

Equality for Roma in Europe

A Roadmap for Action

Prepared by Lanna Hollo,
with the contribution of Sheila Quinn

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On behalf of
European Roma Information Office,
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Migration Policy Group, and
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EXECUTIVE SUMMARY

The Adoption by the European Union (EU) of Directive 2000/43/EC– "implementing the principle of equal treatment between persons irrespective of racial or ethnic origin," and Directive 2000/78/EC– "establishing a general framework for equal treatment in employment and occupation," constituted significant steps toward guaranteeing the principle of equal treatment throughout the EU. The challenge now facing the EU and member states is how to transform these formal guarantees of equality into concrete reality.

It is clear that efforts to date to ensure equality for Roma in Europe have failed to produce any significant improvement. The challenges have been and remain enormous: deeply embedded institutional discrimination within government structures, widespread anti-Gypsyism, extraordinarily high levels of poverty and social exclusion, and segregated systems in housing, education and social welfare.

The situation has, on one level, been given increased attention on the political agenda. It must be acknowledged, however, that a lack of real political will is one of the main reasons why such little progress has been made.

There are, however, signs of an emerging period of new opportunities. The analyses and recommendations from the range of bodies charged with monitoring adherence to human rights laws are receiving more attention. There is a growing recognition that governments need to learn from the efforts to date and apply a more strategic approach. The Decade of Roma Inclusion, a initiative supported by major international actors, including the World Bank, the EU, United Nation Development Programme (UNDP), Council of Europe (CoE), Organisation for Security and Cooperation in Europe (OSCE) and Open Society Institute (OSI), represents renewed political will on the part of the eight governments with large Roma populations (Bulgaria, Croatia, the Czech Republic, Hungary, FYR Macedonia, Romania, Serbia and Montenegro, and Slovakia) to overcome the gap in opportunities and living conditions between Roma and non-Roma through targeted and coordinated action over a 10 year period. Finally, there are opportunities within European Union policy arenas that have the potential to move forward an enhanced plan of action for equality for Roma in Europe.

This summary is based on the findings of research that examined a significant body of literature representing the current learning on the situation of Roma in Europe. The full research report draws on this learning to map out the cultural, policy, and legislative changes that need to be realised in order to make progress at the national and European level.

The first part of the summary outlines what the literature indicates are the main factors that have limited progress in achieving equality for Roma in Europe. The second part deals with recommendations to national governments and to the EU Institutions.

A. FACTORS LIMITING PROGRESS TOWARD ROMA EQUALITY

Current research and analysis point to a number of fundamental factors that have limited progress to date. These are:

1. lack of strategic focus of funded initiatives;
2. low levels of Roma participation in public life;
3. insufficiently robust legislative frameworks;
4. the need for an integrated approach;
5. high levels of anti-Gypsyism;
6. challenges to the preservation of Roma identity and culture;
7. lack of political will.

1. Lack of Strategic Focus of Funded Initiatives

The level of funding from international donors over the past decade or more targeted at relieving the economic and social deprivation of Roma has been considerable. The outcomes, however, have not been proportionate to the financial investment. Current analysis suggests the fault lies in a lack of strategic focus in the design and implementation of the projects.

The lack of strategic focus is manifest in four main ways:

- failure to tackle discrimination and link projects to systemic change;
- little if any evaluation;
- poor co-ordination;
- low level of Roma involvement.

- **Failure to tackle discrimination and link projects to systemic change**

Whether in housing or education, health care or social welfare, research indicates that a combination of discriminatory policies and prejudicial attitudes of public officials and service providers results in inequality of access for Roma. Projects which fail to address these systemic issues can only result in short-term gains. Any learning from the project cannot reach into the systems to affect the level of change that is necessary to contribute to long-term improvement.

- **Little if any evaluation**

Another reason cited for the lack of long-term impact is the fact that there has been little if any evaluation of the initiatives. Projects are undertaken, completed, and then very often repeated without any pause to measure what has been achieved, what the lessons are in relation to policy development, or how implementation might be improved. Where attempts have been made to measure achievement, this process has been hindered by the lack of baseline data.

- **Poor coordination**

Thirdly, much of the work has lacked coordination. This has meant that projects with similar objectives, sectoral, and geographical focus have been carried out in isolation from each other with no formal links. The potential for added value during the implementation phase and valuable post-implementation learning is thus lost. Lack of cooperation, not only between the different funders, but also within funding agencies is largely to blame for this lack of coordination.

- **Low level of Roma involvement**

Consultation with and participation by the intended beneficiaries is vital if project outcomes are to be maximised. In the case of EU structural funding, managing authorities and project implementers are required to ensure maximum beneficiary participation possible at every stage. Such consultation and participation has to be planned and resourced and, in some cases, may also require particular outreach activities. It has now been very clearly documented that the participation of Roma in the decision-making processes related to these initiatives has been inadequate.

2. Low Levels of Roma Participation in Public Life

On a broader level, the scarcity of Roma in public life, whether in the NGO community or as elected representatives has been a factor in limiting efforts to bring about the integration of the Roma community. Clearly, where groups are particularly marginalised, encouraging and enabling the emergence of capable and competent representatives entails committed and coordinated work. In the case of Roma, the largest and most disadvantaged ethnic minority group in Europe, there can be no underestimating the work required. It is work that is part of a larger strategy which encompasses combating anti-Gypsyism. Attitudes within society at large must change in order to encourage Roma to take their place in societal structures. But governments must take the lead by introducing a range of measures aimed at increasing representation and participation by the Roma in every sphere of public life. A necessary and urgent first step should be the providing resources to the existing Roma civil society groups. It must also be remembered that the Roma is not a homogeneous group, and that the diversity of the Roma communities must be accommodated within consultative processes and fora.

3. Insufficiently Robust Legislative Frameworks

On the face of it, there is sufficient legislative basis—whether in the form of commitments to international human rights conventions, or in the transposition of EU Directives—to guarantee equal rights to Roma. In practice, however, Roma do not come anywhere close to enjoying the same rights as most other citizens.

In the case of EU member states, the most potentially positive legislative development for the Roma was the adoption of the Race Equality Directive. The Directive constitutes a

landmark in Europe's legal development. By covering “indirect” as well as “direct” discrimination, it goes beyond current limited conceptions to reach a broad swath of discriminatory policies and actions which, though not motivated by overt and readily provable racial hatred, nonetheless "disadvantage" members of racial or ethnic minority groups. All EU member states are required to ensure that their legislation conforms to the provisions of the Directive. Moreover, the Directive is now part of the "acquis communautaire," the body of law which all candidate countries must adopt.

At the broader European level, the ratification of Protocol 12 to the European Convention on Human Rights, and its subsequent coming into force, provides further opportunities for enhanced action in the field of racism and discrimination.

The current review of the literature on the capacity of national legislative frameworks to deliver equality for Roma indicates a number of limitations. In the case of EU member states there is a concern about the transposition of the Race Directive into national legislation. In the case of non-EU European countries, the concern is that, in most instances, the commitment to international human rights instruments is poorly reflected in national legislation. In all cases, an additional concern relates to a lack of attention to effective implementation of the legislation. In general, there is a consensus among independent legal experts that there is a long way to go before real and sustained benefit from the legislation is realised.

The main challenges are:

- the need to address segregation;
- challenges in accessing the legal system;
- limited remit of specialised bodies;
- lack of clarity about positive measures;
- unavailability of data to establish indirect discrimination;
- absence of duty to promote equality;
- nationality prohibited as a grounds for discrimination.

- **The need to address segregation**

Some analysts point to the imperative of specifically listing segregation as a form of discrimination in the legislation, arguing that such a provision is the only way to deliver the depth of change required. Here we are talking about basic rights to health care, housing and education. Anything short of tackling policies and practices which consign Roma to segregated systems will have little impact. It is further argued that the impact of segregated systems goes beyond the provision of services to influence the whole of society and serves to perpetuate historical anti-Gypsyism, which itself is an enormous challenge to progress.

- **Challenges in accessing the legal system**

Analysts point to the challenges faced by victims of discrimination in initiating legal proceedings to vindicate their rights. These challenges are multiple for Roma. This is perhaps best illustrated by the very few cases in which individual victims have been

able to obtain effective remedy. As well as the challenges of cost and acquiring legal representation, there are difficulties in relation to publicly challenging discrimination in the face of a hostile public.

- **Specialised bodies**

A well-resourced, independent body with a broad remit is, in the first instance, a vital resource to victims of discrimination. Such bodies can also play an important role in the promotion of equality through research, public awareness-raising campaigns, and advocacy for stronger legislation. Where such bodies exist at all, they are not adequately resourced to play a full role in the overall legislative framework.

- **Positive measures**

The EU Race Equality Directive allows for states to introduce limited positive measures to compensate for past discrimination. While there has been some debate and some confusion as to the “legality” of positive measures, the weight of legal opinion is clear that the use of positive measures does not violate the principle of equal treatment. The need for positive measures in the case of Roma is irrefutable. Without such measures in a whole range of areas, particularly in housing, education, health care, and employment, it will be impossible to bring Roma up to a level of access to these basics of life as that enjoyed by their fellow citizens.

- **Use of data**

Despite the push toward evidence-based policymaking, the difficulties with data availability persist. Within the judicial system, the use of data to establish indirect discrimination is regarded as an important tool. As it stands, there are still a number of sectors where data disaggregated by ethnicity is not systematically collected in any European country. There is slow progress towards enhanced systems of data collection and analysis, and these efforts must be redoubled. Despite the debate, it has been clearly shown that the use of data to demonstrate group characteristics does not violate the law on the protection of personal data.

- **Duty to promote equality**

It is argued that without a statutory duty to promote equality there will be limited progress in eliminating institutional discrimination faced by Roma. Attention is drawn to Northern Ireland and the UK, where public bodies are required to draw up equality schemes to demonstrate how they will promote equality in carrying out their functions.

4. An Integrated Approach

The problems experienced by Roma are multidimensional and interlinked. Poor housing has an impact on health and on educational performance and access to public services. Low attendance rates at school and unequal treatment within the educational system affect employment opportunities, access to services, health, and access to justice. This interlinkage of problems experienced in the different spheres of life requires a multi-sectoral, or integrated, approach to providing solutions. Such an approach demands close

cooperation and coordination between government departments and between national, regional, and local levels of government. It also requires meaningful and ongoing consultation with the breadth of the Roma community.

5. Anti-Gypsyism

Rooted in history, fuelled by the media, and largely unchallenged by the state, there are dramatic levels of anti-Gypsyism throughout Europe. Racist stereotypes often serve to justify ongoing discriminatory practices. Similarly, anti-Gypsyism can work to thwart measures aimed at improving life for Roma, when local officials, fearing the political costs of challenging prevailing attitudes, fail to implement measures decided at the national level. Indeed, many analysts state that the first step in the fight against anti-Gypsyism is for public officials to acknowledge it and to take the lead in openly condemning it in all its forms.

6. Roma Identity and Culture

A 2004 ruling of the European Court of Human Rights clearly articulates the obligation on states to facilitate the Gypsy way of life. There have been other rulings and expert legal assessments that suggest that failure to take due account of minority identities constitutes indirect discrimination. Far too often, Roma are faced with having to choose between exercising their right to live according to their culture and their right to public services. This is mostly starkly demonstrated when Roma are forced to accept settled housing because of the failure of the state to provide housing sites. Roma should not be required to assimilate in order to access basic human rights; rather laws, regulations, and policies need to take account of the needs and identities of Roma.

7. Political Will

It is not enough to agree to the principle of equality for Roma. Being signatories to human rights instruments or transposing EU anti-discrimination legislation will not make any difference to how people experience equality in their daily lives unless followed up with concrete action that will translate commitment into policies, programmes, laws, and budget lines. In the case of equality for Roma, the application of genuine political will is long overdue. Adequate resources must be allocated, public officials need to be trained, new structures need to be put in place, established ways of working need to be reformed, officials need to be charged with responsibility, and targets must be set. This may involve taking the lead in challenging negative public opinion. It will most certainly involve making tough political decisions.

B. RECOMMENDATIONS

1. Recommendations to National Governments

- Devise national strategies for Roma;
- Develop comprehensive legislative frameworks.

- **Devise national strategies for Roma**

The best way to ensure the level of coordinated, multilayered activity that is required across all sectors and addressing all issues is through the design and implementation of a National Strategy for Roma. The Strategy will, of course, need to be operationalised through an Action Plan. The Decade of Roma Inclusion, which already comprises eight European countries with large Roma populations (Bulgaria, Croatia, the Czech Republic, Hungary, FYR Macedonia, Romania, Serbia and Montenegro, and Slovakia), can provide the model for action. Focusing on four priority areas—education, health, employment, and housing—the eight countries have Decade Action Plans (*hereinafter* the Plan) in place, which outline specific actions over a 10 year period.

In designing a National Strategy for Roma, and in order to ensure that the Strategy is operationalised, national governments are exhorted to adhere to the following principles and practices:

- Prioritizing the eradication of institutionalised discrimination. The evidence from research clearly shows that the failure to tackle discrimination that is inherent in many state institutions, laws, policies, and services has meant that, even when well-funded, all too many initiatives have not produced a lasting impact.
- Assigning responsibility to the highest level of government. Government ministers from all relevant bodies must take responsibility and be held accountable for National Strategies. Clear reporting and coordinating structures should be set up so as to ensure accountability and transparency.
- Creating a comprehensive, transparent, and resourced consultation process. Well designed consultation procedures will ensure that the Plan reflects the needs as they are experienced by Roma and that the Plan takes account of the institutional challenges that need to be addressed in order to execute the Plan.
- Ensuring Roma participation through inclusion of representatives reflecting the diversity of Roma populations, including women and youth. Inclusion of Roma who accurately reflect the diversity within and among Roma communities is vital at every stage, from policy development to implementation and evaluation. Resources should be set aside to seek out, resource and, where necessary, provide

for the capacity-building of Roma representatives so as to enable optimum participation.

- Devising a Plan that provides a strategic framework within which all Roma-related actions are coordinated. With the overall objective of securing full Roma integration, there should be a commitment to a long-term strategy, with specified time frames for the attainment of targets, and indicators by which progress can be measured through ongoing monitoring and periodic reviews.

- Implementing clear and specific action plans. Actions that are clearly defined and have specific objectives will allow for monitoring and evaluation to help ensure government accountability.

- Using all available data to establish benchmarks and a guide policy and programme development. It is vital to develop a more accurate profile of the Roma population and of their needs. Mechanisms, therefore, should be strengthened to capture accurate data, both quantitative and qualitative that is disaggregated by gender and age.

- Including externally funded initiatives within Plan framework. Inclusion of externally funded initiatives will allow for better coordination of efforts, limit duplication of projects, foster the sharing of learning and best practices, and maximise outcomes on the ground.

- Involving regional and local authorities. It is crucial to involve regional and local authorities in the design of the Plan, if they are to fully commit to its objectives. It is often the regional and local level interpretation and implementation of policies and programmes where the real impact is felt.

- Combating anti-Gypsyism. The Plan must effectively challenge anti-Gypsism with key activities such as well-resourced public education programmes aimed at public officials, the media, all educational institutions, and the general public.

- Incorporating a gender perspective. As with any community, the roles and status of women in Roma communities are different to those of men, with women often shouldering additional burdens. The Plan must acknowledge these differences and address them by providing Roma women with specific interventions and forms of support.

- Implementing positive measures to compensate for past discrimination. In order to make headway in advancing Roma equality within a reasonable time frame, the Plan must incorporate positive measures aimed at compensating for past discrimination.

- Preserving and promoting respect for Roma identities and culture. The Plan must regard the preservation and promotion of Roma culture and identities as a

necessary cross-cutting consideration in the preparation and execution of the Plan. The Roma community should not feel the need to assimilate in order to enjoy their rights as citizens of Europe.

- **Develop comprehensive legislative frameworks**

National governments are urged to review their legislative framework with a view to ensuring the dual objectives of (i) providing accessible and appropriate means of redress for individual Roma who suffer discrimination and (ii) proactively promoting equality so as to bring about the necessary institutional change.

In enhancing their legislative framework, national governments are exhorted to aspire to the standards set out in the European and international human rights instruments to include:

- the scope to cover all areas of life in which Roma experience discrimination, including those areas listed in the EU Race Equality Directive; as well as in the administration of justice, including protection of security of the person; political participation; freedom of movement and residence; freedom of peaceful assembly and association; and the right to nationality;
- the introduction of a statutory duty on public authorities to promote equality for Roma;
- a duty for public authorities to ensure that those parties to whom they award contracts, loans, grants or other benefits, respect and promote a policy of nondiscrimination;
- the introduction of a statutory duty on public authorities to carry out impact assessments to ensure that all laws, regulations, and administrative provisions do not violate the principle of equal treatment in relation to Roma;
- the collection of data to be made available for use in demonstrating the disproportionate negative effect on Roma in cases where indirect discrimination occurs;
- the introduction of measures to support members of the Roma community in accessing the justice system, including enabling NGOs to act on behalf of individuals, the provision of legal aid, the dissemination of information in order to inform people of their rights and of the means of redress available to them, and the setting up of mechanisms for regular dialogue with the Roma NGO community;
- as a way of tackling institutional forms of discrimination, NGOs, trade unions and other legal entities with a legitimate interest should be given the opportunity to bring a case of discrimination without reference to a specific victim;

-In order to make progress in those areas where Roma most experience different and unequal treatment, segregation should be listed within the legislation as a form of discrimination.

2. Recommendations to EU Institutions

- Adopt a Framework Strategy for Roma
- Improve existing EU policy frameworks
- Enhance legislation compliance and monitoring
- Complement the existing legal framework

- **Adopt a Framework Strategy for Roma**

Given the magnitude of the task involved in bringing about equality for the 12 million European Roma, it is incumbent on the EU to commit to the adoption of a Framework Strategy with a specific focus on Roma integration. The European Parliament's resolution in April 2005 called on the European Commission (The Commission) to prepare a communication on how the EU "can best coordinate and promote efforts to improve the situation of Roma and to adopt an action plan with clear recommendations to Member States..." A Framework Strategy for Roma would provide the necessary mechanisms for the coordination of all Commission activities, including all lines of funding. The Decade of Roma Inclusion can provide a useful model for such a strategy. Three and soon five member states – with Bulgaria and Romania joining the EU - are part of the Decade. It includes actions in four priority areas over a 10 year period. The adoption of this framework by the European Union would facilitate the alignment of EU and national policies.

Such a Framework Strategy for Roma should focus on the following key elements:

- within the Framework, member states should be required to develop a national action plan for Roma, in which they outline a strategy for achieving Roma integration;
- the Open Method of Coordination should encourage a strategic and integrated approach and facilitate mainstreaming at member state level on Roma integration, as well as providing opportunities for networking and mutual learning;
- positive measures need to be part of the EU's strategy, both in terms of its own initiatives and funding programmes, and the guidance it provides to member states;
- in order to ensure that all EU policies, programmes, and legislation do not indirectly discriminate against Roma, the scope of the EU's extended impact assessment process should be widened to include a focus on Roma;

- a mechanism whereby the EU can exercise a monitoring role on efforts by member states to tackle anti-Gypsyism. This should include support for civil society monitoring activities;
- a focus on strengthening and expanding Roma civil society, with particular focus on capacity-building, network-building, and core support for grassroots organisations;
- greater encouragement and support to member states on the issue of data collection. This should include an expanded role for the Commission's Working Group on Data Collection and the dissemination of the findings of the Group's studies. The role of the future Fundamental Rights Agency (FRA)¹ on data should build on the work of the RAXEN network to further promote data collection in member states;
- promoting respect for Roma identities and culture should be an integral aspect of the EU's Framework Strategy for Roma and should become an integral cross-cutting principle within all EU Roma-targeted initiatives;
- identifying Roma as a target group within current EU Social Inclusion, Employment and Lifelong Learning strategies should be a priority of the EU Council. This would signal the EU's commitment to Roma integration and would greatly facilitate the mainstreaming of Roma issues at member state level.

Similar to the development process of national strategies, EU efforts to adopt a Framework Strategy must include representatives reflecting the diversity of Roma populations, including women and youth. These Roma representatives must be involved at every stage of policy development, implementation, and evaluation.

- **Improve existing EU policy frameworks**

The EU's High Level Group for the social and labour market integration of ethnic minorities, set up under the Framework Strategy for Non-discrimination and Equal Opportunities, represents an opportunity to bring together the best expertise available on this topic. The Group should be given a strategic role in influencing upcoming policy and funding decisions in this area. In terms of the brief of the Group, it must be remembered that Roma are the largest ethnic minority group in the EU and, given the degree of disadvantage and marginalization experienced by Roma, the deliberations of the Group should provide clear, practical, and strategic recommendations on Roma integration.

Another initiative with the potential to advance the social integration of Framework Strategy on Roma is the European Year of Equal Opportunities for All (2007). The

¹ To expand on the work on data carried out by the European Monitoring Centre on Racism and Xenophobia (EUMC), which will be replaced by a Fundamental Rights Agency.

year provides an opportunity to take a strong stand against anti-Gypsyism by raising public awareness and stimulating debate on how to strengthen social participation of under represented groups. The European Parliament (The Parliament) has recommended that combating anti-Gypsyism should be a particular objective of the year. The Commission, therefore, should encourage member states to ensure that there is Roma participation in their National Implementation Bodies. It is imperative that the Commission ensures that projects promoting Roma rights and integration are included in all national strategies.

The European Commission Interservice Group on Roma could be given the specific task of bringing cohesion and coordination of all Roma-targeted initiatives—both in terms of policy development and funding initiatives—undertaken by the EU. The capacity of the Group would be strengthened through the establishment of a permanent secretariat To ensure the efficacy of such a brief and to maximise the outcomes of EU activities for Roma, the Group of Commissioners on Human Rights and Equal Opportunities should be given special responsibility for Roma and that a reporting mechanism be established between the Group of Commissioners and the Interservice Group on Roma.

- **Enhance legislation compliance and monitoring**

EU institutions must do all in their power to ensure that member states fully transpose the Race Equality Directive and to ensure the effective implementation of the legislation. The introduction of an annual report on the measures being implemented by national governments in transposing the provisions of the Directive is welcomed and could be a mechanism by which the EU can set benchmarks for Roma integration. The Commission should also consider sanctions for states that fail to meet their obligations.

As a way of extending the scope of the Race Equality Directive so as to enhance protection to Roma, the Commission could consider issuing a communication citing segregation as a form of discrimination under the Directive.

Reporting on measures to combat segregation in the fields of, *inter alia*, education, housing, health, social assistance, and social services could become part of the annual report.

- **Complement the existing legal framework**

In carrying out the feasibility study in relation to the need for new initiatives to complement the current legal framework, the Commission should carefully examine the considerable body of literature that illustrates some of the hurdles for the attainment of equality for Roma found within the existing legislative framework. In considering how to complement the current legal framework, attention should focus on the following:

- addressing segregation;
- increasing access to justice for victims of discrimination:

- giving more powers to specialised bodies;
- clarifying implementation of positive measures for member states;
- clarifying procedures for data collection;
- instilling a positive duty to promote equality;
- listing nationality as a prohibited grounds for discrimination.

The Commission should note that some legal experts advocate for an EU Directive focused specifically on Roma. One suggestion is for a "Desegregation Directive" explicitly prohibiting ethnic and racial segregation and requiring action by states to eliminate all instances of segregation of Roma. The Directive would cover the fields of education, housing, health, and access to social services.

Another suggestion is for an "Integration Directive" which would also include a duty for states to promote equality for Roma and implement desegregation measures, as well as special measures to compensate for past discrimination. Additionally, the "Integration Directive" would require states to take into account specific Roma identities and ensure that integration is carried out in a manner that is respectful of these identities.

The EU should also relaunch the debate over establishing a Council Framework Decision on combating racism and xenophobia. Agreement upon a set of standards would allow for increased cooperation between EU states in applying legislation to combat racist and xenophobic offences. It would also bring clarity and help strengthen national laws toward the fight against racism and xenophobia.

