Promoting the implementation of European Union equality and non-discrimination standards in the programming and implementation of structural funds with respect to Roma

Isabelle Chopin, Uyen Do and Lilla Farkas
This publication has been commissioned by the Open Society Foundations, Making the Most of EU Funds for Roma Program. The authors would like to particularly thank Viola Zentai, Adam Kullmann and Savelina Roussinova-Danova for their kind assistance and support.

November 2013

Copyright Open Society Foundations. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means without the prior written permission of the Open Society Foundations.

Design and layout: Alex Kirchberger
# TABLE OF CONTENTS

Executive Summary 4

1. The European legal and policy framework for Roma inclusion 14
   1.1 Programming – a comprehensive and complex national approach 14
   1.2. Implementation 15
   1.3. Evaluation and monitoring 16
   1.4. Mainstreaming as a proactive measure
      1.4.1. Gender mainstreaming 18
      1.4.2. Disability and general equality mainstreaming 18
      1.4.3. Roma mainstreaming 19
      1.4.4. Adapting gender mainstreaming tools to Roma mainstreaming 20
      1.4.5. National best practices on race and ethnic origin mainstreaming – revisiting the conceptual framework 22

2. Domestic conditions for mainstreaming anti-discrimination 28
   2.1. (In) directly discriminatory national legislation 28
   2.2. Planning for the Roma not compliant with EURS 29
   2.3. Lack of specific expertise and guidance for planning 30
   2.4. Stakeholders call attention to shortcomings 30

3. Monitoring Roma mainstreaming 32

4. Let’s all speak the same language! The approximation of legal and policy discourses 34
   4.1. Key concepts: international law binding on Member States 37
   4.2. Key concepts: the Racial Equality Directive 42
   4.3. Segregation can hardly ever be justified. Desegregation in education is more commonly undertaken 45
   4.4. Segregation and the duty to desegregate 47
   4.5. In search of an EU definition of segregation 53
   4.6. Framework to determine compliance of policies and projects with the duty to desegregate 58
   4.7. EURS and desegregation 63

Conclusions 66

Annex I 69

Annex II 71

Annex III 93
Executive Summary

The Migration Policy Group (MPG) was commissioned by the Making the Most of European Union Funds for Roma Program of the Open Society Foundations to carry out critical research aimed at informing and advising European Union (EU) institutions on ways of reinforcing the principles of non-discrimination and equality in the programming and implementation of Structural Funds. The proposals offered in this paper are based on desk research covering Bulgaria, the Czech Republic, Hungary, Romania and Slovakia. MPG carried out field research in four Member States – excluding the Czech Republic. The paper analyzes how these Member States comply with their obligations under Article 16 of the General Regulation on Structural Funds. The analysis focuses on non-discrimination—based on racial or ethnic origin—and explores in particular the implementation of this principle with respect to the Roma. The question of whether Roma mainstreaming should be developed on par with gender mainstreaming if the two are to be accorded the same level of protection (which may be a requirement under the Charter of Fundamental Rights) will also be analyzed.

Key concepts and definitions

This report explores the potential of an EU legislative and policy context that has improved since the publication of the European Commission Report on Improving the tools for the social inclusion and non-discrimination of Roma in the EU.1 Improvements include an EU Framework for National Roma Integration Strategies up to 2020 (EURS) and Council conclusions on an EU Framework for National Roma Integration Strategies up to 2020 (Cc). While conducting research for this report, draft Regulations on Cohesion Policy (CP) were published and Member States compiled their National Roma Integration Strategies.2 In May 2012, the

1 This publication summarises the relevant legal, policy and financial measures and such issues as mainstreaming and targeting, positive action, Roma participation and data collection.
European Commission published its assessment of these strategies, welcoming certain actions. The European Roma Policy Coalition welcomed the critical tone of the Commission’s assessment and in turn it highlighted various shortcomings it identified in its own assessment of the national strategies.

The key concepts addressed in the above-mentioned policy documents are: integration (EURS), inclusion (CP), desegregation (Cc) and the ex-ante conditionality to ensure non-discrimination based on, inter alia, race and ethnic origin. Regrettably, considerations pertaining to ex-ante conditionalities may become obsolete in view of the General Affairs Council’s proposal of 24 April 2012 to delete ex-ante conditionality related to non-discrimination from the Common Rules of the Cohesion Policy Regulations.

Strikingly, besides the lack of clear or, in fact, any definition of the key policy concepts little is known on how they relate to the anti-discrimination directives whose effective implementation they aim to ensure. Certainly, this makes the comprehension of EU priorities relating to Roma integration rather cumbersome. Moreover, the failure to align social policies and legal concepts pertaining to the equal treatment of Roma — even the most robust ex-ante conditionality — may result in misinterpretations during planning and implementation. A minimum requirement, therefore, would be to contextualize ex-ante conditionality and other key concepts in the framework of the anti-discrimination directives.

Hence, this report provides detailed analysis on Roma mainstreaming, desegregation and the ex-ante conditionality relating to non-discrimination. Given it is imposed by

---


4 See http://webhost.ppt.eu/romapolicy/2012/05/23/erpc-statement-nris-communication/

5 See http://www.ergonetwork.org/media/userfiles/media/Final%20ERPC%20Analysis%2021%2003%2012_FINAL.pdf

CP Regulations, ex-ante conditionality will be mandatory. Thus, the regulatory framework may go beyond what is foreseen in Article 5 of the Racial Equality Directive (RED)⁷ and impose mandatory positive action. It remains to be seen what role desegregation will be given during the negotiations of National Development Plans. The approach of Member States to National Roma Integration Strategies already indicates that EU institutions ought to take a robust stance if they wish to ensure that desegregation is implemented in practice. Through the existing policy framework and decision making process they have the power to impose a duty on Member States to desegregate. In such circumstances the EU regulatory and policy framework would in practice ensure that Member States comply with their obligations to maintain mandatory positive action measures. This, on the other hand, would ensure that Member States comply with their obligation to maintain mandatory positive actions in relation to Roma as stipulated under Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).⁸

Ex-ante conditionality, Roma mainstreaming and desegregation are key social policy concepts that amount to positive action measures under Article 5 RED. The first step to ensuring uniformity is to define segregation, whose definition is a *conditio sine qua non* of implementing desegregation. However, segregation is not a separate legal concept under the RED. Moreover, it has not been settled whether segregation under RED amounts to direct or rather indirect discrimination. Finally, legislative guidance or case law needs to clarify whether and to what extent segregation can be justified under RED. Such clarification can in great part fill the lacunae identified by many stakeholders who call for a

---


⁸ Under Article 2.2. ICERD States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case en tail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.
specific anti-discrimination directive focusing on the Roma.⁹

In order to remedy these shortcomings, this report sets out to define segregation with a view towards ensuring that legal and policy contexts are approximated. It then moves on to explore how a clear definition of segregation can benefit the implementation of key policy concepts as well. Relying on international treaties signed and ratified by all Member States this paper argues that at the domestic level there exists a duty to desegregate in the field of education and housing. Arguably, the extent and level of these duties may differ in the two fields.

The European Commission has not yet taken a position on segregation. The DG Justice Equality Directorate needs to be engaged on this matter. Furthermore, the applicability of the ICERD to disputes arising from the RED is an area that needs to be researched. As pointed out in recent discussions within the European Parliament, Member States’ compliance with international treaties pertaining to protected grounds and rights enshrined in EU non-discrimination law— including compliance with the ICERD—has not been studied yet. It is recommended that research be undertaken in this area, particularly in relation to Articles 2, 3 and 5 of the ICERD as they pertain to the segregation of Roma in the field of education and housing. Compliance with obligations arising from international treaties signed and ratified by Member States needs to be ensured. This notion has recently been substantiated in relation to the Convention on the Rights of Persons with Disabilities in the context of discrimination based on disability – including the need to retain in the CP Regulations the ex-ante conditionality pertaining to non-discrimination.¹⁰

Given the Cc’s focus on desegregation and Roma mainstreaming, there seems to be political commitment from the EU to proactively engage in dismantling segregation. This, however, remains to be stated clearly: without a greater

---


degree of Roma-non-Roma contact, interaction and Roma participation ensured through desegregation and social inclusion cannot be achieved.

Bearing in mind the fundamental rights framework adopted by the Cc, desegregation in education and housing, as well as Roma mainstreaming, also need further analysis from a fundamental rights perspective. The difference between the right to education—which is complemented by an obligation to attend school—and the right to housing—which is not guaranteed in all Member States’ constitutions—needs to be mapped.

The question of whether Roma mainstreaming should be developed on par with gender mainstreaming if the two are to be accorded the same level of protection (which may be a requirement under the Charter of Fundamental Rights) will also be analyzed.

*Segregation can hardly ever be justified. Desegregation in education is more commonly undertaken.* From the perspective of equal treatment based on race and ethnic origin, it is important to note that schools are not solely places where students acquire the knowledge and skills necessary for them to access employment and earn a living. They also serve as the most important venues for students to learn how a pluralist and democratic society functions in practice, how citizens relate to each other, what their civil and political rights are, and how they can invoke those rights in their own and in others’ interests.

Some common desegregation measures include: setting balanced ethnic proportions in schools and classes, bussing children to enable their access to integrated education, after-school education provided to Roma children to catch up, multicultural education, extra tuition, grants schemes, and free early childhood and kindergarten education to enable enrolment in integrated schools. Interventions of this kind are implemented across the EU and qualify as positive action measures. Other permissible examples include the provision of tutorials and social services to Roma university students (Romaversitas11), as well as grants schemes available to Roma university students (Roma Education Fund scholarship grants12).

---

12 [http://www.romaeducationfund.hu/how-apply-scholarship](http://www.romaeducationfund.hu/how-apply-scholarship)
In contrast, comparative research on housing issues demonstrates that not only do local authorities and agencies in various Member States fail to promote policies of Roma desegregation, but many actually reinforce segregation practices when implementing social housing policies. Often domestic laws and practices deprive vast numbers of Roma from housing through the lack of security of tenure and forced evictions—and in some cases mass evictions.\(^\text{13}\) Indeed, “segregation is still evident in many EU Member States, sometimes as a result of \textit{deliberate} (emphasis added) government policy”.\(^\text{14}\)

In light of the aforesaid, this report proposes a framework to determine whether or not a particular project in the field of education would be permissible under the relevant EU, international and domestic legal and policy context. Furthermore, it provides signposts to help avoid future steps or actions that impinge on comprehensive desegregation in the field of housing. The European Court of Human Rights has recently issued judgments which indicate that in relation to Roma and Travellers a duty to desegregate in the field of education and a duty to rehouse in case of forced evictions may exist at the Council of Europe level.\(^\text{15}\)

### Adequate legal protection for Roma at EU level?

Concerns relating to discrepancies between public policy and legal concepts characterize the debate regarding adequate legal protection for Roma since the drafting of the Racial Equality Directive. A salient question is whether it provides equal protection for Roma as it does for other racial or ethnic minorities in the EU, or whether there is still a need for a Roma specific regulative framework?

Two main issues emerging from this debate are addressed in this paper:

(i) does the legal framework adequately address segregation, which is the most outstanding characteristic of Roma housing and education concerns, and;
(ii) given the extent of this segregation, does the legal framework adequately deal with integration, social inclusion and/or Roma-non-Roma relations?

\(^{13}\) Supra, 18, p. 6.

\(^{14}\) Ibid, p. 5.

\(^{15}\) See Lavida et Autres c Grece judgment of 30 May 2013 and Winterstein et Autres c France, judgment of 17 October 2013.
We argue that an EU definition of segregation based on existing case law, Member States’ best practices and legal analysis available at the EU level needs to be provided by EU institutions. Better still; National Roma Integration Strategies need to be evaluated by the European Commission on the basis of such an EU definition. This need is all the more apparent because segregation has been addressed by the Council conclusions, which extensively deal with desegregation/elimination of segregation/avoidance of the reproduction of segregation. Indeed, they envisage Roma mainstreaming in relation to fighting against segregation. It is of concern, then, that this mainstreaming has not yet been defined at the EU level. Moreover, it has not been indicated whether mainstreaming is to be understood to include good race relations.

Best practice examples of race and ethnic origin mainstreaming taken from the national level raise an important substantive issue beyond any concrete procedural considerations: the understanding of equality in the context of Roma. Gender mainstreaming encompasses the prohibition of discrimination as well as the promotion of equal opportunities. Where it exists, racial mainstreaming goes beyond this conceptual framework: it places an equally important emphasis on good race relations—in other words, on interracial or interethnic contact and cooperation between individuals belonging to majority and minority races or ethnic groups. Significantly, this is the point that various stakeholders interviewed by MPG mentioned as an area that future EU funded programs need to address. Few stakeholders stressed that interracial contact promoted by programs is the most significant indicator of social inclusion and desegregation. As such, it is apparent that these considerations should be addressed when producing materials to guide Roma mainstreaming. It is recommended that during the consultations between Member States and the Commission in relation to the National Roma Integration Strategies, a set of indicators pertaining to interethnic contact could be introduced, instead of using indicators that measure outreach to the Roma. The latter indicators are seen as being counter-productive, as they may favour projects that embed segregation.

16 Cc indents 21, 26 and 32.
The existing *equality bodies* established in Member States under Article 13 RED can be a good resource for developing a systematic approach to equality and non-discrimination pertaining to Roma. These bodies, however, cannot substitute the need for developing equality and non-discrimination expertise among public authorities directly involved in the management and implementation of Cohesion/Structural Funds. Moreover, the equality bodies interviewed by MPG reported a lack of adequate expertise and financial resources to review or consult on equality planning. Similarly, Equinet’s data\(^{17}\) and annual compliance reports produced by the European Network of Independent Experts in the non-discrimination field\(^{18}\) demonstrated that Equality Bodies across the EU did not possess the mandate or the human and financial resources required to engage in consultations as envisaged in the draft regulations. It was recommended that capacities be strengthened in this regard. Capacity building efforts would ideally be spearheaded by the European Commission in two ways: (i) the development and dissemination of practice guides and checklists for equality bodies to follow when consulting or reviewing government strategies relating to equality, and; (ii) grants to build internal capacities. This report puts forward recommendations to fill the gap of EU soft law measures by providing a model code on Roma mainstreaming. None of these initiatives could, however resolve shortages of financial resources. This concern has become greater in recent years as there have been steady decreases or severe cuts in many equality bodies’ budgets.\(^{19}\)

**Guidance on Roma mainstreaming is needed**

This research has identified that unlike the horizontal principle of equality between men and women\(^{20}\), neither general equality mainstreaming as it pertains to Roma,

\(^{17}\) See the relevant communication from Equinet on the Roma Strategy.

\(^{18}\) All reports and a comparative summary are available from [http://www.non-discrimination.net](http://www.non-discrimination.net)

\(^{19}\) See, for instance flash reports from the Network on Ireland, Bulgaria and more recently (November 2010) UK [http://www.non-discrimination.net/content/media/UK-45-funding%20cuts%20at%20the%20Equality%20and%20Human%20Rights%20Commission%2C%20UK.pdf](http://www.non-discrimination.net/content/media/UK-45-funding%20cuts%20at%20the%20Equality%20and%20Human%20Rights%20Commission%2C%20UK.pdf) and 2012 in Hungary.

nor the specific principle of Roma mainstreaming\textsuperscript{21} has yet been interpreted by the European Commission. Stakeholders interviewed during the preparation of this report believed that clear guidance to Member States on how to implement mainstreaming is the key to developing a systemic approach to advancing equality and non-discrimination pertaining to Roma. Doing so can also decrease the likelihood of token strategies, measures and programs being developed by Member States.

There seems to be political commitment in the Cc towards Roma mainstreaming. Indeed, there is simply no reason why Roma, as the EU’s most sizable ethnic minority group\textsuperscript{22}, should not benefit from the same social policy measures as, for example, women.

Roma mainstreaming should be based on Roma ethnicity using existing ethnic data or using proxies, such as socially impoverished/excluded status. There are no legal prohibitions forbidding Member States from collecting ethnic data, but detailed domestic rules for doing so are often missing.

Guidance on desegregation and/or on the avoidance of reproducing segregation was seen as being of paramount importance due to Roma experiences with housing and school segregation in the four Member States visited. Stakeholders interviewed underlined the need to establish a test that would indicate when desegregation was not practical or feasible and when “measures for improving the situation of Roma” in segregated settings can be justified. This point has been raised earlier as well in relation to housing segregation, where a report called for the EU to define a set of minimum requirements of desegregation.\textsuperscript{23}

Regrettably, the importance of Roma mainstreaming—particularly in relation to the fight against segregation—is not yet matched by the production of useful manuals, toolkits and checklists for national stakeholders, such as governments, implementing agencies, equality bodies and Roma civil society actors. Moreover, EU resource materials

\textsuperscript{21} See Council Conclusions indent 20 and 32.
\textsuperscript{22} Their number within the EU is estimated at 8 to 10 million. See Estimates on Roma population in European countries, \url{http://www.coe.int/web/coe-portal/roma}

\textsuperscript{23} Eszter Somogyi, Nóra Teller, Vademecum on Improving Housing Conditions for Marginalised Communities, Including Roma, MtM, Metropolitan Research Institute, Budapest, March 2011, p.4.
that could assist or guide national stakeholders are scarcely available in relation to race.

**Appraisal of National Roma Integration Strategies**

Beyond taking steps to ensure the transparency of consultations leading up to the adoption of National Roma Integration Strategies, the publication by the Commission of a comparative review of indicators, benchmarks and progress made through the implementation of strategies and policies—similar to the Migrant Integration Policy Index developed by MPG—would be useful.

A *Roma Integration Policy Index* (ROMIX) could (i) analyse how the four policy areas selected by the EU Framework for National Roma Integration Strategies shape a Roma’s journey to equality in practice; (ii) examine how policies compare against the standard of equal rights and responsibilities for Roma; (iii) determine how individual Member States’ policies rank compared with each other; (iv) track policy performance over time; (v) study real examples of how to improve policies, and; (vi) help design and assess new laws and proposals on an on-going basis.

