORK AND OPPORTUNITIES FOR IMPROVEMENT

KEY FINDINGS

- The European Commission has stepped up its efforts in tackling structural racism within the police forces. The EU Anti-Racism Action Plan 2020-2025, though criticised as not going far enough, has emphasised the role of EU agencies, particularly FRA in collecting relevant information and CEPOL in delivering training activities.
- The European Parliament has repeatedly called on Member States to address issues of disproportionate use of force by the police and for taking more significant action in this field, including through the establishment of an EU Code of Police Ethics.
- FRA has conducted significant research in providing guidance to Member States' authorities through guides and manuals and by mapping practices on police stops highlighting ethnic profiling and discriminatory practices. The Agency should continue collecting information and could potentially follow up with Member States regarding the use and effectiveness of its outputs at national level.
- Europol, in line with its mandate (which includes racism and xenophobia), could step up its efforts through a dedicated Centre and trainings in cooperation with CEPOL.
- CEPOL's training activities on fundamental rights are streamlined and must run through the entirety of the curriculum on offer. The Agency has the potential to step up its efforts so that its work is in line with the calls by the EU institutions in designing and delivering various high quality activities both on site and online to maximise its audience.
- The recent European Commission proposals for an EU police cooperation code are relevant to this study to the extent that the Commission package refers to the creation of a common EU culture through significantly broadening of joint training and professional development relating to cross-border operational police cooperation.

Action at EU level in the researched area has been limited by the EU competence in police and judicial cooperation in criminal matters, as set out in Article 87 of the Treaty on the Functioning of the European Union (TFEU). According to this Article, the Union shall establish police cooperation involving all the Member States' competent authorities, including police authorities in relation to the prevention, detection and investigation of criminal offences, by establishing measures under the ordinary legislative procedure concerning: (a) the collection, storage, processing, analysis and exchange of relevant information; (b) support for the training of staff, and cooperation on the exchange of staff, on equipment and on research into crime-detection; (c) common investigative techniques in relation to the detection of serious forms of organised crime.¹³⁴ Furthermore, the Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law criminalises a number of conducts relating to publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin and publicly condoning, denying or grossly trivialising

¹³⁴ Article 87(3) concerns the possibility of adopting measures on operational police cooperation under a special legislative procedure.

specific crimes.¹³⁵ At the same time, action in this field goes beyond the strict remit of EU criminal law, as it touches upon the protection of fundamental rights more broadly, particularly non-discrimination; therefore, EU action has also taken place through the lens of discrimination and anti-racism. Indeed, Articles 2 and 10 of the Treaty on European Union (TEU), Articles 19 and 67(3) TFEU, and Articles 20 and 21 of the EU Charter of Fundamental Rights provide the EU legal framework for implementing comprehensive policies on equality and non-discrimination. Therefore, discrimination on the grounds of racial or ethnic origin, defined in Article 2 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive) is prohibited under EU law.¹³⁶ Of relevance is also the proposal for a horizontal Directive on non-discrimination that has been blocked since the Commission proposed it in 2008.¹³⁷ Against this backdrop, this section aims to highlight the EU action taken by the EU institutions, namely the Commission and the European Parliament, as well as EU agencies, and provide a series of recommendations for making better use of existing tools, whilst proposing new ones. In that regard, emphasis is placed not only on solutions within the contours of police cooperation, by focusing on the roles of Europol and CEPOL, but also (due to the relevance of the protection of fundamental rights) on the role of FRA.

5.1. The EU Anti-Racism Action Plan 2020-2025 and Its Follow-up

A key initiative by the Commission has been the establishment in June 2016 of the High-Level Expert Group on combating racism, xenophobia and other forms of intolerance through which Member States are supported in a number of issues, including in preventing discriminatory attitudes within law enforcement.¹³⁸ One of the key strands of action in this context has been countering hate speech online and improving methodologies for recording and collecting data on hate crime. However, its work has not been directly concerned with discriminatory practices by law enforcement authorities. The murder of George Floyd and the Black Lives Matter movement has provided the impetus for a series of EU initiatives. The Commission adopted an EU Anti-Racism Action Plan 2020-2025, which has been welcomed as heralding an era whereby anti-racism has become 'a social priority for the EU'.¹³⁹ For example, among legislative measures, it announced the evaluation of the Racial Equality Directive with possible plans for revision in 2022 and beyond the adoption of EU legislation it examined ways to counter discrimination by law enforcement authorities.¹⁴⁰ The Action Plan has been received with great enthusiasm. It acknowledges that recognising diversity and ensuring fair law enforcement is essential to fighting racism. Whilst asserting that profiling is commonly and legitimately used by law enforcement authorities to prevent, investigate, and prosecute criminal offences, the Commission condemned discrimination on the basis of special categories of personal data, such as data revealing racial or ethnic origin as unlawful. The Commission referred to the work of the High-Level Expert Group

¹³⁵ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law [2008] OJ L328/55.

¹³⁶ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22.

¹³⁷ Commission, 'Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation' COM(2008) 426 final.

¹³⁸ For an overview of the work of the High Level Expert Group see <https://ec.europa.eu/newsroom/just/items/51025>

¹³⁹ Pascoët J. 'EU Anti-Racism Action Plan Explained: A Blog Series' (ENAR-EU, 13 October 2020) <https://www.enar-eu.org/EU-anti-racism-action-plan-explained-A-blog-series>.

¹⁴⁰ Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A Union of Equality: EU Anti-Racism Action Plan 2020-2025' COM(2020) 565 final.

and further proposed a multi-level approach focusing on the roles of EU agencies to tackle structural racism. In particular, it stated that **FRA should collect and disseminate good practices promoting fair policing**, building on their existing training manual and guides on preventing unlawful profiling, as will be discussed below. According to the Action Plan, **FRA should also continue to gather and publish data on police attitudes towards minorities**, which as will be shown below has indeed been taking place. The Action Plan also referred to the work of CEPOL, **calling for the agency to 'step up its work on comprehensive training packages on human rights, ethics and racism, and sharpen awareness of fair and inclusive policing among mid-level and senior police officers and law enforcement representatives'**.¹⁴¹ Finally, the Commission urged the Member States to step up efforts to prevent discriminatory attitudes among law enforcement authorities and to boost the credibility of law enforcement work against hate crimes by developing 'recruitment procedures which ensure that the composition of the police reflects the diversity of the population, as well as frameworks for dialogue between the police and members of minority groups'.¹⁴² However, the Action Plan has been criticised as 'falling short in providing meaningful supportive state action against racism'¹⁴³ with an area of utmost concern being the approach to police violence. Indeed, the Commission has not proposed structural changes in law enforcement, but has rather followed 'an integrationist approach that views the concerns of people who are particularly vulnerable to policing and police brutality as a marginal concern in the overall foundational framework of law enforcement'. As a result, the measures proposed are understood 'as a strategy to ensure temporary survival'. A year later, on 19 March 2021, the Commission organised a **Summit Against Racism** at the occasion of the International Day for the Elimination of Racial Discrimination. The Summit, co-hosted by the Portuguese Presidency of the Council of the European Union and in cooperation with the ARDI Intergroup of the European Parliament, addressed the implementation of the European Anti-Racism Action Plan at various levels with the involvement of EU Institutions, Member States, civil society, equality bodies and grassroots organisations. The importance of training for staff and representatives of public institutions who must be exemplary (law enforcement, public services, magistrates, educators) has been particularly highlighted in that regard.¹⁴⁴ Furthermore, Detlef Schröder, the then Director of CEPOL, referred to the criticism levelled at law enforcement services and acknowledged the need to address organisational culture within services, as he was aware of acts of racism by officials which were condemned. It is against this backdrop that one much considers how existing EU instruments and tools are applied and whether there is room for improvement. On 9 December 2021, the Commission published a Communication announcing its initiative to extend the list of EU crimes under Article 83 TFEU to all forms of hate crime and hate speech.¹⁴⁵ This initiative has been prompted by a 'sharp rise of hate crime and hate speech in Europe targeting individuals and groups of people sharing or perceived as sharing a common characteristic, such as race, ethnicity, language, religion, nationality, age, sex, sexual orientation, gender identity, gender expression, sex characteristics or any other fundamental characteristic, or a combination of such characteristics'.¹⁴⁶ The Commission Communication refers to police practices to a limited extent when explaining that victims of hate crimes may face victimisation

¹⁴¹ Ibid 7-8.