I. INTRODUCTION

1. Roma and Persistent Discrimination

It is widely recognised that Europe's Roma face persistent discrimination in all spheres of life, generalised conditions of exclusion and segregation, and high levels of anti-Gypsyism from majority populations.¹ While considerably more attention has been paid to the ongoing human rights violations experienced by Roma in Eastern and Central Europe, Roma living in Western Europe endure similar violations of their basic civil, political, economic, social, and cultural rights.²

Despite the commitments undertaken and the resources committed, the situation of Roma has improved little, if at all, in recent years.³ Research indicates that there has been a rise in anti-Roma sentiment in some countries, fuelled by concerns about migration patterns in general and large-scale immigration of Roma in particular. This report draws attention to the failure of uncoordinated initiatives, the lack of participation of Roma in decision-making processes, the inadequacy of legislation to tackle anti-Gypsyism, and other factors which must be addressed from a new perspective.

Of particular importance is the failure of many, and in many cases well-funded, initiatives to take account of the underlying systemic discrimination which is at the root of much of the economic, social, and cultural poverty and exclusion experienced by Roma. Improving housing or education or access to health care without addressing issues of segregation will bring only short-term improvements at best.

2. Equality and Non-Discrimination in the EU

Respect for and protection of minorities was highlighted as a key value of the European Union (EU) when it became one of the political criteria for accession to the union. According to the agreement reached in Copenhagen in 1993, candidate countries must have achieved “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.”

When the Amsterdam Treaty came into effect in 1999, the EU Council acquired the competence to introduce legislation to combat discrimination on a range of grounds, including racial or ethnic origin. Shortly thereafter, the Commission developed proposals leading to the adoption of Directive 2000/43/EC—the Racial Equality Directive—and Directive 2000/78/EC—the Framework Directive.⁴

The EU's commitment to equality was further reaffirmed in the Charter of Fundamental Rights of the European Union, which was proclaimed in 2000. At the same time, the EU Network of Independent Experts on Fundamental Rights (EU Expert Network) was established with the brief of monitoring, on a country by country basis, the status of the

protections of fundamental rights relative to the Charter. In a 2005 Thematic Comment, the EU Expert Network pointed out "...in the implementation of Union law, the Member States are bound to respect the Charter of Fundamental Rights, as well as the other fundamental rights which belong to the general principles of Union law."⁵

In 25 April 2005, the European Parliament (The Parliament) adopted a resolution calling on the European Commission to prepare a communication on how to coordinate EU efforts to improve the situation of the Roma. Importantly, the resolution also called for the adoption of an action plan "with clear recommendations to the member states and candidate countries to bring about better economic, social and political integration of the Roma."

3. Recent European Union Developments

There have been two recent developments within the European Union that have a bearing on work to secure equality for Roma:

- The European Commission's Framework Strategy on Nondiscrimination and Equal Opportunities for all, September 2005;
- The Proposal for a European Union Fundamental Rights Agency, June 2005.

- **EC's Framework Strategy on Non-Discrimination and Equal Opportunities**

The Framework Strategy is intended to not only ensure effective legal protection against discrimination across the EU, but also to provide for the positive and active promotion of nondiscrimination and equal opportunities for all. A key assumption behind the strategy is the need "to go beyond anti-discrimination policies." The emphasis on actions to promote equality echoes a central theme of this report, which is most clearly articulated in the recommendation to enhance anti-discrimination legislation with a "positive duty" to promote equality.

Acknowledging the lack of, or inadequacy of effective equality bodies, the strategy promises training and capacity-building actions for equality bodies, judges, lawyers, NGOs and the social partners. Other actions specified in the strategy include an annual report on the implementation of the Race and Employment Framework Directives, tools to promote the mainstreaming of nondiscrimination, and a handbook on data collection.

Of particular relevance to Roma is the establishment of a High Level Advisory Group on the Integration of Ethnic Minorities. The communication announcing the Framework Strategy identifies the situation of the Roma as a "particular concern," and the fact that the Roma continue to experience "particularly severe forms of exclusion and discrimination" in a range of areas. With its first meeting scheduled for 2006 and the Commission's intention to bring together key players, the high level advisory group represents an opportunity to make progress on the coordination of EU Roma-focused initiatives toward an effective, comprehensive strategy.

Also of particular importance to Roma is the proposed feasibility study into the need for new legislative initiatives to complement the current legal framework. A major focus of this current report is the inadequacy of legislation in terms of its accessibility to victims of discrimination as well as its scope relative to the widespread nature of discrimination experienced by the Roma. There is a call from some quarters for a new Directive specifically focused on Roma and so the results of the Commission's feasibility study, which are expected to be published in autumn 2006, will be eagerly awaited and studied.

- **Proposal for a European Union Fundamental Rights Agency**

In June 2005, the Commission published a proposal for the establishment of a European Union Agency for Fundamental Rights. This development comes in the light of a desire to extend the remit of the European Monitoring Centre on Racism and Xenophobia. According to the Commission's proposal, the agency, which is to begin functioning in January 2007, is to provide "information, assistance and expertise on fundamental rights" in respect of the implementation of [EU] community law. The work of the new agency will be closely linked with the Charter of Fundamental Rights, and debate continues as to whether the agency will cover all the chapters of the charter or focus on certain priority thematic areas.

There is ongoing debate also as to how the work of the agency will relate to the work of the existing Network of Independent Experts on Fundamental Rights. It is expected that the agency will publish thematic, rather than country reports, which could serve to complement the country reports produced by the network. The Commission has indicated that the agency is to be a "crossroads" by facilitating contacts between the different players in the field of fundamental rights, and it seems particularly important that synergy and cooperation between these two interdependent institutions are essential.

The work of the European Monitoring Centre on Racism and Xenophobia (EUMC) has been important in keeping the problem of racism on the European agenda. Concern was expressed in the Commission's consultation process that the focus on racism not be diluted. At the public hearing in January 2005, the Commissioner responsible spoke of the "unanimity as regards the need to keep the themes of racism and xenophobia at the art of the Agency's activities." This will be essential if the work of the agency is to contribute to the task of securing equality for Roma.

4. Decade of Roma Inclusion

The Decade of Roma Inclusion, an initiative supported by major international actors, including the World Bank, the EU, UNDP, Council of Europe, OSCE and OSI, provides a framework which can act as a model in relation to focused action at the national level. The main objectives of the Decade are to: i) accelerate progress toward improving the welfare of Roma by including Roma in the decision-making process, and; ii) review such progress in a transparent and quantifiable way.

The Decade brings together governments, intergovernmental and nongovernmental organisations, as well as Roma civil society and represents renewed political commitment by governments to combat Roma poverty, exclusion, and discrimination within a regional framework. Currently eight governments are among the founding partners of the Decade and each has developed a Decade Action Plan, covering a 10 year period and focusing on the priorities of employment, education, health, and housing. In addition, each participating government shall take into account the other core issues of poverty, discrimination, and gender mainstreaming.

With an international steering committee and a rotating presidency, each partner government is committed to a process which will not only ensure transparency and accountability, but will also foster mutual learning and support. It is anticipated that the added value of this simultaneous concerted effort, within a regional framework, and the international support available to the initiative will help to expedite the Decade's goals.

5. Legal and Policy Actions to Meet the Challenge

Legislative developments in the EU have stimulated considerable legislative activity at the national level, with EU member states and candidate countries bolstering legal protection against racial⁶ and ethnic discrimination. A majority has transposed, or partially transposed, the Racial Equality and Framework Directives into their legal system and now face the even greater challenge of transforming these formal guarantees into concrete reality. In other words, the challenge these states face is making nondiscrimination and equal treatment a reality for all persons in all spheres of their daily lives.

This paper seeks to map the terrain of legal and policy actions that need to be taken to meet this challenge. To do so, it focuses on Roma, Europe's largest and most deprived ethnic minority group.⁷ The paper represents a distillation of the lessons garnered from a considerable body of literature authored by a range of experts and seeks to present a roadmap for action at the national and EU level.

The paper is divided into three sections. The first section outlines the key elements of an action plan capable of bringing about tangible and sustainable improvement in the lives of Roma in Europe. The second section draws upon these elements in order to map the way forward at the national level, while the third section aims to map the way forward at the EU level.⁸

II. KEY ELEMENTS FOR AN EFFECTIVE STRATEGY

This section draws on the considerable body of literature to identify the keys elements of an effective strategy that will reverse the trend of persistent discrimination faced by Roma in Europe. These key elements are presented within the context of the need to go beyond formal commitments. Additionally, they represent a distillation of the current thinking of the main agencies and bodies working for equality for Roma.

The following are the key elements discussed in this section:

1. a multisectoral and multidimensional approach;
2. full roma participation;
3. the importance of data;
4. combating anti-Gypsyism;
5. strategic components at the sectoral level;
6. comprehensive legislation.

1. A Multisectoral and Multidimensional Approach

A multisectoral and multidimensional approach is one of the keys to making headway in securing the equal treatment of Roma. Actors at all levels that set out to promote tangible improvements in the situation of Roma should therefore ensure that initiatives simultaneously address interlinked problems in different sectors of life, as well as all of the factors underlying each problem.

At a broader policy level, this can best be achieved through the development of an overarching and comprehensive *strategy for Roma equality*. Such a strategy provides the most appropriate framework for policymakers to ensure the necessary policy coverage and coordination.⁹ The development of such a strategy will be dealt with in more detail in Part Three of this paper.

The interlinkage of the problems faced by Roma in the different spheres of life and their cumulative nature is discussed in much of the literature. For instance, substandard, inadequate and often segregated housing conditions create problems in other spheres, such as equal access to education, employment, and public services.¹⁰ Low participation rates in the education system in turn affect employment possibilities, access to public services, participation in public life, and decision-making, health, and access to justice.¹¹ Likewise the difficulties many Roma encounter in accessing basic forms of social assistance are often related to poor education, segregated living conditions, lack of personal documents, and the racist attitudes of social workers.¹²

This tight interlinkage between the problems Roma face in these different areas dictates that a multisectoral approach needs to be adopted. It is not enough to address problems in a segmented manner, focusing only on one sphere, while ignoring the interrelated and

inseparable problems in others. Thus, for example, low rates of school achievement among Roma children need to be addressed in the context of sub-standard and segregated living conditions, the general climate of anti-Gypsy racism, and the discriminatory barriers affecting employment possibilities.

In addition to being multisectoral, current learning also indicates that policy responses need to be multidimensional—meaning that *all* of the factors underlying a given problem be addressed. No matter how well-funded and implemented a given project is, an approach that only tackles some of the factors underlying a given problem, while ignoring others, is likely to meet with limited success at best.

This has been repeatedly demonstrated by the many initiatives aimed at tackling problems of poverty and culture, which have failed to address the role played by discrimination and racism. For instance, in the area of employment job training or temporary work experience have been provided to a number of Roma individuals, yet the widespread discrimination and racism in the labour market have been neglected. On the whole, these measures have not resulted in any significant reductions in overall Roma unemployment levels.¹³ Likewise in the education sector, initiatives to improve Roma levels of schooling have often focused on raising awareness of the importance of education among Roma children and families while failing to tackle discriminatory barriers in the school system as well as the racism of local officials, communities, and education personnel. Once again, little progress has been made in overall levels of Roma school achievement.

Thus, in order to effect widespread and sustainable improvements in the situation of Roma, initiatives need to address the discrimination and racism that underlying problems as well as providing social assistance and support to Roma individuals where necessary.¹⁴

2. Full Roma Participation

There is broad consensus that full Roma participation in all aspects of public decision-making is crucial. Many reports point to the severe under-representation of Roma in elected bodies and in public administration systems across Europe as a significant obstacle to promoting their equal treatment. This virtual absence of Roma voices has been paralleled by a marginalisation of Roma concerns on the political agenda. Other political actors have, at best, given extremely low priority to promoting the equal treatment of Roma, and, at worst, aggravated anti-Roma racism and discrimination. It is widely recommended that this situation be remedied as a matter of urgency and that Roma become equal participants in mainstream decision-making.¹⁵

As well as representation, there is a pressing need for adequate consultation to ensure that Roma needs and interests are taken into account. Such consultations create channels through which discriminatory legislation, policies or practices may be identified and adequate remedies developed. They are also a necessary condition for the development of any initiatives that specifically target Roma communities. The assessment of Roma-

targeted initiatives consistently stress that their success is contingent upon Roma involvement at all stages.

This point was emphasized by the former OSCE High Commissioner on National Minorities, Max Van der Stoel, in a detailed assessment of "the Situation of Roma and Sinti in the OSCE Area." According to Van der Stoel:

“The basic democratic principle that individuals should have a say in how they are governed requires nothing less, and pragmatic considerations counsel the same approach...Unfortunately, countless programs for Roma have been destined to fail because they were developed without Roma participation, and, correspondingly with scant awareness of the specific culture and needs of the intended beneficiaries.”¹⁶

Recommendations from a range of actors, in particular the Advisory Committee on the Framework Convention for the Protection of National Minorities (*hereinafter* Advisory Committee) and the Office of the OSCE High Commissioner for National Minorities, point to the modalities of consultation that are in line with international standards:¹⁷

- range of mechanisms;
- inclusive consultations;
- ongoing Roma involvement;
- transparency of consultations;
- resources for capacity building.

- **Range of Mechanisms**

Both formal and ad hoc mechanisms should be developed so that Roma political parties, associations, and representatives are consulted by officials on a regular basis, as well as specifically when considering issues or adopting decisions on matters of direct concern to them.¹⁸ These consultations should take place at all levels of decision-making.

- **Inclusive consultations**

Studies indicate a tendency among authorities to seek out a single or limited number of representatives, organisations or structures to represent Roma interests. Such an approach falsely homogenizes Roma and assumes singular interests, placing requirements on Roma that would certainly not be acceptable with respect to other sections of the population, who are generally recognised to have diverse needs and interests.¹⁹ It is essential that officials do not rely solely on a limited circle of Roma representatives, but instead also actively seek out other voices at the grassroots level, particularly those directly affected by particular decisions and measures.

- **Ongoing Roma involvement**

Roma involvement needs to begin at the earliest stages of policy development and continue in a meaningful manner through all phases of policy implementation and evaluation.²⁰

- **Transparency of consultations**

In order to have maximum legitimacy and effectiveness, consultation procedures should remain transparent, which ideally should include records of meetings being made public. In addition, representatives of Roma communities should "receive essential information about programs and proposals sufficiently in advance of decision-making deadlines to allow meaningful analysis and input by those representatives."²¹

- **Resources for capacity building**

In order to function effectively, consultative bodies need to have sufficient financial and technical resources to carry out the roles for which they are mandated.²²

The effectiveness of Roma participation in elected bodies, public administration, or consultative mechanisms, is contingent upon the ability of Roma individuals, groups, and organisations to articulate their needs and interests within the various decision-making fora. For example, the local Roma self-government bodies in the Hungarian towns of Nagykanizsa and Bobócsa have been held up as examples of particularly effective local self-governments. Their success is related to the skills of representatives, many of whom had previous NGO experience and had also participated in training programmes focused on public administration.²³ Such training and capacity building programmes for grassroots organisations and potential representatives are essential to full Roma participation.

The vital role played by NGOs has been highlighted by The Open Society Institute in a recent paper assessing the lessons of their 12 years as a donor and advocate of Roma rights:

“The NGO sector within the broader sphere of civil society has proven, over the last decade, to be *the* entry point for Roma participation in public life. It is largely due to Roma civic activism that there is any public awareness or recognition of Roma issues. In addition to their role as advocates for Roma rights, NGOs with strong ties to local communities are essential to the success of any initiatives or interventions targeted at Roma. This sector needs to be expanded and strengthened.”²⁴

As well as being essential to furthering the equal treatment of Roma, the possibility for Roma to participate equally in public affairs is a right in itself. European and international human rights standards unambiguously require that Roma should be able to fully participate in mainstream decision-making, in elected bodies and the public administration, as well as be consulted and involved in all stages of policymaking that directly affect them.²⁵

3. The Importance of Data

The general absence of accurate data with respect to the numbers of Roma in European Union countries and their situation in society is widely recognised. In a 2004 publication on ethnic statistics, the European Roma Rights Center (ERRC) noted that “the need for

statistics on Roma has become ever more acute, as governments have begun to develop special programmes related to Roma.”²⁶

The difficulty of developing, implementing, and evaluating policies without quality data is highlighted in the European Commission against Racism and Intolerance’s (ECRI) General Policy Recommendation No. 1 on Combating racism, xenophobia, anti-Semitism and intolerance.²⁷

Further, in its country monitoring, the ECRI systematically inquires into the availability of data on different minority groups and recommends that such data be gathered. In particular it points to the importance of data in revealing discrimination, while at the same time aiding the task of formulating appropriate responses.²⁸

The Advisory Committee on the Framework Convention for the Protection of National Minorities likewise systematically inquires into the availability of accurate statistical data and has remarked on numerous occasions that discrepancies in estimates as to numbers of persons belonging to national minorities can "seriously hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities."²⁹

Furthermore, such data provides individuals with a key instrument in the defence of their own rights—the ability to demonstrate that they fall into a class of persons threatened with racial or related discrimination. In judicial proceedings, data can be used to support claims of indirect discrimination, by revealing the disparate impact of apparently neutral laws, policies or measures upon certain protected categories of persons. For example, data that shows an over-representation of Roma in segregated schools can constitute important supporting evidence to a claim that testing procedures have a disproportionate negative effect upon Roma.³⁰ As such, the collection of statistical data constitutes an essential tool for giving practical effect to the legal prohibition of indirect discrimination.³¹

Data can also be crucial in raising public awareness. Accurate data can have a greater effect on public opinion than unsupported allegations. Likewise such data can serve to demonstrate the need for transformative policies to the general public.³²

There are, of course, challenges and sensitivities to the collection of accurate data and these are recognised in current literature. One example is that of Germany, where concerns may still exist among national minorities about the systematic collection of data. The Advisory Committee points out that in such situations, alternative methods of data collection should be used, such as ad hoc studies, special surveys, polls or any other scientifically sound method...³³

As to the desegregation of data, the ECRI suggests the inclusion of colour, religion, language, nationality, and national or ethnic origin. The ECRI also recommends that gender be taken into account, in particular in order to reveal double or multiple-

discrimination.³⁴ The Advisory Committee further suggests that data on national minorities should also be broken down by age, gender, and location.³⁵

There is a widely held perception that data collection of this nature violates the law in relation to the protection of personal data. However, the EU Expert Network has recently analysed this issue in great detail in its "Thematic Comment No. 3: the Protection of Minorities in the European Union" and concluded that although some states perceive a conflict between the protection of personal data and the processing and free movement of such data, "there is no contradiction in fact." The report recognizes the possibility of cultural obstacles but concludes that "there are no insuperable legal obstacles to such monitoring."

The distinction is made between, on the one hand, data which is made anonymous so as to be used in statistics, and as such should not be considered as personal data; and, on the other hand, data related to an identified or identifiable natural person and therefore constitutes personal data.³⁶ Data on minority groups, disaggregated by ethnicity or other criteria, may therefore be of a sort that does not constitute personal data.

The production of such data should, in all instances, be carried out in accordance with the law, and the value of such data should be clearly communicated to all stakeholders. Production of data likely to foster racist stereotypes and discrimination or that might give rise to aggravated states of ethnic tension—such as the production and public release of misleading "Gypsy crime" statistics—should be avoided.

Positive models in the production and use of ethnic data for purposes of fighting against discrimination and promoting equality should be made widely known. The ECRI consistently emphasises the importance of respecting the principles of confidentiality, informed consent, and the voluntary self-identification of persons as belonging to a particular group.

4. Combating Anti-Gypsyism

It is widely agreed that in order to make sustainable progress in improving the situation of Roma, it is necessary to take action to combat the dramatic levels of anti-Gypsyism across Europe. At present, reports indicate that anti-Gypsyism pervades all segments of European societies, and is continuously stirred up by the media³⁷ as well as public officials.³⁸

Widespread anti-Gypsyism feeds the cycle of discrimination, in which Europe's Roma are caught. Racist stereotypes too often serve to justify ongoing and past discrimination (for instance legitimising abusive police raids on Roma settlements by the supposed "criminal nature" of Roma) and inspire its continuation. Anti-Gypsyism also serves to obstruct the implementation of measures aimed at improving the situation of Roma. For instance, measures developed at national level often remain empty promises with local officials taking no action to implement these measures, fearing the political costs of challenging the anti-Gypsy attitudes of local populations.³⁹

Combating rampant anti-Gypsyism requires persistent and determined efforts. Many reports stress that the first step is for public officials to recognise anti-Gypsyism and take the lead in openly condemning all manifestations.⁴⁰ In addition, the media's significant role is repeatedly emphasised. For example, in its General Policy Recommendation No. 3 on Combating racism and intolerance against Roma/Gypsies, the ECRI recommends that media professionals be sensitised to "the particular responsibility they bear in not transmitting prejudices when practising their profession, and in particular in avoiding reporting incidents involving individuals who happen to be members of the Roma/Gypsy community in a way which blames the Roma/Gypsy community as a whole."⁴¹ Media professionals also need to be made more aware of the situation of minorities and multiculturalism in order to play a proactive role in countering racism and discrimination.⁴² Furthermore, public campaigns aimed at combating anti-Gypsyism need to be carried out along with targeted anti-racism trainings of key actors, such as elected officials, civil servants, police, media, teachers, and social workers.

In addition to these policy measures, it is repeatedly stressed that criminal law provisions prohibiting racist expressions need to be fully applied, with due respect for relevant European and international standards concerning freedom of expression.

5. Strategic Components at the Sectoral Level

The literature highlights four key components that are necessary in any sectoral level strategy designed to promote Roma inclusion. These are:

- measures to eradicate ongoing discrimination;
- measures to compensate for past discrimination;
- measures to promote Roma identities;
- measures to eliminate future discrimination.

- **Measures to eradicate ongoing discrimination**

For the most part, the inadequate steps taken by EU countries to date in order to eradicate existing discrimination against Roma cannot be attributed to lack of knowledge of the problems. Numerous reports describe in detail the factors that lead to discrimination against Roma in different sectors of life and provide detailed country specific recommendations.⁴³ What remains is for these recommendations to be implemented at the national, regional, and local levels.⁴⁴

Where more locally-tailored knowledge of factors causing discrimination against Roma is necessary in order to develop appropriate remedies, investigations should be carried out with the full involvement of the Roma affected. Such investigations should cover direct and indirect discrimination.

- **Measures to compensate for past discrimination**

The historical discrimination and racism experienced by Roma has had a dramatic impact in terms of disadvantage, marginalisation, and segregation. Any strategy aimed at securing the equal treatment of Roma today, needs to not only address present conditions, but also to seek to remedy the impact of past discrimination.

This will require that *desegregation measures* be taken in all areas in which Roma today experience segregation, most notably in housing and education. In many European Union countries, Roma are physically cut off from the rest of the population, living in indecent housing conditions and channeled into separate schools or classes that provide poor quality education. Although less widespread, segregation in health care and social services is also a serious problem. Providing for the equal treatment of Roma in these sectors requires targeted measures aimed at breaking these patterns of segregation and bringing about the inclusion of Roma in mainstream society.⁴⁵ Some countries have in recent years adopted school desegregation policies. Early indications are that school desegregation laws will need to be adopted in order for desegregation to be achieved in practice.⁴⁶

The importance of tackling the root causes of these segregated systems has been highlighted by the critique that many initiatives have actually worked to reinforce segregation. While such initiatives may have had some impact on the quality of housing and education, they have done little or nothing to end the segregation.⁴⁷ It is also important that desegregation measures do not violate the principles of equality and nondiscrimination by promoting the assimilation of Roma.⁴⁸ The Council of Europe Parliamentary Assembly clearly articulated this point in its 2002 *Legal Situation of Roma in Europe* report:

“Governmental programmes aimed to improve the situation of the Roma must be based on the principle of integration without assimilation... This approach entails two criteria: 1) the emancipation and social integration of the Roma; 2) the safeguarding of their Roma identity”.⁴⁹

Adhering to this approach means, for example, that in undertaking measures to counter the spatial segregation of Travellers⁵⁰ living in caravans, states should not in any way encourage or oblige Travellers to leave their caravans for apartments or houses. On the contrary, states should ensure that Travellers living in caravans may live alongside other residents while continuing to live in caravans and lead a travelling lifestyle if they so choose.⁵¹

An essential strategy in redressing past discrimination is through positive measures. Contrary to the popular perception that positive measures are illegal or discriminatory, they are, in certain circumstances, actually required by the principle of nondiscrimination in order to bring about *de facto* equality. Bringing disadvantaged and marginalised groups, such as Roma, to a level of enjoyment of rights on par with the rest of the population would certainly constitute such a circumstance.⁵²

A considerable amount of confusion and misrepresentation surrounds the notion of positive measures designed to compensate for disadvantage. There is no generally accepted legal definition of the term “positive measures.” Legal scholars continue to debate its meaning and scope.⁵³ In public discussions “positive measures” are commonly and falsely portrayed only as measures aiming at “equality of result,” such as quotas or reserved places for members of target groups in employment or higher education establishments. Measures involving such preferential treatment (sometimes referred to as positive measures *stricto sensu*)⁵⁴ are in fact only one possible and relatively infrequently used type of positive measure. Positive measures can, and generally do, take a wide variety of forms, including information campaigns, special training programmes, zero grade classes, financial support for infrastructure development, and Roma mediators within certain public service establishments.⁵⁵

Article 2(2) of the International Convention on the Elimination of All Forms of Racial Discrimination, to which all EU member states are party, provides an explicit articulation of the obligation to implement positive measures. It stipulates that “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.” Similarly, Article 4(2) of the COE Framework Convention for the Protection of National Minorities provides that “the Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.”⁵⁶

In order to not fall foul of the nondiscrimination principle, positive measures must not themselves result in segregation, and should only be continued until such time as the objectives for which they were developed have been achieved.⁵⁷ In addition, in the European context, these measures must respect the “proportionality principle.” As enunciated in the *Belgian Linguistics* case, this means that there must be a “reasonable relationship of proportionality between the means employed and the aim sought to be realised.”⁵⁸ Programmes of positive measures should therefore be carefully designed with careful attention paid to the particular situation to be addressed and a clear articulation of the goals to be achieved.