ROMIX is essential to pressure Member States into advancing Roma inclusion policies. It will also spur governments into providing comparative data on the situation with regards to Roma across the EU. This kind of comparative data assessment is long overdue and has only been attempted by the Decade Watch in relatively few Member States. Existing expert networks, as well as experts to be recruited for the assessment of programmes and projects under the Cohesion Policy can contribute to ROMIX.

---


1. The European legal and policy framework for Roma inclusion

The European Regional Development Fund (ERDF) aims to strengthen economic and social cohesion in the European Union by correcting imbalances between its regions, whereas the European Social Fund (ESF) focuses on improving employment and job opportunities in the EU. Article 16 of the Structural Funds General Regulation introduces mainstreaming with regard to discrimination on grounds of sex, racial and ethnic origin, religion or belief, disability, age and sexual orientation in the implementation of the Funds and, in particular, in the access to them. Mainstreaming is binding and requires integrating the non-discrimination principle into every step of the process, with a cross-cutting and horizontal perspective.

The desk research therefore reviewed reports on how equality and non-discrimination have been mainstreamed in the a) programming, b) implementation and c) evaluation of the Funds. In particular, the research looked for good practices with regards to Roma mainstreaming.

All Member States presented National Reference Frameworks (NSRF) and Operational Programmes (OP) explaining how they would put the Funds’ priorities into practice.

1.1 Programming – a comprehensive and complex national approach

Mainstreaming of non-discrimination as a horizontal priority is included in all NSRFs and OPs. MPG has found that:

All five Member States currently present quantitative and qualitative data regarding Roma at both national and regional levels, for employment, education, housing and health care.

All governments have adopted complex social and economic policy programs instead of single actions aimed at enhancing the social integration of the Roma population. Targeted group approaches (labour market situation, education, marginalized Roma community and social inclusion, i.e., housing, health care) or targeted territorial areas are favoured. These are sometimes complemented by specific Roma programs if needed. For instance, in Slovakia two approaches are envisaged for the provision of impact and coordination of the horizontal priority with regard to the “Marginalised Roma Community”: 

All Member States presented National Reference Frameworks (NSRF) and
A comprehensive approach which is applied in various Operational Programmes (Regional, Employment and Social Inclusion, Education, Environment, Competitiveness and Economic Growth and Healthcare);

Individual Projects (demand-driven), which may be applied in all Operational Programmes.

Such an approach allows one to efficiently “address the multiple exclusion factors experienced by Roma and the advantages are that it provides policy makers with a general framework for multidimensional policy measures and allows for long-term planning of holistic interventions and the financial resources needed for their implementation.\(^\text{26}\)

The objectives and strategies with regard to the Roma, however, are not always spelled out clearly. This inhibits the operationalization and makes it more difficult to effectively budget for and allocate resources to address the set priorities. This undermines the design of real actions and concrete measures at the implementing stage.

In some countries (e.g., Bulgaria, Hungary) civil society is involved in the programming and implementation of the NSRF and OPs.

In Bulgaria, 45 Roma organizations have provided formal and informal comments on the different parts of the text of the Human Resources Development Operational Programme. In conformity with the partnership principle, the comments and recommendations have been reviewed and roughly 90 percent of them have been accepted and integrated in the program. In Hungary, in order to assist potential beneficiaries belonging to underprivileged micro-regions and / or the Roma minority, the National Development Agency operated a National Advisory Network, and involved a network of Roma advisors offering advice during the preparation and implementation of development projects.

According to their own reports, the national coordination authorities in all the respective countries ensure the full respect of the non-discrimination principles in the implementation of the NSRF. In Bulgaria, the Coordinating Authority reported that it developed guidelines and compiled a specific handbook with respect to non-discrimination. Also, the Managing Authority promoted and disseminated good practices.

1.2. Implementation

In submitting project proposals, the principle of non-discrimination and equal treatment must be respected in all public procurement contracts and it constitutes a selection criterion for the

\(^{26}\) Report on improving the tools for the social inclusion and non-discrimination of Roma in the EU, p. 17.
projects. All potential beneficiaries requesting financial assistance should demonstrate that the projects do not infringe this principle. In Slovakia, the Ministry of Labour was to set up a support centre to provide assistance to applicants in assessing the impacts of their projects with regard to equal opportunity. In the Czech Republic and in Hungary applications evaluated positively on “equality of opportunities and prohibition of discrimination” were to have an advantage in the projects’ assessment phase. In Hungary, 25 micro regions were identified with significant Roma populations. These regions lagged far behind the national average in terms of job creation and investment. In response, via the Economic Development Operational Programme, Roma, women and persons with disabilities are being scored preferentially when considering how to disburse micro-financing support.

However, if the non-discrimination principle must be respected, projects proposals are not required to specifically target the Roma as a selection criterion.

In Hungary, results from the PHARE programme were duly taken into consideration and publicized so as to provide assistance for project planners and implementing bodies, and to contribute to improving the quality of future interventions.

1.3. Evaluation and monitoring

The Making the Most of EU Funds for Roma program assigned special units—in the countries where it operates—with the task of addressing the issue of non-discrimination and Roma inclusion in the implementation of the NSRF and OP. For instance, the Office of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities established a department for the coordination of the horizontal priority with respect to “Marginalised Roma Communities” (MRC). The focus has been the execution of activities connected with the administrative and methodological backup of the horizontal priority of MRC. The deputy prime minister for Knowledge Society, European Affairs, Human Rights and Minorities was responsible for the horizontal priority in MRC. In addition, an institutional network was developed to ensure vertical coordination through state institutions (regional offices of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities, departments at the HTU, regional offices of the Slovak National Centre for Human Rights, etc.) and through non-governmental and civic sectors. Vertical coordination has not been established in all countries, which may undermine the effective

---

27 In line with Government Decree No. 396/2007.
implementation of the non-discrimination principle with regard to Roma.

Hungary conducted ex-ante evaluations, impact assessments and interim and post-ante evaluations based on standardized checklists. These included indicators related to need, relevance, effectiveness, efficiency, impact and sustainability. For instance, an interim assessment on “access to work and training” for Roma uncovered problems associated with the definition and identification of the target group. In response a proposal has been put forward to fine tune the methodology.

1.4. Mainstreaming as a proactive measure

As with measures to support gender equality, enforcement models that rely on proactive measures are characterised by the following: (i) policy makers take proactive steps to address structural issues concerning institutional inequalities; (ii) in order to prove the necessity of change, discrimination need not be proven; and (iii) the participation of the protected group in norm setting and enforcement is broadened.  

One could easily argue that with the EU Framework for National Roma Integration Strategies and the Council conclusions the EU has put in place a framework of an enforcement model resembling the one described above.

Certain proactive measures such as mainstreaming are process based, while others, such as quotas in ethnic minority education and use of the Roma language are substantive or result oriented. In the context of Roma mainstreaming, the second way of operation identified by Fredman appears most relevant. Here, a process—namely an impact assessment—is put in place in order to prevent inequality arising in the first place. Equality bodies, governments and the executive may be in charge of gender equality impact assessment across the EU. Belgium is mentioned as a best practice example: in each federal ministry a civil servant is in charge of ex-ante impact assessments on gender, there is an interdepartmental unit in charge of monitoring, and the Equality Institute provides training and expert assistance. This is exactly the process many stakeholders interviewed by MPG proposed for Roma mainstreaming. Others, however, wished to see a central coordination unit, possibly a Roma plenipotentiary of some sort.


The weak points of gender equality impact assessment appear significant in relation to Roma: (i) once a negative impact has been identified there is no guarantee of actions to amend/improve the situation, (ii) once instituted, changes need to be reviewed, (iii) impact assessments may be impeded by a shortage of resources.  

### 1.4.1. Gender mainstreaming

At the EU level, Article 10 of the European Union Treaty provides a basis for the promotion of equality mainstreaming. The concept of mainstreaming was first developed in relation to gender. In 1996, the European Commission defined gender mainstreaming as “mobilising all policies and measures specifically for the purpose of achieving equality by actively and openly taking into account at the planning stage their possible effects on the respective situation of men and women.”

Although Member States put in place national mechanisms to plan and oversee gender mainstreaming, these mechanisms were criticized as ineffective and/or not yielding tangible results. A Guide to Gender Impact Assessment published by the Commission could not improve implementation either. Indeed, the Manual for Gender Mainstreaming, Employment, Social Inclusion and Social Protection Policies published by the Commission in 2008 openly acknowledged shortcomings and set out to strengthen the implementation of the gender mainstreaming principle.

### 1.4.2. Disability and general equality mainstreaming

In 2003, disability mainstreaming was defined as “the integration of the disability perspective into every stage of the policy process ... with a view to promoting equal opportunities for people with disabilities.”

The definition of a general equality mainstreaming pertaining to gender, race and ethnic origin, disability, age, religion or belief and sexual orientation was offered in 2008: “a systemic incorporation of non-discrimination and equal opportunity concerns into all policies, in particular within existing coordination mechanisms.”

---

30 Ibid.
for employment, social inclusion, education
and training.”

In November 2011, the Commission
published a Compendium of Practice on
Non-Discrimination/Equality
Mainstreaming. It recommended that
Member States (i) expand the remit of
gender mainstreaming to cover other
grounds – including ethnic origin; (ii) use
the gender mainstreaming as a model and
(iii) a standard. The publication deals both
with policy making and policy
implementation.

1.4.3. Roma mainstreaming

The concept of general equality
mainstreaming as developed in 2008
no doubt covers Roma. However,
this has been made more explicit by a more
recent document that specifically mentions
Roma mainstreaming. Indent 20 of the
Council conclusions on an EU Framework
for National Roma Integration Strategies up
to 2020 invites Member States “to improve
the social and economic situation of Roma
by pursuing a mainstreaming approach in
the fields of education, employment,
housing and healthcare”. Indent 32 then
underlines that the fight against
segregation needs to be mainstreamed into
policy making processes. Moreover, the

envisioned mainstreaming is to adopt an
integrated approach to policies in the above
fields and is to be based on the Common
Basic Principles on Roma Inclusion – which
further strengthen the requirements of data
based planning and of Roma participation
throughout the processes. The clear need
for Roma participation is then further
mentioned in indents 28 and 41.

The extent to which the issue of housing
and school segregation is dealt with in the
Council conclusions clearly indicates the
prominence these issues need to be
accorded when mainstreaming Roma
concerns in policy processes. Regrettably,
the importance of Roma mainstreaming—
particularly in relation to the fight against
segregation—is not yet matched by the
resources needed to drive this forward, such
as manuals, toolkits and checklists for
national stakeholders (governments,
agencies, equality bodies and Roma civil
society actors). Resource materials that
could assist or guide national stakeholders
are not available in relation to race.

There seems to be political commitment
towards Roma mainstreaming in the
Council conclusions. Moreover, there is
simply no reason why Roma as an ethnic
group should not benefit from the same
social policy measures as do women. A
difference between the two grounds may
run counter to Article 20 and 21 on equality
and non-discrimination of the Charter of
Fundamental Rights of the European Union.

35 European Commission, Non-Discrimination
and Equal Opportunities: A Renewed
Moreover, Roma as an ethnic group are members of racial and ethnic minorities that under EU law are accorded the highest level of legal protection from discrimination (compare this to RED) with gender equality treaty provisions and directives). Lastly, Roma mainstreaming is a positive action measure, which is mandatory under ICERD Articles 2 and 5.

Relying on Makkonen’s assessment of difficulties to categorize ethnicity\textsuperscript{36} and Farkas’s definition\textsuperscript{37} of Roma for the purposes of tackling segregation in education, this report proposes that Roma mainstreaming should be based on data collected in relation to three potential facets of Roma identity: race (colour), membership of an ethnic minority group and social deprivation resulting from historical discrimination. The benefit of construing Roma identity along these criteria is that it captures the complexity of being a Roma, while allowing for the planning of positive action measures at as many different levels as possible. Clearly, even this categorization may be incomplete. However, it provides individuals with the choice of identifying themselves as Roma at the level they feel appropriate. Practice shows that self-identification with either facets of the Roma identity is probable, while identification with all may not be universal. Clearly, not every person perceived as, or identifying themselves as, Roma will at the same time identify him or herself as a member of that ethnic minority group or suffer social deprivation resulting from historical discrimination. At the same time, such a complex categorization renders the control of ethnic data based on self-identification more effective. In technical terms, however, the bottom line is that there is absolutely no legal prohibition on Member States ability to collect ethnic data, but they need to either help establish the requisite domestic rules for doing so or simply start collecting the relevant data under the existing rules that generally require consent for such data collection.\textsuperscript{38}

\textbf{1.4.4. Adapting gender mainstreaming tools to Roma mainstreaming}

\begin{flushright}
\textsuperscript{\textcopyright} Makkonen, 2006, pp. 84-85.
\end{flushright}
EU Framework and the Council conclusions. The following is an example from the Manual for Gender Mainstreaming, Employment, Social Inclusion and Social Protection Policies relating to flexicurity policies. It is adapted to reflect Roma mainstreaming in relation to desegregation policies in education and housing. These two fields are selected because they are specifically and repeatedly mentioned in the Council conclusions and also because they are interlinked. The checklist below can serve as guidance for equality bodies as well.

Checklist on Roma mainstreaming of desegregation policies

Step 1. Getting organized
- Are there any guidelines or targets set with regard to desegregation in education and housing?
- Are all relevant stakeholders aware of the Roma equality issues, particularly segregation?
- Is there a common understanding among law and policy makers of de/segregation and Roma mainstreaming? Are they aware that segregation is prohibited?
- Is there a clear structure of responsibilities?
- Are training facilities in Roma equality issues available and/or is it possible to make use of external expertise?

Step 2. Learning about Roma and non-Roma differences
- Are all relevant statistics differentiated by Roma and non-Roma ethnic origin? Alternatively, do statistics based on proxy (social status, territorial aspects) exist? Alternatively, do other relevant research data exist?
- What is the Roma and non-Roma proportion of relevant administrative units (class, school, neighbourhood, village, town, micro-region, region, country)?
- What segregation trends exist in housing and education?

Step 3. Assessing the policy impact
- Are the present legal and policy arrangements compatible with the needs of Roma?
- Is the development of desegregation policies compatible or incompatible with the particular situation for Roma?
- Are the policies aimed at Roma as well as non-Roma (social class, territorial aspects)?
- Do Roma have access to integrated education and housing?
- Do Roma have access to further education?
Are there measures to reduce the risk of drop-outs and evictions associated with desegregation?

Are desegregation policies compatible with the EU 2020 targets and the EU Framework for National Roma Integration Strategies up to 2020?

**Step 4. Redesigning policy**

Upon reviewing the results of the above steps, identify ways in which the policy could be redesigned to promote Roma equality. Take into account that Roma mainstreaming calls for an integrated approach, Roma participation and the inclusion of families.

**1.4.5. National best practices on race and ethnic origin mainstreaming – revisiting the conceptual framework**

Best practice examples of race and ethnic origin mainstreaming taken from the national level raise an important substantive issue beyond the concrete procedural considerations. This issue is the understanding of equality in the context of race and ethnic origin. Gender mainstreaming encompasses the prohibition of discrimination as well as the promotion of equal opportunities. Race and ethnic origin mainstreaming goes beyond this conceptual framework: it places an equally important emphasis on good race relations, in other words on interracial or interethnic contact and cooperation between individuals belonging to majority and minority races or ethnic groups.

Significantly, this is the point that various stakeholders interviewed by MPG mentioned as an area of concern that future EU-funded programs need to address. In Slovakia, two interviewees stressed that interracial contact promoted by programs is the most significant indicator of social inclusion/integration, as well as school and housing desegregation. It would be useful to pay heightened attention to these considerations when producing materials that will guide Roma mainstreaming.

Interviewees also suggested that this point should be raised with Member States and the Commission in relation to the National Roma Integration Strategies. A set of indicators pertaining to interethnic contact could be developed and introduced.

**The United Kingdom (England, Scotland and Wales) – statutory equality duty**

The overall purpose of the equality duty is to integrate equality into the day-to-day activities of public authorities. Mainstreaming is therefore necessary to achieve that goal, as it requires equality to be considered in
decision-making, in the design of policies, in the delivery of services and in the evaluation or review processes. The duty is a legal obligation imposed on public authorities. Public authorities such as local authorities, education bodies (including schools), health bodies, police, fire and transport authorities, government departments and other organizations that exercise public functions (such as a private company running a prison on behalf of the government) are covered by the general equality duty.

The Race Relations Act 2000 mandates public authorities to:

- Eliminate unlawful racial discrimination
- Promote equality of opportunity
- Promote good relations between people of different racial groups

The race equality duty arose from the many failures in the police investigation of a black teenager’s murder and the revelation of institutional racism within in the Metropolitan Police. The race equality duty aimed at guiding the approach of public authorities to prevent discrimination and racism. For the first time ever, public authorities were compelled to positively promote equality, not merely to avoid discrimination. Later, similar duties were introduced for other grounds of discrimination, such as the disability equality duty in 2006 and the gender equality duty in 2007.

On 5 April 2011, the public sector equality duty created under the Equality Act 2010 came into force in England, Scotland and Wales. This duty replaces the former race, disability and gender equality duties (section 149 of the Equality Act 2010). Under the new Act, the aims of the equality duty have been rephrased as the following:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- Advance equality of opportunity between people who share a protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not

In particular, the Equality Act 2010 further explains the second aim, stating that advancing equality of opportunity involves:

- Removing or minimizing disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups

---

where these are different from the needs of other people.

- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

According to the case law developed on the general equality duty, public authorities must act in full awareness, with a conscious approach and state of mind at all stages of the process, when making decisions and setting policies. It is a continuing duty the authorities must comply with, including at the implementation and assessment phases of a policy setting.

In the absence of any particular process prescribed by the law, the Essential Guide to the Public Sector Equality Duty provides a suggested approach to help public authorities comply with the equality duty. Public authorities are required to:

- Establish the relevance of the equality duty to their functions
- Adopt an evidence-based approach in their decision-making process by collecting and using equality information
- Assess the impact on equality of their decision-making and policies and practices
- Engage with people with different protected characteristics to help to develop an evidence-based approach
- Comply with the equality duty when undertaking procurement (as well as commissioning) at all stages, including reviews of their procurement policies and contractor’s performance. In addition, procurement could impose equality conditions or require full compliance with the Equality Act to tenderers, suppliers and subcontractors.