¹⁴² Ibid 8.

¹⁴³ Müller, C. (2021) 'Anti-Racism in Europe: An Intersectional Approach to the Discourse on Empowerment through the EU Anti-Racism Action Plan 2020–2025' *Social Sciences*, 10.

¹⁴⁴ European Anti-Racist Summit, 'Report' (19 March 2021) <https://www.antiracism-eusummit2021.eu/media/1trigkzo/just-anti-racism-summit-report-eu-anti-racism-summit.pdf>

¹⁴⁵ Commission, 'Communication from the Commission to the European Parliament and the Council - A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime' COM(2021) 777 final

¹⁴⁶ Ibid

not as a direct result of the criminal act, but through the way the victim is treated by the police and the criminal justice system.¹⁴⁷ However, this initiative may offer the impetus for increased activity in this field, which should address police practices, primarily police stops, towards specific groups of individuals.

5.2. Resolutions by the European Parliament

The European Parliament has also played a significant role in this area through the work of the Anti-Racism and Diversity Intergroup (ARDI)¹⁴⁸ and by adopting a number of Resolutions on different occasions. In particular, in its Resolution on the situation of fundamental rights in the European Union in 2017, the European Parliament stressed that *'the foremost task of police forces is to ensure the security and safety of citizens, and that any excessive and unjustified use of force by law enforcement officials must be subject to impartial and exhaustive investigations by the relevant authorities of each Member State.'*¹⁴⁹ Similarly, in its Resolution on fundamental rights of people of African descent in Europe, the European Parliament took note of the fact that *'adults and children of African descent are increasingly vulnerable when held in police custody, with numerous incidents of violence and deaths recorded'* and that racial profiling discriminatory stop-and-search practices and surveillance in the context of abuse of power in law enforcement, crime prevention, counter-terrorism measures, or immigration control are routinely used.¹⁵⁰ In that regard, it called on the Member States *'to end racial or ethnic profiling in all forms in criminal law enforcement, counter-terrorism measures and immigration controls, and to officially recognise and combat practices of unlawful discrimination and violence through anti-racism and anti-bias training for the authorities'*. Another Resolution of relevance in this case is that of 14 February 2019 on the right to peaceful protest and the proportionate use of force.¹⁵¹ There, the European Parliament recalled that **law enforcement agencies must always be held accountable for the fulfilment of their duties and their compliance with the relevant legal and operational frameworks**. The Resolution called on Member States to ensure that the use of force by law enforcement authorities is always lawful, proportionate, necessary and the last resort, and that it preserves human life and physical integrity and recalled that the indiscriminate use of force against crowds contravenes the principle of proportionality. Following George Floyd's death the European Parliament took action in different ways: on 5 June 2020, the Subcommittee on Human Rights exchanged views on the case.¹⁵² Soon afterwards, on 19 June 2020, it adopted a Resolution on the anti-racism protests following the death of George Floyd,¹⁵³ which acknowledged that racism, discrimination and the excessive and lethal use of force by the police exist within the EU, where law enforcement authorities in several Member States have been criticised for using excessive force. The European Parliament opined that when a person is confronted

¹⁴⁷ Ibid 9.

¹⁴⁸ See ARDI, 'Police Brutality and Increase of Extremism within Police Forces in Europe (8 September 2020) <https://www.ardi-ep.eu/police-brutality-and-increase-of-extremism-within-police-forces-in-europe/>; 'Briefing: How Do Romani People Experience Police Misconduct' (17 November 2021) <https://www.ardi-ep.eu/briefing-how-do-romani-people-experience-police-misconduct/>.

¹⁴⁹ European Parliament, 'European Parliament resolution of 16 January 2019 on the situation of fundamental rights in the European Union in 2017 (2018/2103(INI))' (P8TA(2019)0032) 12.

¹⁵⁰ European Parliament, 'Resolution of 26 March 2019 on fundamental rights of people of African descent in Europe (2018/2899(RSP))' (P8TA(2019)0239) 4.

¹⁵¹ European Parliament, 'Resolution of 14 February 2019 on the right to peaceful protest and the proportionate use of force (2019/2569(RSP))' (P8TA(2019)0127).

¹⁵² For the hearing see https://multimedia.europarl.europa.eu/en/webstreaming/droi-committee-meeting_20200605-0900-COMMITTEE-DROI.

¹⁵³ European Parliament, 'Resolution of 19 June 2020 on the anti-racism protests following the death of George Floyd (2020/2685(RSP))' (P9TA(2020)0173).

by the police or other agents of the State, recourse to physical force which has not been made strictly necessary by the person's own conduct diminishes human dignity and is in principle an infringement of the right set out in Article 3 of the ECHR and that the disproportionate use of force should be strongly condemned. **The European Parliament submitted a comprehensive set of recommendations targeted at both the EU and Member States.** In particular, it called for the EU to urgently reflect on and commit to tackling the structural racism and discrimination faced by many minority groups and for the EU institutions, bodies and agencies and the Member States to strongly and publicly denounce the disproportionate use of force and racist tendencies in law enforcement whenever it occurs, in the EU, in the US and around the world. **The organisation of the European Anti-Racism Summit on combating structural discrimination in Europe and the adoption of the Anti-Racism Action Plan 2020-2025 were among the recommendations of the European Parliament.** Other recommendations have primarily aimed at calling on reforms at the national level, in particular the stepping up measures to increase diversity within police forces and to establish frameworks for dialogue and cooperation between police and communities and to focus on the establishment of independent police complaints mechanism to lead investigations into cases of police misconduct and abuse. In that regard, it was highlighted that democratic policing requires that the police be accountable for their actions before the law, the public authorities and the entire public they serve and that the key requirement for accountability is the maintenance of effective and efficient oversight instruments. As shown by the previous Section, steps towards that direction remain underdeveloped. Furthermore, considering that police and law enforcement forces must have an exemplary record on antiracism and anti-discrimination, the European Parliament called for the EU and Member States to develop policies and measures to tackle discrimination and to end racial or ethnic profiling in all forms in criminal law enforcement, counter-terrorism measures, and immigration controls, also taking into account new technologies. It further **proposed action to strengthen the training of members of police and law enforcement forces on strategies to fight against racism and discrimination, and to prevent, identify and respond to racial profiling.** At national level, it called on the Member States not to leave cases of police brutality and abuses unpunished, and to properly investigate, prosecute and sanction them. The European Parliament further encouraged the relevant authorities to ensure transparent, impartial, independent, and effective investigation when the use of disproportionate force is suspected or has been alleged and recalled that law enforcement agencies must always be held accountable for the fulfilment of their duties and their compliance with the relevant legal and operational frameworks. It also called on Member States to ensure that the use of force by law enforcement authorities is always lawful, proportionate, necessary and the last resort, and that it preserves human life and physical integrity, as the excessive use of force against crowds contravenes the principle of proportionality. With respect to EU action, the European Parliament **asked the Commission to unblock the proposal for an Equality Directive that has been blocked since 2008 and to create an independent expert group tasked with developing an EU Code of Police Ethics** that provides a set of principles and guidelines for the objectives, performance, oversight and control of the police in democratic societies governed by the rule of law, which can also help police actors in their daily work to properly enforce the prohibition on racism, discrimination and ethnic profiling. **To the best of our knowledge no action has taken place in that respect and therefore this Study should serve as a reminder about this particular suggestion, considering that the CoE Code of Police Ethics was adopted in 2001 and no equivalent instrument exists at EU level.** Lastly, the Resolution provided certain recommendations in relation to training, calling on FRA, CEPOL and Europol, within their respective mandates, to step up their efforts in combating racism and discrimination. The next sub-sections will explore how these Agencies have assisted in addressing issues relating to the work of the police through relevant research and training and what additional

actions could be taken by each of them and collectively. In addition to the aforementioned Resolutions, police brutality and misconduct against Romani people in specific has also caught the attention of the European Parliament. In its Resolution of September 2020, Parliament condemned the persisting social exclusion and anti-gypsyism that lead to the disproportionate criminalisation of Romani people.¹⁵⁴ In November 2021, MEPs took stock of developments and called on the Commission and the member states to put forward better legislation and specific policy measures to prevent such incidents and ensure justice for victims, while placing the fight against anti-gypsyism at the heart of EU policies.¹⁵⁵