Despite international and European standards with respect to positive measures, there remains some uncertainty as to the position that the European Court of Justice (ECJ) will adopt vis-a-vis positive measures aiming at “equality of result” in the case of Roma (positive measures *stricto sensu*). It has not yet had occasion to rule with respect to the use of such measures to further the equality of Roma or other ethnic minorities. In its existing case law on sex equality in employment, the ECJ has found that strict quota systems at the point of recruitment or promotion went beyond what could be considered as acceptable. However, the ECJ has found that preferences for

hiring or promotion established in favour of equally qualified candidates from the under-represented sex are acceptable as long as "the candidatures are subjected to an objective assessment which takes account of the specific personal situations of all the candidates."⁵⁹ Furthermore, it has found strict quota systems to be acceptable prior to the point of recruitment. For example, in *Badeck*, the ECJ was prepared to accept measures which imposed a strict quota reserving at least 50 percent of training places for women, and requiring at least 50 percent of all candidates invited for interviews to be women. These measures were regarded as permissible because they were not "an attempt to achieve a final result appointment or promotion, but rather to provide women with 'additional opportunities to facilitate their entry into working life and their career."⁶⁰

It is commonly presumed that the ECJ will follow its existing case law in sex equality cases when it comes to positive measures *stricto sensu* used to promote the equality of other groups.⁶¹ However, this remains to be seen. It may well be that the court will hold that the drastic levels of exclusion of Roma, combined with barriers of discrimination and racism, in certain circumstances justify strict quota systems in order to make headway toward equal treatment, even in circumstances where it has not held this to be the case with respect to sex discrimination. Such an interpretation may in fact be called for in order for the ECJ's jurisprudence to remain consistent with that of other human rights mechanisms (such as the ICERD, the FCNM or the European Convention on Human Rights) and for the Racial Equality Directive to be effectively implemented in the case of Roma.

Even if the ECJ follows its existing jurisprudence developed in sex equality cases, this would only restrict rigid quota schemes for workplace recruitment and promotion. There would remain considerable scope for a wide range of positive measures to be implemented without crossing the limits imposed by the ECJ.

- **Measures to promote Roma identities**

Numerous reports describe considerable discrimination against Roma in their access to a wide range of fundamental rights due to the failure of policymakers to adequately take into account their specific identities. For instance, in numerous European Union countries Travellers⁶² experience severe violations of their right to adequate housing, health, work, and education, due to the shortage and inadequacy of halting areas. Travellers are left with the discriminatory choice of either giving up significant elements of their culture (the travelling lifestyle) and thereby benefiting from basic rights and services, or maintaining their culture, but experiencing severe violations of basic rights.⁶³

At the European level, this obligation is clearly articulated in Article 5(1) of the Framework Convention for the Protection of National Minorities, which places an obligation upon States Parties to "...undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage." At the international level, Article 27 of the International Covenant on Civil and Political Rights stipulates that "In those States in

which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." In its General Comment on this article, the UN Human Rights Committee has made clear that this article also imposes positive obligations on states to "protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group."⁶⁴

In the case of vulnerable minorities, such as Roma, the European Court of Human Rights has ruled in the recent case of *Connors v. United Kingdom* that states have a positive obligation to facilitate their way of life:

"The vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases (Buckley judgement [...] pp. 1292-95 paras 76, 80 and 84). To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the gypsy way of life (see Chapman, [...] para 96 and the authorities cited, mutatis mutandis, therein)".⁶⁵

The obligation upon states to take into account and take special measures to protect minority identities is also related to the principles of equal treatment and non-discrimination.⁶⁶ The European Court of Human Rights has recently made explicit that a failure to take due account of minority identities may amount to discrimination in the case of *Thlimmenos v. Greece*, where the court ruled that: "... The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different."⁶⁷

Furthermore, the EU Expert Network has highlighted the fact that:

"[T]his judgment [*Thlimmenos*] has been relied upon by the European Committee of Social Rights, in the framework of the Revised European Social Charter (Article E of which provides that the rights of the Charter shall be recognised without discrimination), allowing the Committee to consider that "Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all."⁶⁸

This jurisprudence makes clear that the failure to take due account of minority identities itself constitutes indirect discrimination. This is particularly significant in light of the fact that the EU Racial Equality Directive specifically provides in its Article 2(1) that:

"For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin." There can

therefore be no doubt that in order to fully implement the Racial Equality Directive, EU States need to take due account of minority identities.⁶⁹

In the case of Roma, European States have a legal obligation to ensure that they may preserve and promote their distinct identities while having equal access to fundamental rights and services. Failure to do so constitutes discrimination.

- **Measures to eliminate future discrimination**

As a regular part of policy and law-making, the potential impact of laws and policies on Roma should be assessed at the outset and adjusted, if necessary, so as to avoid any negative impact. Such an assessment should be included as part of the impact assessment of legislation and policy decisions.⁷⁰ This necessitates consultation and participation from Roma communities as well as reliable data. For example, data concerning a disproportionate lack of social insurance cards among members of Roma communities could reveal the indirect discriminatory impact of a regulation requiring the presentation of such cards before receiving treatment.⁷¹ Likewise, information concerning the languages spoken by a given Roma community could provide essential information for developing local education policy that provides equal access to Roma children.

6. Comprehensive Legislation

Anti-discrimination legislation can serve as a legal anchor within an overall strategy to secure equality for Roma. According to the ERRC "the provision of adequate laws banning racial discrimination is a *sine qua non* for addressing Roma rights issues..."⁷² To deal adequately with the level of discrimination experienced by Roma, such legislation needs to be comprehensive in scope and have a dual objective, i.e. to provide individual victims with a remedy, including adequate compensation, and to promote societal change toward the elimination of discrimination.⁷³

EU and candidate countries have introduced some level of anti-discrimination legislation, either prior to or during the process of transposing the Racial Equality Directive.⁷⁴ However, even where such legislative provisions exist, there remain very few cases in which individual victims are able to obtain effective remedy.⁷⁵

With regard to the elimination of discrimination on a wider scale, few EU and candidate countries have this as an objective of their anti-discrimination framework. In countries such as Canada, India and the UK, where there is a longer experience with anti-discrimination legislation, this objective has become a vital component.⁷⁶

The experience of the United Kingdom is illustrative. In the mid-sixties, the United Kingdom enacted laws prohibiting discrimination in public places, employment, access to goods, facilities, services, and housing.⁷⁷ It also established a specialised body (Race Relations Board), which was mandated to investigate and conciliate complaints of discrimination and to bring civil proceedings in cases where conciliation was unsuccessful. After a decade, in which there was only a reduction in the most overt forms

of discrimination and a low level of cases being taken by individuals, the government enacted new legislation empowering a new specialised body, the Commission for Racial Equality, to initiate its own investigations to expose discriminatory practices.⁷⁸

However, by early 2000, after more than 25 years of anti-discrimination legislation ethnic minorities continued to experience significant racism and discrimination.⁷⁹ The conclusions of the Stephen Lawrence Inquiry, an official assessment of the failed police investigation of the murder of a black teenager, shocked Britain with its findings of widespread racism and spurred a further shift toward a more proactive approach to fighting discrimination. New legislation, adopted in April 2001, placed a positive duty on public authorities to eliminate discrimination and to seek to promote equal opportunities and good relations between persons of different racial groups. The Commission for Racial Equality was given explicit powers to enforce compliance with these duties.⁸⁰

A similar situation exists in Northern Ireland. Section 75 of the Northern Ireland Act of 1998 imposes "an equality duty on all public authorities in Northern Ireland to have 'due regard to the need to promote equality of opportunity' across all the equality grounds, including sex, race and ethnic origin, disability, age, sexual orientation and also political belief, in carrying out their public functions."⁸¹ It also includes a duty to promote "good relations" with respect to race, religion, and political belief. All public authorities are obliged to submit equality schemes to the Equality Commission (a specialised body) showing how they propose to fulfill these duties.⁸²

The ECRI recommendation on national legislation to combat racism and racial discrimination encompasses both objectives, i.e. the provision of effective legal recourse to individual victims and the duty to promote equality. With respect to the latter, the following ECRI recommendations are noteworthy:

- "the law should place public authorities under a duty to promote equality and to prevent discrimination in carrying out their functions;⁸³
- the law should place public authorities under a duty to ensure that those parties to whom they award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination;⁸⁴
- ...organisations such as associations, trade unions and other legal entities with a legitimate interest should be entitled to bring a case of racial discrimination without reference to a specific victim.⁸⁵ (This possibility, the ECRI explains...) is essential for addressing those cases of discrimination where it is difficult to identify such a victim or cases which affect an indeterminate number of victims;⁸⁶
- (In terms of sanctions...) the law should provide for the possibility of imposing a programme of positive measures on the discriminator. This is an important type of remedy in promoting long-term change in an organisation. For instance, the discriminator could be obliged to organise for its staff specific training programmes aimed at countering racism and racial discrimination. The national specialised body should participate in the development and supervision of such programmes..⁸⁷

III. NATIONAL ROAD MAP FOR ROMA EQUALITY

The first section of this paper detailed the elements of a strategy aimed at securing Roma equality. Section two aims to provide general direction to policymakers as to how best to incorporate these elements in a national context. Clearly, policy details will need to be developed in each country. Current learning suggests, however, that in order to effect the level of change required across the range of sectors concerned, the following three-pronged approach is called for:

1. development and implementation of national action strategy for Roma;
2. mainstreaming of Roma needs in general policy making;
3. comprehensive Anti-discrimination legislation.

1. Development and Implementation of National Action Strategy for Roma

The need for a multisectoral and multidimensional approach to securing the equal treatment of Roma calls for a national action strategy at the state level. Such action strategies provide an overarching framework by which to address issues in a holistic and coordinated manner.⁸⁸

To date, at least 18 European states have adopted national action strategies aimed at improving the situation of Roma, many over the last few years.⁸⁹ For some newly acceded and candidate countries in Central and Eastern Europe these strategies have been adopted during the process of meeting the Copenhagen criteria for EU accession.⁹⁰ However, many existing strategies require improvement, either in their substance, implementation or evaluation procedures.⁹¹ For instance, a recent report on the Spanish National Gypsy Development Programme, adopted in 1985 (one of the oldest national strategies for Roma in Europe), indicated that the programme "needed to be fully evaluated and then, re-thought and re-focused."⁹²

In setting out the case for national action strategies, this part of the paper examines the following dimensions:⁹³

- general features;
- background conditions;
- strategic components at the sectoral level;
- establishing conditions for effective implementation.

- **General features**

Specific strategy objectives and measures have to be tailored to the national context and respond to the specific national situation. However, learning from the past suggests the incorporation of the following general features:

- roma as full partners;
- comprehensiveness;

- sufficient specificity;
- tailored to local particularities;
- adequate monitoring and evaluation;
- gender dimension.

- **Roma as full partners.** One of the primary lessons of past experience is that Roma need to be fully involved in all stages of policymaking related to national action strategies. This involvement should begin at the earliest stages of the development position Roma as equal partners in the process,⁹⁴ and involve Roma at grassroots level from a wide geographic spread. Additionally, it is important that diverse segments of Roma communities are involved, including women and youth. As with other forms of participation, it is essential that more resources be invested into community empowerment programmes wherein Roma representatives will be equipped to act as full participants.⁹⁵

- **Comprehensiveness.** National action strategies should cover all of the areas of life in which Roma experience violations of their fundamental rights. In most European countries, this includes access to education; housing; social assistance; employment; health care; personal documents; and citizenship status. It also encompasses equal opportunity to participate in public affairs, and receive fair and equal treatment from the justice system and the police.

Strategies should also be comprehensive in their approach to each problem. In particular, they should avoid the error of viewing the problems Roma face as purely or primarily "social problems." Instead, they should ensure that the discrimination and racism so central to the situation of Roma are fully addressed in each policy sector.⁹⁶ Policy responses need to include measures aimed at eradicating all existing discrimination, as well as positive measures aimed at remedying the effects of past discrimination.⁹⁷

- **Sufficient specificity.** National action strategies should be sufficiently specific as to engage states toward concrete commitments that may be monitored. A vague strategy amounts to a rhetorical declaration, but does not constitute an action plan and cannot be adequately monitored or evaluated as the initial goals are not clear.⁹⁸

- **Tailored to local particularities.** Specific initiatives need to be tailored to local particularities. The conclusions of a recent meeting assessing numerous national action strategies highlighted that:

National policies are necessary, but not sufficient. They are just basic documents, frameworks aimed to establish principles and the main direction of action in each field. They lack value if they are not further developed into concrete action plans. They are not—and they cannot be—adequately detailed to respond to the needs of the Roma communities in each specific area. In order to ensure adequate answers,

there is a need to systematically develop sectoral policies, as well as regional and local policies and ensure strong linkages among them.⁹⁹

Participation of local Roma will greatly assist in targeting the initiatives to meet local needs.

- **Adequate monitoring and evaluation.** National action strategies should comprise adequate mechanisms for monitoring and evaluating their impact on an ongoing basis. This means that specific and quantifiable targets should be set that provide a basis upon which it will be possible to measure outcomes and real impact. Targets should include substantive indicators, such as rates of school attendance and completion; employment levels; income levels; average age of mortality and child mortality rates; poverty levels; and percentages of children in segregated forms of schooling. Quantitative data on the situation of Roma in various sectors of life is evidently a prerequisite to effective quantitative monitoring and evaluation.¹⁰⁰ In addition to quantitative data, there is a role for qualitative data that allows for the various effects of particular measures to be assessed.¹⁰¹

Monitoring and evaluation should be carried out not only by implementing bodies and donors, but also involve other actors, particularly the intended beneficiaries. The processes should be transparent and participatory and ensure that diverse segments within beneficiary communities are involved.¹⁰²

- **Gender dimension.** The particular situation of women should be taken into account in the development, implementation and evaluation of national strategies. It should therefore be ensured that Roma women are widely consulted with respect to the design of the strategy and concrete measures, and are full participants in implementation and evaluation.

- **Background conditions**

The existence of certain conditions significantly increases the likelihood that any national strategy or policy initiatives will make real progress in securing the equal treatment of Roma. These conditions include:

- effective Roma participation;
- accurate data on the situation of Roma;
- decrease in anti-Gypsyism.

The objective of realising these conditions can be part of national strategies themselves or be part of broader policies, such as minority policies more generally. The following discussion provides further details as to what is required of States in order to fulfill these conditions that are so vital to eliminating discrimination against Roma and Travellers.

- **Effective Roma participation.** As discussed in the first section of this paper, effective Roma participation in public affairs is a necessary condition for

promoting an improvement in their access to fundamental rights. Assuring full access to all forms of public participation is also a duty of EU states and candidate countries arising from their European and international human rights obligations. EU and candidate states should therefore urgently take the steps necessary to promote Roma participation on an equal footing with other members of society in mainstream decision-making institutions—in elected bodies as well as in the public administration at national and local levels.

No single formula can be provided to states for achieving these goals given the significant differences in their electoral systems, political structures, public administrations, political cultures, minority situations, and other relevant factors. However, the discussion below suggests various options that could be adapted as appropriate to the circumstances in each country.

The significant *under-representation of Roma in elected bodies and public administration* at all levels of power throughout the European Union bears witness to the failure of democratic processes and ordinary recruitment procedures to bring about the equal inclusion of Roma. European Union member and candidate countries will need to implement special measures in order to remedy this situation.

One method for Roma to have an opportunity of obtaining seats in representative bodies is via the creation of Roma political parties. States can support such parties and their chances of gaining seats through a variety of actions such as waiving minimum thresholds for representation in proportional election systems;¹⁰³ reserving seats in elected bodies;¹⁰⁴ amending legal conditions that prevent or make it difficult for Roma to form political parties;¹⁰⁵ and marking out constituencies which are advantageous to Roma parties.¹⁰⁶

An analysis prepared by the Migration and Roma/Gypsies Department of the Council of Europe in October 2003, based on questionnaire responses of member states, noted that "specific political parties for these [Roma and/or Traveller] communities have been set up in only half a dozen countries but, once the first step has been taken, this system has a tendency to grow (there are up to twenty-odd parties in some states). It should be noted that the existence of parties that specifically defend the interests of Roma and/or Travellers results in the introduction of proposals on this question in the electoral manifestos of so-called generic parties."¹⁰⁷

Another method for Roma to obtain representation in elected bodies is by running within other parties—generic ("traditional") political parties or parties representing other minorities. To date, Roma participation in such parties has not brought significant results either in terms of Roma representation on elected bodies or in terms of the promotion of Roma needs and interests by these parties. The results of the above-mentioned Council of Europe questionnaire indicated that Roma representatives enlisted in other parties are only rarely elected.¹⁰⁸

Furthermore, it appears that Roma needs and interests are subordinated to the majority interests of the political party to which Roma individuals belong.¹⁰⁹

If Roma representation in other political parties is to effectively improve Roma participation in decision-making, the attitudes of these political parties will clearly have to change. Roma candidates should be presented in positions where they have opportunities for being elected. In addition, it is important that these parties place Roma interests on their agendas in a meaningful way.¹¹⁰

States can also seek to increase the representation of Roma within public administration through different types of positive measures. For example, these can involve informational measures aimed at ensuring that Roma receive information about vacancies and application procedures so members of Roma communities can apply for positions in the local administration. These can also involve skill development measures, for instance by offering special training or internship possibilities to members of Roma communities in order that they may gain the required competencies to fill positions in the public administration.

In order to bring about significant change in an environment of widespread anti-Gypsyism, it may be necessary for states to adopt preferential treatment measures, such as setting targets for increasing the representation of Roma across public administration agencies. In order to avoid reinforcing perceptions of Roma lack of qualifications or abilities and fostering a backlash against Roma as a result of such measures, it is essential that Roma candidates selected meet required qualification criteria for the posts that they fill and that persons in the immediate working environment as well as the general public be given clear information about the measures and the reasons for them.¹¹¹

It is essential that consultations with different segments of Roma communities become an integral and regular part of decision-making at all levels. *Consultative and advisory bodies* should therefore be established by states to serve as permanent channels of dialogue between Roma communities and state officials. Such bodies can be established at national, regional, district, and local administrative levels.

The Lund Recommendations, developed by an international group of experts¹¹² provide a useful description of the functions that can be attributed to these mechanisms:

“Such bodies might also include special purpose committees for addressing such issues as housing, land, education, language and culture. The composition of such bodies should reflect their purpose and contribute to more effective communication and advancement of minority interests.

These bodies should be able to raise issues with decision-makers, prepare recommendations, formulate legislative and other proposals, monitor developments and provide views on proposed governmental decisions that may directly or indirectly affect minorities. Governmental authorities should consult these bodies regularly regarding minority-related legislation and administrative measures in

order to contribute to the satisfaction of minority concerns and to the building of confidence.”¹¹³

In essence, it needs to be ensured that consultative bodies are set up in such a manner that their composition, mandate, and relationship with decision-makers allows them to serve as an effective vehicle through which minority viewpoints shape policymaking in a meaningful manner.

A number of different models of consultative bodies involving Roma exist in EU member states, including self-government councils, mixed bodies involving governmental and nongovernmental representatives, and nongovernmental advisory boards. Some comprise representatives from different minority groups, while others comprise only Roma representatives.¹¹⁴ Existing examples demonstrate that it is preferable that these bodies be composed only of Roma representatives, rather than a range of minorities, in order that Roma voices not be drowned out and that their interests truly be taken into account.¹¹⁵ They also demonstrate that in order to provide for meaningful Roma participation, it is essential that participants of these commissions should themselves be part of Roma communities.¹¹⁶

Various states have also sought to give individual Roma particular advisory functions within governmental bodies. These positions have included:

- minister, state secretary or under state secretary, with full responsibility for Roma issues;
- posts as Roma advisers to heads of state, ministers, and within ministries;
- secretary general of a governmental advisory committee for the Roma;
- civil servants in certain ministries or state institutions;¹¹⁷
- regional or local level advisers;¹¹⁸

The manner by which individual Roma are selected for such positions differs from country to country. However appointments are generally based on simple nomination. Less frequently, these posts have been opened to recruitment by competitive examination. A problem has arisen in numerous cases due to the perception by grassroots Roma communities that these individuals do not represent them, but are instead "bought" by governments.¹¹⁹ It is therefore essential that recruitment procedures be transparent and that the Roma individuals recruited possess the skills required to effectively carry out their functions. In no cases should the hiring of such individuals be presumed to replace other forms of consultation with Roma communities.¹²⁰

Permanent consultative mechanisms and procedures need to be complemented with ad hoc consultations designed to engage Roma in the formulation, implementation, and evaluation of policies that affect them. Thus, for instance, if a local council is considering a project to improve the housing conditions of a particular Roma community, ad hoc consultations should be carried out with individuals from the community in order to involve them at as early a stage as

possible in the development of this project. These consultations can take a wide range of forms such as formal or informal meetings, roundtables, seminars, and personal interviews.¹²¹

To facilitate participation, states should support capacity-building programmes that reinforce the skills needed to make full use of possibilities for participation in decision-making. Such programmes could include training in political, policymaking, and public administration skills and provide information about human rights guarantees and means of securing their implementation.¹²² States should also support the development of Roma civil society, which provides an important grassroots base for Roma participation and involvement in projects aimed at improving their situation.¹²³ Special attention should be paid to developing the capacities and possibilities for women and youth to become active participants in public affairs.¹²⁴

- **Accurate data on the situation of Roma.** European States urgently need to collect data relevant to combating discrimination and promoting the equal treatment of Roma in their countries. This data should include information about the size, composition (gender, age) location (rural, urban) and specific needs of this population. It should also reveal in a specific manner the situation of Roma in different fields of life. This data should record local specificities that are relevant to policymaking. It should evidently be collected in such a manner as to fully respect European laws, regulations, and recommendations on data-protection and the protection of privacy.

- **Decrease in anti-Gypsyism.** European States also need to undertake short, medium, and long-term initiatives to fight against the prevailing climate of anti-Gypsyism. As long as racist prejudices and stereotypes pervade public opinion about Roma, measures and policies aimed at furthering Roma equality will encounter resistance and failure.

States should develop specific anti-racism campaigns designed to replace negative stereotypes about Roma with objective information. These campaigns should inform the public about the manner in which racism and discrimination have affected Roma communities, and highlight the valuable contribution that Roma have made to their societies. These general campaigns should be complemented by antiracism initiatives targeted at particular actors with a key role in promoting equal treatment in different sectors (such as teachers, social workers, civil servants, local authorities, police, prosecutors, and judges).¹²⁵ COE Human Rights Commissioner Gil Robles has stressed the importance of antiracist education stating that "[s]uch education should start in schools, and include information on the negative consequences of racism and discrimination, and the importance of good ethnic relations for the development of the society as a whole."¹²⁶ Additionally, a national monitoring body could be charged with monitoring anti-Gypsyism and designing measures to combat it. Ongoing

dialogue with Roma NGOs and Roma participation in the work of such a body will be vital to its success.

