

Protection against racism, xenophobia and racial discrimination, and the EU Anti-racism Action Plan¹

ABSTRACT

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, provides an analysis of the distinctive features of racism, xenophobia and racial discrimination in the EU and selected EU Member States. It further examines various forms of racism, xenophobia and racial discrimination, their target groups and the impact of the COVID-19 pandemic. The study assesses anti-racism policies and legislation to determine effectiveness of the national and EU legislation and measures envisaged in the EU Anti-racism Action Plan on eradication of racism, xenophobia and racial discrimination. The study identifies gaps that need to be filled and provides recommendations on how to create engagement at all levels to achieve meaningful change and equality.

There is an **identifiable and irrefutable problem with racism in the EU and its Member States**. The European Union Fundamental Rights Agency (FRA) states that racism remains a persistent issue within the EU, seriously affects lives of individuals, and that over half of Europeans believe that racism is widespread in their country.²

Racism, xenophobia and discrimination are phenomena that can occur either between individuals (**individual racism**) or be embedded in organisations and institutions (**institutional racism**). **Discrimination by law enforcement authorities** is a key element of institutional racism and occurs in all selected Member States.

Various groups, communities and individuals are subject to racism, xenophobia and discrimination. The European Network Against Racism (ENAR)³ identifies five main groups particularly affected: (i) Roma and travellers, (ii) People of African descent and black Europeans, (iii) Muslims, (iv) Jews, (v) Migrants. In addition to these groups, racism against Asians and people of Asian descent and racism against indigenous people are examined in this study.

A broad set of rules exist at the international, EU and national level aimed at tackling racism, xenophobia and racial discrimination. At the **international level**, a legal framework has been developed through the work of the United Nations. That framework requires countries to work towards the elimination of all forms

¹ Full study in English: [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/730304/IPOL_STU\(2022\)730304_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/730304/IPOL_STU(2022)730304_EN.pdf)

² FRA, Fundamental Rights Report 2021, op. cit.

³ ENAR, available at: <https://www.enar-eu.org/Specific-forms-of-racism>.



of racism, xenophobia and racial discrimination. As an international organisation, the Council of Europe (CoE) promotes the rule of law, democracy, human rights and social development, in particular through the **European Convention on Human Rights** (ECHR)⁴. The ECHR sets out the legally binding obligation for its members to guarantee a list of human rights to everyone within their jurisdiction (not just citizens) and the **European Commission against Racism and Intolerance** (ECRI), which plays a particular role as it monitors problems of racism, xenophobia, antisemitism, intolerance and racial discrimination.

A broad set of rules exist at **the EU level** aimed at tackling racism, xenophobia and racial discrimination. Some of the policies have a horizontal approach, while others focus on specific groups experiencing racism and xenophobia. The **EU's legal architecture** that was developed over the past 20 years, however, **still builds on concepts of racism as a phenomenon occurring between individuals**. As such, it seeks to combat discrimination, hate speech and hate crime.

The EU Anti-racism Action Plan marks a shift in the understanding of racism at the EU level by recognising the **structural dimension of racism**, the **specific forms of racism** affecting different racialised groups in Europe, as well as the **concept of intersectionality**. The action plan's focus is on encouraging and supporting Member States to **develop and adopt national action plans against racism (NAPARs)**. NAPARs are an important tool for questioning the reasons behind the lack of implementation of existing legislation in force in Member States and can complement the tackling of more elaborate forms of racism. The action plan proposes actions to develop methods that would allow for the collection of robust, consistent and comparable data **disaggregated by racial or ethnic origin** while ensuring respect for privacy and Member States' national contexts.⁵ Other elements of the action plan which were welcome include the acknowledgement of the need to address **racism in law enforcement**; the need to ensure **mainstreaming**; the emphasis **on engaging civil society and grassroots organisations** and the steps announced by the European Commission to **improve racial diversity and representation within its ranks**.

The EU equality directives are implemented through **anti-discrimination laws** in all the Member States studied. This has significantly enhanced legal protection against racism, xenophobia and racial discrimination. In some countries, this takes the form of **single equality laws**, whereas in others anti-discrimination laws are enacted in **various legal codes** covering different grounds and elements of discrimination. In addition, some Member States went beyond the legal obligations set by the equality directives, namely by increasing the number of grounds of protection.

At national level, there is also a comprehensive body of legislation tackling racism and discrimination. These are included in constitutional provisions, criminal law and legislation on equal treatment. All countries included in this study have **provisions on non-discrimination in their constitutions**. These vary, however, in terms of the grounds of non-discrimination covered.

The recommendations for this study are structured around three themes.

1. Implementation of the legislative framework

1 a. The European Commission should continue to monitor effectively the transposition and implementation of EU anti-discrimination legislation in the Member States and to initiate infringement proceedings against Member States that are shown to be in breach.

⁴ Full text of the Convention, available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁵ *ibid.*

1 b. The European Commission could put in place implementation measures of the the EU Antiracism Action Plan with clear and measurable targets and progress monitoring. This could be done by introducing regular review of the EU Antiracism Action Plan in the same way as the 'Rule of Law Review Cycle' proposed by the Commission⁶.

1 c. Member States should ensure equality bodies have the necessary competences, powers and resources to perform their tasks independently and effectively and be accessible to all.

1 d. Member States should follow the High-Level Group on Non-discrimination, Equality and Diversity's subgroup on equality data's guidance note⁷ to collect disaggregated data.

1 e. Member States should be encouraged to develop effective and comprehensive National Anti-racism Action Plans and to ensure their regular review and implementation.

1 f. There is no agreement yet on the Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, the Commission's proposal from July 2008. Efforts should be made to finally agree to adopt the so called 'Equal Treatment Directive or Horizontal Directive'.

2. Tackling the root causes of racism

2 a. Member States should encourage the development of initiatives to foster a greater understanding of the historical causes of racism.

2 b. The European Union should fund research to collect information on education materials used in Member States to identify areas where disputed facts are presented as reality.

2 c. The European Union should support effort to tackle institutional racism, in particular from law enforcement authorities. This could include: recommendation to introduce a reasonable suspicion standard for police search activities, ensure training and monitoring of instances of racially-motivated misconduct by the police.

3. Policymaking process

3 a. European and Member State institutions should encourage the participation and/or consultation of civil society organisations representing racialised groups in the policymaking process.

3 b. The European Institutions should set an example in the use of positive framing, such as speaking of 'racial justice' rather than 'racism', or 'broadening the curriculum' instead of 'decolonising the curriculum'.

⁶ European Commission, Communication of 17 July 2019 on Strengthening the rule of law within the Union: A blueprint for action, COM(2019) 343 final, available at:

[https://ec.europa.eu/transparency/documents-register/detail?ref=COM\(2019\)343&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2019)343&lang=en).

⁷ High-Level Group on Non-discrimination, Equality and Diversity's subgroup, Guidance note on the collection and use of equality data based on racial or ethnic origin, 2001, available at:

https://ec.europa.eu/info/sites/default/files/guidance_note_on_the_collection_and_use_of_equality_data_based_on_racial_or_ethnic_origin.pdf.

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