5.3. The European Agency for Fundamental Rights

The work of the Commission and the Resolutions of the European Parliament must be put in the broader context of research conducted by the *European Union Agency for Fundamental Rights* (FRA), a centre of excellence in providing fundamental rights evidence to the EU institutions and Member States. The FRA's mandate in relation to non-discrimination, equality and racism and xenophobia has brought police work within the realm of the agency's interests. Since its establishment, FRA has engaged with questions regarding police activities on numerous occasions through the conduct of surveys, reports, and guides (infra, section 2). As we suggest previously, its guides are particularly useful in order to instil a view of fundamental rights as a tool to enhance police effectiveness, professionalism and establish a relationship of trust between the police and diverse communities. **The Guides provided by FRA have been bolstered by information on police practices, particularly in relation to 'stop and search' operations collected through a series of surveys.** The EU Minorities and Discrimination Surveys (EU-MIDIS of 2010¹⁵⁶ and EU-MIDIS II) have focussed on the specific experiences of people with immigrant or ethnic minority background.¹⁵⁷ Summaries of the findings are further presented in FRA's Fundamental Rights Reports.¹⁵⁸ A dedicated report on report 'Being black in the EU' reveals that 25% of respondents of African descent were stopped by the police in the five years before the survey and 11% in the last 12 months and almost half of them believed that the last stop was racially motivated.¹⁵⁹ The rates of police stops and perceived racial profiling vary substantially among countries – Austria and Finland have the higher rates. Men are three times more likely to be stopped than women (22% v 7%) and four times more likely to perceive the most recent stop as racial profiling (17% v 4%). As for level of trust in the police, the results vary, - for example, respondents in Finland trust the police the most compared to respondents in Austria who have the lowest level of trust in the police - but the levels of trust are affected by whether the stop is perceived as racial profiling and not by the stop as such. In that survey FRA recommended as a useful strategy to reduce crime and fear of forms of community policing that redistribute responsibilities to the members of marginalised communities. However, the Action Plan failed to acknowledge and suggest implementing this strategy as proposed by FRA. With regard to Roma and travelers, FRA has also found through surveys that the police stopped almost 1 in five of all respondents in the 12 months before the survey, 58 % of whom believed that they

¹⁵⁴ European Parliament, 'Resolution European Parliament resolution of 17 September 2020 on the implementation of National Roma Integration Strategies: combating negative attitudes towards people with Romani background in Europe (2020/2011(INI))' (P9TA(2020)0229).

¹⁵⁵ For the exchange of views on police violence against Roma within the LIBE committee on 9 November 2021, see https://multimedia.europarl.europa.eu/en/committee-on-civil-liberties-justice-and-home-affairs_20211109-1645-COMMITTEE-LIBE_vd.

¹⁵⁶ FRA, 'EU MIDIS - European Union Minorities and Discrimination Survey' (2009).

¹⁵⁷ FRA, 'Second European Union Minorities and Discrimination Survey Main results' (2017).

¹⁵⁸ FRA, 'Fundamental Rights Report 2020' (2020) 72.

¹⁵⁹ FRA, 'EU-MIDIS II - Second European Union Minorities and Discrimination Survey: Being Black in the EU' (2018) 31.

were stopped because of their ethnic or immigrant background.¹⁶⁰ On the first anniversary of the death of George Floyd, FRA took a closer look at police stops and racial profiling across the EU from a more holistic perspective, by releasing selected data from its Fundamental Rights Survey regarding the different societal groups' experiences with police stops to identify potential patterns on disproportionate stops and examine the treatment of individuals during the stop.¹⁶¹ It did so by comparing the results for the general population to those for people with an ethnic minority or immigrant background. The report shows differences between the general population and ethnic minorities across member states. It found that the rate of being stopped by the police varies across EU countries. Police stops more often concern men, young people, as well as people who self-identify as belonging to an ethnic minority, who are Muslim, or who are not heterosexual. People belonging to an ethnic minority are more often searched by police. In particular, police officers performed a search on 34% with an ethnic minority or immigrant background for their identity papers - compared to 14% of people generally in the EU. The surveys provided by the FRA clearly demonstrate that police practices continue to raise important concerns regarding discriminatory practices, with considerable variations among different groups of population. In turn, these practices heavily undermine building trust between them and the police, thus fiercely backing up the claim for more action that needs to be taken. On its part, **FRA should continue its work, in line with the prescriptions of the Action Plan.** Furthermore, it could potentially follow up on its work by **assessing the impact and use of its Guides and Manual through surveys with the Member States, as to which extent the recommendations have led to policy change at the national level.**

5.4. EUROPOL

Europol's work is central in supporting cooperation among the EU Member States in the area of cross-border law enforcement. Europol's legal basis Regulation (EU) 2016/794 (Europol Regulation) has been applicable since 1 May 2017¹⁶² and it will soon be replaced by a new one, following agreement in February 2022 between the co-legislators on a Commission proposal for a revised mandate.¹⁶³ Europol is described as the EU's 'criminal information hub'¹⁶⁴ and the main 'information broker',¹⁶⁵ as it facilitates information exchange between EU Member States, Europol, other EU bodies, international organisations and third countries, and produces criminal intelligence on the basis of information acquired from various sources, including Member States and its partners. According to Article 3(1) of the Regulation, 'Europol shall support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a

¹⁶⁰ FRA, 'Roma and travellers in six countries' (2020) 37-38. About 4% of the respondents stressed that they were physically assaulted by a police officer because of their Roma or Traveller background in the past five years.

¹⁶¹ FRA, 'Your Rights Matter: Police Stops – Fundamental Rights Survey' (2021).

¹⁶² Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA [2016] OJ L135/53 (Europol Regulation).

¹⁶³ Commission, 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation' COM(2020) 796 final.

¹⁶⁴ 'Europol Strategy 2020+' (Europol, 5 February 2019) <<https://www.europol.europa.eu/publications-documents/europol-strategy-2020>> 4.

¹⁶⁵ Wahl, T., 'The European Union as an Actor in the Fight Against Terrorism' in Marianne Wade and Almir Maljevic (eds), *A War on Terror?* (Springer 2010) 144.

Union policy, as listed in Annex I'.¹⁶⁶ Racism and xenophobia are included within this list as criminal offences falling within Europol's remit. This is in line with Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.¹⁶⁷

Amongst its many information-related tasks, Europol supports and coordinates cooperation on cross-border police work and produces regular assessments that offer comprehensive, forward-looking analyses of crime and terrorism in the EU. In relation to operational tasks, Europol is empowered to request national authorities both to initiate a criminal investigation¹⁶⁸ and to set up a joint investigation team (JIT),¹⁶⁹ in which Europol may also participate. The third category of tasks is related to training, knowledge and expertise. Europol is ideally placed to collect knowledge concerning cross-border criminality and ways to fight it, so that the agency should also engage with the adequate collection and diffusion of this knowledge, as well as with the training of national authorities. Therefore, Europol develops, shares and promotes knowledge of crime prevention methods, investigative procedures and technical and forensic methods, provides advice to Member States,¹⁷⁰ and engages in the specialised training of national authorities.¹⁷¹ Some of the tasks falling within the category at hand are: i) 'develop, share and promote *specialist knowledge* of crime prevention methods, investigative procedures and technical and forensic methods, and provide advice to Member States';¹⁷² ii) 'provide *specialised training* and assist Member States in organising training, including with the provision of financial support';¹⁷³ and iii) 'develop Union centres of *specialised expertise* for combating certain types of crime falling within the scope of Europol's objectives'.¹⁷⁴ As a result, Europol has developed EU centres of specialised expertise to respond to the threats to the EU internal security posed by large-scale criminal and terrorist networks.¹⁷⁵ Yet, **there is no specific Centre focusing on threats relating to racism and xenophobia, even though this falls within Europol's mandate.** Therefore, it may be **worth exploring the option of setting up a Centre dedicated more broadly to these criminal offences and monitor trends, including within law enforcement agencies.** The Centre could work in collaboration with FRA and CEPOL to promote operational cooperation among Member States, collect and disseminate good practices and organise specialised trainings to tackle structural racism and educate police officers of all ranks on the protection of fundamental rights.