States should also provide support for initiatives aimed at encouraging and assisting media professionals in playing a positive role in combating anti-Gypsyism. For instance, they could provide support for media prizes recognising antiracist programming; the development of codes of self-regulation; training to media professionals on reporting in a manner that does not promote racist stereotypes about Roma (for instance not mentioning the ethnicity of Roma individuals suspected of committing crimes); and reporting that promotes awareness about the situation of Roma and their positive contribution to society.

When there are public expressions of anti-Gypsyism, public officials at all levels should take the lead in recognising the racist nature of such expressions and in condemning them.

In addition, the criminal law framework should be developed and applied in such a manner as to act as a strong deterrent against the spread of anti-Gypsyism. In its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, the ECRI recommends *inter alia* that the following acts be penalised when committed intentionally against "a person or grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin": public incitement to violence, hatred or discrimination; and threats. The ECRI further recommends penalising "the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin."¹²⁷ By following the ECRI's recommendation and ensuring that such criminal legislation is effectively applied in the case of expression targeting Roma, states will significantly reinforce their fight against anti-Gypsyism. However, states must also ensure that the application of such penal provisions is in accord with legal standards protecting freedom of expression.

- **Strategic components at the sectoral level**

The literature highlights four key components that are necessary in any sectoral level strategy designed to promote Roma inclusion. These are:

- measures to eradicate discrimination against Roma;
- measures to compensate for past discrimination against Roma;
- measures to promote Roma identities.

- **Measures to eradicate discrimination.** In all sectors of life, discrimination needs to be recognised and tackled if tangible and sustainable progress is to be made in improving the situation of Roma. In most countries, a multitude of reports already provide information about the nature of discrimination in different sectors as well as recommendations on how to eliminate this discrimination. What remains is for such measures to be adopted and implemented.

Effective action strategies should not only address problems Roma face (such as low rates of employment and low levels of education) as social or cultural problems, but should also seek to remedy *discriminatory factors*, whether they be laws, regulations, policies or practices. For example, a considerable amount of resources can be spent on training programmes for Roma to qualify them for employment, but as long as discrimination bars their recruitment into the workforce, their unemployment rates will remain high.

In particular sectors or locations, additional research may be necessary into specific manifestations of discrimination. Where this is the case, the national action plan should stipulate that the necessary research be carried out. Roma themselves should be full participants in this process.

- **Measures to compensate for past discrimination.** The historical discrimination and racism experienced by Roma has had a dramatic impact in terms of disadvantage, marginalisation, and segregation. Any strategy aimed at securing the equal treatment of Roma today, needs to not only address the present, but also to seek to remedy the impact of past discrimination.

This will require that desegregation measures be taken in all areas in which Roma experience segregation, most notably in housing and education. In some countries, desegregation measures will also be required in the health and social services sectors. In line with this goal, states should ensure that initiatives carried out with the aim of promoting Roma equality do not reinforce existing patterns of exclusion and marginalisation.

An essential strategy in redressing past discrimination is through positive measures. Contrary to the popular perception that positive measures are illegal or discriminatory, they are, in certain circumstances, actually required by the principle of nondiscrimination in order to bring about *de facto* equality. Bringing disadvantaged and marginalised groups, such as Roma, to a level of enjoyment of rights on par with the rest of the population would certainly constitute such a circumstance. These positive measures can take a range of forms, depending on what is most appropriate to a given situation.

In order to avoid falling foul of the nondiscrimination principle, positive measures must always be designed in such a manner that there is a reasonable relationship of proportionality between the means employed and the aim sought to be realised. Positive measures must also cease when they achieve their objective of enabling Roma to compete equally with the majority population. This will generally require data about the situation being addressed, and close monitoring of the implementation of measures so that their impact can be evaluated.

In some situations, given the long term and endemic nature of the disadvantage experienced by Roma, positive measures *stricto sensu*, may be the most effective means of making progress toward equal treatment. Where policymakers elect to

use such measures, it is vital that the policy and the reasons for it be fully explained in the institutional environment in which the measures are to be implemented as well as to the general public. This is key to avoiding a counterproductive result, for instance by reinforcing negative stereotypes about Roma (that they “need” such measures due to lack of merit or competence, rather than due to longstanding societal barriers) or stirring up resentment against them (due to the false perception that these measures represent “reverse discrimination”).¹²⁸

A related point is the importance of having members of the judiciary in EU and candidate states receive adequate training in the European and international norms of equal treatment and nondiscrimination that bind their countries. Judges have an important role to play in ensuring that national jurisprudence is consistent with these obligations by making clear that positive measures are not only consistent with the principles of equal treatment and nondiscrimination, but sometimes, as in the case of Roma, are actually required in order to bring about *de facto* equality.

- Measures to promote Roma identities. A key horizontal principle of a national strategy should be the promotion of the distinct cultural identities of Roma communities. On the one hand, this implies that measures aimed at improving Roma access to basic rights in different sectors do not do so at the cost of assimilation. On the other hand, it requires that in different sectors the strategy includes special measures aimed at promoting elements of Roma identities where this is the desire of the Roma themselves. As discussed in section one, such measures are fundamental to full respect of the principles of equal treatment and nondiscrimination that bind EU and candidate states.

Where States have not done so, they should recognise Roma as national minorities, making them beneficiaries of minority rights protection standards, such as the Council of Europe Framework Convention for the Protection of National Minorities.

- **Establishing conditions for effective implementation**

Political will is essential in order to translate a national strategy into concrete and effective action on the ground. Such political will be demonstrated in the setting up of appropriate structures, the allocation of responsibility at the highest level, and the commitment of adequate resources.¹²⁹

In the first instance, a coordination mechanism should be established in order to oversee implementation of the strategy. Roma representatives should be full participants within this mechanism and should be selected by Roma. In addition, this mechanism should work closely with Roma representatives and with officials at as local a level as possible. It should be allocated the necessary competencies and resources to ensure effective horizontal implementation of the strategy by each relevant ministry, as well as vertical implementation at the regional and local levels.¹³⁰ The powers of the coordination mechanism should include the ability to

require each ministry and regional or local authority involved in implementation to report on measures carried out. Feedback from these bodies should be used to adjust the strategy and its implementation so as to improve its effectiveness.

Experience indicates that it has been particularly difficult for central authorities responsible for coordinating the implementation of national strategies on Roma to ensure their implementation by regional and local authorities.¹³¹ The Council of Europe High Commissioner for Human Rights summarised the problem as follows:

“Undoubtedly, the past ten years have also seen positive developments at national level, such as the emergence of stronger Roma movements, and the adoption of national programmes, strategies or action plans for the improvement of the situation of the Roma in many Council of Europe member states. The concrete results of such strategies remain, however, sporadic and their implementation is often hampered by resistance at local level. Each of my visits has revealed with increasing clarity, that the lack of real political will and the prevailing climate of intolerance create significant obstacles for the implementation of national programmes. In many countries, I observed that local authorities, especially those holding elected positions, are often unwilling to implement measures under national programmes in fear of unpopularity in the eyes of the majority population, or sometimes because of their own discriminatory attitudes. Technical, economic and legal obstacles are often evoked as reasons for non-implementation of, for instance, programmes aimed at ensuring decent living conditions at Roma settlements, although in most cases, such obstacles could be overcome if there was the necessary political will. In situations where local authorities fail to implement national programmes, the central Government ought to intervene much more rigorously in order to ensure that commitments undertaken by it through the adoption of such strategies and national programmes are fulfilled.”¹³²

If the national strategy does not translate down to the regional and local level, it will not have concrete effects on the lives of Roma. To achieve it is essential to train public officials in anti-discrimination work and make them aware of the legal obligations and national priorities recommended by the ECRI.¹³³

The Decade of Roma Inclusion provides a framework which can act as a model in relation to focused action at the national level. The main objectives of the Decade are: i) to accelerate progress toward improving the welfare of Roma by including Roma in the decision-making process, and; ii) to review such progress in a transparent and quantifiable way.

Through an International Steering Committee and a rotating Presidency, the Decade prompts each partner government to commit to a process which will not only ensure transparency, and accountability, but will also foster mutual learning and support. It is anticipated that the added value of this simultaneous concerted effort, within a regional framework, and with the international support available to the initiative will help to expedite the Decade’s goals.

2. Mainstreaming of Roma Needs in General Policy Making

The second key approach that should be adopted by national governments in order to improve life for their Roma populations is to mainstream Roma issues into general policymaking. While targeted Roma policies are necessary, Roma issues should not be ghettoised within ministries in a manner mirroring the ghettoisation of Roma within society. The perspective and particular needs of Roma should instead be included in all aspects of general policymaking.

This means that when general policies are being developed, Roma needs and interests should be taken into account. Thus, for instance, in developing their national action plans for social inclusion, employment, and lifelong learning, European Union states should explicitly include Roma as a target group within these action plans. Likewise, when passing any domestic law, such as a law aimed at improving housing conditions, the specific needs of Roma should be taken into account.

Mainstreaming also implies the use of impact assessments of laws, regulations, and policies. If any are found to discriminate against any segments of Roma populations, either directly or indirectly, they should be amended so as to eliminate any discriminatory impact. Similarly, if impact assessments reveal a potential discriminatory impact of future laws, regulations or policies, the necessary amendments should be made. In order to ensure that such impact assessments are systematically carried out, states should impose a legal duty on public authorities to implement assessments and act on their results.¹³⁴

When Roma needs and identities are systematically taken into account, Roma should be able to benefit from rights and services equally with other segments of the population without abandoning key aspects of their identities. Thus, for instance, Roma should be able to exercise their right to vote on equal terms with other citizens, whether or not they choose to lead a travelling lifestyle.¹³⁵ In order to guarantee equal treatment with respect to all general rights and services, policymakers may need to make special provision to accommodate aspects of Roma identities, such as developing special measures to provide children who travel through part of the school year continuous and equal quality schooling.

In order to systematically take the interests and needs of Roma into account, they should be regularly consulted and involved in policymaking processes, including impact assessment and policy development.

The mainstreaming of Roma policy issues can be given a significant impetus through appropriate legal anchors, such as a legal duty on public authorities to promote the equal treatment of Roma; an obligation on public authorities to regularly review the impact of all laws, regulations, and administrative provisions upon Roma; and an explicit obligation on public authorities to consistently take due account of minority identities in policymaking. These legal anchors will be discussed further in the next section of this paper.

3. Comprehensive Anti-discrimination Legislation

The generalised failure of existing anti-discrimination legislation across Europe to provide remedy in more than a handful of cases of discrimination against Roma calls for rapid and significant action by member states. The persistence of widespread discrimination and limited political will to tackle these problems vividly demonstrates that legal measures need to address not only individual complaints, but also proactively promote broader institutional change.

The EU Racial Equality Directive provides states with a firm basis for developing the necessary legislative framework. All European Union member states that have not yet done so, as well as candidate countries, should therefore transpose the provisions of the Racial Equality Directive into their national legal systems as swiftly as possible.¹³⁶ They should also do so as fully as possible, going beyond the Directive's minimal requirements where this is necessary to achieve its primary purpose: "to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment." Those states that have begun to transpose and implement the Directive in their legal systems should continue to develop their legislative framework in this area in order to ensure that it is as effective as possible in achieving this purpose.

For guidance in establishing a legal framework that effectively implements the principle of equal treatment, states should make use of the ECRI's General Policy Recommendation No. 7, which complements the Racial Equality Directive by enumerating key substantive components and procedural mechanisms.

While all of the components set out in the Racial Equality Directive and the ECRI's recommendation are vital to establishing a legal framework that promotes the equal treatment of Roma, certain components of this framework bear singling out in the context of this paper. They are:

- covering all areas of life;
- including nationality as a form of prohibited discrimination;
- listing segregation as a form of discrimination;
- imposing equality duties on public authorities;
- imposing a duty to carry out impact assessments;
- imposing a duty to take due account of minority identities;
- using statistics and situational tests as means of proof;
- allowing nongovernmental organisations to bring complaints;
- providing assistance with legal costs;
- disseminating information about the 'Race Directive';
- encouraging dialogue with Roma NGOs.

- **Covering all areas of life**

It is important that states review their legislation in order to ensure that it covers *all* the areas of life in which Roma experience discrimination and all the forms of

discrimination that they experience.¹³⁷ This means that their legislation should not only cover the areas of life explicitly enumerated in the Directive,¹³⁸ but also other key sectors, required by the standards set out in the ECHR, the ICERD, and ECRI recommendation No. 7, such as:

- administration of justice, including protection of security of the person (ICERD 5 (a) and (b)/ECHR Arts. 5, 6,13,14);
- political participation, including the right to vote, stand for election, take part in government and in the conduct of public affairs at any level, as well as to have equal access to public service; (ICERD, 5 (c)) (ECHR Art. 14 and Protocol No. 1 Art. 3);
- the right to freedom of movement and residence within the border of the state (ICERD, 5(d)(i)/ECHR Protocol No.4 Art. 2 and Art. 14);
- the right to freedom of peaceful assembly and association (ICERD, 5(d) (ix)/ECHR Arts. 11 and 14);
- the right to nationality (ICERD 5(d)(iii));
- the right to not be subject to discriminatory treatment or activities by the police and other law enforcement officials, border control officials, and army and prison personnel (ECRI paragraph 26 explanatory memorandum to Recommendation No. 7);¹³⁹

Where any area is excluded from protection, the legislation will have only a limited effect, leaving victims of discrimination with no legal remedy. It also means that, without a strong legal anchor, these fields will likely be excluded from the broad-ranging actions needed to combat discriminatory regulations, institutions, and practices. Thus, for instance, if activities of the police do not fall within the scope of anti-discrimination legislation, Roma victims of discriminatory treatment by the police will be unable to achieve remedy. In addition, there will be no legal catalyst pushing the police forces to seek to identify and eliminate any regulations and practices within their services that discriminate against Roma (such as ethnic profiling).

- **Including nationality as a form of prohibited discrimination**

In order to close a significant loophole that allows for certain forms of discrimination against Roma, states should ensure that “nationality” figures are included among the list of prohibited grounds of discrimination. This has been recommended by the ECRI, the European Roma Rights Center (ERRC) and the European Roma Information Office (ERIO).¹⁴⁰ Excluding nationality from the list of prohibited grounds of discrimination leaves open the possibility for blatant racial discrimination against Roma to be justified as based on “nationality.”¹⁴¹ This problem applies both to Roma citizens and non-citizens, who are frequently wrongly perceived by local populations as “foreigners.”

- **Listing segregation as a form of discrimination**

Since eradicating segregation is a key element in the fight for equality for Roma, listing segregation as a form of discrimination with the legislative framework is essential. While it is clear that segregation is a form of unfavourable treatment, it is

also clear, as pointed out by the ECRI, that in practice it is often overlooked or excluded from the scope of such legislation. Therefore segregation needs to be explicitly listed as a form of discrimination in legislation.¹⁴² This clarity will serve to support the authorities in undertaking the desegregation measures that will be necessary to remedy the existing exclusion and marginalisation of Roma.

- **Imposing equality duties on public authorities**

Another ECRI recommendation relates to including within the legislation a duty on public authorities to promote equality and prevent discrimination in carrying out their functions. Through such a duty, each ministry, regional, and local authority can be legally required to take the steps necessary to promote the equal treatment of Roma in an active manner. This includes ensuring that no laws, regulations, policies or practices have the effect of discriminating against Roma; actively implementing and evaluating the national action strategy specific to Roma and/or any other measures required to secure the equal treatment of Roma; taking Roma needs and identities into account in policymaking; and promoting their distinct identities. Mechanisms also need to be established to monitor and enforce public bodies' compliance with these duties. The examples of the United Kingdom and Northern Ireland, discussed above, where specialised bodies are involved in enforcement, provide models that states can adapt to their own contexts. The equality bodies set up in accordance with Article 13 of the Racial Equality Directive could be mandated to provide assistance, monitoring, and evaluation of the implementation of this duty by public bodies.¹⁴³

States should also "place public authorities under a duty to ensure that those parties to whom they award contracts, loans, grants or other benefits respect and promote a policy of non-discrimination."¹⁴⁴ In this way, anti-discrimination legislation also promotes widespread changes in the employment sector, likely to have a far more significant impact in fighting workplace discrimination than punitive actions based on individual complaints.¹⁴⁵

- **Imposing a duty to carry out impact assessments**

Both the Racial Equality Directive and the ECRI's recommendation explicitly require member states to ensure that "laws, regulations and administrative provisions" do not violate the principle of equal treatment.¹⁴⁶ In order to fulfill this requirement, states should impose on all authorities an obligation to carry out regular impact assessments to ensure that their laws, regulations, and administrative provisions conform to this requirement.¹⁴⁷ In order to ensure that authorities conform to this obligation in the case of Roma, they should, through implementing instructions or directions, be placed under a specific obligation to review the impact of all laws, regulations, and administrative provisions upon Roma. Any discriminatory provisions should be amended or abrogated.

- **Imposing a duty to take due account of minority identities**

While implicitly included in the prohibition of discrimination, states should make explicit the obligation of authorities to consistently take due account of minority identities in policymaking. Particular instructions should therefore be issued to public

bodies at all levels regarding the need to respect and promote Roma identities in exercising their functions. Practice reveals that too often Roma are placed in the degrading position of having to choose between exercising basic rights and preserving essential elements of their identity. Racist stereotypes concerning Roma cultures often underlie and justify policies and practices that promote their assimilation or exclusion. An explicit duty to take these identities into account can therefore serve to counter the existing trend of either overlooking the particular needs of Roma or deliberately trying to assimilate them.

- **Using statistics and situational tests as means of proof**

Given the difficulties that victims of discrimination generally face in proving discrimination, states should strive to put tools at their disposal that make it possible for them to support their case. The shifting of the burden of proof provided for in the Racial Equality Directive is a vital tool. However, the alleged victim still needs to put forward enough factual evidence for there to be a presumption of direct or indirect discrimination.¹⁴⁸ Situation tests have proven to be an important form of evidence.¹⁴⁹ Likewise, in cases of indirect discrimination, statistical evidence is often essential in order to prove the disproportionate negative effect upon members of a given category. States should provide for the possibility of establishing the presumption of direct or indirect discrimination by any means, including statistical evidence and situation tests.¹⁵⁰ In order for victims to be able to use statistical data to prove discrimination, a prerequisite is that such data is collected and made available to them.¹⁵¹

- **Allowing nongovernmental organisations to bring complaints**

Given the hesitation of many Roma to bring complaints of discrimination, it is vital that nongovernmental organisations are able to lodge complaints on their behalf. States should therefore ensure that they fully implement Article 7(2) of the Racial Equality Directive providing for this possibility.¹⁵²

States should also heed the ECRI's recommendation and provide in law that "organisations such as associations, trade unions and other legal entities which have, according to the criteria laid down by national law, a legitimate interest in combating racism and racial discrimination, are entitled to bring civil cases, intervene in administrative cases or make criminal complaints, even if a specific victim is not referred to. If a specific victim is referred to, it should be necessary for that victim's consent to be obtained." The possibility for nongovernmental organisations and associations to bring complaints, even if there is not a victim, is crucial to eliminating institutionalised forms of discrimination.¹⁵³ For instance, an NGO could challenge practices of segregating Roma into schools for mentally disabled by providing statistical evidence of their disproportionate representation in these schools.

- **Providing assistance with legal costs**

States should ensure that possibilities for free legal aid exist in their legal system and that this is available for victims of discrimination who wish to seek remedy before the courts. A court appointed lawyer should also be made available to all victims of discrimination who so require.¹⁵⁴ Too often Roma are unable to make use of existing

anti-discrimination provisions as they are unable to cover the costs involved in pursuing a complaint and/or they do not have access to legal counsel. Given the difficulties involved in proving discrimination, even if Roma victims are legally permitted to pursue their complaints without counsel, their chances of successfully proving discrimination under such circumstances are slim. Free legal aid and the possibility of a court-appointed lawyer are therefore vital in making anti-discrimination provisions meaningful for all Roma victims of discrimination, regardless of their financial situation.

- **Disseminating information about the ‘Race Directive’**

Article 10 of the Racial Equality Directive requires that member states "take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by all appropriate means throughout their territory." It is vital that Roma be provided with information about anti-discrimination legislation and the recourses available to them in cases of discrimination. States should therefore carry out and support information campaigns aimed at providing Roma with this information. They should also support targeted trainings aimed at Roma representatives and nongovernmental organisations so that they are able to make effective use of anti-discrimination legislation. Judges, prosecutors, police, and other law enforcement officials as well as lawyers, should also be provided with targeted training with respect to anti-discrimination legislation.¹⁵⁵

- **Encouraging dialogue with Roma NGOs**

States should ensure that they fully transpose Article 12 of the Racial Equality Directive as concerns Roma. This article requires states to "encourage dialogue with appropriate non-governmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on grounds of racial and ethnic origin with a view to promoting the principle of equal treatment." In the case of Roma, adequately translating this article requires states to promote regular consultations with Roma nongovernmental organisations. They should do so by establishing permanent and ad hoc mechanisms of consultation with Roma at all levels (national, regional, local, etc.) and also by helping to build the capacity of Roma NGOs.¹⁵⁶

IV. EU ROADMAP FOR ROMA EQUALITY: A FRAMEWORK ROMA EQUALITY STRATEGY

In a resolution adopted on 25 April 2005, the European Parliament called on the European Commission to:

“Prepare a communication on how the EU, in cooperation with the Member States, can best coordinate and promote efforts to improve the situation of the Roma, and to *adopt an action plan* with clear recommendations to the Member States and candidate countries to bring about better economic, social and political integration of the Roma¹⁵⁷”

In making this recommendation, the European Parliament reflected growing calls for the European Union to coordinate its Roma related activities and adopt an overarching comprehensive policy strategy in order to increase the effectiveness of its actions to promote the equal treatment of Roma across the European Union.¹⁵⁸ As at the national level, a multisectoral and multidimensional approach is necessary at EU level. EU actions have been criticised as lacking coherence and approaching issues in an uncoordinated and piecemeal manner, thus spending resources without necessarily attaining the desired impact.¹⁵⁹ These actions have also been criticised for sometimes being misdirected and supporting projects that do not necessarily lead to medium or long-term improvements in the human rights situation of Roma.¹⁶⁰

An EU Framework Roma Equality Strategy (*hereinafter* EU Roma Equality Strategy) could, like the EU Framework Strategy on Gender Equality, aim at coordinating all Roma-related EU initiatives under a single umbrella to ensure resources are used to maximum positive impact. The strategy would require clear operational objectives indicators and benchmarks and entail regular monitoring and evaluation of progress.

A combination of targeted measures and mainstreaming of Roma issues will be crucial to achieving the strategy's objectives. This strategy should also serve as a matrix for all European Union funding, making it possible to ensure that projects financed further the strategy's goals.

The application of the Open Method of Coordination (OMC) to the implementation of an EU Roma Equality Strategy, would translate the strategy's objectives into concrete national action plans. Timetables, indicators, and benchmarks could be set for the achievement of specific targets in each state. Under the OMC, states would each report on the measures they take and mutually evaluate each other's progress. This method would require that states initially collect information, develop specific targets, and monitor and evaluate progress. The approach would also provide much mutual learning between countries.

It is essential that the EU Roma Equality Strategy be developed in close consultation with Roma civil society from across the European Union, and that Roma be involved in the implementation, monitoring, and evaluation of the strategy. The EU should include in

this consultation the European Roma and Travellers Forum, Roma political parties, and Roma NGOs at international, European, national, and local levels. The consultation process should include the circulation of a draft strategy via the internet allowing for a broader range of Roma voices to contribute. The process of developing the strategy could therefore itself constitute an important step in developing working methods and channels to improve the participation of Roma in European Commission decision-making.

The Decade of Roma Inclusion, an initiative supported by major international actors, including the World Bank, the EU, UNDP, Council of Europe, OSCE and OSI, provides a framework which can act as a model in relation to focused action at the national level. The main objectives of the Decade are to: i) accelerate progress toward improving the welfare of Roma by including Roma in the decision-making process, and; ii) to review such progress in a transparent and quantifiable way.