Moreover, certain public authorities are also required to publish equality information and equality objectives with regard to their specific equality duties to better perform the general equality duty for the purpose of the Equality Act 2010.

The Home Office clarifies the objective of the general equality duty as follows:

“The [public sector Equality Duty] requires public bodies to consider all individuals when carrying out their day to day work – in shaping policy, in delivering services and in relation to their own employees. It requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between different people when carrying out their activities. The Equality Duty supports good decision making – it encourages public bodies to
understand how different people will be affected by their activities, so that their policies and services are appropriate and accessible to all and meet different people’s needs. By understanding the effect of their activities on different people, and how inclusive public services can support and open up people’s opportunities, public bodies can be more efficient and effective.\(^{40}\)

The equality duty is monitored and enforced by the Equality and Human Rights Commission, which is the independent regulator of equality and human rights legislation. The monitoring role of the Commission is to assess:

- Whether equality information can be found at all
- How comprehensive the equality information is about people with the different protected characteristics who are affected by its policies and practices such as service users or about employees
- Whether authorities have a clear approach to having due regard to the aims in the general duty in their policy and decision-making
- Whether authorities are preparing to comply with the new duty

To ensure enforcement, the Commission assesses equality information, undertakes research on implementation of the equality duty, promotes best practice and compiles evidence of progress and non-compliance. In case of non-compliance, the Commission is entitled to initiate legal enforcement actions with public authorities not complying with the equality duty or it can use judicial review to challenge decisions taken by public authorities. In addition, it can make use of the equality duty to challenge public authorities’ priorities. The Commission also promotes awareness about the equality duty and builds capacities of stakeholders and partners to ensure compliance.

United Kingdom (Northern Ireland) – monitoring religious composition

The Fair and Treatment (Northern Ireland) Order 1998 requires private employers registered with the Fair Employment Commission and public authorities to monitor the religious composition of their workforce to ensure a fair balance and representation of Catholics and Protestants. Private employers with eleven or more employees working more than sixteen hours per week must register with the Commission.

\(^{40}\) See http://www.homeoffice.gov.uk/equalities/equality-act/equality-duty/
Each year, employers are required to submit returns to the Commission for scrutiny and annual publication. If an employer fails to provide a monitoring form or a reasonable excuse for failure, he/she can be fined. Every three years, employers are asked to review their recruitment, training and promotion practices to assess whether there is equitable treatment and sufficient participation of both Catholics and Protestants.

In addition, employers are required to take affirmative action to guarantee “fair participation” and “equality of opportunity” between the two communities and to address under-representation by means of including the adoption of practices encouraging such participation, and the modification or abandonment of practices that have or may have the effect of restricting or discouraging such participation.

The Fair Employment Commission has the power to investigate and review employment patterns and practices and to issue enforceable recommendations to employers specifying steps to be adopted to promote equality.

Norway – obligation to ‘make an active effort’

As of January 2009, employers, public authorities and employer/employee organizations are legally obliged to make active, targeted and systematic efforts—and to report on their efforts—to promote equality and prevent discrimination on grounds of disability, ethnicity, religion, and others, (Anti-Discrimination Act, section 3a). The obligation covers pay and working conditions, promotion, development opportunities and protection against harassment. All measures carried out and planned must be reported in annual accounts or annual budgets. Annual reports and public budgets must state actions taken to fulfil these obligations. The obligation is enforced by the Equality and Anti-Discrimination Ombud.

Hungary – equal opportunity funding policy (EOFP)

The Hungarian Government enacted the equal opportunity funding policy in 2007. Its main goal was to introduce a local government Equal Opportunity Plan for the allocation of EU funds. All tender proposals submitted by municipalities related to public education and urban rehabilitation, for instance, would have to be checked against the equal opportunity criteria established in the EOFP.

It was expected that the introduction of such criteria would contribute to equal access to EU funds by Roma and other persons living in extreme poverty.
The EOFP aims to:

- ensure that government policy is implemented;
- abolish segregation in the field of housing and education;
- help impoverished persons participate in the labour market and receive adult training;
- ensure equal access to public services, including health and social services.
- ensure professional support for municipalities;

Achieving these aims will not be easy as the issues are interconnected: each problem has an impact on other elements.

The 2010 amendment of the Act on Equal Treatment and Promotion of Equal Opportunity introduced the obligation for local governments to prepare an Equal Opportunity Program every five years which should then be reviewed every two years. The Equal Opportunity Program consists of an analytical report and an action plan. The Equal Opportunity Program is an obligatory attachment of tenders financed by EU and national funds. Equal opportunity experts helped local governments in preparing the Equal Opportunity Plans. The 2010 amendment envisaged that the Equal Treatment Authority would review these documents. Although the Equal Treatment Authority recruited new colleagues, they would not have had the time or expertise to substantially review Equal Opportunity Plans. The incoming government in May 2010 amended the legislation again and since then neither the plans nor their implementation has been reviewed by a central government agency.
2. Domestic conditions for mainstreaming anti-discrimination

Field research was undertaken in Bulgaria, Slovakia, Romania and Hungary. The Migration Policy Group interviewed dozens of stakeholders to examine practical challenges. How did projects that were selected and financed under the Structural Funds mirror and address the objectives and targets set out in the NSRFs and OPs? MPG was mapping in particular whether there were specific indicators used to evaluate and monitor the implementation of the non-discrimination principles and whether authorities made use of guidance documents.

In summary, MtM countries seem to experience a serious shortage of expertise in relation to key public administrative functions that renders the process—including evaluation, if undertaken—more ad hoc than systemic. Guidance documents, if and when existing, are rarely used in practice. This may explain how MPG encountered openly racist opinions within the ranks of national agencies overseeing Roma projects.

The feedback MPG has received clearly echoes concerns addressed earlier in the EIRS. The EIRS therefore seems to be a step in the right direction. Alarmingly, in general, interviewees noted the lack of capacity to systematically plan, absorb and distribute EU funds. It is a widely held view that during the consultation with Member States envisaged in the Strategy the EC ought to have adequately addressed the most significant concerns detailed below.

2.1. (In) directly discriminatory national legislation

In all four countries visited, various pieces of national legislation that have been recently adopted or amended run counter to Roma policy targets. If and when Roma mainstreaming is implemented, these laws need to be reviewed and amended further.

Across the Member States covered by MtM, stakeholders expressed great concern about the equality agenda of various pieces of domestic legislation with regards to Roma. Thus, the new acts on public work and public education in Hungary have been condemned as reintroducing forced labour and segregation, as well as giving students the option of dropping-out of school at the age of sixteen. Furthermore, NGO stakeholders are also critical of the failure to legislate in certain fields.

The Vademecum on Improving housing conditions for marginalized communities, including the Roma analyzes how the failure
to set legal titles for MRCs is detrimental across the Member states reviewed.41 On the other hand, NGO, as well as government stakeholders interviewed by MPG in Bulgaria, pinpoint how efforts made to stem illegal construction by businessmen—especially in tourist areas—have made it practically impossible to legalize Roma settlements, which would be the precondition of not only desegregation, but also the improvement of living conditions. Bulgarian NGO stakeholders have also stressed that legislation in the field of health practically bars access to health services to a great proportion of the Roma and the unemployed poor.

These failures need to be addressed during the regular review of the transposition of the Racial Equality Directive—with a view in particular to Article 17—or as a default solution, during the consultation on national Roma strategies. Otherwise, the strategies in the specific fields adversely impacted by legislation cannot be implemented, thus rendering the whole strategic planning exercise devoid of meaning.

2.2. Planning for the Roma not compliant with EURS

The EURS lists four specific intervention areas: reducing dropout rates, closing the gap in employment, and improving housing and healthcare. Regrettably, not all of these intervention areas feature in the Cohesion Policy. Moreover, the Council conclusions, define ‘integration and inclusion both [to] refer to measures improving the situation of Roma living in the Member States’. It remains unclear how these goals set in EURS intervention areas will serve integration.

A common observation among NGO and public policy stakeholders was that beyond the many fraudulent projects that never reached their Roma beneficiaries, many EU funded projects reinforced school and housing segregation without improving the conditions of housing or schooling in the medium to long term. Some concluded that certainly the lack of government policies and legislation in these fields rendered project based solutions hopeless. In any case, the majority of stakeholders insisted that desegregation shall be considered a primary objective if and where feasible. Feasibility was debated widely. The essence of this debate was to identify the level of decision and policy making fitting different scenarios, i.e. to call in regional or central government when segregation cannot be

41 Pp. 17-19.
avoided at the local, micro-regional or regional levels. In cases where central or regional governmental intervention was not feasible, stakeholders recommended to minimize potentially harmful impact by limiting funding to projects that aim at ensuring basic service provision. In other words: instead of funding whole scale reconstruction in segregated Roma schools or settlements, NGO stakeholders suggested that children be bussed to integrated schools and community members be provided services in integrated settings – possibly outside or on the outskirts of segregated settlements.

2.3. Lack of specific expertise and guidance for planning

It is also of concern that in the absence of specific expertise or written and publicly available guidance for planning, Member States’ national strategies will result in pragmatic and non-discriminatory policies based on explicit but not exclusive targeting. Clearly, such guidance should clarify the meaning of basic terms, such as integration, inclusion and (de)segregation. Indeed, in light of the emphasis the Council conclusions place on the promotion of desegregation, as well as the avoidance of the reproduction of segregation in housing and education, specific guidance ought to be provided on these issues.

2.4. Stakeholders call attention to shortcomings

Many stakeholders feel that national goals for Roma integration are often not achievable. Roma targets are rarely if ever included in national development plans. They recommend that the EU institutions request synergies to be ensured between National Roma Integration Strategies and national development plans.

The *Vademecum on Improving housing conditions for marginalized communities, including Roma* noted that target communities were identified either through detailed lists of marginalized communities or through segregation indexes in Hungary, the Czech Republic and Slovakia. In Bulgaria, stakeholders stated that a map of (marginalized) Roma communities had also been prepared. In other words, disadvantaged micro-regions or segregated neighbourhoods have already been identified at the national level.

Stakeholders charge that national governments have been reluctant to fund Roma programs and projects from the state budget and that in certain instances basic services are funded from EU sources – such

---

42 *Vademecum on Improving housing conditions for marginalized communities, including Roma*, p. 7-8.
as the provision of decent schools and educational facilities.

MPG interviewed equality bodies that reported to have either been direct beneficiaries under Operational Programs (Hungary and Bulgaria) or implementing projects under the EQUAL Initiative\(^{43}\) (Romania). Their expertise to assess equality planning/mainstreaming has thus far not been tested, but all stakeholders report that the necessary human and financial resources to perform such duty is lacking. Furthermore, their present level of funding and mandate do not allow for such activities.\(^ {44}\)

While the Bulgarian equality body has a consultative status in relation to the Human Resources Development Operational Program and the Hungarian Equal Treatment Authority may sometimes have the authority to review local equal opportunities plans, they both expressed the need for further human resources and training and additional expertise to meaningfully engage in any review process. The Romanian and Slovak bodies have not been involved in planning, consultation or review, nor has the Czech Ombudsman.\(^ {45}\)

---

\(^{43}\) See, [http://ec.europa.eu/employment_social/equal_consolidated](http://ec.europa.eu/employment_social/equal_consolidated)

\(^{44}\) Equality bodies’ mandates are described in detail in country reports available at [http://www.non-discrimination.net](http://www.non-discrimination.net)

\(^{45}\) Czech country report on the implementation of the non-discrimination directives, 2010, [http://www.non-discrimination.net](http://www.non-discrimination.net)
3. Monitoring Roma mainstreaming

Is there a need to approve and oversee local, regional and national level plans adopted to ensure Roma mainstreaming in the specific fields covered by EURS? Stakeholders interviewed answer in the affirmative and emphasize the need for overseeing the content of such plans. Whose duty shall it be to approve and oversee planning – particularly if there is no specific Roma managing authority? The model proposed by CP suggests equality bodies are best suited for this role. However, interviewees from equality bodies in Bulgaria, Romania, Slovakia and Hungary state that the substantive expertise to oversee planning and, critically, to assess OPs is missing. Except in the case of Bulgaria the equality bodies have not yet been involved in planning, implementing and monitoring EU funds not directly spent by them. Furthermore, since 2008 the EU equality bodies have suffered from severe budget cuts which endanger their basic functioning, let alone the expansion of their staff and expertise to adequately fulfil the new oversight duties.

Bearing these severe shortcomings in mind, it is alarming that the CP regulatory proposals envisage such a vital job for the equality bodies without the Member States’ pledge to commit further financial and human resources, and from the EU to provide additional expertise to successfully carry it out. In order to facilitate this oversight of OPs by equality bodies, a checklist and a common format of opinion should be introduced at the EU level. Equality bodies could also be trained through Equinet—their umbrella organization—to meet this challenge. However, there are indications that capacity building is best ensured through Commission funded programs targeting equality bodies and Equinet.

MPG has recommended amending the text of the draft General Regulation 87.3. (iii) to reflect the need for inclusion of equality bodies in the planning phase. Furthermore, MPG recommended that Member States are required ‘to ensure that equality bodies have the power, the resources and the capacity to perform equality reviews’.

47 The draft General Regulation reads as follows: 87.3. Each operational programme, except those where technical assistance is undertaken under a specific operational programme, shall include: (ii) a description of the specific actions to promote equal opportunities and prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the preparation, design and implementation of the operational programme and in particular in relation to access to funding, taking account of the needs of the various target groups at risk of such discrimination and in particular the requirements of ensuring accessibility for disabled persons;

46 Article 87 of the CP General Regulation.
Roma mainstreaming cannot work without institutional and procedural arrangements and equality expertise in those responsible for its implementation, including local governments in decentralized contexts. Participation is also vital. MtM believes that in both the EURS and the CP, these preconditions and actual processes of mainstreaming should be better articulated and detailed. In particular, the systemic use of knowledge on the structural causes of Roma exclusion and complex knowledge of anti-discrimination and equal opportunity policies in planning should be stipulated in Roma inclusion-related EU regulations. Previous MtM regulatory proposals underscored this central idea.

There are also further procedural considerations which have been addressed by the EURS and the CP, as well as articulated in the Ten Common Basic Principles on Roma Inclusion. The most crucial issue is to define Roma for the purposes of EU funding. The main consideration is that given that discrimination (segregation) occurs as a result of less favourable treatment based on perceived ethnic identity, social policy measures should address individuals and groups that are perceived as being Roma.

Equally important is the consideration that marginalized non-Roma whose position in society is analogous to that of the Roma should also benefit from positive action measures introduced for Roma. Since 2003, Hungary, for instance, designed and implemented its desegregation program in education in this fashion – thus focusing on socially deprived children.

---

4. Let’s all speak the same language! The approximation of legal and policy discourses

Interviews with stakeholders and the analysis of EU and national level policy papers, laws and strategies show a clear need for regular dialogue between law and policy makers in the non-discrimination field at EU and national levels. This is necessary to ensure that every major player in the field “speaks the same language”, i.e. that the compatibility between European Union social policy documents with international treaty provisions binding on all Member States, as well as with EU and national legislation in the non-discrimination field exists. Moreover, key legal and social policy concepts need to be clearly defined. Thus, not only the meaning of gender mainstreaming, but also the concept of Roma mainstreaming, desegregation, inclusion and integration, as stressed in the Council conclusions 2011, ought to be explained and also interpreted as legal terms and processes.

The key concepts addressed in the policy documents are: integration (EURS), inclusion (CP), desegregation (Cc) and the ex-ante conditionality to ensure non-discrimination based on, inter alia, race and ethnic origin. Regrettably, considerations pertaining to ex-ante conditionalities may become obsolete in view of the General Affairs Council’s proposal of 24 April 2012 to delete ex-ante conditionality related to non-discrimination from the Common Rules of the Cohesion Policy Regulations.49 “Integration” is defined in the EURS as “actively contribut[ing] to the social integration of Roma in mainstream society and to eliminating segregation where it exists”. Inclusion and desegregation are not defined, although desegregation seems to be construed as the adequate way of eliminating segregation. Significantly, the EURS and the Cc go beyond the mere prohibition of segregation; rather, they stress that it needs to be eliminated. As such, they suggest that Member States need to take active measures to eliminate segregation. The ex-ante conditionality pertaining to non-discrimination is explained in Fiche No. 10 issued by the Commission in order to clarify several aspects of its proposals.50

“Article 7 refers to the principles on the promotion of gender equality and the prevention of anti-discrimination in the preparation and implementation of the

programmes. These principles have been made operational in different provisions of the Common Provisions Regulation. The ex-ante conditionality, however, sets out the minimum requirements which need to be fulfilled ex ante, to ensure that there is an effective implementation and application of a gender equality strategy and of the anti-discrimination directives (emphasis added).

In the case of the anti-discrimination directives these minimum requirements include institutional arrangements, a strategy for training of staff involved in the implementation of the Funds and measures to strengthen administrative capacity. These minimum requirements aim to ensure that – as is the case for the ex ante conditionality on State aid and public procurement – Union law is duly complied with in order to limit the need for financial corrections, loss of resources and reduced effectiveness of the interventions due to non-respect of Union law (emphasis added)."

Strikingly, besides the lack of clear or, in fact, any definition of the key policy concepts little is known on how they relate to the anti-discrimination directives whose effective implementation they aim to ensure. Certainly, this makes the comprehension of EU priorities relating to Roma mainstreaming rather cumbersome. Moreover, the failure to align social policies and legal concepts pertaining to the equal treatment of Roma — even the clearest and most robust elements such as ex-ante conditionality — may result in misinterpretations during planning and implementation.