In relation to training, Europol provides various training and capacity building activities, through the EC3 or by regularly hosting law enforcement interns from Member States, thus enabling them to deepen their understanding of Europol's capabilities and international law enforcement cooperation; supporting numerous joint investigation teams (JITs), hosting or otherwise supporting meetings of

¹⁶⁶ De Moor, A. and Vermeulen, G., 'The Europol Council Decision: Transforming Europol into an Agency of the European Union' (2010) 47(4) *Common Market Law Review* 1089, 1097.

¹⁶⁷ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law [2008] OJ L328/55.

¹⁶⁸ Europol Regulation, art 6.

¹⁶⁹ Europol Regulation, art 5.

¹⁷⁰ Europol Regulation, art 4(1)(g) (emphasis added).

¹⁷¹ Europol Regulation, art 4(1)(i) (emphasis added).

¹⁷² Europol Regulation, art 4(1)(g). Emphasis added.

¹⁷³ Europol Regulation, art 4(1)(i). Emphasis added.

¹⁷⁴ Europol Regulation, art 4(1)(l). Emphasis added. As for Europol's role vis-à-vis cybercrime, see also Art 4(1)(m) and Recital 8 of the Europol Regulation.

¹⁷⁵ The Central Office for combating euro counterfeiting, the European Migrant Smuggling Centre (EMSC), the European Counter Terrorism Centre (ECTC), the EU Internet Referral Unit (IRU), the European Cybercrime Centre (EC3) and the European Financial and Economic Crime Centre (EFECC)

national JIT experts and contributing to training programmes that raise awareness of JITs, in particular at CEPOL; providing forensic support to law enforcement agencies to determine the origin of materials and devices used for the manufacturing of counterfeit goods and providing technical support and training on tactical and technical issues related to protecting the euro from counterfeiting.¹⁷⁶ In cooperation with the International Atomic Energy Agency, Europol has also trained chemical, biological, radiological and nuclear experts and first responders from the civil and military services in both EU and non-EU countries on how to respond to radiological incidents and emergencies. Another initiative of Europol involves the creations of the European Explosive Ordnance Disposal Network (EEODN), where experts on explosives meet twice a year to share knowledge, expertise and best practices in the fight against the illicit use of explosives and improvised explosive devices. Europol also regularly supports training for specialists in explosives and weapons of mass destruction as part of the portfolio of courses that CEPOL offers. Consequently, **Europol is currently not actively involved in the design and delivery of trainings relating to racism and xenophobia or fundamental rights more broadly.** Furthermore, the latest reform of Europol's mandate does not specifically refer to providing additional operational support to Member States in this area and emphasis is rather placed on dissemination of online terrorism content and child abuse.¹⁷⁷ Therefore, **in addition to the creation of a dedicated centre, Europol could more actively collaborate with CEPOL and FRA in the delivery of trainings to enhance their knowledge on issues relating to racism and xenophobia in line with the limits of Europol's mandate.**

5.5. CEPOL

CEPOL was established in 2000¹⁷⁸ and was relaunched in 2005 by a Decision granting it legal personality and outlining in greater detail the body's objectives and tasks.¹⁷⁹ In 2015, Regulation (EU) 2015/2219 (CEPOL Regulation) was adopted and formally recognised CEPOL as an agency of the EU.¹⁸⁰ CEPOL, which was previously based in Bramshill (United Kingdom) and is now located in Budapest,¹⁸¹ is essentially a network bringing together the national police training institutes of Member States¹⁸² and its main purpose is to support, develop, implement and coordinate training for law enforcement officials, in particular in the areas of prevention of and fight against serious crime affecting two or more Member States and terrorism.¹⁸³ This should be done 'while putting particular emphasis on the protection of human rights and fundamental freedoms in the context of law enforcement'. Interestingly, when CEPOL was set up, no reference was made to fundamental rights in its legal basis and the EU legislature rather referred to 'democratic safeguards' and the 'rights of the defence'.¹⁸⁴ It was only with the CEPOL Regulation that such reference made its way to the final text. When the

¹⁷⁶ Europol, 'Training and Capacity Building' <https://www.europol.europa.eu/operations-services-and-innovation/services-support/training-and-capacity-building>.

¹⁷⁷ See Council, Document 5920/22 (9 February 2022). The only reference to additional training involves Europol staff itself.

¹⁷⁸ Council Decision of 22 December 2000 establishing a European Police College (CEPOL), OJ L336/1.

¹⁷⁹ Council Decision 2005/681/JHA of 20 September 2005 establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA [2005] OJ L256/63.

¹⁸⁰ Regulation (EU) 2015/2219 of the European Parliament and of the Council of 25 November 2015 on the European Union Agency for Law Enforcement Training (CEPOL) and replacing and repealing Council Decision 2005/681/JHA [2015] OJ L319/1 (CEPOL Regulation)

¹⁸¹ CEPOL Regulation, Art 25(3)

¹⁸² CEPOL Regulation, Art 3(3).

¹⁸³ CEPOL Regulation, Art 3(1).

¹⁸⁴ Failla, S. (2020) 'The European Code of Police Ethics – 20 Years on – A View from a Training Angle' *European Law Enforcement Research Bulletin* 48.

Commission proposed the merger of CEPOL and Europol in the aftermath of the Lisbon Treaty, the European Parliament and the Member States opposed it, so as not to jeopardise the downscaling of its training activities. In order to pursue its activities, CEPOL cooperates with Member States through dedicated national units.¹⁸⁵ From an administrative governance perspective, its main organs are the Management Board, made up of representatives from each EU country and one from the Commission; an Executive Director, appointed for 4 years and where appropriate, a Scientific Committee for Training or other advisory bodies created by the Management Board.¹⁸⁶ In essence, the role of CEPOL is to equip European law enforcement officials to protect human rights, prevent and fight serious crime and terrorism and maintain public order, with a view to creating a common EU law-enforcement culture. According to Article 3(1) of the CEPOL Regulation, the training aims to raise awareness and knowledge of various aspects: the implementation and use of international and EU instruments on law enforcement cooperation, the functioning and role of EU bodies, aspects relating to law enforcement cooperation and practical knowledge about access to information exchange channels. CEPOL also supports Member States at their request in the development of regional and bilateral cooperation through law enforcement training between Member States, EU bodies and third countries.¹⁸⁷ Training on specific criminal or policing thematic areas or for participation in EU missions and law enforcement capacity-building activities in third countries are also developed, implemented, and coordinated. One of its key tasks involves the preparation of multi-annual strategic training needs analyses (EU-STNA) and multi-annual learning programmes.¹⁸⁸ The EU-STNA emerged following the establishment of the Law Enforcement Training Scheme (LETS), which in 2013 acknowledged the need to address the lack of a systematic process for identifying the evolving law enforcement training needs in the EU.¹⁸⁹ The training activities and learning products include courses, seminars, conferences, as well as web-based e-learning and other innovative and advanced training activities, common curricular for law enforcement training on specific subjects with an EU dimension, training modules, exchange and secondment programmes, as well as study visits.¹⁹⁰ According to a Study supporting the evaluation CEPOL, the Agency also undertakes an Operational Training Needs Analyses (OTNA) on the priority topics outlined by the EU-STNA to enable an understanding of the profile of the officials to be trained, as well as the proficiency and urgency of the training to be delivered.¹⁹¹ According to Article 34 of the CEPOL Regulation, CEPOL may establish and maintain cooperative relations with EU bodies, with authorities and training institutes of third countries, with international organisation and with private parties.¹⁹² The Agency must be open to the participation of the authorities and training institutes of third countries with which the EU has entered into agreements.¹⁹³ In that regard, working arrangements have been included with 18 third countries,¹⁹⁴ the Association of European Police

¹⁸⁵ CEPOL Regulation, Art 6.