The Decade brings together Governments, inter-governmental and non-governmental organisations, as well as Roma civil society and represents renewed political commitment by Governments to combat Roma poverty, exclusion, and discrimination within a regional framework. Currently eight governments are among the founding partners of the Decade and each has developed a Decade Action Plan, covering a ten year period and focusing on the priorities of employment, education, health, and housing. In addition, each participating Government shall take into account the other core issues of poverty, discrimination, and gender mainstreaming.

With an International Steering Committee and a rotating Presidency, each partner government is committed to a process which will not only ensure transparency, and accountability, but will also foster mutual learning and support. It is anticipated that the added value of this simultaneous concerted effort, within a regional framework, and with the international support available to the initiative will help to expedite the Decade's goals

The consultative processes emerging from the Decade of Roma Inclusion will play a strong role in defining the specific details of the EU Roma Equality Strategy. However there is much to be learned from findings within the vast body of existing reports and recommendations. Two areas of particular importance in this regards are:

1. strategic components at the sectoral level;
2. guidelines in developing a framework strategy for Roma equality;

1. Strategic Components at the Sectoral Level

While other specific sectoral objectives of the EU Roma Equality Strategy will arise out of the consultation process, the following stand out as areas where the EU can significantly contribute to national action to promote Roma equality:

- promoting Roma participation;
- encouraging data collection;
- combating anti-Gypsyism;

- encouraging national strategies on Roma Equality.

- **Promoting Roma participation**

This is an area where the EU can have a significant positive impact. In order to set an example, the EU should look inward and develop possibilities for Roma participation in its own institutions. In addition, the EU is in a position to reinforce Roma participation in public life in member states, candidate countries, and partner countries through a combination of financial, programmatic, and policy resources.

The right to effective participation in public life means that Roma should have possibilities to participate equally in EU elected bodies and institutions, and be fully included in all mainstream policy processes.

- **Improving Roma representation in the European Parliament.** Efforts to increase Roma representation in the European Parliament could include European political parties encouraging Roma to stand for election. Two Roma representatives have been elected to the European Parliament as members of mainstream parties.¹⁶¹ However, as at the national level, even election does not in itself guarantee that Roma concerns will be placed on the parties' agendas in a meaningful way. Mainstream political parties should therefore also take on broad Roma needs and concerns and give voice to them at the European level.¹⁶²

Given current levels of under-representation and the reluctance of political parties to promote the interests of Roma, the EU should consider the introduction of positive measures to remedy the vast discrepancy between the size of the Roma population and their representation in the European Parliament. As at the national level, these measures could take various forms, for example waiving or lowering minimum thresholds for obtaining seats in the case of Roma lists.

Voter education campaigns could be a useful way of encouraging Roma to vote in European elections. In countries where a Roma party is running or where Roma candidates are on mainstream party lists, a high turnout of Roma voters would obviously increase the chances of Roma representatives gaining seats in the European Parliament.

In the short-term, the European Parliament could create a special working group or committee on Roma issues within the Parliament. This would increase the attention given to Roma issues by the European Parliament and also further sensitise representatives to the specific situation of Roma. This working group or committee could immediately turn its attention to the issue of Roma representation within the Parliament.

- **Improving Roma representation in European Union institutions.** Roma should also be actively recruited to work in European Union institutions, including the European Commission, the European Parliament, and Delegations of the European Commission in candidate and other countries.¹⁶³ Positive

measures should be taken to recruit Roma, as permanent agents, temporary agents, and national experts. When exams for permanent positions are held, special efforts should be made to ensure that information about these exams reaches Roma who may be qualified for these positions. Roma NGO networks and Roma media could, for example, be useful channels for spreading such information. Likewise, when temporary agents or experts are recruited, efforts should be made to ensure that Roma are informed of these employment possibilities. Internship and special training programmes in EU matters could also be offered to Roma in order to increase their familiarity with the workings of the European Union and provide them with possibilities to acquire the competencies required for recruitment. Furthermore, European Union institutions could consider establishing “targets” for recruiting Roma into their structures, and hiring these candidates on a preferential basis when they are equally qualified with other candidates applying for positions. The many international organisations funded by the European Commission should also take positive measures in order to increase Roma representation.¹⁶⁴

- Establishing mechanisms for consulting Roma. European Union institutions and elected officials need to establish channels of regular dialogue with Roma from across the European Union. The European Union should seek to be as inclusive of different Roma voices as possible. EU bodies should therefore establish links with the European Roma and Travellers Forum, Roma political parties, and Roma NGOs at international, European, national and local levels.¹⁶⁵ Those bodies with a focus on issues of particular concern to Roma, such as the Commissioners' Group on Fundamental Rights, Anti-discrimination and Equal Opportunities, should be particularly attentive to establishing dialogue with a wide range of Roma representatives.

In addition, when policies of particular relevance to Roma are being considered, such as an EU Roma Equality Strategy, more extensive ad hoc consultations should be carried out with different segments of Roma communities. These consultations can take a wide range of forms, including consultations via the internet, NGOs, roundtables, and personal interviews. It is essential that consultations begin early in the policy development process and that sufficient time is allowed for respondents to provide informed comments. Furthermore, it should be ensured that Roma involvement in policies that concern them be continued throughout the implementation, monitoring, and evaluation phases.

- Actions to expand and strengthen Roma civil society. Strengthening and expanding Roma civil society is essential to their increased participation in public life. The EU is well placed to assist in the development of a network of active, well-organised and competent Roma organizations. Initiatives should cover three areas of activity—capacity building, support for network building, and core funding.

Funds for activities aimed at individual and organizational capacity building should seek to provide Roma civil society with the tools to participate more effectively in all aspects of policymaking.¹⁶⁶

While it will be necessary for specific needs to be expressed on a local basis, capacity building could involve focuses such as:

- training and awareness raising on human rights standards, including the Directives;
- training on the processes available at the national, European and international levels in order to promote application of these standards (judicial procedures, making use of monitoring bodies, and lobbying elected officials);
- developing and providing information about local, national, and European decision-making processes and possibilities to express needs and concerns at each level;
- training on specific policy issues;
- developing and providing information about the types of measures that have been developed elsewhere in order to address specific problems (such as school desegregation);
- developing and providing information about sources of funding available to support specific projects;
- training in project development and management; and
- training in advocacy skills.¹⁶⁷

Special efforts will be needed to include those segments of the Roma population that are most marginalized in capacity building initiatives. A broad EU-wide funding programme is required, with Roma being the primary actors determining needs and implementing projects.

EU resources targeted at projects aimed at strengthening national networks of Roma organisations and representatives, could involve activities such as:

- roundtables, meetings or seminars bringing together Roma in order to discuss common initiatives, - recommendations or strategies, or to establish institutional networks;
- websites, television or radio stations, or other fora that develop links between Roma representatives in different parts of the country; and
- initiatives aimed at informing Roma in one country or region about processes through which Roma participation was strengthened in other countries or regions.

Core funding for Roma networks and umbrella organizations, including European level networks, would go a long way to the growth of strong organizations capable of representing Roma.

In addition to project-based funding, the European Union should make institutional core support available for grassroots Roma organisations. Nongovernmental organisations need basic financial support for office infrastructure and personnel if they are to be able to carry out activities. Without such basic funding, organisations survive in a state of perpetual insecurity and have great difficulty developing even a medium-term strategy as their existence is uncertain.¹⁶⁸

- Encouraging states to improve Roma participation in public life. Strong grassroots Roma organisation alone will not result in participation. All too often public officials refuse to engage in dialogue with Roma organisations. Furthermore, projects are often carried out without involving Roma as more than passive beneficiaries. The EU should use its influence, especially in its role as funder, to ensure that the policy of facilitating participation gets translated into all Roma-related activity.

The EU can also directly encourage national and local authorities to engage in consultations with Roma civil society through supporting events, such as roundtables or meetings organised as consultation fora. In addition to financial support, the EU could provide political support for such events by sending Commission representatives to attend the events. An EU presence can serve as a motivating factor for authorities that might otherwise be reluctant to discuss policy matters with Roma representatives.

Funding guidelines should explicitly require Roma participation in the development, implementation, monitoring, and evaluation of EU projects. In this way, the EU can both support Roma participation in public life and target its resources toward projects that are more likely to reflect the needs and bring about sustainable improvements within Roma communities.

- **Encouraging data collection**

Many States continue to justify their refusal to collect data concerning the situation of minority groups with arguments about data protection and privacy. Clear guidance from the EU is needed. The recommendation of the EU Network of Independent Experts in Fundamental Rights in this regard is useful:

“It may therefore be useful to clarify the scope of these requirements, and more clearly distinguish the processing of personal data (as may be required for the implementation of positive action programmes) from the statistical use of data, whether these are personal data which have been anonymized, or whether these have been collected by means which exclude that they may be linked to particular individuals. An opinion from the Data Protection Working Party established under Article 29 of Directive 95/46/CE of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data could be requested by the European Commission, or the Data Protection Working Party could formulate in this respect a recommendation on its own initiative.”¹⁶⁹

The Data Protection Working Party should also continue its work in providing states with information about different methods that can be used to collect such data in full respect of European laws, regulations, and recommendations regarding privacy and data-protection.¹⁷⁰ Likewise, the Working Group on Data Collection should continue its work to increase knowledge about data collection for purposes of combating discrimination.¹⁷¹

The European Commission's 2004 publication, *Comparative Study on the Collection of Data to Measure the Extent and Impact of Discrimination within the United States, Canada, Australia, Great Britain, and the Netherlands*, provides useful models that EU member states could adopt to their particular contexts. Another document, *Study on Data Collection to Measure the Extent and Impact of Discrimination in Europe*, commissioned by the Working Group on Data Collection, provides further information and guidelines for data collection geared toward combating discrimination.¹⁷² The Commission should further publicise the results of these studies in order that they might influence national debates on matters of data collection for purposes of promoting equality.

As pointed out in the *Comparative Study on Data Collection*, the inclusion of the concept of indirect discrimination in the Racial Equality Directive makes the collection of statistical data imperative for the Directive's effective implementation:

“The indirect discrimination concept and the related action schemes are intrinsically linked to statistics by their logic and objectives. The definition of indirect discrimination is based on quantitative concepts: significant effects and comparisons between groups. The cognitive tools used to capture indirect discrimination, which is the reasoning on which legal and political developments are based, are statistical. The group concept is the focus: treatment is no longer personalised, it is collective and only relates to individuals in terms of their real or assumed affiliation to a protected group. This shift from the individual to a group is strictly analogous to the operations carried out by statistics: impersonal aggregates that highlight a collective situation. As a consequence, all of the main elements of an intervention scheme require statistics: data recording and collection, the inclusion of personal characteristics into comparative tables, the production of indicators demonstrating differentials and the assessment of their extent and variations, the development of quantified objectives for rectifying procedures and promoting equality, and the assessment of the effects of the programmes, etc.”¹⁷³

In order to assess a state's progress in combating indirect discrimination, the Commission should therefore request such statistics from states in the reports that they are to produce under Article 17 of the Directive. For purposes of evaluating a state's progress in implementing the Directive, the development of a data collection system appropriate to recognising indirect discrimination should be considered as a short-term benchmark of a state's progress in combating indirect discrimination. The refusal by a state to put in place such a system over a reasonable period of time should therefore be sufficient reason for the Commission to start infringement proceedings. It would be useful for the Commission to issue a communication to this

effect making clear to member states the need for effective data collection for purposes of monitoring implementation of the Directive.

- **Combating anti-Gypsyism**

An EU Roma Equality Strategy should specifically address the anti-Gypsyism that continues to feed the cycle of discrimination that Roma experience. The EU should develop Roma-focused awareness raising campaigns, modeled around existing European days or European years,¹⁷⁴ but specifically designed to address anti-Gypsyism.¹⁷⁵ These campaigns should raise awareness as to the existence of anti-Gypsyism and the widespread discrimination that Roma experience; provide objective information about Roma in the place of existing stereotypes; and raise awareness about the significant positive contributions Roma have made to European societies.¹⁷⁶ Funding could also be made available for targeted antiracism trainings, with a focus on anti-Gypsyism, aimed at specific actors (such as teachers, social workers, civil servants, local authorities, and police).

Tracking levels of anti-Gypsyism as well as the specific forms it takes is essential to developing focused measures to counter it. At the EU level, this task could be given to the future Fundamental Rights Agency (current European Union Monitoring Centre on Racism and Xenophobia).¹⁷⁷ The EU should also support civil society monitoring activities focused on anti-Gypsyism. This monitoring should focus particularly on expressions of anti-Gypsyism by public officials and the media.

The EU should also relaunch the debate over establishing a Council Framework Decision on combating racism and xenophobia.¹⁷⁸ Agreement upon a set of standards that would allow for increased cooperation between EU states in applying criminal legislation to combat racist and xenophobic offences would substantially reinforce the ability of each EU state to take effective action against expressions of anti-Gypsyism falling within the scope of criminal law.

- **Encouraging national action strategies on Roma equality**

As discussed in the second section of this paper, comprehensive national action strategies are the most effective policy framework for improving the situation of Roma. A key focus of the EU's Framework Roma Equality Strategy should be to promote the adoption of national action strategies by EU member states, candidate countries, and partner countries. Where strategies already exist, the EU should focus its efforts on supporting their improvement, implementation, monitoring, and evaluation.

The inclusion of "respect for and protection of minorities" among the political criteria for accession to the Union, along with the Racial Equality Directive, provide a solid legal basis for EU actions in promoting national action strategies for Roma equality. The EU's experience indicates that in the Central and Eastern European countries in which it emphasised the improvement of the situation of Roma as a priority in the accession process, governments adopted national strategies specific to Roma.¹⁷⁹

While it is impossible to attribute the EU as the singular reason for these steps, it undoubtedly played an important role.¹⁸⁰

The primary avenue through which the EU should exert influence relating to national strategies is via grassroots Roma organisations. As was emphasised in the second section of this paper, the full participation of Roma at the grassroots level is a necessary condition for a national strategy's success. The EU should therefore devote resources to supporting grassroots Roma civil society organisations in activities related to a national strategy. This approach overlaps with the policy goal of furthering Roma participation in public affairs, and would also be a cost-effective use of resources.

In countries which do not yet have national action strategies, the EU could provide financial support to the organisation of civil society initiatives aimed at the development of such a strategy. It could, for instance, support a consultation process such as the one that took place in Bulgaria in which grassroots Roma civil society organisations developed a draft strategy and then negotiated their strategy with government officials. It could also support "capacity building" initiatives aimed at providing information to Roma grassroots organisations about national action strategies in other countries as well as training on specific policy issues. Additionally, it could support roundtable meetings, seminars or other events in which aspects of a draft strategy are discussed.

Another avenue through which the EU can act is through directly influencing governments. The European Commission could, for instance, encourage governments to use relevant EU funds to develop and implement national action strategies.¹⁸¹ The EU's activities relating to national action strategies should be coordinated with other organisations promoting similar objectives, such as the Council of Europe's Roma/Gypsy section and the ODIHR contact point for Roma and Sinti. Cooperative initiatives and division of labour — for instance utilising the Council of Europe's extensive experience in organising roundtables related to national action strategies — should be sought. The involvement of different international actors also plays an important role in encouraging dialogue between grassroots Roma representatives and national and local level authorities.

2. Guidelines in Developing a Framework Strategy for Roma Equality

Current analyses of Roma in Europe point to a number of key guidelines which need to be adhered to in the development of an EU Roma Equality Strategy. An effective strategy should have:

- a comprehensive scope;
- specific yet flexible objectives;
- actions that fully respect and promote Roma identities;
- mechanisms for addressing structural or institutional discrimination;

- positive measures;
- mainstreaming policies to prevent further discrimination.

- **A Comprehensive scope**

Due to the interlinkage of problems Roma experience in different sectors, the strategy should be as comprehensive as possible in its scope. Its coverage may be limited by the scope of EU competences. It should therefore set clear objectives for achieving the equal treatment of Roma in, at minimum, the following fields included in the Racial Equality Directive:

- (a) conditions for access to employment, to self-employment, and to promotion, , including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy;
- (b) access to all types and levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
- (c) employment and working conditions, including dismissals and pay;
- (d) membership and involvement in an organisation of workers or employers, or any organisation whose members are engaged in a particular profession, including access to the benefits provided by such organisations;
- (e) social protection, including social security and healthcare;
- (f) social advantages;
- (g) education; and
- (h) access to goods and services that are available to the public, including housing.

In addition to covering all the areas mentioned above, a comprehensive approach will also involve addressing the multiple factors underlying the problems in each sector, and how they inter-relate across sectors. An important example of the inter-relatedness is how lack of citizenship or personal identity documents impacts access to a wide range of services.¹⁸² In the first instance, and to ensure the success of initiatives, an accurate diagnosis of the underlying factors creating the disadvantage and exclusion will be required. This diagnosis needs to be local and involve the intended beneficiaries. It is of little value to seek to impose initiatives which have been used elsewhere without analysing their appropriateness.

- **Specific yet flexible objectives**

The sectoral objectives set out in the EU Framework Roma Equality Strategy should be specific enough to allow for measurable indicators and benchmarks, whose attainment may be monitored and evaluated. At the same time, the objectives will have to be general enough to allow for national and local specificities to be the determining factors in the development of specific policy measures. Where necessary and/or relevant, the EU should encourage member states to anchor policies in law so as to ensure their full and effective implementation.

- **Actions that fully respect and promote Roma identities**

The EU Framework Roma Equality Strategy should recognise and aim to support the right of Roma to preserve and promote key elements of their identities. All actions should fully respect Roma identities. Thus, for example, inclusion measures should not promote assimilation, but instead promote equal access to rights while simultaneously ensuring that Roma are able to preserve and develop key elements of their identities.

Furthermore, mechanisms are needed to take account of Roma identities in all mainstream policies to ensure that these policies do not discriminate - either directly or indirectly - against Roma.¹⁸³ Where necessary, existing policies should be amended to ensure that Roma may benefit - equally with other segments of the population- while maintaining their specific identities.

An approach that fully takes into account and promotes Roma identities should consistently be part of the guidelines for any EU funding of initiatives targeting Roma, as well as of more general initiatives that will affect Roma. For example, if a nongovernmental organisation applies for funding for a project aimed at improving the access to housing of disadvantaged populations in a given area, where Roma constitute a part of the population, a criterion for funding should be that the organisation establishes how it intends to take their specific needs into account. The involvement of Roma in all stages of projects (from policy development to evaluation) will obviously be a key indicator that such an approach is being adopted by the organisation.

- **Mechanisms for addressing structural or institutional discrimination**

Research clearly shows that the failure to tackle discrimination that is inherent in many state institutions, laws, policies, and services has meant that, even when well-funded, all too many initiatives have not produced a lasting impact. It is not enough to deal with low levels of employment or education, for example, as social or cultural problems without identifying how such conditions are brought about because of the discriminatory bias of laws, regulations, policies or practices. For example, a considerable amount of resources could be spent on training programmes for Roma to qualify them for employment, but as long as discrimination bars their recruitment into the workforce, they will not get jobs.

The nature of the discrimination faced by Roma is well documented. What is needed is political will to act on the recommendations. In this respect, the EU has a role to play in encouraging member states to take action. The EU could also provide support for any additional research that is needed and for technical support in developing appropriate responses.

- **Positive measures**

Whatever the sectoral objectives established at EU level for furthering Roma equality, their fulfillment at national level will require both the elimination of existing discrimination and a programme of positive measures aimed at Roma integration and desegregation. Addressing the effects of past discrimination, which Roma continue to

experience, means addressing the issue of segregation. Actions to promote desegregation, especially in the areas of education, housing, social assistance, and health, are urgently needed. The EU can play an important role in encouraging member states to ensure that there is a sound legal basis under domestic law to ensure that such positive measures are effective and implemented in full. The EU also needs to promote and support *positive measures* aimed at compensating for the disadvantaged position of Roma in different areas of life. Since such actions are in fact necessary for the full implementation of the Racial Equality Directive, the EU should utilise all means available to it to foster their implementation.

The following range of policies and actions should be considered by the EU:

- Proposed Directives on Roma integration. Two proposals have recently been put forward as to how to provide legal clarity and impetus for the adoption of positive measures to promote the equal treatment of Roma.

“Integration Directive”— The first proposal was elaborated by the EU Network of Independent Experts on Fundamental Rights in its 2003 annual report on human rights in the European Union. It recommended that the EU adopts a Directive, complementary to the Racial Equality Directive, which would make more explicit what is needed in order to secure equal treatment in the case of Roma. The Network stated that “[t]he most important contribution which the European Community could make to the protection of minorities, within the framework of its existing powers, would be the adoption of a Directive specifically aimed at encouraging the integration of Roma...”¹⁸⁴

Although the Directive has not been outlined in detail, it is clear that its aim would be to obligate states to implement desegregation measures, particularly in the fields of education and housing, as well as positive measures to compensate for past discrimination. Additionally, it would require states to take into account specific Roma identities and ensure that integration is carried out in a manner that is respectful of these identities.¹⁸⁵ In other words, the underlying philosophy of the Directive would be integration while respecting diversity.

According to Olivier de Schutter, coordinator of the EU Expert Network, in order for the legal obligations set out in the Directive to be sufficiently clear as to render them enforceable, the instrument could be procedural rather than substantive. It could, for example, “build on Directive 2000/43/EC, and define as one of the missions of the equality bodies set up in accordance with Article 13 of that instrument that they request from all public bodies that they present equality schemes defining how they intend to promote the integration of the Roma, and that they define quantitative objectives in order to attain that objective.”¹⁸⁶ This is in line with a proposal made in the second section of this report that states place public authorities under a duty to promote equality and prevent discrimination in carrying out their functions.

The Directive could also make explicit that segregation is a form of discrimination and is illegal. Such a provision could perhaps be inspired by Article 3 of the UN Convention for the Elimination of Racial Discrimination, which provides that "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 could therefore require states to clearly ban segregation as a form of discrimination as well as take actions to eliminate the effects of past segregation by, for example, undertaking desegregation measures.¹⁸⁷

Given the levels of outright unwillingness, hesitation, or half-hearted action demonstrated by governments to date in addressing the unequal situation of Roma in a meaningful way, such an instrument seems an important catalyst. While undoubtedly states' existing legal obligations at the European and international level already bind them to take the necessary action, a legally-binding Directive at EU level focused specifically on the integration of Roma would provide a more explicit and specific legal obligation to take effective action in this regard.¹⁸⁸ One commentator has emphasised the added value that such a Directive could bring to the existing Racial Equality Directive: "The difference is that this new Directive would be explicitly on Roma integration, which would leave no space for alternative, reductionist interpretation by States, as has been the case with the Race Equality Directive to date, when it comes to the segregation of Roma. In other words, there will be no doubt that EU Member States will have to take measures on Roma integration."¹⁸⁹

"Desegregation Directive"— A second proposal that has been promoted by Roma European Parliament Member Viktoria Mohacsi involves a "Desegregation Directive" covering at a minimum the fields of education, housing, and health. It would be appropriate that such a Directive also cover other fields where Roma experience segregation in some countries, such as access to social assistance or services. While the precise content of this proposed Directive is not clear, it seems somewhat more limited in scope than the above-mentioned integration Directive. It would seem to involve an explicit prohibition of ethnic and racial segregation, reflecting Article 3 of the International Convention on the Elimination of Racial Discrimination.¹⁹⁰ It would also require action by states to eliminate all instances of segregation of Roma.

The implementation of such a Directive could be partially achieved in the short-term through the incorporation into legal systems at national level of a clear ban on racial segregation and explicit recognition in the anti-discrimination framework that segregation is a form of discrimination. A longer period would evidently be required to achieve the result of desegregation across European states.

- **Listing segregation as a form of discrimination.** Another possible line of action that the Commission could pursue is to issue a communication prohibiting

racial and ethnic segregation in the fields of inter alia education, housing, health, social assistance, and social services. With a clear definition of segregation, verified benchmarks, a transparent monitoring system and appropriate sanctions, states would be obliged to work toward the elimination of segregation.¹⁹¹

Such a procedure could be linked to the Racial Equality Directive with segregation listed as a form of discrimination under the Directive. In reporting on the transposition of the Directive, states could be required to include information about patterns of segregation of Roma.