Roma mainstreaming and desegregation are explicitly mentioned in Cc (desegregation is dealt with in EURS as well) while ex-ante conditionality may or may not in the end be adopted as part of the CP Regulations.\(^5\) Presently, at the EU level, mainstreaming, desegregation and ex-ante conditionality are the most advanced and broadly construed Roma related positive action measures. As such, they are capable of making integration and social inclusion a reality. While Roma mainstreaming and ex-ante conditionality are procedural, desegregation appears to be substantive in nature in that it establishes clear goals to be achieved. Indeed, all three amount to positive action measures as defined under Article 5 of the Racial Equality Directive (RED), i.e. they are ‘specific measures that may be adopted by Member States to prevent or compensate for disadvantages linked to race or ethnic origin with a view to ensuring full equality in practice’. Member States are left with a certain degree of discretion with regards to their interventions aimed at Roma mainstreaming and ex-ante conditionality.

\(^5\) EURS p. 5: “There is a need to ... reduce segregation. ... Member States should ensure that ... Roma children ... are not subject to discrimination or segregation. etc.”
When it comes to desegregation, though, the integration of education and housing are clearly and definitively targeted.

Moreover, if indeed imposed by CP Regulations, ex-ante conditionality will be mandatory. Thus, the regulatory framework may go beyond what is foreseen in Article 5 RED and impose mandatory positive action. It remains to be seen what role desegregation will be given during the negotiations of National Development Plans. The approach of Member States to National Roma Integration Strategies already indicates that EU institutions ought to take a robust stance if they wish to ensure that desegregation is implemented in practice. Through the existing policy framework and decision making process they have the power to impose a duty on Member States to desegregate. In such circumstances the EU regulatory and policy framework would in practice ensure that Member States comply with their obligations to maintain mandatory positive action measures. This, on the other hand, would ensure that Member States comply with their obligation to maintain mandatory positive actions in relation to Roma as stipulated under Article 2 ICERD.\footnote{Under Article 2.2. ICERD States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.} Notably, however, experience from the few Member States that have already experimented with these concepts shows that unless political commitment and strong enforcement mechanisms exist, the concepts themselves cannot deliver real change on the ground.

Ex-ante conditionality, Roma mainstreaming and desegregation are key social policy concepts amounting to positive action measures that are to be defined in detail in the context of European Union and domestic laws. The first step is to define segregation, whose definition is a \textit{conditio sine qua non} of implementing desegregation. However, segregation is not a separate key concept under the RED. Moreover, it is debatable whether segregation under RED amounts to direct or rather indirect discrimination. Finally, legislative guidance or case law needs to clarify whether and to what extent segregation can be justified under RED.

The ICERD specifically prohibits racial segregation.\footnote{Under Article 3 the ICERD States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.} It forms part of Member States’ legal order whose implementation thus shall be ensured at the domestic level.
Given, however, that the RED—which Member States shall also transpose into national law—covers the fields of employment, education, health and housing in terms strikingly similar to those enshrined in the ICERD, the two instruments inevitably interplay at the domestic level. In other words, the RED cannot effectively be implemented without properly implementing the ICERD and vice versa. Furthermore, discrimination based on race and ethnic origin is prohibited both by the EU Charter of Fundamental Rights, as well as the European Convention on Human Rights. As the Court of Justice of the European Union has stated, the principle of non-discrimination not only constitutes an important part of various binding international instruments vis-à-vis Member States, but it is also regarded as a general principle of Community law.\(^\text{54}\) Given that Roma segregation is a form of discrimination based on race and ethnic origin, it must be tackled by Member States with a view to this intricate web of international and domestic legal provisions.

The strength of RED lies in its clear and detailed definition of key concepts. Such clarity and detail are missing from the ICERD, the ECHR and the EU Charter. However, RED fails to define segregation, which is a type of discrimination that is commonly experienced by Roma across the EU, and which is particularly outlawed under the ICERD.\(^\text{55}\) It is also extensively dealt with in EURS and the Cc.

Regrettably, the unprecedented reconstruction of the meanings of integration and inclusion in a footnote attached to the title of Cc perplex those seeking clarity, and seem to undermine the very essence of Roma social inclusion. Social inclusion in employment and health care do not seem to pose theoretical difficulties. However, this is not the case in the field of housing and education—hence the emphasis on desegregation in these two fields in the Cc.

4.1. Key concepts: international law binding on Member States

School segregation is never incidental. Authorities cannot but notice if classes and schools educate Roma children only. A change requires proactive and long-term engagement of Member States to eliminate the physical separation of Roma and non-Roma; to revise educational policies and consistently

\(^{54}\) European Parliament v Council of the European Union, (Case C-540/03), judgment of 27 June 2006, paras. 35-39. See also Werner Mangold v Rüdiger Helm, (Case C-144/04), judgment of 22 November 2005, paras. 74-75. in which the CJEU found that the principle of non-discrimination is a ‘general principle of Community law’.

\(^{55}\) See Article 3 ICERD.
monitor their impact in order to exclude the possibility of segregation in the future.\footnote{The Impact of Legislation and Policies on School Segregation of Romani Children, ERRC, page 3}

Although racial segregation is a particularly vicious form of discrimination only a few international treaties expressly prohibit it. Among these, the UNESCO Convention Against Discrimination in Education (CADE) 1960 is the prime instrument. Article 13 CADE covers the right to education comprehensively. Six Member States are not parties to CADE: Belgium, Estonia, Greece, Ireland, Lithuania and Spain.\footnote{UNESCO Convention against Discrimination in Education (1960) and Articles 13 and 14 (Right to Education) of the International Covenant on Economic, Social and Cultural Rights: A comparative analysis, 2006, available at: http://unesdoc.unesco.org/images/0014/001459/145922e.pdf. The list of ratifications is available at http://www.unesco.org/eri/la/convention.asp?K=12949&language=E&order=alpha}

The Convention defines „discrimination” in art.1 as the term including any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion ... which has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:

\begin{itemize}
  \item[b)] Of limiting any person or group of persons to education of an inferior standard;
  \item[c)] Subject to the provisions of Article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons;
  \item[d)] Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man.
\end{itemize}

Article 2 of the Convention enumerates situations when the right to education may be limited or restricted. These situations include:

\begin{itemize}
  \item[a)] The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil’s parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level;
  \item[b)] The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group
but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.

Article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) provides: “States parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction”, (emphasis added). ICERD has been signed and ratified by all Member States. In its General recommendation XIX (1995), the Committee on the Elimination of Racial Discrimination stipulated that “the obligation to eradicat all practices of this nature includes the obligation to eradicate the consequences of such practices undertaken or tolerated by previous Governments in the State or imposed by forces outside the State.” The Committee further observed that “while conditions of complete or partial racial segregation may in some countries have been created by governmental policies, a condition of partial segregation may also arise as an unintended by-product of the actions of private persons.”

The case of residential segregation of Roma in Europe falls within the sphere of prohibited discrimination as interpreted by the Committee: “In many cities residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, colour, descent and national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds.” Significantly, under Article 3 ICERD Member States do not only undertake to prohibit, but also to prevent and eradicate all practices of segregation. The European Commission against Racism and Intolerance (ECRI) defines segregation as “the act by which a (natural or legal) person separates other persons” on the basis of a ground such as race, colour, language, religion, nationality or national or ethnic origin, “without an objective and reasonable justification, in conformity with the proposed definition of discrimination”.

The European Court of Human Rights seems to follow this definition when dealing with complaints against segregation in education. When dealing with the ‘Roma education cases’, it relies on Article 14 (prohibition of discrimination) and Article 1 Protocol II (right to education) of the European convention on Human rights, a treaty signed and ratified by all Member States.

58 Explanatory Memorandum, General Policy Recommendation N°7: National legislation to combat racism and racial discrimination, adopted by ECRI on 13 December 2002
States. The ECtHR has so far delivered judgments in six 'Roma education cases' – all related to different forms of segregation. Besides segregation, in all five cases except Orsus the ECtHR also found that the level of education provided to Roma children was inferior.

In DH. and Others v the Czech Republic (Grand Chamber judgment of 13 November 2007) the form of segregation was the diagnosis of non-disabled Roma children as mentally disabled and their consequent placement in special schools established for the mentally disabled. On appeal by the applicants, the ECtHR found indirect discrimination. Significantly, the Court addressed the issue of whether or not segregation was voluntary or not from the aspect of parental consent relating to the placement in special schools. It approached the issue from the perspective of the child’s best interest which correlates to the public interest not to discriminate based on race or ethnic origin. It established that no (parental) waiver of the right not to be discriminated against on the ground of race can validly be given in the field of education.60

In Sampanis and Others v Greece (judgment of 5 June 2008) the form of segregation was segregation between classes/school buildings, coupled with majority parents’ threatened physical violence against the Roma children, picketing and pressure on the local administration to physically segregate Roma children. Roma children lived in a segregated settlement that was rather close to the main school building. The ECtHR found discrimination. In Orsus and Others v Croatia (Grand Chamber judgment of 16 March 2010) the form of segregation was between classes in the same school building under the apparently race-neutral criterion of providing Roma children with catch-up education in the majority language. On appeal by the applicants, the ECtHR found discrimination.

Sampanis and Others v Greece (judgment of 11 December 2012) the case was a follow-up on Sampanis and Others v Greece as the Greek authorities failed to take adequate steps to eradicate segregation between schools and bridge the gaps in language proficiency. The ECtHR found discrimination and recommended that

60 The Grand Chamber judgment is available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-83256#{%22itemid%22:[%22001-83256%22]}
61 The judgment is available in French only at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96798
62 The Grand Chamber judgment is available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-97689#{%22itemid%22:[%22001-97689%22]}
63 The Chamber judgment is available in French only at: http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-99012.
applicants still of school age be enrolled in non-segregated schools, while those beyond school age enrol at ‘second chance schools’. The judgment is not final. In Horváth and Kiss v. Hungary (judgment of 29 January 2013) the form of segregation was identical to that uncovered in DH, i.e. misdiagnosis. In this case the chamber judgment was unanimous, finding indirect discrimination leading to isolation and segregation. The ECtHR found that States have a duty to implement positive action measures to stem discrimination against Roma children in education. The judgment is final and was brought by unanimous vote.

Lavida and Others v Greece (judgment of 30 May 2013) concerned the education of Roma children who were restricted to attending a primary school in which the only pupils were other Roma children. The Court found that the continuing nature of this situation and the State’s refusal to take anti-segregation measures implied discrimination and a breach of the right to education.

From ECRI to the ECtHR and FRA it is understood that segregation negatively affects cultural and social integration. For instance, segregated minority communities have difficulties in developing their language competences and in forming their social networks into the majority society. It also hinders social integration and reinforces stereotypes and racism among communities. When segregation occurs in school environments, this hinders the realisation of the human right to education and, consequently, the realisation of other human rights, producing a spiral of marginalisation, intolerance, and isolation. According to FRA, segregation in education is sometimes concomitant to residential segregation.

In Lavida, the European Court of Human Rights reflected on the continued practice of segregation and the State’s failure to take effective action to stem it. It reiterated “that a judgment finding a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for the consequences so as to restore as far as possible, the status quo obtaining prior to the breach. It follows in particular that the respondent state is not just to pay the applicants the sums awarded by way of just satisfaction, but also to choose, subject to the control of the Committee of Ministers, the general and / or, as the case may be, individual measures to adopt in its domestic legal order ... In addition, it follows from Article 1 of the

---

64 The Chamber judgment is available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-116124#{%22itemid%22:[%22001-116124%22]}
Convention that by ratifying it the Contracting States undertake to ensure that their domestic law is compatible with it. Therefore, in this case, it is up to the defendant to eliminate in its national law any obstacles that would prevent it from adequately redressing the situation of the applicants in relation to the findings of the present judgment” (emphasis added, para. 82).


Direct and indirect discrimination, harassment, victimization and the instruction to discriminate are defined and outlawed under the Racial Equality Directive. Positive action is also defined, although it is not mandatory under Article 5 RED. However, under Article 2.2 of the International Convention on the Elimination of all Forms of Racial Discrimination positive action based on race and ethnicity is compulsory and the ICERD itself has been signed and ratified by all Member States, thus imposing on them direct obligations.

Segregation or desegregation is not defined in the Racial Equality Directive. However, it is covered by the RED and, depending on the national context; it amounts to either direct or indirect discrimination.67 Under the RED, direct race or ethnicity based discrimination can only be justified by positive action. On the other hand, indirect discrimination can be justified by a legitimate aim, which stands the test of reason and proportionality. It appears that national courts only admit positive action as a justification in cases brought related to education.68 Thus, simple proportionality tests do not hold ground in public education. The European Court of Human Rights only allows objective and strict justification for racial segregation in the field of education, but in practice it has never found governments’ arguments convincing enough to justify the

67 The categorization of segregation as direct discrimination is supported by domestic legal provisions specifically addressing racial segregation. In the UK segregation on racial grounds is a form of direct discrimination, whereas in Hungary it is a specific form of discrimination that on racial grounds cannot be justified, unless resulting from the free choice of parents to provide ethnic or national minority education to their children. Bulgarian law also prohibits racial segregation, defining it as forced division, separation or isolation. Clearly, in order to ensure compliance with the RED ‘forced’ shall be taken to denote the lack of informed consent.

68 See Slovakian, Romanian and Hungarian cases reported by the European Network of Legal Experts in the Non-Discrimination Field at www.non-discrimination.net.

---

66 ICERD Article 2.2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. ...
segregation of Roma children in primary schools.\textsuperscript{69}

Case law from domestic courts\textsuperscript{70} as well as from the European Court of Human Rights shows that racial segregation in the field of education can only be justified if it occurs as a result of genuine positive action measures that are based on parents’ informed consent and voluntary choice, where parents cannot consent to racial discrimination. – This essentially collapses the difference between construing segregation as direct or indirect discrimination.

It is not yet known what justification courts will allow in cases concerning segregation in the field of housing – especially because unlike the right to education, the right to housing is not guaranteed by the constitutions of all Member States.\textsuperscript{71} Furthermore, neither the EU Charter, nor the ECHR guarantees the right to housing. Still, Member States that guarantee the right to housing in their constitutions must also ensure that housing—especially social housing—is not discriminatory or segregated.

Member States need to also ensure non-segregated housing to Roma if such a duty arises in relation to guaranteeing a fundamental right. For instance, this may be the case in emergency situations resulting from natural calamities – such as floods. More commonly may be cases when a Roma child must be provided protection for economic reasons. In these cases, the right to life and/or to family life requires that the child be accommodated on a temporary or permanent basis together with his or her family.

Recent case law from the European Court of Human Rights supports this view. In Yordanova and Others v Bulgaria – analysed below – the Court relied on the right to family and community life to provide protection from forced eviction.\textsuperscript{72} Similarly, in Winterstein et Autres c France\textsuperscript{73} the Court found a violation of the right to family life. Moreover, it further developed its approach used in Yordanova and with reference to other Council of Europe bodies’

\textsuperscript{69} DH Grand Chamber judgment para. 175-176, Horváth and Kiss judgment, paras 101 and 112.
\textsuperscript{70} See case reports at http://www.non-discrimination.net
\textsuperscript{72} Yordanova and Others v Bulgaria, judgment of 24 April 2012, final on 24 September 2012, available at http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-110449&%22itemid%22=%22001-110449%22]
recommendations it found that a positive obligation to provide rehousing (relogement) in case of forced evictions existed, except in cases of force majeure. The Court formulated this positive duty as follows: “La Cour souligne à cet égard que de nombreux textes internationaux ou adoptés dans le cadre du Conseil de l’Europe insistent sur la nécessité, en cas d’expulsions forçées de Roms et gens du voyage, de leur fournir un relogement, sauf en cas de force majeure : c’est le cas de la recommandation (2005)4) du Comité des Ministres, de la résolution 1740(2010) de l’Assemblée parlementaire et du Document de synthèse du Commissaire aux Droits de l’Homme du 15 septembre 2010 (paragraphes 90, 91 et 95 ci-dessus) et, sur un plan plus général, de l’observation générale no 7 du Comité des Droits économiques, sociaux et culturels des Nations-Unies (paragraphe 102 ci-dessus)”.

Few Member States have guaranteed the right to housing under the (Revised) European Social Charter.75 Under this instrument complaints relating to the precarious housing situation and de facto segregation of Roma families or communities in various Member States have been brought before the European Committee of Social Rights. In a recent decision in pursuit of a collective complaint by the European Roma Rights Center against Portugal, the Committee noted that “States should be vigilant when implementing housing policies so as to prevent spatial or social segregation of ethnic minorities or immigrants” (emphasis added).76 Given its lack of power to pass binding judgments, the Committee all but concluded that Portugal violated the rights of Roma to housing through, inter alia, spatial segregation that resulted from the actions of municipalities during the implementation of re-housing programs.77 The Committee focused on the overall result of government financed housing programs and, while noting improvements,

74 Unofficial translation provided by the authors: “In this respect, the Court underlines that a large number of international texts or texts adopted within the Council of Europe do insist on the necessity, in case of forced evictions of Roma and travellers, to provide them with alternative housing except in case of ‘force majeure’ as is the case of the recommendation (2005)4) of the Committee of Ministers, of the resolution 1740(2010) of the Parliamentary Assembly and of the synthesis document from the Human Rights Commissioner of 15 September 2010 (paras. 90, 91 and 95) and on a more general level, of the general observation n°7 from the United Nations Committee on Economic, Social and Cultural Rights (para 102)”.

75 The relevance of this instrument is explained in detail in The Prohibition of Discrimination under European Human Rights Law: Relevance for the EU non-discrimination directives – an update, Olivier de Schutter, 2011, pp. 40-50. As de Schutter points out, in relation to devising social policies, the Committee has developed ‘the due diligence obligation to target the vulnerable groups’, which also pertains to the Roma.

76 Decision on the merits of 30 June 2011, ERRC v Portugal, Complaint No. 61/2010, para. 41.

77 Ibid, para. 48.
it did not find any legitimate justification for spatial segregation.

Under the RED, once a Member State voluntarily takes social policy measures in the field of housing—such as building social housing from EU Funds—justifying its failure to eliminate spatial or housing segregation may prove as difficult as justifying segregation in education.