¹⁸⁶ CEPOL Regulation, Arts 7-14, 23.

¹⁸⁷ CEPOL Regulation, Art 3(1)(b)

¹⁸⁸ CEPOL Regulation, Art 4(1).

¹⁸⁹ Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Law Enforcement Training Scheme' COM(2013) 172 final.

¹⁹⁰ CEPOL Regulation, Art 4(2).

¹⁹¹ Commission, 'Study to support an evaluation of the European Union Agency for Law Enforcement Training (CEPOL)' (2021). In 2020, OTNAs were carried out in five areas: illegal immigration, trafficking in human beings, criminal finances, money laundering and asset recovery and drug trafficking.

¹⁹² CEPOL Regulation, Art 34(2).

¹⁹³ CEPOL Regulation, Art 34(1).

¹⁹⁴ Working or cooperation arrangements exist with: Albania, Armenia, Bosnia and Herzegovina, Georgia, Iceland, Kosovo, Liechtenstein, Lebanon, Moldova, Montenegro, Norway, North Macedonia, Russia, Serbia, Switzerland, Tunisia, Turkey

Colleges (AEPC), the European Judicial Training Network (EJTN), the European Network of Forensic Science Institutes (ENFSI), the European Security and Defence College (ESDC), the European Crime Prevention Network (EUCPN), the European Union Intellectual Property Office (EUIPO), eu-LISA, Eurojust, Europol, FRA, Frontex, Interpol, OSCE, the Police Cooperation Convention for Southeast Europe Secretariat (PCC-SEE) and UNODC.¹⁹⁵

CEPOL offers a wide range of activities for the learning and development of law enforcement officials in the Member States and third countries, namely residential training activities, the CEPOL exchange programme, *Law Enforcement Education* (LEEd) – which is essentially e-learning – seminars, online courses, and a European Joint Master Programme.¹⁹⁶ While CEPOL does itself deliver some activities, including residential and online learning, it implements most of them through the allocation of grants to Framework Partners. In terms of substantial delivery of training activities, the first EU-STNA was launched in 2018 and is a collective and EU-wide effort aimed to identify gaps in knowledge, skills and competencies and training needs.¹⁹⁷ It entailed the review of 265 EU documents on security and crime threats and law enforcement challenges. Following this, numerous experts from various professional networks were consulted to identify training activities implemented at the EU level. This consultation led to a consolidated list of 184 EU-level training needs across 21 thematic categories distributed among the Member States, with a request to prioritise and rank the training needs. CEPOL prepared a report based on these findings, which the European Parliament later endorsed. Overall, the EU-STNA identified 21 thematic training categories that should be addressed by all EU-level training in priority order established by Member States. The EU-STNA identified the following core capability gaps in law enforcement training: cyber investigation, open-source intelligence, financial investigations, **fundamental and human rights**, crime prevention and forensics, links between crime areas and document fraud, in terms of priority **fundamental rights –related training featured 20th on the list by order of prioritisation**.¹⁹⁸ However, in recognition of the need to step up efforts in the area of fundamental rights, in January 2021, CEPOL established an Expert Group on Fundamental Rights to further guide CEPOL on the integration of these aspects into its training portfolio, including providing advice on specific activities to address the knowledge gap in line with various EU documents, such as the EU Strategy on Victims' Rights 2020-2025¹⁹⁹ and the EU Anti-racism Action Plan 2020-2025. This approach in line with the fact that CEPOL has always provided fundamental rights training with real life simulations, aimed not only at raising awareness as regards legal frameworks, but also to identify biases and encourage self-reflection with a view to establishing behavioural standards.²⁰⁰ CEPOL updated the methodology and launched the EU-STNA 2022-2025 to define strategic and EU-level training priorities for the law enforcement community for the next policy cycle. The EU-STNA was published in December 2021, however this time **training on fundamental rights does not feature as a separate area of priority**.²⁰¹ **Instead, the EU-STNA considers that fundamental rights are 'a cross-cutting element**

and Ukraine. See https://www.cepola.europa.eu/who-we-are/partners-and-stakeholders/external-partners?fbclid=IwAR0Qpdtf4PwTko-Z9tWr7c_ayXByYYNo_dNeeQY32dDmlLOJfNn3uSB1lko.

¹⁹⁵ See https://www.cepola.europa.eu/who-we-are/partners-and-stakeholders/external-partners?fbclid=IwAR0Qpdtf4PwTko-Z9tWr7c_ayXByYYNo_dNeeQY32dDmlLOJfNn3uSB1lko

¹⁹⁶ Commission, 'Study to support an evaluation of the European Union Agency for Law Enforcement Training (CEPOL)' (2021) 14.

¹⁹⁷ CEPOL, 'European Union Strategic Training Needs Assessment 2018-2021' (2018).

¹⁹⁸ Ibid 76-79.

¹⁹⁹ Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - EU Strategy on victims' rights (2020-2025)' COM(2020) 258 final.

²⁰⁰ Failla 48.

²⁰¹ CEPOL, 'European Union Strategic Needs Assessment 2022-2025' (2021).

that should mainstreamed across all areas and integrated into each training session in an applicable manner’.²⁰² Among the capability gaps relating to training on fundamental rights are their protection in extraordinary situations such as lockdowns, particularly considering the protection of vulnerable groups, in particular migrants and children as well as victims of domestic violence. A general introduction to fundamental rights is a training topic to be addressed for operational officials and managers. Further training topics cover the rights of children and minors, victims’ rights, and hate crime and hate speech. New topics that need to be covered include the procedural rights of non-EU citizens and the handling of gender/sexual violence, as well as increased emphasis on data protection. Within the list of topics to be covered are raising awareness among police officers of standards applicable to police stops and of the damaging effect of discriminatory profiling practices on community relations and trust in law enforcement.²⁰³ Reference is also made to the Independent Police Complaints Authorities’ Network (IPCAN).²⁰⁴ Furthermore, the latest CEPOL Single Programming Document provides additional information on the priority areas for 2022-2024 and emphasises on training activities related to fundamental rights and crime prevention.²⁰⁵ According to the Document ‘[t]he full respect of fundamental rights will be embraced across the entire training portfolio of CEPOL’ and ‘dedicated training activities will focus on ensuring a high level of integrity and police ethics in daily law enforcement practice, strengthening ethical leadership in LE authorities, addressing issues concerning policing in diverse societies and paying particular attention to different forms of discrimination and racism among LE’.²⁰⁶ Fighting hate crime and hate speech, protection of victims’ rights and vulnerable groups, focusing in particular on victims of hate crime, terrorist attacks and domestic violence, shall also remain priority subjects, **including raising awareness of discrimination and racism among law enforcement**. This is envisaged as a single onsite activity with a budget of 42.900 Euros. It is to be noted that **FRA and the European Institute for Gender Equality (EIGE) are listed as key partner agencies** in delivering this activity. It must be noted that the Programme indicates that only one training activity relating to fundamental rights is to be conducted, as opposed to two trainings that were offered in previous years on ‘Fundamental Rights and Ethics’ and ‘Management of Diversity’. The two trainings are combined in one, but CEPOL is committed ‘to cover most aspects of the double activity in the replacement’ one.²⁰⁷ This is in addition to two further activities that are to be implemented on Hate Crime and Victim Protection.²⁰⁸

These activities are very much welcome and in line with the findings of this Study about the gaps in knowledge on police ethics. However, CEPOL’s objectives respond to or align with key EU policy documents such as the Stockholm Programme,²⁰⁹ the EU Agenda for Security²¹⁰ and the LETS. Arguably, **the Commission’s Anti-racism Action Plan as well as the European Parliament Resolutions have not resulted in CEPOL stepping up its efforts in a satisfactory manner, doing justice to the acuteness of the issues**, as demonstrated in the previous Sections and the FRA reports and surveys.