- Legal clarity on positive actions. Certain actors have raised the question as to the competence of the European Union to impose legally binding obligations with respect to positive measures in light of the jurisprudence of the ECJ relating to positive measures *stricto sensu* in the area of sex equality.¹⁹² The ECJ's jurisprudence in no way constitutes a barrier to such a Directive. It has only ruled that a very narrow category of positive measures in very specific circumstances in cases dealing with sex equality crossed the limits of what was reasonable in order to achieve equality in the workplace. Even if the ECJ were to follow this jurisprudence with respect to positive measures aimed at remedying the disadvantaged position of Roma, this would limit only a very specific and infrequently used set of positive measures—those which, at the point of recruitment or promotion, impose strict quota schemes or give preference to equally qualified candidates of the under-represented target group without guaranteeing that all candidates will benefit from an objective assessment taking into account their specific personal situations.¹⁹³ This same reasoning applies to the current scope for member states of the European Union to adopt positive measures in different sectors.

There is, however, no reason to assume that the ECJ would consider positive measures *stricto sensu*, even at point of recruitment, to be unacceptable when it comes to Roma. In fact, the ECJ likely will, and should, assess any such cases that come before it in light of the particular circumstances of Roma in the country concerned. In certain areas, such as the representation of Roma in elected bodies and public administration, positive measures providing for preferential treatment (for instance reserved seats on elected bodies or hiring quotas in public administration agencies), may well be necessary to have any tangible effect upon the significant exclusion of Roma in this area. In such an instance, the ECJ could very well hold that these measures do not go beyond what is reasonable and proportionate given the circumstances. Such an interpretation would seem to be called for in order to implement the Racial Equality Directive in the case of Roma and may also impose itself in order to avoid a situation of legal contradiction between ECJ jurisprudence and European Union member state's other human rights commitments (for example under ICERD or the FCNM).

- **Mainstreaming policies to prevent further discrimination**

Specific action to promote the social inclusion of Roma should be identified as a common objective under the three major EU strategies. These are the Social Inclusion Strategy, the Lifelong Learning Strategy, and the European Employment Strategy. Aimed at promoting the social inclusion of the most marginalized in Europe, these strategies are key instruments of the EU's Lisbon Agenda. Implemented through the Open Method of Coordination, these strategies present an opportunity for issues related to Roma integration to receive the policy attention required.

At the next European Council a recommendation should be made that all states include Roma as a target group in their national action plans for these three strategies. The guidelines, targets, benchmarks, and indicators set for achieving this end could, in effect, mirror those set out under an EU Roma Equality Strategy. Roma grassroots organisations could also be involved in all stages of designing, implementing, monitoring, and evaluating state action plans through the Open Method of Coordination.

This approach has been recommended by the authors of the report "Situation of Roma in an Enlarged EU." The report notes that while Roma, Gypsies and Travellers are often overlooked when it comes to these strategies, other "more visible or vociferous minorities are often more successful in influencing policy." This disparity in influence is in part due to the need for capacity building within Roma civil society and the scarcity of resources available to them. It is of course mainly due to the historical lack of political will on the part of governments. It is, therefore, appropriate that Roma are listed as a target group in these strategies.

It is important also to note that a mainstreaming approach is not seen as a substitute for a national strategy on Roma. Rather, the reverse: mainstreaming within these major EU-related policy frameworks should come within the framework of a national strategy on Roma.

END NOTES

¹ The situation in Italy as described by the European Roma Rights Center is illustrative: "Roma are merely tolerated in Italy at the best of times, but today racism and xenophobia in Italy are at floodtide. Roma, weak and exposed, suffer from daily human rights abuses. Italian authorities have acted ineffectively to counter these abuses, and have failed even to provide a rudimentary legal framework within which such abuses could be redressed." European Roma Rights Center. *Campland Racial Segregation of Roma in Italy*. Country Report Series No. 9, October 2000, p. 89. Commenting more generally about the situation in Europe, the report *The Situation of Roma in an Enlarged European Union* noted that: "... numerous assessments of the situation of Roma in both new and old Member States clearly illustrate that members of these communities continue to experience marked discrimination and social exclusion, and to encounter difficulties in gaining unhindered and equal access to employment, education, social security, healthcare, housing, other public services and justice. The assessments also show that many Roma communities are uniquely exposed to the forces of social exclusion..."

The post-1989 era in Europe has seen an outbreak of intense anti-Roma sentiment in both Eastern and Western Europe. In Eastern Europe, governments in some countries blamed Roma collectively for a breakdown in public order or for fears that a breakdown in public order was imminent. Systematic persecution of Roma took place in countries including Albania, Bulgaria, Germany, Hungary, Poland, Romani, Russia, Slovakia, Ukraine and Yugoslavia. Racist movements have also arisen and targeted Roma for attack. In some countries, such as in the Czech Republic and Slovakia, violence against Roma remains at alarming levels. In general, criminal justice authorities have reacted inadequately to the dramatic rise in racially motivated violent crime and public officials have failed, or been slow, to condemn anti-Roma violence.

In Western Europe, anti-Roma sentiment has frequently broken out following the arrival of Roma from Eastern Europe. Belgium, Finland, France, Germany, Ireland, Italy, the Netherlands, Norway, Spain, Switzerland and the United Kingdom have all featured episodes of public panic, fueled by alarmist media reports of "Gypsy invasions" and similar. These measures have frequently been followed by racially discriminatory measures by public authorities, often including collective expulsions." *Ibid.*, p. 6 and p. 9.

A Council of Europe Parliamentary Assembly Recommendation of 2002 also noted the prevailing discrimination against Roma: "Today Roma are still subjected to discrimination, marginalisation and segregation. Discrimination is widespread in every field of public and personal life, including access to public places, education, employment, health services and housing, as well as crossing borders and access to asylum procedures. Marginalisation and the economic and social segregation of Roma are turning into ethnic discrimination, which usually affects the weakest social groups." Council of Europe Parliamentary Assembly. *Recommendation 1557 (2002) The Legal Situation of Roma in Europe*. April 25, 2002, Paragraph 3.

² In a recent report, Mr Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights, noted: "Even at present, the Roma often continue to experience intolerance, prejudice and discrimination in their daily lives in all parts of Europe, creating significant obstacles to their enjoyment of a number of fundamental rights. Human rights concerns faced by them in Central and Eastern Europe have attracted relatively high attention in recent years – partly due to the accession process to the European Union of a number of these countries – with less attention being afforded to their situation in Western Europe. However, also in these countries many Roma continue to suffer the consequences of prejudice and discrimination in their daily lives. Ensuring that the fundamental values of democracy, equality and respect for human rights become a reality for the Roma is therefore a task for Europe as a whole, each of its countries and all of its regions." Gil-Robles, Alvaro. *Report on the Human Rights Situation of the Roma, Sinti and Travellers in Europe*. Strasbourg: CommDH (2005)4, May 4, 2005, paragraph 6. For information about the situation of Roma in different Western European countries, see European Commission against Racism and Intolerance country reports, Opinions of the Advisory Committee for the Framework Convention on National Minorities and European Roma Rights Center country reports.

³ In its third round country reports, the European Commission against Racism and Intolerance observes this lack of improvement in the situation of Roma in numerous countries. See for example: European

Commission against Racism and Intolerance. *Third Report on Bulgaria*. CRI(2004)2, adopted on June 27, 2003, paragraph 89; European Commission against Racism and Intolerance. *Third Report on the Czech Republic*. CRI(2004)22, adopted on December 5, 2003, paragraph 98. European Commission against Racism and Intolerance. *Third Report on Germany*. CRI (2004)23, adopted on December 5, 2003, paragraph 68. European Commission against Racism and Intolerance. *Third Report on Greece*. CRI(2004)24, adopted on December 5, 2003, paragraph 67; European Commission against Racism and Intolerance. *Third Report on Slovakia*. CRI(2004)4, adopted on June 27, 2003, especially section "Implementation of new approaches to furthering an integrated society" pp. 25-26; In introducing its 2002 recommendation on "the legal situation of Roma in Europe", the Parliamentary Assembly of the Council of Europe commented that: "Nearly ten years ago in its Recommendation 1203 (1993) on Gypsies in Europe, the Parliamentary Assembly stressed the need for special protection for Gypsies and condemned the various forms of discrimination suffered by them in the member states of the Council of Europe. Although international organisations, national governments, local authorities and non-governmental organisations have made great efforts, the aims set by this recommendation have been achieved to a restricted extent." Council of Europe Parliamentary Assembly, *Recommendation 1557 (2002)*. Paragraph one. More generally, the European Commission report *Equality and non-discrimination in an Enlarged European Union: Greenpaper* comments that: "It will be vital to address the gap between the legal provisions agreed at EU level in 2000, the state of implementation in some Member States and the continued existence of discrimination on the ground. Indeed, there is evidence that racist acts and racial discrimination have increased in recent years." European Commission, Directorate General for Employment and Social Affairs, p. 23.

⁴ In 2004, a European Network of Legal Experts in the Non-Discrimination Field was established, on the initiative of the European Commission, in the framework of the Community Action Programme to combat Discrimination (2001-2006), in order to provide the Commission with independent advice on all grounds of discrimination covered by Directive 2000/43 and Directive 2000/78. The Network, composed of some thirty anti-discrimination experts from across the EU, is monitoring transposition of the two Directives and producing national reports on developments in Member States, thematic reports on cross cutting issues and a bi-annual legal review. From July 2005, a specific Roma expert has been appointed. This Network is managed by Human European Consultancy and the Migration Policy Group (MPG). Relevant reports can be found on both the Commission and MPG's web site.

⁵ E.U. Network of Independent Experts on Fundamental Rights. *Thematic Comment No. 3: The Protection of Minorities in the European Union*. April 2005, p. 7.

⁶ As in the Racial Equality Directive, use of the notions of 'racial discrimination' or 'racial origin' in this paper, in no way imply acceptance of theories based on the existence of different "races". The use of this term reflects its use in the E.U. Racial Equality Directive, the United Nations Convention on the Elimination of All Forms of Racial Discrimination, and other international legal norms aimed at promoting equality and preventing discrimination.

⁷ Accurate demographic data is not available as to the number of Roma in the EU and candidate countries. A recent report published by the European Commission indicates that there are possibly over ten million Roma in Europe as a whole. Focus Consultancy Ltd., the European Roma Rights Center and the European Roma Information Office. *The Situation of Roma in an Enlarged European Union*. European Commission Directorate General for Employment and Social Affairs Unit D3, 2004, p. 5.

⁸ In this report, the term "Roma" refers to individuals and groups of diverse culture, who frequently self-identify as "Sinti", "Manouche", "Kale", "Gitan", "Roma" or other. These persons share the stigma of long-standing racist stereotypes associated with "Gypsies" and a long history of suffering and persecution caused by racist treatment, discourse and related widespread discrimination. I am aware that the choice of the terminology does not do justice to the many different identities here encompassed by the term "Roma". However, practical and linguistic reasons motivated the use of this term.

⁹ For a number of years now European inter-governmental organisations, including the Council of Europe, the OSCE and the European Union, have been calling on states to adopt national action plans on Roma. This issue is discussed in greater detail in Part II of this paper.

¹⁰ Highlighting this in its third report on Slovakia, the European Commission against Racism and Intolerance (ECRI) expressed its concern that: "The conditions are so critical in some settlements that there is a real threat of health epidemics, while it seems clear that the families – and particularly children – living

under such conditions cannot possibly hope to participate in society on an equal footing in other areas of life such as education and employment." European Commission against Racism and Intolerance. *Third Report on Slovakia*. CRI (2004)4, adopted on 27 June 2003, paragraph 58. Similarly, in its third report on Bulgaria ECRI expressed concern "Most Roma neighbourhoods consist of slums, precariously built without planning permission on land that often belongs to the municipalities, as in the case of the Faculteta district in Sofia. As the Bulgarian authorities have not taken steps to address the situation, the people living in these districts have no access to basic public services, whether health care, public transport, waste collection or sanitation. The inhabitants of these areas are often in a deplorable state of health and cannot afford medical treatment, as there are no facilities on the spot and, in any case, medical care is too expensive for them, despite social welfare... In some cases, moreover, Roma do not receive the welfare benefits to which they are entitled. European Commission against Racism and Intolerance. *Third Report on Bulgaria*. CRI (2004)2, adopted on June 27, 2003, paragraph 89. In the preamble to its recent recommendation to member states on improving the housing conditions of Roma and Travellers in Europe", the Committee of Ministers of the Council of Europe also noted the effect of poor living conditions on other fields of life: "Recognising that there is an urgent need to develop new strategies to improve the living conditions of the Roma/Gypsy and Traveller communities all over Europe in order to ensure that they have equality of opportunities in areas such as civic and political participation, as well as developmental sectors, such as housing, education, employment and health.

Bearing in mind that policies aimed at addressing the problems faced by Roma/Gypsies and Travellers in the field of housing should be comprehensive, based on an acknowledgement that the issue of housing for Roma/Gypsies and Travellers has an impact on a wide range of other elements, namely the economic, educational, social and cultural aspects of their lives, and the fight against racism and discrimination." Council of Europe Committee of Ministers. *Recommendation Rec (2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe*. Adopted on February 23, 2005.

¹¹ The United Nations Committee for Social, Economic and Cultural Rights has stressed the centrality of education to other rights. See *General comment No. 11: Plans of Action for Primary education (art. 14)*. E/C.12/1999/4, May 10, 1999, see especially paragraphs 2 and 4, available on the internet at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/59c6f685a5a919b8802567a50049d460?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/59c6f685a5a919b8802567a50049d460?Opendocument); *General comment No. 13: the right to education (art. 13)*. E/C.12/1999/10, December 8, 1999, see especially paragraph 1, available on the internet at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/ae1a0b126d068e868025683c003c8b3b?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/ae1a0b126d068e868025683c003c8b3b?Opendocument).

¹² Noting this interlinkage in the field of health, the report *Breaking the Barriers - Roma Women and Access to Public Health Care* commented: "Poor living conditions, problems securing a permanent domicile, lack of services, and forced evictions all impact negatively on access to health care... Unfortunately, many Roma are forced to live in conditions that pose health and safety hazards. Health care and other service providers may intentionally or inadvertently avoid these areas.

For Roma living in rural or isolated communities, public services may not be readily accessible. Such gaps in mainstream services must be filled.

Where proof of residence is required to access public services, Roma may be disadvantaged by the improper use of discretion on the part of authorities in providing such documentation, or by laws or policies that provide for legal halting sites in a manner that does not satisfy existing need. Roma communities may be particularly vulnerable to forced evictions, which impact health and access to other services in numerous ways. In this connection, legalization of settlements and other places of residence need to be addressed as a matter of urgency." Council of Europe's Migration and Roma/Gypsies Division, European Union's European Monitoring Centre on Racism and Xenophobia (EUMC), and Office of the OSCE High Commissioner on National Minorities. Luxembourg: Office for Official Publications of the European Communities, 2003, p. 8.

¹³ See for example ECRI's *Third Report on Bulgaria*, paragraphs 93 and 95 and ECRI's *Third Report on Slovakia* paragraphs 54 - 56.

¹⁴ One of the oldest National Action Programmes specifically targeting Roma, the Spanish "National Programme for Gypsy Development", adopted in 1985, has recently been evaluated after failing to produce satisfactory results. One of the main conclusions of this evaluation was that: "The main objective of the programme should be the fight against discrimination facing the Roma population in Spain. The current programmes aim at tackling the most marginalised and poorest sectors of the Roma community in Spain

and therefore, they are mainly built on an objective of social support and socio-economic measures for the most disadvantaged. Although this area of policy is undoubtedly indispensable, the underlying principle of any new programme should be to achieve equality of opportunities for the Roma population as a whole and in all sectors of life. Therefore, a strong anti-discrimination policy, coupled with targeted/positive action programmes, should be at the heart of any new programme, be it national and/or regional/local." Centro de Investigaciones Legales y Sociales. *European Conference on Policies Towards Roma, Gypsies and Travellers, Meeting Report*. Granada, Spain, May 19-20, 2003, on the internet at: http://www.coe.int/T/DG3/RomaTravellers/documentation/strategies/grnadareport_en.asp.

¹⁵ See European Roma Rights Quarterly devoted to the issue of the political participation of Roma. In the introduction Savelina Russinova summarises the situation as follows: "In the past thirteen years, the democratic processes in Central and Eastern Europe have dispelled two illusions - or rather false assumptions - about the representation and participation of Roma in public life. The first one is that Roma concerns can be effectively addressed and their rights promoted within the ordinary political process by individuals in publicly elected bodies who are not necessarily Roma. And the second one is that a token number of Roma in the public administration can make a difference in policy formation and implementation on Roma. Despite their numerical strength in several countries, Roma in Central and Eastern Europe remain to date un- or underrepresented in political life due to the fact that they do not stand equal chances to participate and to exercise their political rights. Roma exclusion is even more pronounced in Western Europe: the total number of public officials in European Union member states who state that they are Roma can literally be counted on the fingers of one hand.

In the ideal situation, when Roma hold the citizenship of the states where they live, and when they vote at national and local elections, it has been assumed and claimed that as long as the publicly elected bodies are representative of the whole citizenry, part of which are Roma, Roma are represented too. The fallacy of this argument is all too obvious for everyone who is familiar with the gap between Roma and non-Roma in every sphere of social life on the one hand, and the dearth of government action to remedy this situation, on the other. Russinova, Savelina. "Political Rights of Roma". *Roma Rights Quarterly*, 4/2003: Political Rights, available on the Internet at: <http://www.errc.org/cikk.php?cikk=1310>.

For a discussion of Roma representation in Central and Eastern Europe see also Van der Stoel, Max. *Report on the situation of Roma and Sinti in the OSCE Area*. Hague: Organisation for Security and Co-operation in Europe High Commissioner on National Minorities, March 10, 2000, pp. 132 - 133. See also ECRI's third report on Albania for a detailed discussion of the lack of participation of Roma in mainstream decision-making and their resulting marginalisation. European Commission against Racism and Intolerance. *Third Report on Albania*. CRI (2005) 23, adopted on December 17, 2004, section on "Participation of Minorities in Public Life", pp. 23 - 25.

¹⁶ Van der Stoel, *Ibid.*, pp. 5- 6.

¹⁷ These factors are drawn particularly from: Country specific opinions of the Advisory Committee on the Framework Convention for the Protection of National Minorities with respect to Article 15 of this Convention; Office of the High Commissioner on National Minorities. *The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note*. Hague, September 1999; Van der Stoel, *Report on the Situation of Roma and Sinti in the OSCE Area*; Committee on the Elimination of Racial Discrimination, General Recommendation 27, "Discrimination against Roma", (Fifty-seventh session, 2000), U.N. Doc. A/55/18, annex V at 154 (2000), available at: <http://www1.umn.edu/humanrts/gencomm/genrexxvii.htm>.

¹⁸ On various occasions the Advisory Committee has emphasised that consultative bodies should not simply be consulted from 'time to time', but on a regular basis. For instance, in its first opinion on Ukraine, the Advisory Committee commented with respect to a newly established consultative Council that "... this body is convened only rarely, and it does not constitute a forum for regular and frequent consultation and dialogue on issues pertaining to national minorities. The Advisory Committee is therefore of the opinion that the working methods of the said body should be revised or a new body established in order to promote such consultation and dialogue." Advisory Committee on the Framework Convention for the Protection of National Minorities. *Opinion on Ukraine*. ACFC/INF/OP/I (2002)010, paragraph 72. It similarly expressed its concern over the limited role of minority representatives in a Polish governmental structure given responsibility over minority issues (Team for National Minority Issues): "Merely inviting them [minority representatives] from time to time to participate in the Team's work, depending on the Team's agenda, would not seem to guarantee a sufficient involvement. The authorities should therefore consider increasing

minority representatives' participation in the Team, for example by providing for the regular participation of all national minorities in the Team, introducing a procedure so that they can formally put items on the Team's agenda or even making them members of the Team..." Advisory Committee on the Framework Convention for the Protection of National Minorities. *Opinion on Poland*. ACFC/INF/OP/I (2004)005, Strasbourg, November 27, 2003, paragraph 89. In various reports (see for example reports on Norway and Sweden under Article 15), the Advisory Committee has also expressed its opinion that ad hoc consultations were not sufficiently effective and needed to be complemented by a more consolidated structure for consulting national minorities.

¹⁹ Max van der Stoel eloquently summarised the problem as follows: "In view of the frequency with which government officials cite the fractious nature of Roma communities as a factor impeding their effective participation in policy-making processes, this issue also merits brief comment here... The first and most important point to be made is that Roma are, like any other group, entitled to political pluralism. To demand that Roma communities speak with a single voice is to expect more of them than other political groupings have been able or expected to achieve. In practice, moreover, some governments' insistence on finding what they consider a legitimate representative of "the" Roma community risks privileging one segment of Roma while excluding others from the political process. (Ironically, a by-product of this strategy may be to intensify divisiveness among Roma organizations.) The challenge is to find effective means of ensuring Roma the opportunity to participate in public life while respecting the diversity among Roma communities." Van der Stoel, pp. 134-135. In its third report on Albania, ECRI described this problem as follows: "The possibilities for persons belonging to minority groups to participate in decision-making are also restricted by a lack of adequate mechanisms for consultation at national and local level, even when minority interests are directly affected. This problem is linked to the limited notion of consultation that seems predominant in official circles whereby a single representative or organisation is deemed to represent the needs and interests of a given minority group. Thus as a rule public officials responsible for developing or carrying out policies do not view it as necessary to take steps to consult with the various segments and interests within a given minority group, including the most marginalised, whose needs and interests may often not be "represented" by dominant elites. For instance, ECRI was told by various officials that minority groups would now be represented through the person from their ethnic background on the Special State Committee on Minorities. ECRI stresses that minority groups do not have singular interests and that consultation needs to involve different voices within minority groups." European Commission against Racism and Intolerance, *Third Report on Albania*, paragraph 102.

²⁰ Max van der Stoel has also pointed out that: "A recurring concern in many countries is that government ministries develop the broad outlines of Roma policy without any significant Roma input, and then present their policies to a Roma consultative body in the expectation of obtaining its blessing. In this setting, Roma representatives who are in a position to raise legitimate concerns are placed in the position of being spoilers if they do so. In contrast, the early involvement of Roma communities in developing the broad outlines as well as specific contours of Roma policy, as in Bulgaria, is likely to ensure that they play an effective role." Van der Stoel, pp. 154-155. The former High Commissioner was here referring to the process of developing the "Program for Equal Participation of Roma in Public Life of Bulgaria" during which, due to an NGO initiative, a wide range of grassroots Roma organisations were consulted nation-wide.

²¹ Van der Stoel, p. 153.

²² This issue has been raised by ECRI and the Advisory Committee on the Framework Convention for the Protection of National Minorities with respect to minority consultative bodies in a number of countries. See for example in ECRI's third report on the Czech Republic, the discussion of the Government Council for National Minorities and the Government Council for Roma Community Affairs paragraphs 36, 37 and 40. See also Advisory Committee on the Framework Convention for the Protection of National Minorities. *Opinion on the Czech Republic*. ACFC/INF/OP/I (2002)002, paragraphs 68 and 69.

²³ See discussion of Hungarian situation in: Van der Stoel, p. 143.

²⁴ Open Society Institute, *Lessons Learned in Roma Programming, Conclusions and Recommendations*, May 2005.

²⁵ See, for example, Human Rights Committee General comment No. 25 on Article 25 (Participation in public affairs and the right to vote) of the International Covenant on Civil and Political Rights. In the specific context of national minorities, Article 15 of the Council of Europe Framework Convention for the Protection of National Minorities requires State Parties to "create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public

affairs, in particular those affecting them." The Opinions of the Advisory Committee under Article 15 have created a body of jurisprudence setting out the conditions that need to be met in order for this right to in practice be effectively guaranteed to persons belonging to national minorities. The Second Opinions on given countries that the Advisory Committee has begun to issue, such as the recently published opinion on Croatia, make these standards more explicit. In the OSCE context, in the 1990 Document of the Copenhagen Meeting on the Human Dimension, OSCE States undertook to respect "... the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities". The Lund recommendations on "the effective participation of national minorities in public life and explanatory note", developed at the initiative of the OSCE High Commissioner for National Minorities, provide considerable guidance as to mechanisms and conditions for implementing this right in practice. The Parliamentary Assembly of the Council of Europe has also called upon member states to "...elaborate and implement specific programmes to improve the integration of Roma as individuals and Romany communities as minority groups into society and ensure their participation in decision-making processes at local, regional, national and European levels." Amongst the measures required the Assembly urges States to: "encourage the presence of Romany members in national parliaments and encourage the participation of elected Romany representatives in the regional and local legislature process and executive bodies;" and to "involve representatives of Roma at all stages of the decision-making process in developing, implementing and evaluating programmes aimed at improving the conditions of Romany individuals and communities. This involvement should not be limited to consultation only, but should take the shape of a real partnership." Council of Europe Parliamentary Assembly, *Recommendation 1557 (2002)*, Paragraph 15(b).