4.3. Segregation can hardly ever be justified. Desegregation in education is more commonly undertaken

Under Article 5 of the RED, positive action measures are permitted in relation to race and ethnic origin. Under Article 2 of the ICERD such measures must be adopted. Such measures shall be compliant with EURS and the Cc. The aim of positive action measures in domestic legislation is to prevent or compensate for disadvantages linked to race or ethnic origin with a view to ensuring full equality in practice. Member States are bound not only by their constitutions but also European and international law to ensure equal treatment based on race and ethnic origin in the fields of education and housing. The issue of whether the right to education and housing (especially the right to housing), exist at the national level falls mainly within the competence of Member States and is not straightforward. Indeed, there are significant differences between the level to which the right to education and the right to housing are protected under Member States’ constitutions, the European Convention on Human Rights, the EU Charter and other significant international human rights instruments. While Member States’ constitutions, the ECHR and the EU Charter guarantee the right to education, the right to housing is not ensured in the ECHR or the EU Charter, and the right to housing can be claimed in court only in a handful of Member States.80 Moreover, for several reasons the right to education is also complemented with children’s duty to attend school and Member States’ obligation to provide public education.

78 The right to education is enshrined in Article 2, Protocol 2, of the ECHR and Article 14 of the EU Charter on Fundamental Rights.
From the perspective of equal treatment based on race and ethnic origin, it is important to note that schools are not solely places where students acquire the knowledge and skills necessary for them to access employment and earn a living. They also serve as the most important venues for students to learn how a pluralist and democratic society functions in practice, how citizens relate to each other, what their civil and political rights are, and how they can invoke those rights in their own and in others’ interests. Clearly, if students are socialized in schools that segregate the different races and ethnic minority groups then later, as adults, it will be that much more challenging to expect them to maintain a pluralist and democratic society. Most importantly, adults emerging from such segregated education systems will have internalized as ‘normal’ the racial segregation and attendant isolation and stigmatization they carry. They will have few, if any, connections with people of different races and ethnicities, increasing the likelihood of a downward spiral of segregated institutions and mentalities.

Some common desegregation measures include: setting balanced ethnic proportions in schools and classes, bussing children to enable their access to integrated education, after-school education provided to Roma children to catch up, multicultural education, extra tuition, grants schemes, and free early childhood and kindergarten education to enable enrolment in integrated schools. Interventions of this kind are implemented across the EU and qualify as positive action measures. Other permissible examples include the provision of tutorials and social services to Roma university students (Romaversitas\(^\text{81}\)), as well as grants schemes available to Roma university students (Roma Education Fund scholarship grants\(^\text{82}\)).

Measures ensuring that Roma children benefit from ethnic minority education—preferably in their minority language—also exist in certain Member States. It is yet to be clarified whether, and if so, to what extent these minority rights based measures comply with Article 5 of the RED and Article 2 of the ICERD. In other words, do they amount to permissible positive action measures, and if so, under what circumstances? Inroads have been made into this issue from the perspective of minority rights, as well as the potential conflict of fundamental rights. But the very essence of the dilemma, especially in the field of education—where parental choices over the shaping of children’s’ ethnic identity and/or membership in an ethnic minority need to be balanced with the best interest of the child and the public interest to ensure racial equality and maintain a

\(^{81}\) [http://www.romaversitas.hu/en/node/80]

\(^{82}\) [http://www.romaeducationfund.hu/how-apply-scholarship]
pluralist, democratic society—has yet to be analyzed in detail.\(^{83}\)

Measures aimed at the promotion of fundamental rights—such as minority rights, including education in minority language or the freedom of religion, including religious education—may actually collide with the right of Roma children to equal treatment. In order to avoid such collisions, it should be guaranteed that measures based on other fundamental rights also serve the purposes of positive action measures that seek to ensure full equality in practice based on race or ethnic origin - an important public interest. Furthermore, in order to avoid stigmatization, and because it is pedagogically feasible, measures designed to help Roma children catch up with their peers should, as a rule, be taken outside regular classes in kindergarten and school. Therefore, organizing segregated education for Roma children for the purposes of them catching up with non-Roma children is not permissible in regular classes, because that would lead to class or school level segregation, depending on the manner in which catch-up education is organized.

In contrast, comparative research on housing issues demonstrates that not only do local authorities and agencies in various Member States fail to promote policies of Roma desegregation, but many actually reinforce segregation practices when implementing social housing policies. Often domestic laws and practices deprive vast numbers of Roma from housing through the lack of security of tenure and forced evictions—and in some cases mass evictions.\(^{84}\) Indeed, “segregation is still evident in many EU Member States, sometimes as a result of deliberate (emphasis added) government policy”.\(^{85}\)

---


Important considerations relating to private life are laid out in In Search of a balance between the right to equality and other fundamental rights, Emmanuelle Bribosia and Isabelle Rorive, 2010, available at [http://www.non-discrimination.net/content/media/In%20search%20of%20equality%20and%20other%20of%20fundamental%20rights_EN.pdf](http://www.non-discrimination.net/content/media/In%20search%20of%20equality%20and%20other%20of%20fundamental%20rights_EN.pdf).

---

4.4. Segregation and the duty to desegregate

Terminological differences between lawyers and policy makers sometimes deepen misunderstandings and cause inaction when it comes to the most significant and widespread disadvantage that Roma suffer

\(^{84}\) Supra, 18, p. 6.

\(^{85}\) Ibid, p. 5.
in the EU: housing and school segregation. Since the RED was adopted critics have pointed out the failure to adequately address the special needs of Europe’s largest ethnic minority and of including the definition of segregation among the prohibited forms of discrimination. Attempts have been made to overcome this failure by conceptualizing segregation as direct discrimination at the EU level. It has also been argued that segregation is inherently outlawed across the EU because Article 3 of the ICERD—which has been ratified by all Member States—renders it unlawful. Lastly, the case law of the European Court of Human Rights suggests that by default the segregation of Roma children in public education amounts to indirect discrimination that is almost impossible to justify.

Under Article 3 of the ICERD Member States are not only obliged to condemn and prohibit racial segregation, but they have the duty to prevent and eradicate segregation. Moreover, pursuant to General Recommendation No. 19 of the Committee on the Elimination of Racial Discrimination, spontaneous segregation, which is the “unintended by-product of the actions of private persons” shall also be monitored by Member States, who are “to work for the eradication of any negative consequences that ensue”. This amounts to the obligation to desegregate. Another significant element of this definition of segregation is that through this duty it clarifies that segregation does not have to be intentional to be illegal. This definition clearly spells out the ultimate liability of Member States regarding desegregation – irrespective of which level of administration segregation occurs. Notably, the ICERD definition of segregation covers the education as well as housing.

Except for the Czech Republic, MtM countries in some shape or form specifically prohibit segregation. However, domestic definitions of segregation vary greatly. Significantly, action against segregation in MtM countries can be brought in civil courts invoking the civil rights clauses of domestic Civil Codes or tort laws (Romania). Under the general principles of civil law, entities

88 DH II. and Orsus II.
89 ICERD Article 3 reads as follows: States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.
liable for segregation – such as schools, local and central government agencies – are under the duty to take action against such breaches of civil law as part of their due diligence.

In Hungary segregation is defined as “any conduct [or omission] that separates individuals or groups from other individuals or groups in a comparable situation on the basis of [race, ethnic origin, etc.], without a law expressly permitting such segregation”.91

In Bulgaria, the domestic definition is assessed as being in contravention to European law, as it “explicitly requires the state of separation to be ‘forced’.92 The Bulgarian definition stipulates that “Racial segregation shall mean issuing an act, performing an action or omission to act, which leads to compulsory (emphasis added) separation, differentiation or dissociation of persons based on their race, ethnicity or skin colour”.93

The Slovakian School Act prohibits all forms of discrimination, particularly segregation.94 In the first judgment pertaining to separate Roma and non-Roma classes, a Slovak court found ethnic origin based segregation to amount to direct discrimination.95

In Romania, the National Council for Combating Discrimination has found segregation to be the most egregious form of discrimination.96 The Romanian anti-discrimination law does not expressly outlaw segregation. It is dealt with in Notification No 28463/2010 of the Ministry of Education and used to be defined in the Education Act 2009 which has since been declared unconstitutional by the Romanian Constitutional Court. That draft definition stated that: “segregation is a serious type of discrimination consisting of physical separation with or without intention, of minority children from the rest of the children in groups, classes, buildings, institutions and

91 Article 10(2) of Act CXXV of 2003 on equal treatment and the promotion of equal opportunities.
94 Article (3) b, Zákon c 245/2008. z. z. o. vychove a vzdelávani. Article 2(2) of this Act defines school integration as the education of children with special education needs in classes and schools designed for children without special educational needs.
96 In the so-called Gline case, file 22A Bis/2006, suggests that it also amounted to direct discrimination.
other educational facilities, so that the proportion of minority children in light of the total number of children in the particular unit is disproportionate when compared to their proportion in that age group within the total population in the administrative/territorial unit.\(^97\) Under the draft Education Act 2009 mother tongue education could justify race or ethnicity based segregation.\(^98\) In contrast to these intricate definitions, the United Kingdom defines segregation simply as direct discrimination.\(^99\)

The Council conclusions focus on the elimination of segregation/desegregation, but the concepts are not defined at the EU level. What shall be the elements of an EU definition? Or in lieu of an EU definition, EU level recommendations for domestic legal definitions? ECHR and domestic case law have so far focused on the field of education and the following key notions: (i) segregation need not be intentional to be unlawful; (ii) a Member State’s inaction against “spontaneous” segregation may also lead to liability for segregation; (iii)

\(^{97}\) Article 5(48) Education Act 2009.
\(^{98}\) Article 8(6) Education Act 2009.
\(^{99}\) In the United Kingdom, direct discrimination under Article 13(1) of the Equality Act 2010 is defined as A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. Under Article 13(5) if the protected characteristic is race, less favourable treatment includes segregating B from others. Available at http://www.legislation.gov.uk/ukpga/2010/15/section/13.

segregation can only be justified by genuine positive action not leading to inferior conditions for Roma; (iv) the spatial level of segregation and the administrative unit liable need to match; (v) an administrative unit not in the position to eradicate segregation shall not be held liable.\(^100\)

There is also interest in developing quantifiable mechanisms (ratios) to help pinpoint when segregation in spatial units is taking place. In social sciences, segregation is defined as having predominantly Roma establishments (e.g. schools, settlements, etc.). What needs to be clarified is predominance: is it more than 50 percent, more than 75 percent? Or should it be defined in comparison to predominantly majority settings, with the precise ratio to be later identified?

In EURS “integration” is defined as “actively contribute[ing] to the social integration of Roma in mainstream society and to eliminating segregation where it exists”. Integration means that there is no discrimination and that action must be taken to reduce the number or proportion of Roma suffering from structural/institutional discrimination/segregation (“closing the gap” in EURS terminology), or, alternatively, to include more Roma in predominantly non-Roma settings (education, employment, etc.).

\(^{100}\) See case reports from Hungary, Bulgaria and Slovakia at http://www.non-discrimination.net
health care, housing). This definition is in line with the proposed definition of segregation, which again creates liability for inaction should predominantly Roma settings or overrepresentation of Roma in certain settings exist.

Indeed, stakeholders interviewed in Bulgaria, Romania, Slovakia and Hungary all agreed that the objective of EU funded projects should be integration/inclusion and elimination of segregation – and only under exceptional conditions (e.g. in predominantly Roma micro-regions), the closing of gaps between Roma and non-Roma, meaning the improvement of public service delivery quality. When asked about indicators, they stressed the level of integration and of inter-ethnic contact. For example, the number of Roma as well as majority individuals jointly using a particular service, or certain infrastructure would be important to measure. Oravecz and Vasecka noted that an indicator of Roma-non/Roma contact could be introduced. Iulius Rostas stressed that indicators, such as the Number of Roma reached by a certain project may in fact be counter-productive, because with such indicators projects that would generate inter-ethnic dialogue or meaningful contact in fact score worse that projects targeting segregated Roma settlements without even the intention to eradicate that segregation. Rostas therefore recommends that indicators be reviewed and that new indicators measuring good race relations be introduced and given priority. Roma Decade indicators were also mentioned as useful.

In Structural Funds planning and spending a challenging issue is how to handle cases when segregated settlements want to develop their public services and infrastructure. In these cases, doing so could be considered segregation by default. This is a pressing issue in decentralized settings where bottom up processes cannot enforce desegregation of settlements with majority Roma population due to subsidiarity-based public funding and authority relations. It might be useful to specifically address the duty of desegregation and basic service provision in relation to proper scaling of action, as demonstrated at the end of this section.

Clear responses to the question of enhancing the transformative content of proactive measures are offered by the notion of desegregation, Roma mainstreaming and the promotion of good race relations. A further challenge remains, however: how to conceptualise and regulate in law social practices and spaces of Roma and non-Roma encounters, ensuring at the same time that these encounters result in tangible outcomes for all races and ethnic groups? The question is the following: can we make the term “desegregation” precise and thick enough to denote the nature of social exclusion but also to refer to social inclusion? Can we conceptualise it in a way that it does not
only make the Roma part of the normal majority society but that it *transforms social mechanisms to non-exclusionist*? Can one propose a refined use of the terms desegregation and social inclusion and their relations?

When answering this question, one needs to bear in mind that the most extensive mainstreaming model—the UK’s statutory duty to promote equal treatment—is regularly criticized for having become a process of “bureaucratic form filling”. To make matters worse, there are now plans to water down the duty and relax its monitoring. The success of the Northern-Irish model shows that a real political and social commitment to integration is the condition *sine qua non* of any inclusionist mechanism.

---

4.5. In search of an EU definition of segregation

It is believed that a definition adequately addressing the above key issues can also set the minimum requirements for desegregation, i.e. answer the question of who and when should take action against segregation. The definition can be based on social class (defined on the basis of the family’s level of poverty, of parents' education, and other indicators, such as the level of social exclusion) instead of ethnicity. However, such review mechanisms must control for ethnic imbalances needs with Roma participation. It is important to recall that positive action based on social class is not recognized under EU law, nor does it seem to justify

Proposed EU definition of segregation

1. Based on consultation with Roma community leaders, decision makers shall avoid a disproportionate concentration of Roma in one spatial or education unit.
2. Decision makers are liable for segregation when under their authority the proportion of Roma in one spatial or education unit is disproportionately higher than it is in another spatial or education unit of the same level.
3. Segregation in schools is lawful if it is explicitly requested by parents in order to ensure Roma minority language education, given that such education cannot be provided in an integrated manner and that it does not create inferior conditions for Roma.
4. Segregation in housing is lawful if it is explicitly requested by Roma and ensures better housing conditions, access to employment, education and health care than would desegregation.
5. Spatial units include districts, villages, towns, micro-regions and regions. Education units include study groups, classes, school buildings and schools.

of segregation proposed here is partly based on the groundbreaking work done by Iulius Rostas.102

If and when deemed more adequate at the national level, the definition of segregation


This formulation can be used in all fields – particularly in housing and education. It clearly indicates that decision makers always have liability for segregation – even if it is “spontaneous”. Thus, inaction also establishes liability for segregation. Liability remains as long as significant
differences in Roma ratios exist across the spatial units. Thus, the duty to desegregate is on-going and not limited to a one-off policy, measure or action.

Schools can only be held liable for segregation if they maintain predominantly Roma next to predominantly non-Roma classes. Villages, towns, micro-regions or regions are liable for segregation if overall ethnic ratios within their territorial units make desegregation practicable, but they omit to take action against segregation. Villages, towns, micro-regions or regions with homogenous or predominantly Roma populations cannot be held liable for segregation as eradicating segregation is simply beyond their power. Liability in these cases lies with decision makers at upper levels, and ultimately, with the central government. It is for the central government to ensure directly via legislation and social policy measures or through delegated powers the bussing to integrated schools or domestic mobility to Roma who wish to break out from the vicious circle of housing segregation and exclusion from the labour market. It is also the obligation of central governments to prevent the establishment of predominantly non-Roma (micro)-regions neighbouring predominantly Roma (micro)-regions.

However, while grand scale desegregation or other social policies are planned and implemented, basic public services, such as quality public education need to be provided. The question then becomes: can EU funds be used to improve the quality of services that the Member State has the duty to provide and that are being provided in a segregated manner? The principled answer to this question is a firm no. It should be stressed that a decision maker that acts at a level where desegregation is feasible and practicable should not be provided EU funds for programs and projects that maintain or reproduce segregation.

The situation is rather different when it comes to a decision maker at a level where desegregation is simply not possible. This decision maker cannot be held liable for segregation. Instead, a decision maker at the administrative level where desegregation would be feasible bears liability for inaction. Indeed, inaction more often than not takes the form of a failure to legislate, adopt public policies aimed at desegregation or the failure to enforce anti-discrimination legislation. In conclusion: by default Member States always bear liability for segregation at any level of administration. Thus, if Member States provide EU funding to programs or projects that maintain or reproduce segregation, they shall be held liable under the existing rules.

Notably, however, there are differences in the feasibility and fundamental rights implications of desegregation as regards education and housing. If bussing to a school within a manageable distance is practicable, then maintaining a segregated
school is unlawful: it amounts to discrimination and infringes upon the best interests of the child (also protected under Article 24 of the EU Charter). Liability for school segregation merits a higher level of scrutiny because the right to education attaches to the rights of the child and is coupled with the obligation to attend school – the corollary of which is for the state to provide public education. This duty cannot be imposed in a discriminatory fashion, whereas (parental) consent to racial discrimination is per se null and void.\(^{103}\)

In relation to housing, there are no such (corollary) obligations. However, in cases where the conditions of existing housing or the lack of housing would result in a violation of Roma individuals’ or families’ right to life, right not to be subjected to inhumane treatment, or if it would run counter to the right to family life—e.g. when a child’s best interest is to stay with his or her family—then Member States have an obligation to ensure (social) housing. On the other hand, decision makers also have the obligation to improve employment, education and health conditions even for a Roma community that wishes to live in a segregated manner in order, for instance, to preserve their ethnic identity. Other fundamental rights should also be recalled when developing public policies: for instance the right to move and reside freely within a Member State’s territory.

The precarious housing situation of the Roma has been the subject of several collective complaints before the European Committee of Social Rights.\(^{104}\) The ECtHR has dealt with Roma housing issues in Yordanova and Others v Bulgaria (judgment of 24 April 2012), where it became abundantly clear that on occasions a Member State does not only NOT champion itself as a provider of integrated housing, but that it may – through eviction without further social care - in fact deny housing to a Roma community altogether. However, the situation is not unique to Bulgaria, as it transpires from the collective complaints under the ESC and from ECRI reports from across the Council of Europe.