²⁰² Ibid 25.

²⁰³ Ibid

²⁰⁴ Ibid 26.

²⁰⁵ CEPOL, ‘Single Programming Document Years 2021-2023’ (2021).

²⁰⁶ Ibid 54.

²⁰⁷ Ibid 83.

²⁰⁸ Ibid 56.

²⁰⁹ European Council, The Stockholm Programme – An open and secure Europe serving and protecting the citizens [2009] OJ C115/1.

²¹⁰ Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – EU Agenda on Security’ COM(2015) 185 final.

Awareness on police stops and complaints mechanisms are only two of the 23 topics to be covered on fundamental rights. Besides, the EU-STNA makes no explicit reference to these issues, notwithstanding the fact that the EU-STNA was adopted in the aftermath of significant efforts by EU institutions to make these issues more prominent. Moreover, one might consider that foreseeing only one training is insufficient. Another important issue concerns the reach of CEPOL's training activities. According to a Study supporting the evaluation of CEPOL, there is scope for the Agency to better reach its substantial target audience, which is currently prevented due to its relatively small size and budget, by further developing its online offer and 'train the trainer' and 'peer to peer knowledge transfer' activities.²¹¹ CEPOL's investment in upgrading and expanding its online training offer is currently through a new proprietary online training platform – Law Enforcement Education (LEEd) – created in 2020, which could be further used to create online training materials for law enforcement officers on the protection of fundamental rights, so that **the training activities offered are accessible as much as possible potentially both in person and online, synchronously and asynchronously**. Given the variety of training activities offered, training on fundamental rights could take place through compact webinars outside residential training. **The Exchange Programme could be further promoted, for example by enabling police officers from countries whose discriminatory profiling rates under the FRA surveys are particularly high** to conduct exchanges to counterparts in countries whose rates are low so as to learn from their good practices.

Furthermore, CEPOL should further promote the importance of knowledge and training in this area so that police authorities prioritise taking such training and that the suitable officers are proposed by the Member States. This is in line with one of the findings of the Study supporting the evaluation of CEPOL, which concluded that participants selected for CEPOL's residential training do not always have a suitable level of expertise or seniority. CEPOL Activity Managers, who review participant applications, could exercise more readily their power to pre-vet and decline participants' applications depending on their profile. In any case, the **high quality of all training activities should be ensured** irrespective of whether CEPOL is responsible for the delivery or the activities are outsourced to any of the Framework Partners. This is a particularly acute issue; as the Study to support an evaluation of CEPOL has found, the Agency has a quality assurance mechanism in place to regulate its training activities, but activities outsourced escape from it resulting in that the quality of those outsourced training may vary. In addition, CEPOL could pay particular attention to the abundant amount of case law regarding violations of the ECtHR by police authorities. In delivering trainings on fundamental rights, the role of FRA must be central, as foreseen by CEPOL, with FRA being in a unique position to share its findings of its own research with the trainees. Provided that Europol decided to step up its efforts in relation to racism and xenophobia, more cooperation with CEPOL in designing trainings will also be needed. Crucially, additional partners could also be sought, such as **the International Commission of Jurists (ICJ) and IPCAN**, both for providing expertise and also in conducting research and in developing alongside CEPOL research relevant for training activities in accordance with Article 5 of the CEPOL Regulation. As this study has demonstrated, comprehensive research in this field is missing and therefore CEPOL could strengthen its role in that respect by combining its efforts with FRA on pursuing additional research.

²¹¹ Commission, 'Study to support an evaluation of the European Union Agency for Law Enforcement Training (CEPOL)' (2021) 24.

5.6. The Commission Proposal for a Police Cooperation Code

The previous analysis demonstrates that EU action in this field remains fairly limited and therefore it is worth exploring whether recent developments in this area through the recent Commission proposal for an EU Cooperation Code provide for any changes. On 8 December 2021, the Commission adopted a package of proposals to enhance law enforcement cooperation across Member States and give EU police officers new tools for information exchange. The so-called Police Cooperation Code comprises a Recommendation on operational police cooperation,²¹² as well as rules on amending Council Framework Decision 2006/960/JHA (the Swedish initiative) on information exchange between law enforcement authorities of Member States so that police officers in one Member State should have equivalent access to the information available to their colleagues in another Member State under the same conditions.²¹³ In addition, revised rules on automated data exchange for police cooperation under the 'Prüm' framework are also foreseen.²¹⁴ These proposals have been adopted in line with the EU Strategy to Tackle Organised Crime 2021-2025.²¹⁵ Both proposals reforming the Swedish initiative and the 'Prüm' system do not contain any relevant provisions for the purposes of the present study and are concerned with enhancing information exchange in the law enforcement context.²¹⁶ However, the first proposal concerns a Recommendation on operational police cooperation, creating shared standards for cooperation between police officers participating in joint patrols and acting in the territory of another Member State. In that regard, the majority of the recommendations concern the rules of engagement in cross-border law enforcement operations, enabling remote access by police officers to their own databases when operating in other Member States and promoting the setting up of joint police stations. Nevertheless, of relevance for the purposes of this study is Section 8 of the Recommendation that promotes the **creation of a common EU culture of policing through significantly broadening of joint training and professional development relating to cross-border operational police cooperation**. To that end, the Recommendation refers to: (a) the setting together with neighbouring Member States of joint initial trainings and exchange programmes;²¹⁷ (b) adjusting and aligning the curricular of their national police academics in all levels of training, to include accredited European cross-border operational police cooperation courses; (c) designing and implementing career paths for cadets and officers who completed joint initial training, exchange programmes or specific cross-border operational police cooperation courses; (d) setting up joint continuous professional development courses and initiatives for front line police officers and crime investigators to develop skills and knowledge on cross-border operational police cooperation, in particular on relevant legislation, rules of engagement, tools, techniques, mechanisms, procedures and

²¹² Commission, 'Proposal for a Council Recommendation on operational police cooperation' COM(2021) 780 final.

²¹³ Commission, 'Proposal for a Directive of the European Parliament and of the Council on information exchange between law enforcement authorities of Member States, repealing Council Framework Decision 2006/960/JHA' COM(2021) 782 final.

²¹⁴ Commission, Proposal for a Regulation of the European Parliament and of the Council on automated data exchange for police cooperation ("Prüm II"), amending Council Decisions 2008/615/JHA and 2008/616/JHA and Regulations (EU) 2018/1726, 2019/817 and 2019/818 of the European Parliament and of the Council' COM(2021) 784 final.

²¹⁵ Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Strategy to tackle Organised Crime 2021-2025' COM(2021) 170 final. The EU Strategy does not provide any information that is relevant for the purposes of the present study.

²¹⁶ For an overview see Valsamis Mitsilegas and Niovi Vavoula, 'Databases' in Valsamis Mitsilegas, *EU Criminal Law* (2nd edn, Hart 2022).