²⁶ The general absence of accurate data with respect to the numbers of Roma in European Union countries and their situation in different fields of life is widely recognised. In a 2004 publication devoted to ethnic statistics, the European Roma Rights Centre noted that: "In recent years, the need for statistics on Roma became ever more acute, as governments have begun to develop special programmes related to Roma." Petrova, Dimitrina, "Editorial". *Roma Rights Quarterly*, 2/2004: Ethnic Statistics, on the Internet at: http://www.errc.org/Romarights_index.php. See this Quarterly for a detailed discussion of the need for statistics in order to improve the situation of Roma.

²⁷ ECRI General Policy Recommendation No. 1 on "Combating racism, xenophobia, antisemitism and intolerance". CRI (96)43 rev., adopted on October 4, 1996.

²⁸ For instance in its Third report on France ECRI noted that France had not made progress in developing "statistics broken down by ethnicity in order to collect accurate data concerning both racial discrimination and the social indicators relating to certain sectors of the population." ECRI expressed its opinion that "more accurate information on the real situation of various social groups in a number of areas of social and economic life would be useful in helping to reveal direct and indirect forms of discrimination, or institutionalised discrimination." It recommended: "researching ways to improve the monitoring systems by collecting relevant information broken down according to categories such as religion, language, nationality and national or ethnic origin. The monitoring should be carried out in accordance with the principles of data protection and confidentiality, on the basis of a system of voluntary self-identification, clearly explaining the reasons why the information is collected. Furthermore, the data collection system on racism and racial discrimination should also take into consideration the gender dimension, particularly from the viewpoint of possible double or multiple discrimination." European Commission against Racism and Intolerance. *Third Report on France*. CRI (2005)3, adopted on June 25, 2004, paragraphs 113 and 114.

²⁹ See for instance: Advisory Committee on the Framework Convention for the Protection of National Minorities. *Opinion on Slovakia*. ACFC/INF/OP/I (2001)001, adopted September 22, 2000, paragraph 21; *Opinion on Czech Republic*. ACFC/INF/OP/I (2002)002, adopted on April 6, 2001, paragraph 28, *Opinion on Poland*. ACFC/INF/OP/I (2004)005, adopted on November 27, 2003, paragraph 27.

³⁰ See discussion on statistical data in: Council of Europe's Migration and Roma/Gypsies Division, European Union's European Monitoring Centre on Racism and Xenophobia (EUMC), and Office of the OSCE High Commissioner on National Minorities, *Barriers*, pp. 34 - 36; E.U. Network of Independent Experts on Fundamental Rights, *Thematic Comment No. 3*, pp. 13 - 14.

³¹ See interesting discussion on this matter in: *Comparative study on the collection of data to measure the extent and impact of discrimination within the United States, Canada, Australia, Great Britain, and the Netherlands*. The study comments that: "Few Member States have truly understood the changes in

perspective involved in the consideration of indirect discrimination. More than just extending the conventional use of legal sanctions to discriminatory acts, indirect discrimination requires the examination of all of the apparently neutral procedures and practices, and, above all, the active promotion of equality. While actions fighting direct discrimination require the invisibilisation of personal characteristics in order to ensure the impartiality of procedures dealing with prohibited criteria, indirect discrimination, on the other hand, requires making the invisible visible. The definition in the "race" directive indicates that "indirect discrimination shall be taken to occur when an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons". A result of this definition is that indirect discrimination can only be assessed in terms of its negative consequences on persons who are assumed to belong to an "ethnic or racial" group. These consequences are measured by comparing the position of the "ethnic or racial" group to that of a benchmark group. The assessment proposes to 1) define groups according to prohibited characteristics, 2) record individual characteristics and assemble them into comparative tables thus leading to the illustration of groups, 3) establish statistical disparities or differentials, and 4) demonstrate their substantial or significant features through indicators set out in an appropriate order of magnitude. Through this operation, unfavourable treatment affecting certain "ethnic or racial" groups becomes apparent, with no need for demonstrating a specific intent, and without identifying the mechanisms causing discrimination. It is the differential in the result itself and its unjustified nature that defines indirect discrimination. It can therefore be said that indirect discrimination is only perceived through statistical reasoning, using data collected from selection and allowance trials." Simon, Patrick. Comparative study on the collection of data to measure the extent and impact of discrimination within the United States, Canada, Australia, Great Britain, and the Netherlands. European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities, August 2004, p. 7.

³² Council of Europe's Migration and Roma/Gypsies Division, European Union's European Monitoring Centre on Racism and Xenophobia (EUMC), and Office of the OSCE High Commissioner on National Minorities, *Ibid.*, p. 34.

³³ Advisory Committee on the Framework Convention for the Protection of National Minorities. *Opinion on Germany*. ACFC/INF/OP/I (2002)008, adopted on March 1, 2002, paragraph 23. See also Advisory Committee on the Framework Convention for the Protection of National Minorities. *Opinion on Sweden*. ACFC/INF/OP/I (2003)6, paragraph 9.

³⁴ See, for example, the section "Monitoring the situation" in ECRI's third reports on Austria, Belgium, France, Germany and Norway.

³⁵ For instance, in its Opinion on Spain, the Advisory Committee states that it "considers that the government ought therefore to try to identify the most appropriate means of obtaining reliable statistical data on the composition of the population, broken down by age, sex and geographical distribution, while respecting the principles contained in Committee of Ministers' Recommendation No. (97) 18 concerning the protection of personal data collected and processed for statistical purposes." Advisory Committee on the Framework Convention for the Protection of National Minorities. *Opinion on Spain*. ACFC/INF/OP/I (2004)004, under Article 4. Similarly, see Advisory Committee first *Opinion on Germany*, paragraph 23 and second *Opinion on Denmark*, paragraph 62.

³⁶ "According to Article 2(a) of the Personal Data Directive, personal data are: any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity." E.U. Network of Independent Experts on Fundamental Rights. *Thematic Comment No. 3*, p. 16. Recommendation No. R(97) 18 of the Council of Europe Committee of Ministers "concerning the protection of personal data collected and processed for statistical purposes" also distinguishes between "personal data" relating to an identified or identifiable persons and "anonymous data" where an individual is not identifiable. Recommendation adopted by the Committee of Ministers on September 30, 1997 at its 602nd meeting.

³⁷ For example, see for a description of the role of the Greek media in promoting anti-Roma stereotypes: European Roma Rights Center and Greek Helsinki Monitor. *Cleaning Operations Excluding Roma in Greece*. Country Report Series, No. 12, April 2003, pp. 24 - 26.

³⁸ For instance, "Mr Evangelos Sisamakias, the Mayor of Nea Alikarnassos, Crete was reported by the major Greek daily newspaper of 27 January 2003 as having stated: "You cannot have a Gypsy settlement next to a basketball court, part of the Olympics 2004 facilities, because Gypsies blemish one's sense of good taste

and, in addition, they deal in drugs...I do not deny that I do not want Gypsies in our area." Focus Consultancy Ltd., the European Roma Rights Center and the European Roma Information Office, *Situation*, p. 41, footnote 115. In another example, the European Roma Rights Center reported: "There is currently an alarming climate of anti-Gypsy and Traveller discourse in which free rein is given to stereotypes about their supposed delinquency, illicit means of acquiring revenue, foreign origin, lack of hygiene, and non-respect of society. Such racist speech is promoted by political actors at all levels, and is particularly commonplace at the local level during discussions over the creation of halting areas for Travellers... A case that attracted a certain amount of media attention involved racist remarks made by the former Prefect of Vaucluse, Mr. Paul Girot de Langlade, in October 2002 at a public meeting with other elected officials in his Department. Mr. Paul Girot de Langlade reportedly stated: 'You can ask my former colleagues... I have no particular tenderness for those people. They live at our expense; from pillage too, everyone knows it. When they invade a piece of land, believe me, I am always ready to use all means to expel them. But there is a law that imposes a halting area in each commune of more than 5000 residents, and it is necessary to respect it.... Don't worry, I know how to behave with respect to this subject. We already found people with eight bank accounts in Luxembourg. Some drive in Mercedes that I myself couldn't afford. I know what you are thinking -- it irritates me as well.'" European Roma Rights Center. *Written Comments of the European Roma Rights Center Concerning France for Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 66th Session, February 21 - March 11, 2005*. On the internet at: <http://www.errc.org/db/01/3F/m0000013F.doc>. See also for other examples of public expression of anti-Gypsy racism by elected officials: Van der Stoel, pp. 43 - 47.

³⁹ ECRI has observed the negative role played by local level racism in numerous reports. For instance, its third report on the Czech Republic stated that: "ECRI deeply regrets that the majority of local authorities seem not to be motivated to take actions to improve the situation of Roma as such actions are reportedly not popular with local communities and can be politically costly. On the contrary, some local leaders attempt to reap political gains through exploiting racism and taking actions that exclude Roma from local communities. This is all the more worrisome as local authorities have been given jurisdiction over most fields of life influencing the daily existence of Roma communities, either through the execution of their own competencies or through the execution of 'transfer' powers, delegated from the central level. For instance, decisions and the implementation of powers in the fields of housing, social services, education and health are executed at the local level. The local level is also responsible for Roma integration." European Commission against Racism and Intolerance. *Third Report on the Czech Republic*. CRI (2004)22, adopted on December 5, 2003, paragraph 93. Human Rights Commissioner Gil Robles also observed that such racism is a significant obstacle in the implementation of national programmes aimed at improving the situation of Roma: "Each of my visits has revealed with increasing clarity, that the lack of real political will and the prevailing climate of intolerance create significant obstacles for the implementation of national programmes. In many countries, I observed that local authorities, especially those holding elected positions, are often unwilling to implement measures under national programmes in fear of unpopularity in the eyes of the majority population, or sometimes because of their own discriminatory attitudes. Technical, economic and legal obstacles are often evoked as reasons for non-implementation of, for instance, programmes aimed at ensuring decent living conditions at Roma settlements, although in most cases, such obstacles could be overcome if there was the necessary political will...." Robles, paragraph 10.

⁴⁰ OSCE High Commissioner Max Van der Stoel emphasised this need: "In the context of pervasive racial stereotyping of Roma, one measure of leadership in this regard is government officials' willingness to acknowledge that anti-Roma racism is a problem in their societies. A non-Roma attorney in the Czech Republic made the case plainly: 'Let's say openly that we have a problem that must be solved.' This simple acknowledgement is the beginning of the search for solutions." Van der Stoel, p. 47. See also discussion on pp. 47- 50.

⁴¹ European Commission against Racism and Intolerance. *General Policy Recommendation No. 3: Combating racism and intolerance against Roma/Gypsies*. CRI (98)29 rev., Strasbourg, March 6, 1998.

⁴² In its recommendation on the "Legal Situation of Roma in Europe", The Parliamentary Assembly of the Council of Europe: "... encourages awareness-raising among media professionals of their particular responsibility in building dialogue between Roma and the majority population, fighting against discrimination in society, making the majority population more familiar with the culture of Roma and the efforts made by them to improve their situation, and reporting the positive examples concerning the

integration of Roma into society." Parliamentary Assembly of the Council of Europe, Recommendation 1557 (2002), Point 12.

For further discussion of measures needed, see Van der Stoel, pp. 59-60. See also numerous ECRI country reports, such as ECRI's Third Report on the Czech Republic, section on "Actions at Local Level to Combat Discrimination and Exclusion"; ECRI's second report on Italy, sections on "Media", "Exploitation of racism and xenophobia in politics"; ECRI's Third Report on Slovakia, section on "Climate of Opinion"; ECRI's Third Report on Germany, section on "Media". See also Advisory Committee Opinion on Lithuania, paragraph 45; and Opinion on Romania, paragraph 35.

⁴³ For example: ECRI's country reports; Advisory Committee Opinions; Parliamentary Assembly recommendations; Gil-Robles, Alvaro. *Report on the Human Rights Situation of the Roma, Sinti and Travellers in Europe*; Van der Stoel, Max. *Report on the situation of Roma and Sinti in the OSCE Area*; Focus Consultancy Ltd., the European Roma Rights Center and the European Roma Information Office. *The Situation of Roma in an Enlarged European Union*; Council of Europe's Migration and Roma/Gypsies Division, European Union's European Monitoring Centre on Racism and Xenophobia (EUMC), and Office of the OSCE High Commissioner on National Minorities. *Breaking the Barriers - Roma Women and Access to Public Health Care*; ERRC country reports and quarterly journals; and many other reports produced at European and country level by different actors.

⁴⁴ COE Human Rights Commissioner, Alvaro Gil-Robles, highlighted the need to move from recommendations to their implementation: "A deep gap persists, however, between the standards set forth in these instruments and the level of enjoyment of human rights by the Roma. Lack of awareness of the existing problems does not explain this state of affairs. On the contrary, the attention of European Governments has been frequently drawn to human rights concerns faced by Roma in Europe, both by local and international actors." Gil-Robles, Alvaro, p. 6. For example, research indicates that Roma in numerous European Union countries are disproportionately and specifically effected by a lack of personal documents, including passports, identity documents, birth certificates, residence permits, and documents needed for access to social assistance and health care (EU States in which such problems have been documented include: the Czech Republic, France, Germany, Greece, Italy, Latvia, Lithuania, Slovakia, Slovenia). The problem of personal documents impacts upon a wide range of other rights such as access to social and housing assistance, basic health care, education, freedom of movement, and voting. Detailed recommendations have been made to these countries highlighting the regulations, procedures or practices that have the effect of discriminating against Roma. Despite knowledge of this problem, the States concerned have yet to take the necessary actions to ensure that Roma obtain such basic personal documents. See discussion in Council of Europe's Migration and Roma/Gypsies Division, European Union's European Monitoring Centre on Racism and Xenophobia (EUMC), and Office of the OSCE High Commissioner on National Minorities, *Barriers*, pp. 66 - 70. See also European Roma Rights Center. *Roma Rights Quarterly*, 3/2003: Personal Documents and Access to Fundamental, on the Internet at: http://www.errc.org/Romarights_index.php

⁴⁵ See E.U. Network of Independent Experts on Fundamental Rights, *Thematic Comment No.3*, for a summary of findings of segregation of Roma in education and housing in many E.U. countries. The Comment states: "... the Roma/Gypsy are in many respects, in a number of Member States, placed in a situation of *de facto* segregation. This situation cannot be tolerated further. But it appears insufficient to rely on the tool of anti-discrimination law to effectively bring a change to the structural situation the Roma/Gypsies are currently facing. Affirmative action is required..." p. 45. See also European Roma Rights Center. *Stigmata: Segregated Schooling of Roma in Central and Eastern Europe, a survey of patterns of segregated education of Roma in Bulgaria, the Czech Republic, Hungary, Romania and Slovakia*. On the internet at: http://www.errc.org/Thematic_index.php.

The report recommends that: "Desegregation of Roma education and prevention of further segregation should be the backbone of governmental educational policies towards achievement of equal educational opportunities. Without integrating education, educational policies on Roma have no chances to succeed as has been demonstrated during the past several decades. Desegregation policies should be comprehensive, i.e. they should include measures aimed at all relevant actors affected by the process of education: Roma students and their parents; teachers and school administrators; local authorities; non-Roma parents and local non-Roma communities." p. 85. For a discussion of patterns of segregation in healthcare in Slovakia, Hungary and Bulgaria see Council of Europe's Migration and Roma/Gypsies Division, European Union's European Monitoring Centre on Racism and Xenophobia (EUMC), and Office of the OSCE High

Commissioner on National Minorities, *Barriers*, pp. 43 - 44. For a discussion of patterns of segregation in France in education, housing and social services, see European Roma Rights Center, *Written Comments*.

⁴⁶ Incentive-based desegregation programmes that are not mandatory, as in Hungary, have proven to be ineffective when they encounter opposition, often in areas where they are needed most.

⁴⁷ For instance, the European Roma Rights Center stated in a recent quarterly devoted to the problem of segregation of Roma: "Unfortunately, substantial funds are spent in Central and Eastern Europe, by inertia but also due to interests of lobby groups, on all kinds of educational programmes for Roma which, citing the complexity of issues surrounding the education of Roma children, advocate a "comprehensive approach" that involves everything but desegregation...The overwhelming part of the activities on Roma education over the past decade has failed to challenge the status quo of segregated education. Nor did such projects prevent further segregation...It is a misguided policy to work towards assuring schools success for Roma children in the racially segregated schools and to define such success as a prerequisite for the integration of the Roma in the mainstream society. On the contrary, school desegregation in the view of the *ERRC* is the first step and the backbone of Roma integration. Without it, school success in a ghetto school is inadequate once the child is out in the larger world, competing with non-Roma for university placements or for jobs." Petrova, Dimitrina. "In Defence of Desegregation". *Roma Rights Quarterly*, Numbers 3 and 4, 2002: Segregation and Desegregation, on the Internet at: http://www.errc.org/Romarights_index.php

⁴⁸ See discussion of the protection and promotion of minority identities and the legal principle of equal treatment in the next sub-section of this report "Measures to ensure that Roma are able to preserve, develop and promote their distinct identities".

⁴⁹ Council of Europe Parliamentary Assembly. *Legal Situation of the Roma in Europe*. Doc. 9397, 19 April 2002, p. 8.

⁵⁰ The term Travellers is used here rather than Roma to include both Roma who lead a travelling lifestyle and non-Roma Traveler minorities, who do not share the same Indic origin as Roma, but who share a common stigma of the long-standing racist stereotypes associated with Gypsies and Travellers as well as common experiences of discriminatory treatment. This term is also used to highlight that only *some* Roma lead a Travelling lifestyle - the widespread perception that all Roma are 'nomadic' is yet another stereotype.

⁵¹ See E.U. Network of Independent Experts on Fundamental Rights, *Report on the Situation of Fundamental Rights in the European Union in 2003*, CFR-CDF.repEU.2003, January 2004, pp 104-105.

⁵² See discussion in Council of Europe's Migration and Roma/Gypsies Division, European Union's European Monitoring Centre on Racism and Xenophobia (EUMC), and Office of the OSCE High Commissioner on National Minorities, *Barriers*, pp. 24-25. In many country reports, ECRI recommends special measures in order to further the equality of Roma in different sectors. For instance, in its 3rd report on Hungary ECRI recommended that "given the long-term and endemic nature of the disadvantage Roma experience on the labour market, special measures are necessary to place them in a position in which they can compete on an equal footing with members of the majority population." European Commission against Racism and Intolerance. *Third Report on Hungary*. CRI (2004)25, adopted on December 5, 2003, paragraph 69.

⁵³ See discussion on this subject in Hollo, Lanna. *Identifying and Developing Policy and Legal Responses to Discrimination*. Secretariat of the Framework Convention for the Protection of National Minorities, Directorate General of Human Rights, SP/NDR 2003 (007), pp. 33 - 35, available on the internet at: http://www.coe.int/T/E/Human_Rights/Minorities/3_CO-OPERATION_ACTIVITIES/1_Co-operation_activities/2_Stability_Pact_activities/PDF_SP_NDR%282003%29007%20Final_Guide_Training_Purposes.asp#TopOfPage Other labels widely used for such measures include 'special measures' 'affirmative action', 'positive action', 'preferential treatment' and 'positive discrimination'. It should be noted that the term 'positive discrimination' is inaccurate - when these measures are legal, that is reasonable and objectively justified, and they are not discriminatory, but in fact required in order to bring about de facto equality. 'Preferential treatment' is equally inaccurate as it refers to only a specific type of positive measure and misrepresents the reasons and objectives of these measures.

⁵⁴ See discussion in E.U. Network of Independent Experts on Fundamental Rights, *Thematic Comment*, pp. 23 - 25.

⁵⁵ See for further examples in different sectors of life, Hollo, pp. 33 - 44. See also EU Network of Independent Experts on Fundamental Rights, *Ibid*. p. 23.

⁵⁶ For further discussion of European and International standards requiring special measures, see Cahn, Claude. "Towards Realising a Right to Positive Action for Roma in Europe: Connors v. UK". *Roma Rights Quarterly*, 1/2005: Positive action to ensure equality, on the Internet at: http://www.errc.org/Romarights_index.php.

⁵⁷ This time restriction on positive measures aimed at compensating for past disadvantage and promoting full equality should not be mistakenly presumed to apply to the measures described in the next section of this paper aimed at ensuring that the distinct identities of minorities are adequately taken into account in policymaking. The latter may very well be permanent. In order to ensure there be no confusion between these different types of measures, in this paper the term positive measures is used to describe the former and special measures to describe the latter.

⁵⁸ ECHR, *Belgian Linguistics* case, 23 June 1968, Ser. A, p.34.

⁵⁹ See the Court's reasoning in *Abrahamsson v. Anderson or Fogelqvist*, paragraphs 60 - 62. In the case at hand, the ECJ found unacceptable a rule providing preference to candidates from the under-represented sex (women) for a public post when: these candidates possess sufficient qualifications for the post; where this preference is necessary to secure the appointment of the candidate from the under-represented sex; and where the difference between the respective merits of the candidates is not so great as to give rise to a breach of the requirement of objectivity in making appointments. Especially paragraphs 22 -24, 36 - 38. Case C-407/98, *Abrahamsson v. Fogelqvist* [2000] ECR I-5539. In *Marschall* the ECJ found acceptable under Articles 2(1) and 2(4) of Directive 76/207 a national rule requiring "that priority be given to the promotion of femal candidates unless reasons specific to an individual male candidate tilt the balance in his favour." The rule was found to provide male candidates a sufficient guarantee that their candidatures would be subject to an objective assessment taking account of all criteria specific to each candidate. Case C-409/95, *Marschall v. Land Nordrhein Westfalen* [1997] ECR I-6363 See also *Badeck*, Case C-158/97, *Badeck* [2000] ECR I-01875.

⁶⁰ "In contrast, *Kalanke* concerned a Bremen law which provided automatic priority for women where male and female candidates were equally qualified, and women were under-represented in the relevant section of the workforce. The Court held this to be in breach of the equal treatment Directive as it went beyond the ambit of the positive action exception. It seems reasonable to assume the Court of Justice will apply similar principles in respect of the Racial Equality Directive." Bell, Mark. "Meeting the Challenge? A Comparison between the EU Racial Equality Directive and the Starting Line". in Chopin, Isabelle and Jan Niessen ed. *The Starting Line and the Incorporation of the Racial Equality Directive into the National Laws of the EU Member States and Accession States*, Migration Policy Group, Commission for Racial Equality, March 2001, pp 24-25.

⁶¹ See discussion in Shaw, Jo. *Mainstreaming Equality in European Union Law and Policy*. European Network Against Racism, April 2004, p. 13. Bell, p. 39.

⁶² See note 58 above for an explanation of the use here made of the term 'Travellers'.

⁶³ For example, in a report describing the situation of Gypsies and Travellers in France, the European Roma Rights Center summarised the situation as follows: "Discrimination arising from failure to take into account the travelling lifestyle particularly affects the social, economic and cultural rights of Gypsies.

The situation has reached crisis proportions in the area of housing, where the many laws and regulations relating to land use, urban planning and access to public infrastructure fail to make place for the specific needs of Gypsies and Travellers who live in caravans. Thousands of Gypsies and Travellers who buy land therefore find themselves constantly harassed, threatened with eviction and denied basic amenities such as water and electricity. Furthermore, although required to do so by a specific law (the Besson Law), municipalities have for the most part failed to include halting areas for Travellers in their urban plans and regulations, and are unwilling in practice to establish such areas on their territory.

Such discrimination also extends across other key sectors of life, magnifying the effect of each single instance of discrimination, so that many Travellers and Gypsies find themselves caught in a snowballing cycle of extreme marginalisation and exclusion...