In Yordanova, the applicants are Roma living in a neighbourhood of Sofia, on land owned by the State. Their families have lived there since the 1960s - some settled there in the 1990s. The families have occupied the land illegally and never sought to regularise the buildings they had constructed. The municipal authorities transferred the title to the land to a private investor in 2005. Tension had been building up between the Roma residents and their non-Roma neighbours since the beginning of the 1990s. The district mayor ordered the removal of the Roma families shortly after

\(^{103}\) DH II. paras 175-176.

\(^{104}\) See a list of collective complaints in this field here, http://www.coe.int/t/dg3/romatravellers/charter_en.asp
the land was transferred. The domestic courts upheld this order. Under the ECtHR’s analysis of the eviction order under Article 8 ECHR (right to family life), it becomes clear that the removal order missed the proportionality analysis completely, because domestic law did not require such analysis to be done. As a result, the municipal authorities did not give any reasons for the order, apart from the unlawfulness of the applicants’ occupation. Moreover, domestic courts refused to hear arguments related to the proportionality of the measure. The ECtHR runs a proportionality analysis, of which two elements appear relevant here: Recognition of the Community Life in Batalova Vodenitsa (para. 105). Roma as a “socially disadvantaged group” (paras. 129, 130, 132 and 133).

The ECtHR has for long identified the Roma as not only a racial or ethnic group, but also, as a socially disadvantaged group with specific needs. As commentators note, this approach opens new horizons to providing group justice in the case. They recall that the ECtHR “rejects the government’s argument that considering approaches specially tailored to the applicants’ situation would amount to ‘privileged’ treatment or discrimination against the majority. For the Court, this argument “fails to recognise the applicants’ situation as an outcast community and one of the socially disadvantaged groups’ (paragraph 129).”

The ECtHR also underlines “an obligation to secure shelter to particularly vulnerable individuals [which] may flow from Article 8 of the Convention in exceptional cases” (paragraph 130). For social policy purposes, this means that the “underprivileged status of the applicants’ group must be a weighty factor” in considering the ways of dealing with unlawful settlements and, if the removal is necessary, in determining the timing, modalities and, if possible, arrangements for alternative shelter (paragraph 133).

Commentators also hail the judgment for its sobering rejection of the argument all too commonly heard in MtM countries in relation to ‘the rights of the majority’. They recall how the Bulgarian Government had “appealed to the Court to take into account, in deciding the case, the reaction a finding of a violation of the Convention would prompt in Bulgarian society, precisely because Bulgarian society expected to see the law applied equally to persons from all ethnic groups”. (para. 98)

---

The ECtHR has this to say on racial tensions characterising the case: „Some of the neighbours’ complaints, however, also contained illegitimate demands, such as to have the applicants ‘returned to their native places’... It is also clear that the situation that obtained was characterised by tension that risked fuelling animosity between two social and ethnic groups. It was therefore important to act in such a manner that the authorities were not seen as being influenced by hostile attitudes of one group against another. However, the Court is not convinced that these subsequently raised illegitimate demands played any role in the initial decision-making process for the issuing of the removal order in question. (para. 142)

The duty to desegregate as defined above—bearing in mind the opportunity to properly scale actions—places the primary burden to act on the central government. In both the fields of education and housing this primary burden implies that Member States ought to adopt a legislative and policy framework that best ensures desegregation. This would amount to adopting legislation that not only outlaws segregation based on race and ethnic origin, but that also stipulates a duty to integrate Roma (children) and enumerates integration measures, while establishing a system of oversight. Policy measures then need to take account of regional and local specificities—such as the prevalence and number of disadvantaged micro-regions and their geographical layout—in determining whether and to what extent desegregation is feasible.

In the field of housing, the starting point is different, because in various Member States—including MtM countries—the existing legislative framework is in effect discriminatory or lacking. Therefore, the absolute first step is to review and repeal discriminatory legislation and adopt legislation that provides a right to housing in situations where it is necessary in order for Member States to meet their obligations under EU and international law.
4.6. Framework to determine compliance of policies and projects with the duty to desegregate

A n oft-repeated question is: can the segregated education of Roma children ever be lawful and permissible? The answer is: almost never. The extremely limited exceptions to this general rule are situations where parents have a real choice of education for their children and the education they choose serves not only the child's fundamental right(s), but also the best interest of the child. Parental choices may be limited by the public interest of ensuring racial equality and good race relations. According to the test established by the European Court of Human Rights in the D.H. and Others v Czech Republic judgment, this test is two pronged: 1. if and when parents choose a school to avoid the segregation or discrimination of their children in another, their choice cannot be taken to amount to a voluntary decision based on informed consent, and 2. no parental waiver of the child's right not to be subjected to racial discrimination can be accepted, as it would run counter to an important public interest, i.e. the fundamental importance of the prohibition of racial discrimination.106 The second element implies that other fundamental rights shall also be guaranteed in a manner that avoids racial discrimination.

Clearly, if segregation in a school is maintained to ensure the full equality of Roma in practice, that does not run counter to an important public interest. The parental waiver of the child's right not to be discriminated against on the basis of his race or ethnicity can then be accepted. Significantly, by conceptualizing the protection of children from segregation as a Member State's obligation to protect the public interest and ensure that actions are taken in children's best interest, the ECHR places the burden of rigorous oversight and intervention on the States themselves.

In summary, ICERD categorically prohibits segregation in education, even if it arises "as an unintended by-product of the actions of private persons". CADE allows justification for Roma minority education under a very strict test. States that signed and ratified CADE are bound by this test. CADE does not provide for other justification defences in relation to the

November 2007. The Court was aware of the parents being caught between a rock and a hard place. It noted under para. 203: It also appears indisputable that the Roma parents were faced with a dilemma: a choice between ordinary schools that were ill-equipped to cater for their children's social and cultural differences and in which their children risked isolation and ostracism, and special schools where the majority of the pupils were Roma.

---

106 See para 204, DH and Others v Czech Republic, Grand Chamber judgment of 13
The ECtHR case law has dealt with five cases – the ‘Roma education cases’ – in which Member States sought to justify segregation in education. Thus far, under the European Convention on Human Rights no scenario in which segregation in education would be permissible has been found.

Article 5 of the RED awaits interpretation by the Court of Justice of the European Union (CJEU). It is foreseen, however, that any type of segregation that is not provisional, or that lasts throughout the entire length of nursery and primary education, would be deemed unlawful. It is likely that the CJEU will take account of ECtHR case law and the provisions of international treaties such as ICERD and CADE when interpreting national provisions in light of Article 5 RED. Clearly, Member States should be expected to take account of the same considerations. The minimum requirement is that they conduct a thorough assessment of situations where segregation occurs.
Practice note on the permissibility of segregated education

*The forms and criteria of permissible segregation in education*

Regardless of whether segregation is construed as direct or indirect race discrimination, the following legal provisions can serve as its justification. In general, genuine positive action measures based on race can only justify the segregation of Roma children in education. In order for segregation to be permissible, it shall always be based on parents’ informed consent, which may not result from their fear of their children being excluded or ostracised in another school.

In practice, the following situations are often viewed as permitting segregation:

- Provision of Roma minority education (including language)
- Provision of catch-up/remedial/competence development education to bridge the gap,
- Provision of education that enables Roma children to master the majority language
- Parental choice (including fear of harassment in integrated schools),
- Religious education,
- Incidental segregation resulting from race-neutral practices,
- Residential segregation

*Permissibility of segregation in education under International and European law*

<table>
<thead>
<tr>
<th>Instrument/ justification defence</th>
<th>ICERD</th>
<th>CADE</th>
<th>ECHR</th>
<th>RED</th>
<th>Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential segregation</td>
<td>Article 2.2. and 3 test</td>
<td>Not covered</td>
<td>Not tested, but will be in Cobruz v Romania.</td>
<td>Not tested</td>
<td>No</td>
</tr>
<tr>
<td>Roma minority education</td>
<td>Article 2.2.</td>
<td>Article 2 b,</td>
<td>Not tested</td>
<td>Article 5 test</td>
<td>Yes, if in compliance with Art 2.2. ICERD, Art. 2. b, CADE and Art 5 RED</td>
</tr>
<tr>
<td>Catch-up education</td>
<td>Article 2.2.</td>
<td>Not covered</td>
<td>No (DH and Others, Horváth and Kiss)</td>
<td>Article 5 test</td>
<td>No</td>
</tr>
<tr>
<td>Mastering majority language</td>
<td>Article 2.2.; provisionally</td>
<td>Not covered</td>
<td>No, or only provisionally (Orsus, Sampanis, Lavida)</td>
<td>Article 5 test</td>
<td>No or only provisionally</td>
</tr>
<tr>
<td>Parental choice</td>
<td>Article 2. b, c,</td>
<td></td>
<td>Generally no as right not to be discriminated cannot be waived (D.H., Lavida)</td>
<td></td>
<td>Only for purposes of minority language/minority religious education</td>
</tr>
<tr>
<td>Religious education</td>
<td>Article 2. b.; if minority ethnic origin and minority religion overlap</td>
<td></td>
<td>Not tested</td>
<td>Art. 5. If minority religion and ethnic origin overlap</td>
<td>If minority ethnic origin and minority religion overlap</td>
</tr>
<tr>
<td>Incidental segregation</td>
<td>Article 3: No</td>
<td>Not covered</td>
<td>No: Lavida</td>
<td></td>
<td>No</td>
</tr>
</tbody>
</table>
Examples of permissible segregation in education

A secondary school established for the purposes of promoting Roma students’ admission to university while providing ethnic minority education—such as the Gandhi Secondary School in Pécs, Hungary—is an example of permissible segregation, given that the education in this school complies with national standards and given also the extremely low proportion of Roma having tertiary education in the country. Similarly, dormitories maintained for instance by the Catholic Church, that accommodate Roma students only and promote their freedom of religion, as well as their admission to university, are also permissible, given that the education in this institution complies with national standards and given also the extremely low proportion of Roma having tertiary education in the country. However, the maintenance of such a secondary school or dormitory will only remain lawful and permissible if over time they in fact realise the purpose of promoting admission to university.

Impermissible segregation in education

At the same time, however, the segregation of Roma children in schools providing education in their minority language that could otherwise be provided in the framework of integrated education is unlawful, even if the education in this school complies with national standards. Similarly, the segregation of Roma children in faith schools providing religious education that could otherwise be provided in the framework of integrated faith schools is also unlawful, even if the education in this school complies with national standards.

Questions helping to determine whether segregation is permissible

1. Is segregation based on parents’ informed consent, which does not result from their fear of their children being excluded or ostracised in another school?
2. Does education in this school or institution comply with national standards?
3. Does segregation serve the purpose of implementing a race or ethnicity based positive action measure permitted by the Member State? In other words: is it aimed at ensuring the full equality of Roma in practice in line with EURS and Cc? If the answers to questions 1-3 are in the affirmative, then segregation is permissible. If Roma children are segregated in school for other purposes, then the test continues as follows:
4. Does the content of the education they receive serve the purpose of ensuring them religious education or education in their minority language?
5. If so, is it practically impossible to convey to them that particular educational content in an integrated setting?
6. If so, does the education in this school comply with national standards? If the answers to questions 1-2 and 4-6 are in the affirmative, then segregation is permissible.
In the field of housing, the signposts of determining whether segregation is permissible are the following:

- Has the Member State reviewed and repealed legislation that in effect bars Roma from accessing (social) housing or discriminates against them?
- Has the Member State adopted legislation that provides a right to housing in situations where it is necessary in order for it to meet its obligations under EU and international law? Do individuals or families have the right to (social) housing that they can claim in court if the conditions of their housing or, lack of housing, would result in a violation of their right to life, their right not to be subjected to inhumane treatment or if it would violate their child’s best interest to stay with his or her family?
- Has the Member State adopted legislation that not only outlaws segregation based on race and ethnic origin, but that also stipulates a duty to integrate Roma in (social) housing?
- Are integration measures in the field of housing enumerated? Do policy measures take into account regional and local specificities—such as the prevalence and number of disadvantaged micro-regions, settlements and their geographical distribution—in determining whether and to what extent desegregation is feasible?
- Is a system of oversight established? In the field of housing, the starting point is different because in various Member States—including MtM countries—the existing legislative framework is discriminatory or lacking. Therefore, the absolute first step is to review and repeal discriminatory legislation and adopt legislation that provides a right to housing in situations where it is necessary in order for Member States to meet their obligations under EU and international law.
4.7. EURS and desegregation

The EURS lists four specific intervention areas: reducing dropout rates, closing the gap in employment, and improving housing and healthcare. The goals beyond the employment field do not directly target integration. This, taken together with the expanded definition of integration and social inclusion in the Cc weakens the latter’s commitment to desegregation. Moreover, not all intervention areas feature in the CP. Of additional concern is how, in the absence of specific expertise or guidance in planning, Member States’ national strategies will pursue a targeted approach that comprises pragmatic and non-discriminatory policies based on explicit but not exclusive targeting.

Micro-regional targeting raises the problem of sufficient quality data. It addresses the potential puzzles of implementing the explicit but not exclusive principle through territorial fund distribution. Within this, it is vital to find adequate mechanisms to stop local power structures from displacing Roma and instead to mainstream their needs in developmental decisions. It is also important to explore how positive action directed at the micro-region level does by default maintain segregation. Taking the definition of segregation presented above, decisions, programs and projects suspected of embedding or increasing the level of segregation can easily be spotted. For this, data based on ethnic origin or social status need to be available, and impact assessments must be realistic. Clearly, if non-discrimination (i.e., Roma mainstreaming and desegregation) is an ex-ante conditionality, then projects and programs that increase the level of segregation at micro-region levels need to be barred from accessing EU funds. The effective implementation of ex-ante conditionalities is the way to ensure that local power structures perform Roma mainstreaming in the course of making developmental decisions. Making the right policy choices at the central level on how disadvantaged micro-regions—whether alone or through a preferential process—may access Structural Funds is of paramount importance in relation to desegregation. Policies need to take account of situations where desegregation would be feasible through cooperation among neighbouring micro-regions.

Without equality expertise and authority within the central planning bodies, or such expertise being infused into Structural Fund planning, then it is unlikely that any serious equality mainstreaming of Structural Funds spending will take place. The participation of Roma stakeholders can partially replace this expertise - but only partially. In this context, having Roma contact points as suggested in EURS is a rather weak institutional proposal.

The EURS proposes various techniques to monitor the impact on the Roma (including the Roma household survey pilot project,
national reform programmes’ monitoring and peer review process). What is sorely missing, however, is benchmark data that can serve as ground for comparison and to measure impact. Thus, the Commission’s objective to foster “cooperation between national statistical offices and Eurostat so as to be able to identify methods to map the EU’s least developed micro-regions, where the most marginalised groups live, and in particular Roma, as a first step” is welcomed. Stakeholders recalled that such maps already existed in Bulgaria, Hungary and Slovakia.

Experience in the four countries visited shows that micro-region level funding may be adequate to improve conditions and “close gaps”. However, as long as funding remains limited to predominantly Roma or extremely poor micro-regions, segregation will also remain. This has been the experience in the cases of disadvantaged micro-regions neighbouring better performing micro-regions. The concern of how data on disadvantaged micro-regions as proxies will be used to eliminate segregation and inform social policy measures at the national level is unfortunately not resolved the EURS.

Under EURS, when developing national Roma Integration Strategies, Member States should bear in mind various approaches that are all reinforced through stakeholder analysis. MtM has designed a sharper mainstreaming logic that lists policy tools for planning and implementation of Roma inclusion strategies. In planning, the following are key: policy frames, institutions, expertise, and participation. In implementation, funding, monitoring, and participation are the most important.

On frames, this report puts forward proposals relating to desegregation and applauds the norm of explicit but not exclusive targeting. In MtM’s previous proposals to the Commission, stronger institutional mechanisms stipulated by CP regulations were proposed. Without equality expertise and authority within the central planning bodies or regularly incorporated in planning, there is no meaningful mainstreaming of equality in Structural Fund spending. Participation can partially replace this expertise, but only partially. The proposed national Roma contact point fails to ensure a strong institutional mechanism.

107 EURS includes the following: Set achievable national goals for Roma integration, Identify where relevant disadvantaged micro-regions or segregated neighbourhoods, Allocate a sufficient funding from national budgets, Include strong monitoring methods, Design, implement and monitor in close cooperation and continuous dialogue with Roma civil society, regional and local authorities, Appoint a national contact point for the national Roma integration strategy with the authority to coordinate the development and implementation of the strategy or, where relevant, rely on suitable existing administrative structures.
EURS targets are not included in EU Cohesion Policy/ Europe 2020 Strategy targets. They should fit into and contribute to the broader framework of the Europe 2020 strategy and should therefore be consistent with national reform programs. However, as detailed above, Roma targets are missing even from the CP regulations’ employment chapter.
Conclusions

This report explored the potential of an EU legislative and policy context that now includes an EU Framework for National Roma Integration Strategies up to 2020 (EURS), Council conclusions on an EU Framework for National Roma Integration Strategies up to 2020 (Cc) and draft Regulations on Cohesion Policy (CP).

With a view to ensuring synergies between legal and policy discourses on key concepts such as integration (EURS), inclusion (CP), desegregation (Cc) and the ex-ante conditionality to ensure non-discrimination based on, inter alia, race and ethnic origin, this report analysed these concepts in detail. The first step to ensuring uniformity is to define segregation, whose definition is a conditio sine qua non of implementing desegregation. However, segregation is not a separate legal concept under the RED. Moreover, it has not been settled whether segregation under RED amounts to direct or rather indirect discrimination. Finally, legislative guidance or case law needs to clarify whether and to what extent segregation can be justified under RED. Such clarification can in great part fill the lacunae identified by many stakeholders who call for a specific anti-discrimination directive focusing on the Roma.