²¹⁷ According to the Explanatory Memorandum, the joint training should follow the successful example of the Franco-Spanish joint Gendarmerie Nationale/Guardia Civil training programme. See Commission, 'Proposal for a Council Recommendation on operational police cooperation' 14.

best practices. According to the Explanatory Memorandum, these could range, with CEPOL's support, from online training modules to officer exchanges and should simulate real situations; (e) stepping up language courses; (f) aligning the training portfolio to the priorities related to cross-border police cooperation set out in the EU-STNA; (g) informing CEPOL of the needs for training relating to cross-border operational police cooperation and support relevant CEPOL activities; (h) reflecting on the possibility of creating large-scale and long-term pan-European joint training and exchange programmes for police cadets and officers in the field of cross-border operational police cooperation. As stated in the Commission Staff Working Document that includes a synopsis of the public consultation undertaken prior to the adoption of the Recommendation, there is 'limited availability of training for law enforcement staff involved in cross-border cooperation. Training is not conducted on a regular basis and does not always take into account the latest developments'.²¹⁸ Furthermore, the role of CEPOL and Member States in providing training was highlighted as well as 'the opportunity to create an "Erasmus of Police" large-scale exchange programme in order to foster a true culture of European policing. This idea would allow best practices on police monitoring and external oversight mechanisms to be exchanged among police authorities. Admittedly, this Recommendation does not have binding force and merely shows the views of the Commission suggesting a line of action without imposing any legal obligation on the Member States. However, it is a strong indication that further collaborative training in this field is required and it is suggested that **training provides a first-class opportunity for including modules on the protection of fundamental rights at EU level. The Recommendation does not make reference as to the content of the modules, but rather refers to training on cross-border police cooperation.**²¹⁹ **An explicit reference to the importance of including training on fundamental rights could be a valuable addition.** Furthermore, a reference to the need for promoting life-long and specialised training may also be worth exploring, also through CEPOL opportunities in order to raise awareness and provide incentives for attending such trainings.

²¹⁸ Commission, 'Staff Working Document Stakeholder Consultation – Synopsis Report accompanying the Proposal for a Council Recommendation on operational police cooperation' SWD(2021) 375 final, 4.

²¹⁹ Initial national training on cross-border police cooperation is provided to newly recruited police officers in the Schengen Area. However, joint training between the relevant national authorities and neighbouring countries on the use of police cooperation tools has been assessed as insufficient. Ibid 8-9.

6. POLICY RECOMMENDATIONS

RECOMMENDATION 1: PROMOTING PUBLIC CONFIDENCE IN POLICING THROUGH DATA COLLECTION OPENED TO CITIZENS' SCRUTINY.

Without comparable data and research across EU Member States, EU level discussions about police violence and racial profiling are very often dominated by allegations and anecdotes. To improve our knowledge of police activities and related complaints, Data collection and evidence-based research are essentials. Furthermore, data collection supports evidence-based public policy and decision-making. It also promotes accountability and transparency, and, if used properly, may build public confidence in policing and police oversight. If more and better data leads to better policy decision-making, data collection also raises methodological challenges. Therefore:

- We recommend the development of an EU-wide system of regular monitoring of police action, linked to rule of law scrutiny. This could take the form of an annual reporting system similar to the 'EU Justice Scoreboard' or can be incorporated within existing rule of law monitoring instruments.
- The FRA should carry on its efforts collecting data across the EU but also work with the various oversight bodies to set up best practices. This would include setting up good practices relating to the collection, management, analysis, and disclosure of the data. It could also consider conducting research on the impact of its Guides and Manuals at the national level.
- Data collection and subsequent research might be optimally achieved by establishing an EU Observatory of police misconduct. This Observatory would gather reports from national non-police oversight bodies and establish on this basis trends and statistics at EU level, as well conducting further research if data gaps are identified.
- Encouraging every Member States to adopt the principle of good communication and mutual understanding between the public and the police, as established in the *European Code of Police Ethics*.
- In line with the European Parliament's Resolutions, we recommend the establishment of a group of experts to work towards the adoption of an EU Code of Police Ethics.
- Europol could consider the establishment of a dedicated Centre for Racism and Xenophobia (both criminal offences are part of the Agency's mandate).

RECOMMENDATION 2: IMPROVING HUMAN RIGHTS TRAINING.

Providing police officers with the education, training, and support necessary to become moral exemplars and carry out the difficult role bestowed on them is essential. In this context, continuous, systematic human rights training as well as the adoption and implementation of the 2001 European Code of Police Ethics, are essential. To this end:

- Europol could more actively collaborate with CEPOL and FRA in the delivery of trainings to enhance their knowledge on issues relating to racism and xenophobia in line with the limits of Europol's mandate.
- Europol could further collaborate with CEPOL and FRA in the delivery of trainings to enhance riot police knowledge on de-escalating practices in demonstrations.
- CEPOL's Exchange Programme could be further promoted, for example by enabling police officers from countries whose discriminatory profiling rates under the FRA surveys are particularly high to conduct exchanges with counterparts in countries whose rates are low so as to learn from their good practices.
- CEPOL could step up its efforts as regards the delivery of high-quality trainings and seminars

on fundamental rights so that the training activities offered are accessible as much as possible potentially both in person and online, synchronously, and asynchronously.

- At the national level, police forces also need to invest in training and education of officers on cases of domestic abuse, aiming for compassionate approaches to victims. Such education could potentially prevent or minimise unethical conduct such as victim-blaming, negligence, and normalisation of abusive behaviour.

RECOMMENDATION 3: EMPOWERING THE NON-POLICE OVERSIGHT BODIES AND STRENGTHENING THE IPCAN NETWORK.

Police oversight bodies, police forces, and the communities they serve are inextricably intertwined. As this study suggests, independent investigation help foster public trust not only in the complaints system but in policing more generally, thus enhancing confidence in the executive power as regards the respect for the rule of law.

- For the public to have confidence in policing and police oversight, the mandates, missions, and powers of the non-police oversight bodies should be clearly improved. To let them investigate police more effectively and in a way that would be fair to all affected parties is essential.
- We recommend that the European Parliament give its full support to every attempt to improve the scope, mandates, and effectiveness of the European non-police oversight bodies.

As the study suggests, independent oversight bodies have the potential to investigate misconduct effectively without bias, and their findings are often considered more credible by the public. According to our findings, the IPCAN network is a crucial yet informal forum where European non-police oversight bodies can exchange expertise and/or best practices regarding investigative themes and investigation methods used.

- We would recommend exploring possibilities to reinforce this network through proper European funding and collaborations with other EU agencies such as the FRA and CEPOL. IPCAN might thus be turned into reliable interlocutor with relevant EU agencies.

RECOMMENDATION 4: ENHANCED PROTECTION OF PRESSPERSONS.

Evidence uncovers that many presspersons have been victims of police misconduct across the EU. Law enforcers' attacks against presspersons seriously endanger press freedom and jeopardise journalists' safety. The media industry plays a crucial role in democratic states as a platform for every social group to express itself, to provide every citizen with access to information so that they can participate fully in political processes and make informed choices.

- We strongly encourage the European Parliament to exert its influence and pressure to ensure a favourable environment for freedom of expression and public.
- FRA could explore that particular matter of presspersons who have been victims of police misconduct across the EU.
- Member states should be reminded of their obligations under European human rights law to put in place and effectively implement comprehensive legislative and policy frameworks.

RECOMMENDATION 5: PROMOTING COLLABORATION BETWEEN RESEARCHERS AND POLICE PRACTITIONERS.

Across the EU, evidence suggests that police forces tend to place a low value on external academic research and tend to prefer in-house expertise. Very often, the two worlds of research and police practitioners are disconnected, even though cooperation between the two is growing. Positive examples across the EU suggest that where police engage with high-quality independent, external, and robust research, accountability is increased. Furthermore, where such networking and

collaboration between police practitioners and researchers exist, it tends to show how valuable they are for sharing information on new approaches and resources but also for acquiring specialised and new expertise on both sides.

- We would like to suggest to the European Parliament to encourage the establishment of long-term partnership between police forces and researchers.
- CEPOL could provide guidance and set up a policy model on the establishment of collaborative partnerships between national police agencies and researchers or research institutions.

RECOMMENDATION 6: RESEARCHING NEW TECHNOLOGIES' POSSIBLE IMPACTS ON POLICE ACCOUNTABILITY AND CITIZEN TRUST.

A compelling account of police ethics must also consider how innovations will shape the future of law enforcement and their normative implications. In the wake of concerns sparked by high-profile incidents, some see technology as a remedy to many of the problems that plague policing. Whether technology will discourage excessive force, increase accountability, and build trust with communities by showing a commitment to transparency, is still a moot point. Furthermore, equipping officers with body cameras for instance has been a popular reform to strengthen accountability, but it also raises worries about more intensive surveillance and policing, especially in marginalised communities.