The report rings an alarm, noting that the failure to align social policies and legal concepts pertaining to the equal treatment of Roma — even the most robust ex-ante conditionality — may result in misinterpretations during planning and implementation. A minimum requirement, therefore, would be to contextualize ex-ante conditionality and other key concepts in the framework of the anti-discrimination directives. It is against this backdrop that this report puts forward an EU level working definition of segregation. This definition seeks to construe segregation as a duty to desegregate.

It remains to be seen what role desegregation will be given during the negotiations of National Development Plans. The approach of Member States to National Roma Integration Strategies already indicates that EU institutions ought to take a robust stance if they wish to ensure that desegregation is implemented in practice. Through the existing policy framework and decision making process they have the power to impose a duty on Member States to desegregate. In such circumstances the EU regulatory and policy framework would in practice ensure that Member States comply with their obligations to maintain mandatory positive action measures. This, on the other hand, would ensure that Member States comply with their obligation to maintain mandatory positive actions in relation to Roma as stipulated under Article 2 of the International Convention on the Elimination
of All Forms of Racial Discrimination (ICERD).\textsuperscript{108}

The European Commission is yet to take a position on segregation. Furthermore, the applicability of the ICERD to disputes arising from the RED is an area that needs to be researched. As pointed out in recent discussions within the European Parliament, Member States’ compliance with international treaties pertaining to protected grounds and rights enshrined in EU non-discrimination law— including compliance with the ICERD—has not been studied yet. It is recommended that research be undertaken in this area, particularly in relation to Articles 2, 3 and 5 of the ICERD as they pertain to the segregation of Roma in the field of education and housing. Compliance with obligations arising from international treaties signed and ratified by Member States needs to be ensured. This notion has recently been substantiated in relation to the Convention on the Rights of Persons with Disabilities in the context of discrimination based on disability – including the need to retain in the CP Regulations the ex-ante conditionality pertaining to non-discrimination.\textsuperscript{109}

Given the Cc’s focus on desegregation and Roma mainstreaming, there seems to be political commitment from the EU to proactively engage in dismantling segregation. This, however, remains to be stated clearly: without a greater degree of Roma-non-Roma contact, interaction and Roma participation ensured through desegregation and social inclusion cannot be achieved. Recent cases adjudicated by the European Court of Human Rights, such as Sampanis and Others v Greece, Yordanova and Others v Bulgaria and Sampani and Others v Greece send clear signals of the debilitating effects of racial tensions that are not controlled by member States. EU funding policies must be cognizant of these social realities, while the regulatory framework needs to respond as well.

From this aspect, it is important to note that schools are not solely places where students acquire the knowledge and skills necessary for them to access employment and earn a living. They also serve as the most important venues for students to learn how a pluralist and democratic society functions in practice, how citizens relate to

\textsuperscript{108} Under Article 2.2. ICERD States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case en tail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

\textsuperscript{109} http://www.edf-feph.org/Page_Generale.asp?DocID=13855&thebloc=30033
each other, what their civil and political rights are, and how they can invoke those rights in their own and in others’ interests.

Bearing in mind the fundamental rights framework adopted by the Cc, desegregation in education and housing, as well as Roma mainstreaming, also need further analysis from a fundamental rights perspective. The difference between the right to education—which is complemented by an obligation to attend school—and the right to housing—which is not guaranteed in all Member States’ constitutions—needs to be mapped.

Desegregation measures in the field of education are relatively common. In contrast, comparative research on housing issues demonstrates that not only do local authorities and agencies in various Member States fail to promote policies of Roma desegregation, but many actually reinforce segregation practices when implementing social housing policies. Often domestic laws and practices deprive vast numbers of Roma from housing through the lack of security of tenure and forced evictions—and in some cases mass evictions.\textsuperscript{110} Indeed, “segregation is still evident in many EU Member States, sometimes as a result of \textit{deliberate} (emphasis added) government policy”.\textsuperscript{111}

---

\textsuperscript{110} Supra, 18, p. 6.
\textsuperscript{111} Ibid, p. 5.
Annex I

MPG interviewed the following stakeholders:

Bulgaria

- Lalo Kamenev – Commissioner, national equality body
- Fikri – Commissioner, national equality body
- Deyan Kolev – Amalipe Center for Interethnic Dialogue and Tolerance
- Boyan Zahariev – OSI, Program Director, governance and public policies
- Daniela Mihaylova – lawyer, Equal Opportunities Project
- Tomislav Donchev – deputy minister
- Krassimir Kanev – Bulgarian Helsinki Committee
- Director, National Network on Children
- Savelina Roussinova-Danova – MtM

Hungary

- Ágnes Honecz – President, national equality body
- Judit Demeter – former President, national equality body
- Gábor Daróczy – former Ministerial Commissioner for the integration of Roma and impoverished children
- Andor Ürmös
- Péter Nizák - OSI
- András Nun – Hungarian Foundation for Self-reliance
- Ádám Kullmann - MtM
- Viola Zentai - MtM
- Balázs Dénes – former Director, HCLU
- Erzsébet Mohácsi – President, CFCF
- András Ujlaky – Board member, CFCF
- Judit Szira – REF
- Iulius Rostas – independent consultant
- Eszter Somogyi – Metropolitan Research Institute
- Nóra Teller - Metropolitan Research Institute

Romania
• Csaba Asztalos – President, national equality body
• István Haller – Commissioner, national equality body
• Ilie Dinca – State secretary for Roma, National Agency for Roma
• Gelu Duminica – Agentia Impreuna
• Carmen Ionel
• Laura Gavrila
• Marie-Jeanne Ghigea – central authority
• Sorin Boteatu - Head of Ministry of Labour, Equality Unit
• Romanita Iordache – lawyer
• Iustina Ionescu – lawyer
• Stefania Andersen

Slovakia

• Klara Orgovanova
• Marek Harakal
• Olga Pietremov - Ministry of Labour, Gender Equality Unit
• Jarmila Lajciakova – lawyer
• Michal Vasecka – Simeckas Foundation
• Laco Oravecz – People in Need
• Representative of Central Coordination Unit for Structural funds
• Daniela Gemerska - Slovak Center for Human Rights
• Tomas Feldes - Slovak Center for Human Rights
• Marek Hojsik - Regional OP – investment projects
• Bros - Social Development Fund
• Jana Mynarovicova – director HPMRK, Office of Plenipotentiary for Roma
Annex II

This Annex looks at how equality and non-discrimination is mainstreamed in the a) programming, b) implementation and c) evaluation of Structural Funds and how Roma in particular are addressed. All Member States presented a National Reference Framework (NSRF) and Operational Programmes (OP) explaining how they would put the Funds’ priorities into practice.

**Programming**

<table>
<thead>
<tr>
<th>Bulgaria</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Fields covered by the NSRF on non-discrimination</strong></td>
</tr>
<tr>
<td>1. Labour market participation,</td>
</tr>
<tr>
<td>2. Qualification and training in the context of lifelong learning,</td>
</tr>
<tr>
<td>3. Equal access to education and reducing school dropout rates,</td>
</tr>
<tr>
<td>4. Increasing equal access to social and healthcare services, among</td>
</tr>
<tr>
<td>others.</td>
</tr>
<tr>
<td>5. Social entrepreneurship,</td>
</tr>
<tr>
<td>6. Strengthening the capacity of the professionals.</td>
</tr>
<tr>
<td><strong>Goals with regard to non-discrimination</strong></td>
</tr>
<tr>
<td>• To promote a wide range of active labour market policy programmes,</td>
</tr>
<tr>
<td>• To improve the level of qualifications of those excluded from the</td>
</tr>
<tr>
<td>labour market, to ensure that the social protection system and labour</td>
</tr>
<tr>
<td>market policies are closely linked, and to remove disincentives to</td>
</tr>
<tr>
<td>taking jobs and to ensure that taking up work pays and lifts people</td>
</tr>
<tr>
<td>• Out of poverty and social exclusion;</td>
</tr>
<tr>
<td>• To overcome educational disadvantage by bringing education and</td>
</tr>
<tr>
<td>lifelong learning in line with the needs of the labour market,</td>
</tr>
<tr>
<td>promoting equal access to mainstream education for everyone,</td>
</tr>
<tr>
<td>preventing early dropouts, paying special attention to children with</td>
</tr>
<tr>
<td>special educational needs; to implement measures aimed at providing</td>
</tr>
<tr>
<td>high quality social services for the most disadvantaged groups,</td>
</tr>
<tr>
<td>improving the health status of the population and facilitating the</td>
</tr>
<tr>
<td>access of the poor and vulnerable population to healthcare services;</td>
</tr>
<tr>
<td>• To reduce poverty and social exclusion of vulnerable ethnic</td>
</tr>
</tbody>
</table>
### Bulgaria

**Authority**

Equal opportunity organizations—including the non-government sector and the Commission for the Protection against Discrimination—have to be consulted during the planning of all envisaged activities.

Written comments were received on the NSRF from Roma organizations such as Amalipe. In addition over 45 Roma organizations have provided formal and informal comments on the different parts of the text of the Human Resources Development Operational Programme. In conformity with the partnership principle the comments and recommendations have been reviewed and some 90 percent of them have been accepted and integrated in the program.

### Romania

**Fields covered by the NSRF on non-discrimination**

<table>
<thead>
<tr>
<th><strong>Goals with regard to non-discrimination</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Authority</td>
</tr>
<tr>
<td>The National Authority for the Co-ordination of Structural Instruments (ANCIS) is the institution entrusted with the coordination of the management and delivery of the Structural Instruments in Romania, assuming the responsibilities assigned to the “CSF Managing Authority” in Government Decision GD 128/2006 modifying GD 497/2004. ANCIS is located within the Ministry of Public Finance. Its tasks are to support the programming, development and delivery of Operational Programmes under the NSRF to ensure coordination and coherence between the programmes and the Rural Development Programme and Operational Programme for Fisheries.</td>
</tr>
<tr>
<td>The Management Coordination Group will address management and administrative issues with horizontal relevance to the Operational</td>
</tr>
</tbody>
</table>
### Romania

Programmes. It will enable regular exchanges of operational experience between Operational Programmes and will provide a forum for management decisions that impact upon all of them. The Head of ANCIS chairs the Management Co-ordination Group. The members of the Group will be the heads of the Operational Programme Managing Authorities, the Certifying Authority, Competent Body for Payments and the Audit Authority. The Group will meet on a monthly basis and will report to the NCC. Only those issues that cannot be resolved in the framework of the Management Coordination Group will be referred to the NCC for decision.

### Hungary

<table>
<thead>
<tr>
<th>Fields covered by the NSRF on non-discrimination Goals with regard to non-discrimination</th>
</tr>
</thead>
</table>

Special attention is to be paid to reducing and attenuating the multiple disadvantages of Roma and Roma communities. This requires a strategic approach to complement the activities undertaken in the framework of the Roma Decade Initiative. Instead of single actions aimed at enhancing the social integration of the Roma population, the development of complex social and economic policy programs is required, including:

- Targeting group approach (labour market situation - unemployment, inactivity- or educational attainment)
- Targeting on a territorial basis (most disadvantaged regions, settlements or areas of settlements, where the proportion of Roma is relatively high
- Specific ‘Roma programmes’ may also be necessary in certain cases (for example, the need to improve the success students suffering from multiple disadvantages, including Roma youth)

<table>
<thead>
<tr>
<th>Authority</th>
</tr>
</thead>
</table>

The Coordinating Authority shall develop guidelines and compile a handbook in order to ensure the full respect of the horizontal principles of equal opportunities and non-discrimination. The Managing Authority promotes and disseminates good practices.
### Czech Republic

| Fields covered by the NSRF on non-discrimination | 1. Education,  
| | 2. Employment,  
| | 3. Health,  
| | 4. Access to goods and services |

| Goals with regard to non-discrimination | Equal opportunity for all, underlining the equality of opportunities between genders. The topic of equal opportunities is reflected in all areas where there are potential risks of discrimination on the grounds of gender, age, race, health condition, sexual orientation or religion. 
| | Activities include the following priorities: Education, Increasing employment and employability, Strengthening social cohesion priorities such as Smart Administration, improving transport accessibility and balanced regional development.  

| Authority | The National Coordination Authority (NCA) as a central coordinator establishes a uniform framework for the implementation of OPs by managing authorities. It guides the managing authorities with the purpose of ensuring efficiency and legality in the management of the operational programs. The NCA ensures compatibility between the implementation of the NSRF and OP on the one hand and the implementation of national policies and the policies on the other.  
| | Particular attention is paid to competition provisions, public contracts, protection of the environment, eliminating disparities, promoting equal opportunities and the principle of non-discrimination. |

### Slovakia

| Fields covered by the NSRF on non-discrimination | Access to the labour market and integration of disadvantaged groups on the labour market, including support of mechanisms for eliminating gender inequality on the labour market, and accessibility of one’s physical environment, including transport and public services, for people with limited mobility and orientation.  
| | Support to marginalized Roma communities is concentrated on four priority areas: education, employment, health care and housing, and three inter-related topics: poverty, discrimination and gender equality.  

<p>| Goals with regard to non-discrimination | Education supports equal opportunity in all its measures, through |</p>
<table>
<thead>
<tr>
<th>Authority</th>
<th>Operational Program technical assistance will finance horizontal</th>
</tr>
</thead>
</table>

Slovakia

### non-discrimination

Concrete actions that create the conditions for equal access to formal and informal education for all. Particular attention is paid to the issue of disadvantaged groups (for example members of marginalized Roma communities, students with special educational needs, the homeless, immigrants, asylum seekers, individuals in custody, single parents, and the elderly).

Specific issues related to marginalized Roma communities are addressed separately. The purpose of horizontal priority “marginalized Roma communities” is to strengthen cooperation and increase efficiency in the coordination of activities and financial resources aimed at improving living conditions for members of these communities. With a view to maximizing the impact potential of Structural Funds, a complex approach will be supported. Selected areas/micro-regions interested in this complex approach will be provided assistance in preparing local development strategies for Roma communities and in preparing project activities within the strategy, with a view to ensure complementarity of content and maximum synergies. The comprehensive approach will be applied particularly in areas with high concentrations of marginalized Roma communities.

Horizontal priority “marginalized Roma communities” is reflected in the individual strategic or specific priorities and the objectives in this area are complementary to and supportive of each other. This is done in such a way that a broad spectrum of measures aimed at integrating the Roma communities can be implemented, mainly through improving, infrastructure, employment, education, health care and social services.

The NSRF and the horizontal priority “marginalized Roma communities” place great emphasis on the efficiency and sustainability of activities, mainstreaming and spatial coordination and concentration of measures. The individual measures financed from the Structural Funds will also be coordinated with relevant national policies, particularly with housing, social services, health and education policies.
activities common to all operational programs or activities that need to be carried out on a nationwide basis for all authorities involved in the management and implementation of operational programs. Implementation of the technical assistance will create optimum conditions for efficient functioning of administrative capacities across the whole system of management and implementation of the NSRF. In the field of preparation, monitoring, evaluation and publicity, these activities will be covered by the central coordinating authority for the NSRF.

Hungary constitutes a good example of having produced high quality and effective guidelines and handbooks to ensure the effective implementation of the non-discrimination principle.

Implementing

<table>
<thead>
<tr>
<th>Country</th>
<th>Tender specifications requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>All participants in future public tendering should respect the principle of equal treatment at the work place and demonstrate they have not been subject to sanctions on the basis of the Law on Protection against Discrimination.</td>
</tr>
<tr>
<td>Romania</td>
<td>Equal opportunities will focus on vulnerable groups, ethnic minorities, especially Roma. The principle of non-discrimination and equal treatment will be applied in all public procurement contracts. The principle of equal opportunity is a selection criterion for the projects and the potential beneficiaries requesting financial assistance shall demonstrate that the projects do not infringe on this principle.</td>
</tr>
<tr>
<td>Hungary</td>
<td>Minimum level of equal opportunity principles must be applied with target groups being women, Roma, persons with disabilities, among others. Applications evaluated positively from an equal opportunity perspective will have an advantage. In case where operations are to be financed under an OP receiving Structural Funds, these operations must pay special attention to the improvement of the situation of disadvantaged groups while promoting equal opportunity and non-discrimination.</td>
</tr>
<tr>
<td>Country</td>
<td>Tender specifications requirements</td>
</tr>
<tr>
<td>-------------</td>
<td>----------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>Special consideration should be given to the following:</td>
</tr>
<tr>
<td></td>
<td>- Practical equal opportunity guidelines for potential beneficiaries specified by project type.</td>
</tr>
<tr>
<td></td>
<td>- Further specified background materials, flyers, bulletins and road shows.</td>
</tr>
<tr>
<td></td>
<td>- Establishment of a call centre that can orientate the applicants with professional information</td>
</tr>
<tr>
<td></td>
<td>regarding equal opportunity.</td>
</tr>
<tr>
<td></td>
<td>- Elaboration of a vademecum on the implementation and monitoring of projects for the institutional</td>
</tr>
<tr>
<td></td>
<td>system as well as for beneficiaries.</td>
</tr>
</tbody>
</table>

Czech Republic

In accordance with the General Regulation and the Strategic General Regulations of the Community, there are two fundamental horizontal issues defined for the period of 2007–2013, which are reflected in the Integrated Operational Programme (IOP) strategy and, consequently, in the program’s implementation: Article 16 – Equality between men and women and non-discrimination, and Article 17 – Sustainable development).

The issues of the horizontal topics are included in the whole scope of the IOP management and incorporated in all documents linked to the IOP (implementation document, operation manual, instructions for applicants and recipients, etc.). As a consequence this will lead to improvements in quality of the submitted projects and an increase in added value of the individual interventions.

As for the horizontal topics, the following activities can be defined within the individual priority axes, or areas of intervention within the IOP:

a) Activities which are directly oriented at equal opportunities / sustainable development,

b) Activities which are not directly oriented at equal opportunities / sustainable development but which could have an impact on equal opportunities / sustainable development,

Activities without links to equal opportunities / sustainable development.

The scope of the IOP will not involve such projects which could have a negative impact on any one of the horizontal topics. The evaluation of projects from the point of the horizontal topics will take place in two stages (see also the part of program describing the project selection):

1st stage – evaluation of positive, neutral or negative impacts the project might
Country | Tender specifications requirements
---|---
| have on the horizontal criteria (projects with negative impact will be automatically ruled out),
2nd stage – projects assessed to have a potential positive impact on horizontal criteria will receive advantage points.
The entity submitting a project for consideration should be contractually bound to fulfilling the horizontal priority areas.

Slovakia | The applicant shall be obliged to assess whether or not the project will have an impact on equal opportunity. If a project is likely to have an impact on equal opportunity it shall first be decided whether that impact is positive or negative. This assessment will be included in evaluation criteria.

The evaluation criteria for assessing the impacts of a project on equal opportunity shall be prepared by the Labour Ministry. The Labour Ministry will also provide guidance to all managing authorities and arrange for the training of managing authorities.

The Ministry of Labour shall set up a support centre to provide assistance to applicants in assessing the impacts of their projects on equal opportunity. The managing authorities of the individual operational programs shall identify focal points (contact persons), whose task will be to cooperate with the support centre. These point persons can and provide advice to beneficiaries on horizontal priorities, equal opportunity and project evaluation of during selection and implementation and monitoring.

These activities will be coordinated by the Ministry of Labour, Social Affairs and Family. In cooperation with the Central Coordinating Authority, the Ministry should carry out adequate publicity measures to increase the positive impact of activities supported under OP Technical Assistance, OP Employment and social inclusion on equality of opportunities.

Scheme 1: Coordination of implementation of horizontal priority "Equal opportunities"
### Operational Programs

<table>
<thead>
<tr>
<th>Country</th>
<th>Operational Programs</th>
<th>Managing authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>Non-discrimination in Operational Programmes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Human Resources Development Operational Programme</td>
<td>Managing authority</td>
</tr>
<tr>
<td></td>
<td>OP &quot;Regional Development&quot; will provide support for improvement of social infrastructure, which will be eligible under the ERDF, while OP &quot;Human Resources Development&quot; as a typical Structural Funds program will provide for complementary measures to improve the educational system, occupational safety and health, as well as the promotion of employment and life-long learning. The contribution of these interventions in the agglomeration areas will integrate and strengthen the social aspect of sustainable urban development with particular attention paid to Roma.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>During its implementation the program shall take advantage of the good practices and leading principles of the EQUAL Community Initiative – gender equality and non-</td>
<td></td>
</tr>
</tbody>
</table>

---

112 No details could be obtained during the desk research regarding the Czech Republic.
<table>
<thead>
<tr>
<th>Country</th>
<th>Operational Programs</th>
<th>Managing authority</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>discrimination based on gender, race, ethnic origin, religion or beliefs, disabilities, age or sexual orientation; innovations, mainstreaming, partnership, transnational and interregional cooperation, sound programme and project management.</td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td>Human Resource Operational Programme</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Priority Axis 1: Education and training in support of the growth and development of a knowledge based society, including Roma as target group.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Priority Axis 2 “Linking lifelong learning and labour market” will address, at national level, the issues of ensuring that all individuals have equal opportunities for learning and are well equipped with competences and skills for their sustainable integration on the labour market. Low educational attainment increases the risk of unemployment and long term unemployment or dropping out the labour market. Since Roma and rural populations are the most affected categories of school dropout, specific measures will target these groups.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Priority Axes 3, 5 and 6 aim to help individuals increase their employability and adaptability, strengthen entrepreneurship and promote social inclusion and equal opportunities. These priority axes will be addressed regionally due to the existence of certain disparities between regions with regards to employment rates, unemployment rates and certain particularities (long term and structural unemployment, including in</td>
<td></td>
</tr>
</tbody>
</table>
### Operational Programs

<table>
<thead>
<tr>
<th>Country</th>
<th>Operational Programs</th>
<th>Managing authority</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>rural areas), participation in CVT, different entrepreneurial culture, poverty rates, specific Roma issues, and the position of women in the labour market. All these issues will be tackled at regional level, as the most appropriate level, where communities and other local actors can identify them and resolve them effectively.</td>
<td></td>
</tr>
<tr>
<td>Priority Axis 4: Modernization of Public Employment Service via Structural Fund interventions to better address unregistered unemployment, especially in rural areas and for vulnerable groups (i.e., Roma, persons with disabilities, youths over 18 years old leaving the state child protection system).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Priority Axis 5: Promoting active employment measures with Roma as a target group.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Priority Axis 6: Promoting social inclusion. Although Structural Fund interventions for vulnerable groups are primarily addressed under this Priority Axis, vulnerable groups shall be also eligible under other Priority Axes. The projects that will support them will seek to provide education, “second chance” education, and more personalized types of programs and awareness-raising campaigns for the Roma population.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regional Operational Programme (ROP) The Regional Operational Programme gives special attention to the vulnerable social groups such as Roma through the inclusion of measures for rehabilitating and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Country</td>
<td>Operational Programs</td>
<td>Managing authority</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------</td>
<td>--------------------</td>
</tr>
</tbody>
</table>
| Hungary | All programs must be implemented in harmony with the objectives of the Roma Integration Decade Programme (2005-2015).  
**Economic Development Program**  
This Program focuses on investments in disadvantaged regions aimed at creating significant work opportunities and better social integration. Apart from this direct investment assistance we put a high emphasis on providing available information. It is primarily the task of the regional and local consultative network operating in the frames of RDOP to assist the Roma enterprises in the research, successful demand and usage of the available financial resources.  
The micro-financing program provides opportunities for Roma enterprises to gain access to financial resources. The tender put out by the holding fund manager of the financial instruments program stipulates equal opportunity for potential recipients, including Roma micro-finance organizations.  
**Social Renewal Operational Program (SROP)**  
This program seeks to enforce the principle of equal opportunity by improving | National Development Agency (Government’s agency charged with the planning and implementation of the National Strategic Reference Framework). Good practice: NDA invites comments from social partners and NGOs not just during the preparation of the NHDP and the OPs, but also when elaborating the action plans and calls for proposals. |
<table>
<thead>
<tr>
<th>Country</th>
<th>Operational Programs(^{112})</th>
<th>Managing authority</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>integration, positive discrimination, and social tolerance, while preserving cultural identity. Development projects must be implemented in such a fashion so as not to increase existing differences, prejudices or segregation. In certain cases, this may mean that access to resources will be subject to elimination of segregation in housing and schools. Towards eliminating educational segregation, development projects will enforce equal opportunities for Roma children and young people through predetermined, observable, monitorable ways. To advance access to development projects, networks of Roma experts in each sector will be established, who will help in the process of obtaining and using resources. Efforts should be made to extend Roma access to such services as health care, education, social welfare, and labour market services to eliminate segregation that exists in education and discrimination that works against labour market participation. The achievement of these objectives calls both for complex targeted programs that apply the instruments of several policies jointly in a harmonized form and individual policy interventions. Income earning activities should be facilitated and efforts should be made to eliminate inhospitable living conditions.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>In order to reduce discrimination, it is important to:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• help shape national and local</td>
<td></td>
</tr>
</tbody>
</table>
attitudes and reduce stereotypes
- train professionals, capacity-building (e.g. Authority for Equal Treatment);
- train public sector employees on anti-discrimination.

South Great Plain Operational Programme
To advance social inclusion and participation, it is important to increase opportunities for children and juveniles, to combat discrimination, to promote social integration of the Roma population, and to reform of the system of social care services. In this framework, mutual familiarization with and adaptation of good practices can be supported.

The development of public education infrastructure in the regional operational programme is linked to the main objectives of public education reform and promotes their achievement.

Special importance is attached to the integrated education of children with multiple disadvantages and special-needs children—with particular attention to reducing the segregation of the Roma—both within and across institutions.

Concerning groups vulnerable to long term unemployment (people with little or no education, unskilled workers, people with disabilities, older workers, Roma, first time jobseekers and people living in municipalities where the employment market
<table>
<thead>
<tr>
<th>Country</th>
<th>Operational Programs</th>
<th>Managing authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Transdanubia</td>
<td>is unfavourable), active employment policy tools shall be prioritized. In addition to revitalizing the physical environment in the areas concerned, these priority axis actions will also help to strengthen social cohesion.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Access to the primary education system, with proper infrastructure, must be ensured throughout the region to ensure that the greatest possible proportion of the entire population—especially of the disadvantaged, including Roma—successfully complete primary education.</td>
<td></td>
</tr>
<tr>
<td>North Great Plain</td>
<td>In the North Great Plain Region close attention must also be paid to the social integration of Roma with multiple disadvantages. A significant percentage of the Roma population in this region experience multiple disadvantages. Given their low level of education and the absence of their socialization, they cannot be integrated into the labour market. The program treats the social integration of Roma horizontally: whenever and wherever applicable, calls for applications prioritize the developments within which integration of Roma is feasible. Targeted interventions must be adjusted to the often low educational level of Roma.</td>
<td></td>
</tr>
<tr>
<td>Central Hungary</td>
<td>As regards the support of the social inclusion</td>
<td></td>
</tr>
<tr>
<td>Country</td>
<td>Operational Programs</td>
<td>Managing authority</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td></td>
<td>of the Roma, the Regional Operational Programme pays special attention to the elimination of social and economic segregation, the application of the principle of positive discrimination, the preservation of cultural identity and the provision of equal access – all in application of the principles of complexity and integration. Equal opportunity priorities must be implemented in all education-related projects and satisfy pre-defined criteria.</td>
<td>Minister of Labour, Social Affairs and Family responsible is the managing authority for the operational programme Employment and Social Inclusion</td>
</tr>
<tr>
<td></td>
<td>Interventions in disadvantaged areas must target employment generation as a means to advance social integration.</td>
<td>Office of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities will establish</td>
</tr>
<tr>
<td>Country</td>
<td>Operational Programs\textsuperscript{112}</td>
<td>Managing authority</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------</td>
<td>------------------</td>
</tr>
<tr>
<td></td>
<td>deals with the integration of the economically and socially excluded Roma communities and the tools of inclusion tested in practice, the 2007 – 2013 period can be used for achieving synergic and sustainable effects. The basis is the governmental policy on levelling measures, ministerial concepts for education (pre-school preparation, teacher’s assistants, support of the Roma language, integrated education), regional development and housing (construction of apartments for rent and infrastructure), support of health (healthcare assistants), community development and employment (community social workers, community centres, social enterprises), and others.</td>
<td>a department for the coordination of the HP MRC\textsuperscript{114} for the execution of activities connected with the administrative and methodological backup of the horizontal priority of MRC. The deputy prime minister for Knowledge Society, European Affairs, Human Rights and Minorities is responsible for the horizontal priority of marginalized Roma communities.</td>
</tr>
</tbody>
</table>

The institutional network that has been developed with state institutions (regional offices of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities, departments at the HTU, regional offices of the Slovak National Centre for Human Rights, etc.) and non-governmental and civic sectors represents a positive feature. This network represents great potential. In 2006, the Office of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities, signed a contract for the elaboration of Regional Concepts for the Development of Roma Communities in the Area with a High Concentration of Marginalized Groups (in line with the Government Decree No. 396/2007).

\textsuperscript{114} In line with the Government Decree No. 396/2007
<table>
<thead>
<tr>
<th>Country</th>
<th>Operational Programs(^{112})</th>
<th>Managing authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Košice, Prešov, Banská Bystrica.</td>
<td>The intervention emphasizes coordination at the regional level and partnership formulation, including consultation at HTU level.</td>
<td></td>
</tr>
</tbody>
</table>

The following are the proposed tools for the provision of impact and coordination:

- a comprehensive approach to solve MRC issues through the following OPs (Regional, Employment and Social Inclusion, Education, Environment, Competitiveness and Economic Growth and Healthcare);
- Individual Projects (demand-driven), which may be applied in all OPs.

An agreement between all implementing parties will help to coordinate and facilitate its execution. Within the framework of the agreement the indicative allocation for this horizontal priority pursuant to the National Strategic and Reference Framework\(^{113}\) will also be defined.

The comprehensive approach will be organized as follows:

- submission of through the Comprehensive Approach (CA) local strategies by the municipality or micro-region
- evaluation and approval of local CA strategies.

---

\(^{113}\) During the preparation of the OP EaSI it was impossible to allocate some funds to the horizontal priority due to it lagging behind in coordination.
<table>
<thead>
<tr>
<th>Country</th>
<th>Operational Programs</th>
<th>Managing authority</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Project design within the framework of approved local CA strategies</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• approval and implementation of the projects within the framework of the OP</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• ongoing monitoring and evaluation of the fulfilment of the objectives of the local strategies through individual projects</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• evaluation of the benefit of the complex projects for the fulfilment of the objective of the horizontal priority</td>
<td></td>
</tr>
</tbody>
</table>

Competencies of the Office of the Plenipotentiary of the Government of the SR for the Roma Communities in connection with the implementation of the CA are based on the delegation of the deputy prime minister for Knowledge Society, European Affairs, Human Rights and Minorities who is regularly informed by the OoPGRC on the coordination of the HP MRC;

• the OoPGRC concludes agreements with the individual MB and MBuMB on mutual cooperation and coordination in fulfilment of the HP MRC which are signed by the head of the Office of the Government of the SR as the statutory representative of the Office of the Government of the SR;

• it cooperates with the managing bodies in the design of calls for the submission of the projects within the
Country | Operational Programs\footnote{112} | Managing authority
--- | --- | ---
 | framework of the CA;  
 • it publicizes the calls for the submission of the local CA strategies;  
 • it establishes the CA selection commission and coordinates its activities with the goal of approving local CA strategies;  
 • it cooperates with the municipalities/micro-regions which based on the successful local CA strategy acquires/uses counselling;  
 • it cooperates with the MB and MBuMB in the selection, evaluation and monitoring of the projects submitted within the framework of the CA and the clear identification of which will be provided through direct notations in the NRFM application;  
 • it coordinates the activities of the CA monitoring group whose task is to monitor the implementation of the CA and troubleshoot as/when needed;  
 • it cooperates in the monitoring and evaluation of the impact of the Structural Funds on the MRC in the 2007 – 2013 period together with the Working Group for Marginalized Roma Communities;  
 • it provides specialized monitoring and evaluation targeted on the overall fulfilment of the approved local CA strategies. |}

\footnotetext{112} Employment and social inclusion
Developing care services - social services and
### Operational Programs

<table>
<thead>
<tr>
<th>Country</th>
<th>Operational Programs</th>
<th>Managing authority</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>measures of social and legal protection with special regards to marginalized Roma communities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Promoting equal opportunity in access to the labour market and the integration of disadvantaged groups into the labour market with special regard to marginalized Roma communities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Education</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Support to Education of Persons with Special Education Needs with regard to marginalised Roma communities.</td>
<td></td>
</tr>
</tbody>
</table>

### Monitoring

<table>
<thead>
<tr>
<th>Country</th>
<th>Authority/organisation involved within the OP Monitoring Committees</th>
<th>Reporting requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>The various organizations for equal opportunities, including the non-government sector as well as the Commission for the Protection against Discrimination, have to be consulted during the monitoring and evaluation of all envisaged activities.</td>
<td>In all project implementation reports information for the participation of men and women and socially-disadvantaged groups has to be included</td>
</tr>
<tr>
<td>Romania</td>
<td>National Agency for Equal Opportunities</td>
<td>The monitoring system shall be developed to ensure an increased coherence of program development and impact for Roma.</td>
</tr>
<tr>
<td>Hungary</td>
<td>Good practice: delegated representatives of non-governmental organisations – within that, at least</td>
<td></td>
</tr>
</tbody>
</table>

---

115 No details could be obtained during the desk research regarding Slovakia.
<table>
<thead>
<tr>
<th><strong>Czech Republic</strong></th>
<th>The Managing Authority (The Ministry for Regional Development) will assure that principles of equal opportunity are followed in the Monitoring Committee and that the presence of institutions operating in the field of equal opportunities is ensured.</th>
</tr>
</thead>
<tbody>
<tr>
<td>one member representing an organization active for (i) the Roma people, (ii) persons with disabilities and (iii) equal opportunities for men and women</td>
<td></td>
</tr>
</tbody>
</table>
## ANNEX III

Legal framework relating to non-discrimination and equal treatment

<table>
<thead>
<tr>
<th>Country</th>
<th>Legislation</th>
<th>Grounds covered</th>
<th>Fields covered</th>
<th>Authority in charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>Protection against Discrimination Act</td>
<td>All grounds</td>
<td>Employment, social protection, social advantages, education, goods and services (including housing)</td>
<td>Ministry of Labour and Social Policy</td>
</tr>
<tr>
<td>Romania</td>
<td>Anti-Discrimination Act</td>
<td>All grounds</td>
<td>Employment, social protection, social advantages, education, goods and services (including housing)</td>
<td>National Council for Combating Discrimination</td>
</tr>
<tr>
<td>Hungary</td>
<td>Equal Treatment and Promotion of Equal Opportunities Act</td>
<td>All grounds</td>
<td>Employment, social protection, social advantages, education, goods and services (including housing)</td>
<td>Ministry of Administration and Justice and Law Enforcement</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Ministry of Social Affairs and Labour Development</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>National Resources Equal Treatment Authority</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Labour Code Anti-Discrimination Act, Employment Act Pre-School, Basic, Secondary, Tertiary Professional and Other Education Act</td>
<td>All grounds</td>
<td>Employment, social protection, social advantages, education, goods and services (including housing)</td>
<td>Public Defender of Rights, Ministry of Labour and Social Affairs (Employment and Labour Relations) Ministry for Regional Development (Housing) Ministry of Education (Education)</td>
</tr>
<tr>
<td>Country</td>
<td>Legislation</td>
<td>Grounds covered</td>
<td>Fields covered</td>
<td>Authority in charge</td>
</tr>
<tr>
<td>---------</td>
<td>------------------------------------------------------------------------------</td>
<td>-----------------</td>
<td>-------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Slovakia</td>
<td>Equal Treatment in Certain Areas and Protection against Discrimination Act</td>
<td>All grounds</td>
<td>Employment, social protection, social advantages, education, goods and services (including housing)</td>
<td>Human Rights and Equal Treatment Office of the Government Department of Gender Equality and Equal Opportunities at the Ministry of Labour, Social Affairs</td>
</tr>
<tr>
<td></td>
<td>Slovak National Centre for Human Rights Labour Code</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>