- We would recommend further research and analysis regarding the adoption and implementation of new technologies in policing. A joint effort between the European Parliament, FRA and CEPOL on that matter would be crucial.
- We would recommend every single police force across the EU to explore these issues in collaboration with independent academic research institutes or researchers.

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ANNEXES

Annexe 1 - List of Interviews

For the purpose of this Study, the following interviews were conducted:

- Krzysztof ŁASZKIEWICZ (Human Rights Advisor to the Commander in Chief of the Polish Police, Poland)
- Aydan İYIGÜNGÖR (European Union Agency for Fundamental Rights)
- Marios LOLOS (Former President of the Greek Union of Photojournalists, Greece)
- Sebastian ROCHÉ (Professor at Sciences-Po Grenoble, France)
- Lauri TABUR (Researcher and expert on Estonian Police, Estonia)
- Nepheli YATROPOULOS (Advisor on European and International Affairs to the Defender of Rights, France)

Annexe 2 - List of the non-police oversight bodies in Europe

| Countries | Official Name | Translation in English | Year |
|-----------|---|---|-------------------------------|
| Austria | Volksanwaltschaft | Austrian Ombudsman Board (AOB) | (1977) 2012 ²²⁰ |
| Belgium | <i>Comité permanent de contrôle des services de police/Vast Comité van Toezicht op de politiediensten –</i> | Standing Committee of Supervision of Police Services (Committee P) | 1998 |
| Bulgaria | Омбудсман на Република България | Ombudsman of the Republic of Bulgaria | (2003) 2005 ²²¹ |
| Croatia | <i>Pučki pravobranitelj</i> | Ombudsman of the Republic of Croatia | 1990 |
| Cyprus | Ανεξάρτητης Αρχής Διερεύνησης Ισχυρισμών και Παραπόνων κατά της Αστυνομίας | Independent Authority for the Investigation of Allegations and Complaints against the Police (IAIACP) | 2007 |
| Czechia | Veřejný ochránce práv (Ochránce) | Public Defender of Rights (Ombudsman) | 1999 |
| Denmark | Den Uafhængige Politiklagemyndighed | Danish Independent Police Complaints Authority (DIPCA) | 2012 |
| Estonia | Õiguskantsler | Chancellor of Justice | (1938) 1999 ²²² |
| Finland | Eduskunnan oikeusasiamies | Parliamentary Ombudsman | (1920) 2002 ²²³ |
| France | Défenseur des Droits | Defender of Rights | (2011) 2014 ²²⁴ |
| Greece | Συνήγορος του Πολίτη | Greek Ombudsman | (1997) 2016 ²²⁵ |

²²⁰ The Austrian Ombudsman Board has been set up in 1977. It is since 2012 that the AOB has an additional mandate under Austrian constitutional law to protect and promote compliance with human rights and to undertake preventive monitoring and control.

²²¹ The Ombudsman Act was adopted in 2003. The first Bulgarian Ombudsman was elected in April 2005.

²²² The Estonian Chancellor of Justice was first created in 1938. The Chancellor of Justice is inscribed in the 1992 Constitution. The mandate and scope of the function have been established by the Chancellor Act in 1999. Its power have been extended several times, in 2007, 2011 and 2015.

²²³ The institution exists since 1920. The 1999 Finish Constitution requires the Parliamentary Ombudsman to submit an annual report to the Eduskunta, the parliament of Finland. It is since the 2002 Parliamentary Ombudsman Act that the annual report must include also a review of the situation regarding the performance of public administration and the discharge of public tasks as well as especially of implementation of fundamental and human rights.

²²⁴ The functions and competences of the former Mediator of the Republic, the Defender of Children, the National Commission on Security Ethics, and the High Authority in the Fight against Discrimination and for Equality (HALDE) have been merged into the *Defender of Rights*, in 2011. However, it is only since 2014, with the code of ethics of the police and the gendarmerie that the Defender of Rights has a power of supervision of police.

²²⁵ The Greek Ombudsman was founded in 1997. However, its staffing, organisation and mandate is regulated by the 2003 Law and its investigations of arbitrary behaviour of the Police, the Hellenic Coast Guard, the Fire Brigade and Staff of State Penitentiaries are regulated by the 2016 Law, as amended by the 2020 Law

| | | | |
|----------------|--|---|-------------------------------|
| Hungary | Alapvető Jogok Biztosának Hivatala | Commissioner for Fundamental Rights | 2020 ²²⁶ |
| Ireland | Ombudsman an Gharda Síochána | Garda Ombudsman | 2007 |
| Latvia | Latvijas Republikas Tiesībsargs | Ombudsman's Office of the Republic of Latvia | 2007 |
| Lithuania | Seimo kontrolierius | Seimas Ombudsmen's Office (SOO) | 1998 |
| Luxembourg | Inspection Générale de la Police | General Police Inspectorate (GPI) | (2000) 2018 ²²⁷ |
| Malta | Parliamentary Ombudsman Malta | Parliamentary Ombudsman Malta | 1995 |
| Netherlands | Nationale Ombudsman | National Ombudsman | 1983 |
| Poland | <i>Rzecznik Praw Obywatelskich</i> | Commissioner for Protection of Civil Rights | 1997 |
| Portugal | <i>O Provedor de Justiça</i> | Portuguese Ombudsman | (1975) 1991 ²²⁸ |
| Romania | Avocatul Poporului | <i>Romanian Ombudsman (People's advocate)</i> | (1997) 2004 ²²⁹ |
| Slovakia | <i>Verejný ochranca práv</i> | <i>Public Defender of Rights</i> | 2001 |
| Slovenia | <i>Varuh človekovih pravic Republike Slovenije</i> | <i>Human Rights Ombudsman of the Republic of Slovenia</i> | 1994 |
| Spain | <i>Defensor del Pueblo</i> | <i>Defender of the People</i> | 1981 |
| Sweden | Riksdagens ombudsman (JO) | <i>Parliamentary Ombudsmen (JO)</i> | (1809) 1986 ²³⁰ |
| United Kingdom | Independent Office for Police Conduct (IOPC) | <i>Independent Office for Police Conduct (IOPC)</i> | (1977) 2018 ²³¹ |

²²⁶ Prior to the establishment of the Hungarian *Commissioner for Fundamental Rights* in 2012, investigations of complaints against the Hungarian police were made to the *Independent Police Complaints Board* (IPCB), created in 2007. However, in February 2020 the mandate of IPCB was allocated to the Commissioner for Fundamental Rights.

²²⁷ The General Police Inspectorate (GPI) has been created in 2000. It is since the 2018 Law that the GPI became an autonomous and independent administration.

²²⁸ The Portuguese Ombudsman has been set up in 1975. The statute of the Ombudsman is organised within the 1991 Law. Since May 2013, under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Ombudsman is responsible for conducting inspection visits to places of confinement.

²²⁹ Since 2004, individuals' complaints regarding a possible violation of fundamental rights and freedoms by the Police bodies are examined within a specialised department 'Army, Justice, Police, Penitentiaries', coordinated by a deputy Ombudsman. See <https://avp.ro/index.php/domenii-de-activitate/domeniul-armata-justitie-politie-penitenciare/competente-generale/>

²³⁰ The Riksdag has had an Ombudsman Institution since 1809. The authority and clarifications of the task of the Parliamentary Ombudsman has been clarified by Law in 1986.

²³¹ The *Police Complaints Board* (PCB), established in 1977, was the first organisation tasked with overseeing the system for handling complaints made against police forces in England and Wales. PCB was replaced by the *Police Complaints Authority* (PCA) in 1985. It was then itself replaced by the *Independent Police Complaints Commission* (IPCC) in 2004. IPCC was replaced by the *Independent Office for Police Conduct* (IOPC) in 2018.

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, aims to provide background information concerning police ethics, accountability, and oversight across the EU. The study shows that existing EU tools and instruments can contribute to enhance police accountability. The study also identifies some gaps and weaknesses. Recommendations are provided in order to remedy the gaps and weaknesses identified.