Members of the majority population are not asked to give up significant elements of their culture in order to benefit from basic rights and state services. However, this is the indecent choice with which Travellers and Gypsies are presented. To benefit from the same rights and public services as others, they are required to give up significant parts of their identity. Or, they can "choose" to maintain their way of life, and therefore suffer the effects of discrimination. Thus in treating their cultures as invisible, the French state in fact denies equality to Travellers and Gypsies." European Roma Rights Center. *Tracked, Excluded and*

Discriminated - Racist Treatment of Travellers and Gypsies in France, unpublished draft, publication scheduled for September 2005. See also: Advisory Committee on the Framework Convention for the Protection of National Minorities. *Opinion on the United Kingdom*. ACFC/INF/OP/I (2002)006, paragraphs 29, 40, 41, 42 for a discussion of the negative effects that the shortage of stopping sites has had on the ability of Roma and Travellers to "maintain and develop their culture and to preserve the essential elements of their identity, of which travelling is an important element." paragraph 40. See also for a discussion of the situation with respect to halting sites in Ireland: Advisory Committee on the Framework Convention for the Protection of National Minorities. *Opinion on Ireland*. ACFC/INF/OP/I (2004)003, paragraphs 48 - 57. For a summary of the situation in Belgium, France, Ireland, the Netherlands and the United Kingdom with respect to halting areas, see E.U. Network of Independent Experts on Fundamental Rights. *Thematic Comment No. 3*, pp. 50 -52. See also discussion of the failure of States to make adequate provision for the travelling lifestyle in: Focus Consultancy Ltd., the European Roma Rights Center and the European Roma Information Office, *Situation*, pp. 35 - 36.

⁶⁴ U.N. Human Rights Committee, "General Comment No. 23: Article 27 (Rights of Minorities), Fiftieth Session 1994, paragraph 6.2. See also Article 4(2) of the "United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities" of 1992 which provides that: "States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards."

⁶⁵ Eur. Ct. HR , *Connors v. United Kingdom* (App. No. 66746/01), judgement of 7 May 2004, paragraph 84.

⁶⁶ As put by Judge Tanaka in his dissenting judgment in the 1968 *Southwest Africa Case*, and upheld by many courts since this judgment, the equality principle means that: "What are equal are to be treated equally and what are different are to be treated differently...The principle of equality does not mean absolute equality, but recognises relative equality, namely different treatment proportionate to concrete individual circumstances. Different treatment must not be given arbitrarily; it requires reasonableness, or must be in conformity with justice." In the case at hand Judge Tanaka was discussing the practice of apartheid. He found that discrimination according to the criterion of "race, colour, national or tribal origin" in establishing the rights and duties of the inhabitants of the territory is not considered reasonable and just. .. If differentiation is required, it would be derived from the difference of language, religion, custom, etc. 'not' from the racial difference itself... The policy of apartheid he consequently found to be fundamentally unreasonable and unjust.

⁶⁷ Eur. Ct. HR (GC), *Thlimmenos v. Greece* (App.. No 34369/97), judgement of 6 April 2000, paragraphs 39 - 49. In the case at hand, the complainant, a Jehovah's witness, claimed that he had suffered discrimination with respect to his religious beliefs in being refused an appointment as a chartered accountant on the basis of a law excluding persons convicted of a serious crime, which did not distinguish between persons convicted as a result of their religious beliefs (refusing to serve in the army) and persons convicted on other grounds. The court found that by not taking into account the complainant's specific situation connected with his religious beliefs, and by not having an objective and reasonable justification for this omission, the Greek state violated the principle of non-discrimination.

⁶⁸ European Committee of Social Rights, Collective Complaint n°13/2002, *Autisme-Europe v. France*, decision on the merits (4 November 2003), at § 52. EU Network of Independent Experts on Fundamental Rights, *Thematic Comment No. 3*, p. 23.

⁶⁹ See detailed discussion of positive obligations implied in the principle of equal treatment in E.U. Network of Independent Experts on Fundamental Rights. *Thematic Comment No. 3*, pp. 22 - 24.

⁷⁰ Shaw defines impact assessment as "... a technique involving pre-decision scrutiny of the impacts of legislation and policy decisions..." Shaw, p. 6.

⁷¹ See discussion in E.U. Network of Independent Experts on Fundamental Rights. *Thematic Comment No. 3*, p. 12.

⁷² European Roma Rights Center and Greek Helsinki Monitor, *Cleaning Operations*, p. 178.

⁷³ Sanctions provided should compensate both material and moral damage of victims and be of a sufficient level to serve as a deterrent for future violations. Alvaro Gil-Robles highlighted this in his recent report on Roma: "In addition to bringing a remedy to the victim, court decisions can have a preventive function by way of indicating to the public that certain behaviour is illegal. This requires, however, that sanctions imposed for the crimes of discrimination are of a sufficient level to be effective. In some countries, it is

reported that the relatively low level of sanctions imposed in discrimination cases does not provide a sufficient deterrent for violations, nor are they effective in terms of preventing recidivism." Gil-Robles, paragraph 15. In its General Policy Recommendation No. 7 ECRI recommends that: "The law should provide for effective, proportionate and dissuasive sanctions for discrimination cases. Such sanctions should include the payment of compensation for both material and moral damages to the victims." European Commission against Racism and Intolerance. *General Policy Recommendation No. 7: National Legislation to Combat Racism and Racial Discrimination*. CRI(2003)8, adopted on December 13, 2002.

⁷⁴ For a detailed assessment of individual countries progress in transposing the Racial Equality Directive see the following reports: Chopin, Isabelle, Janet Cormack and Jan Niessen. *The implementation of European anti-discrimination legislation: work in progress*. Migration Policy Group, December 2004. Miguel Sierra, Maria. *Towards Equal Treatment: Transposing the Directive - Analysis and Proposals*. European Network Against Racism, March 2002. Miguel Sierra, Maria, Marianne Gratia, Lucie Brocard, Dick Houtzager, Paul Lappalainen, and Sarah Isal. *From Principle to Practice: Evaluation of legislation dealing with racial and ethnic discrimination in certain EU Member States*. European Network against Racism, June 2001.

⁷⁵ This matter is discussed in many reports assessing the situation of Roma in EU and candidate countries, including ECRI country reports, Advisory Committee Opinions, European Roma Rights Center Country Reports, and many others.

⁷⁶ See Canadian government website "History of Employment Equity" for a summary of the evolution of Canadian equality law in the area of employment: <http://www.hrsdc.gc.ca/asp/gateway.asp?hr=/en/lp/lo/lsw/we/information/history.shtml&hs=wzp>
See also Hucker, John. "Antidiscrimination Laws in Canada: Human Rights Commissions and the Search for Equality". *Human Rights Quarterly*, Volume 19, Number 3, pp. 547 - 571. Abella, S. Rosalie. *Report of the Commission on Equality in Employment*. 1984.

⁷⁷ See Race Relations Acts of 1965 and 1968.

⁷⁸ Race Relations Act 1976, available on the internet at: <http://www.homeoffice.gov.uk/docs/racerel1.html>. See Cohen, Barbara. "'Positive Obligations: Shifting the Burden in Order to Achieve Equality". *Roma Rights Quarterly*, 1/2005: Positive action to ensure equality, on the Internet at: http://www.errc.org/Romarights_index.php

⁷⁹ Barbara Cohen, previously head of legal policy at the Commission for Racial Equality (CRE) in London, notes that: "... despite successful outcomes of individual cases and exposure by the CRE investigations of patterns of racism and discrimination in different organisations, the facts of discrimination and disadvantage of ethnic minorities in Britain changed very little. There continue to be huge disparities in the rates of unemployment between ethnic minorities and their white counterparts. Ethnic minorities are over-represented amongst those stopped and searched by the police and amongst men and women serving prison sentences. Children from some ethnic minority groups have lowest rates of success in schools and highest rates of school exclusion. Ethnic minority families are more likely to be homeless and to live in overcrowded accommodation; they are more likely than their white counterparts to suffer ill health." Cohen, *Ibid.*

⁸⁰ Section 71(1) Race Relations Act 1976 as amended by Race Relations (Amendment) Act 2000. Available on the internet at: <http://www.opsi.gov.uk/acts/acts2000/00034--a.htm#2>. See discussion in Cohen, *ibid.*

⁸¹ Shaw, p. 25.

⁸² Shaw, *Ibid.*, p. 25.

⁸³ In the "Explanatory Memorandum" to Policy Recommendation No. 7 ECRI explains this duty further: "...The obligations incumbent on such authorities should be spelled out as clearly as possible in the law. To this end, public authorities could be placed under the obligation to create and implement "equality programmes" drawn up with the assistance of the national specialised body referred to in paragraph 24 of the Recommendation. The law should provide for the regular assessment of the equality programmes, the monitoring of their effects, as well as for effective implementation mechanisms and the possibility for legal enforcement of these programmes, notably through the national specialised body. An equality programme could, for example, include the nomination of a contact person for dealing with issues of racial discrimination and harassment or the organisation of staff training courses on discrimination. As regards the obligation to promote equality and prevent discrimination, the Recommendation covers only public

authorities; however, it would be desirable were the private sector also placed under a similar obligation." ECRI, *General Policy Recommendation No. 7*, paragraph 27 Explanatory Memorandum.

⁸⁴ ECRI further specifies that "the law should provide that public authorities should subject the awarding of contracts, loans, grants or other benefits to the condition that a policy of non-discrimination be respected and promoted by the other party. The law should provide that the violation of such a condition may result in the termination of the contract, grant or other benefits." ECRI, *General Policy Recommendation No. 7*, paragraph 9.

⁸⁵ ECRI, *General Policy Recommendation No. 7*, paragraph 25.

⁸⁶ ECRI, *General Policy Recommendation No. 7*, paragraph 56 Explanatory Memorandum.

⁸⁷ ECRI, *General Policy Recommendation No. 7*, paragraph 34 Explanatory Memorandum.

⁸⁸ Over the last years the Council of Europe, Organisation for Security and Cooperation in Europe and European Commission have been actively supporting the development of such action plans in the countries of Central and Eastern Europe. See Directorate General III - Social Cohesion Migration and Roma Department, Roma and Travellers Division and the Co-ordinator for activities concerning Roma and Travellers. *2004 Report on Activities Relating to Roma and Travellers*. January 17, 2005, available on the internet at:

http://www.coe.int/T/DG3/RomaTravellers/documentation/activityreports/RomaDivisionActivitiesReport2004_en.asp. See also Organisation for Security and Co-operation in Europe. *Decision No. 566 Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area*. PC.DEC/566, November 27, 2003.

⁸⁹ Centro de Investigaciones Legales y Sociales, p. 7.

⁹⁰ For example, Bulgaria, the Czech Republic, Hungary, Poland, Lithuania, Romania, Slovakia and Slovenia all adopted national strategies specifically targeting Roma. See Guglielmo, Rachel. "Human Rights in the Accession Process: Roma and Muslims in an Enlarging EU" in Toggenburg, Gabriel, ed. *Minority Protection and the Enlarged European Union: the Way Forward*, OSI/LGI, 2004, p. 42.

⁹¹ A recent meeting in Granada in which different national action strategies were reviewed concluded that: "... many of existing policies need to be revised, re-focused and completed, as there are significant gaps particularly in the areas of communication, anti-discrimination chapters, monitoring and evaluation..." Centro de Investigaciones Legales y Sociales, p. 8. Another recent report noted that: "Where Roma-specific policies exist, few have yet to demonstrate durable impact...Most of the comprehensive government policies in effect in Central and Eastern Europe date from no earlier than 1996 (Hungary) and in most cases were adopted even more recently. To date they remain under-funded, at very preliminary stages of implementation, and often resemble more a menu of desired outcomes than viable and realistic policies. There also appear universally to be significant deficiencies in terms of targets for assessing the success of existing policies: it is difficult to see to what standards policy makers aspire in the implementation of many Roma-related policies." Focus Consultancy Ltd., the European Roma Rights Center and the European Roma Information Office, *Situation*, p. 40.

⁹² Centro de Investigaciones Legales y Sociales, p. 2.

⁹³ Both the OSCE and the Council of Europe have prepared models for national action strategies based on assessments of existing measures and action plans. See Organisation for Security and Co-operation in Europe, *Decision No. 566* and *Draft Recommendation of the Committee of Ministers of the Council of Europe on Policies Towards Roma/Gypsies in Europe*. MG-S-ROM (2002) 3 Rev. 2, Strasbourg, August 2002. See also Centro de Investigaciones Legales y Sociales, *European Conference on Policies Towards Roma, Gypsies and Travellers*, that brought together a wide range of actors from different countries involved in the design, implementation, and monitoring of strategies to improve the situation of Roma and/or Travellers (Granada Conference).

⁹⁴ At the above-mentioned Granada Conference one of the main conclusions was that: "the level of participation of the representatives of the Roma organisations in designing, implementation, monitoring and evaluation of the policies at national and international level is still unacceptably low. Though the importance of "Roma participation" has been emphasised repeatedly by international organisations, and is generally - at least formally - acknowledged by governments at this point, it has often been interpreted narrowly in practice. As a rule, Roma participation is considered to have been achieved when Roma representatives or organisations are invited to participate in programme development meetings, or a "Roma advisor" is appointed to sit in a government office. However, these are consultative mechanisms rather than quality participation; the persons involved have no real influence on decision-making process and do

not share responsibility for the final product... Limited Roma participation in programme development inevitably results in policies and projects that do not reflect the needs and interests of Roma communities, and which are not in fact widely known or accepted by Roma." Centro de Investigaciones Legales y Sociales, p. 6.

⁹⁵ See discussion in Centro de Investigaciones Legales y Sociales, pp. 6-7. See also Organisation for Security and Co-operation in Europe, *Decision No. 566*, paragraph 5 and European Commission against Racism and Intolerance, *Third Report on Hungary*, paragraph 78.

⁹⁶ Rumyan Russinov, who led the group of Roma organisations that negotiated the adoption of the Bulgarian

Framework Programme with the Bulgarian government in 1998-1999, has analysed the failure of previous Bulgarian policies as follows: "While some measures have been taken over the years, government programmes that existed before and after the fall of the totalitarian state were doomed to be ineffective for two reasons. First of all, underpinning these programmes was the fundamentally flawed conception that Roma problems are social problems and not issues of ethnicity and discrimination. Secondly, authorities have generally ignored Roma as participants in the process of formulating these programmes, and the policies were never communicated properly to the Roma community." Russinov, Rumyan. "The Bulgarian Framework Programme for Equal Integration of Roma: Participation in the policy-making process". *Roma Rights Quarterly*, 2-3/2001: Government Programmes on Roma, p. 50.

⁹⁷ The OSCE Action Plan recommends that strategies "should introduce a balanced and sustainable approach to combining human rights goals with social policies;" Organisation for Security and Co-operation in Europe. *Decision No. 566*, Point 4 action plan, annex.

The lack of comprehensiveness was one of the key weaknesses noted with existing programmes at the Granada Conference: "Examination of programmes adopted up to date shows that few of the government programmes are truly comprehensive in scope: some do not fully acknowledge the problem of discrimination; some do not contain a well-developed minority rights component, and some reflect a prejudice equating Roma identity and culture with disadvantage and inferiority (possibly reflecting insufficient Roma participation in programme development)." Centro de Investigaciones Legales y Sociales, p.8.

⁹⁸ An assessment of the Slovene national programmes for Roma highlighted vagueness as a key obstacle to their effective implementation: "The Slovene government has, without doubt, taken the necessary first steps towards the inclusion of Roma in Slovene society, and made the right noises about the desperate need to improve their situation. However, the 1995 and 2000 programmes, as they presently stand, are inadequate to address the real challenges presented by the situation, and the striking vagueness of the programmes serves to justify their irresponsibly slow realisation in practice. The idea of expanding the rather brief 1995 programme into separate and more detailed reports, as in the case of the 2000 employment programme, is worthy of further efforts. Additionally, the government must adopt concrete measures that leave no space for ambiguity and ensure real implementation of the ideas presented in the programmes. ..." Peric, Tatjana. "Insufficient: governmental programmes for Roma in Slovenia." *Roma Rights Quarterly*, 2-3/2001: Government Programmes on Roma, p. 45.

⁹⁹ Centro de Investigaciones Legales y Sociales, p. 9.

¹⁰⁰ See discussion on performance targets and benchmarks in "2005-2015 The Decade of Roma Inclusion Concept Note". Available on the Internet at www.worldbank.org.

¹⁰¹ The Granada Meeting conclusions highlighted inadequate monitoring and evaluation as a key weakness in existing strategies: "Enormous amounts of money have been spent on implementing policies and projects whose lessons are never learned, inter alia because their impact has never been evaluated. Sometimes, in spite of the good will of the authors, measures adopted have a totally different result than expected. Some mistakes are repeated for long periods of time. Some programmes which seem successful have the tendency of being replicated without before being evaluated and only after years it is discovered that they have undesirable effects. Poor implementation and poor results have led to frustration within the Roma community all over the region and increasing distrust in the willingness and ability of the governments to improve their situation. Both governments and intergovernmental organisations are responsible for the use of public money - and have an obligation to ensure the best use of available funds.

To stop wasting money and human resources in ineffective projects for Roma, there is a pressing need to evaluate their impact. Since what matters is the change on the ground, the real impact needs to be measurable. Not funding volume neither the compliance with the budget line and expenditures is a

criterion for the adequacy of a project. Impact is what matters and impact cannot be assessed unless there is a base-line study on the specific issue where the project intervenes. So far analyses, projects and funding, are based on intuitive assessments or qualitative information (see UNDP's report "avoiding the Dependency Trap") not on quantitative data. Quantitative data, however, is possible to be collected, and it should be a precondition for funding any projects. Governments should stop using data protection legislation as pretext for not gathering statistics essential for anti-discrimination litigation and impact assessment purposes, while permitting or tolerating it for policing purposes. Administrative practices in Europe and elsewhere in the world show that it is possible to collect ethnically sensitive data in line with international data protection provisions, with the full and informed consent of the persons concerned." Centro de Investigaciones Legales y Sociales, p. 12.

¹⁰² Phillips, Alan. "Key points for Recommendations of the Committee of Ministers on the participatory monitoring and broad-ranging evaluation of Roma and Traveller Strategies and Programmes". in *Draft Recommendation on Policies Towards Roma/Gypsies in Europe*, MG-S-ROM (2003)3rev4, Strasbourg, May 20, 2005.

¹⁰³ "Several member states exercise positive discrimination in respect of parties representing minority interests by lowering (Albania) or completely removing (Germany, Poland in the Lower Chamber) the electoral threshold allowing these parties to be represented in parliament." Secretariat of the Migration and Roma/Gypsies Department DGIII Social Cohesion Council of Europe. *Preliminary Analysis of the replies to the questionnaire on forms of participation of Roma/Travellers and related groups in decision-making processes in Europe*. GT-ROMS (2003)9 prov. 2 (restricted), October 23, 2003, p. 5. The Advisory Committee on the Framework Convention for the Protection of National Minorities has welcomed such measures. See *Opinion on Germany*. ACFC/INF/OP/I(2002)008, Strasbourg, adopted on March 1, 2002, paragraph 63; and *Opinion on Poland*. ACFC/INF/OP/I(2004)005, Strasbourg, November 27, 2003, paragraph 86.

¹⁰⁴ Under Roma an electoral law, "a seat is reserved in the Chamber of Deputies for a Roma organisation (*Partida Romilor*) if it obtains at least 5% of the average number of votes required for the election of an "ordinary" MP. In Roma a, national minorities' non-governmental organisations may stand for election in order to enter parliament. Each national minority (except the Hungarian minority) may obtain only one seat, but the total number of representatives of minorities sitting in parliament is not restricted (it varies according to the number of minorities which obtain enough votes in the elections)." Secretariat of the Migration and Roma/Gypsies Department DGIII Social Cohesion Council of Europe, *Ibid.*, p. 4. Croatia also has a system of guaranteed representation of persons belonging to national minorities in Parliament and in local and regional self-government. Advisory Committee on the Framework Convention for the Protection of National Minorities. *Second Opinion on Croatia*. ACFC/INF/OP/II(2004)002, paragraphs 161 – 163.

¹⁰⁵ "There are almost no countries left in Europe that expressly prohibit the setting up of political parties on an ethnic basis. However, restrictive conditions may be enshrined in legislation. These conditions seem justified when the purpose is to ban political parties that promote racial hatred or may endanger the country's territorial unity. On the other hand, the obligation to obtain a relatively large number of citizens' signatures, as is the case in Albania, can restrict access to political participation. Many Roma do not have papers. As they cannot prove their identity, citizenship or place of residence, it is impossible for them to exercise their electoral rights." Secretariat of the Migration and Roma/Gypsies Department DGIII Social Cohesion Council of Europe, *Preliminary Analysis*, p. 3.

¹⁰⁶ See discussion in GTS-ROMS. "Brief analysis of forms of participation of Roma/Travellers and related groups in decision-making processes in Europe". GTS-ROMS(2003)11 restricted 23 October 2003.

¹⁰⁷ Secretariat of the Migration and Roma/Gypsies Department DGIII Social Cohesion Council of Europe. *Brief analysis of forms of participation of Roma/Travellers and related groups in decision-making processes in Europe*. GT-ROMS(2003)11 restricted, October 23, 2003, paragraph 3.

¹⁰⁸ See discussion in Secretariat of the Migration and Roma/Gypsies Department DGIII Social Cohesion Council of Europe, *Preliminary analysis*, pp. 3-4.

¹⁰⁹ "To judge by the replies, effective representation of Roma and/or Travellers within generic parties is in fact barely provided for. In addition, it is subordinate to the majority policy within the political movement

to which the Roma representatives belong. Consequently, the influence of Roma/Travellers is fairly limited. Equally, it is just as difficult for the Roma/Travellers to carve out a place for themselves within political parties which defend the interests of other minorities, where, generally speaking, those who are elected and obtain parliamentary seats are, more often than not (if not exclusively) representatives of the other minorities." Secretariat of the Migration and Roma/Gypsies Department DGIII Social Cohesion Council of Europe, *Brief analysis*, paragraph 5.

¹¹⁰ While the Roma representatives, whose placement on the majority party lists is often advertised as an expression of the good will of the majority party to tackle Roma problems, have increased the chances of a given mainstream party to win Roma votes, their recruitment to the respective party has almost never resulted in any meaningful role in shaping the party's policy agenda with regard to Roma. Nor has the presence of Roma in mainstream parties guaranteed any commitment by the respective party to Roma policy. The inclusion of Roma in mainstream party lists has in most cases been perceived by both sides as a kind of mercy on the part of the party leadership, rather than a commitment to Roma policy. Roma representatives elected in this way have in most cases been caught in a vicious circle of balancing allegiance to the party which elected them and allegiance to the Roma constituency which expects them to address its concerns. That these two are incompatible (perhaps not inherently, but at least for the time being) is demonstrated, among other things, by the fact that most of the Roma elected MPs have not been re-elected in subsequent elections." Russinova, Savelina, "Political Rights of Roma". See also National Democratic Institute. "National Democratic Institute Assesses Roma Political Participation in Future EU Members: Bulgaria, Roma a and Slovakia". *Roma Rights Quarterly*, 4/2003: Political Rights, on the Internet at: http://www.errc.org/Romarights_index.php.

¹¹¹ See Miguel Sierra, Maria *Towards Equal Treatment*, pp. 41-43, for a discussion of positive measures that have been taken with respect to the private or public employment sectors in different countries to prevent or compensate for discriminatory treatment motivated by "race" or ethnicity. See especially discussion of "the WetSAMEN", a law aimed at "encouraging participation in employment by ethnic minorities...It requires both private and public companies and professional organisations with more than 35 employees to aim to have a workforce which is representative of the whole of the population in the region where they are based. In order to do this, the organisation must establish a staff register which indicates the number of employees who belong to ethnic minorities. In addition, it must produce a public report on the representation of ethnic minorities among its employees."

An interesting and ambitious strategy for increasing the representation of minority groups across the public administration is currently being implemented in Macedonia. Recognising the importance of this issue to conflict prevention, the Ohrid Framework Agreement (signed on 13 August 2001 and formally bringing an end to the ongoing armed conflict in the country) stipulates that laws and policy measures should ensure the "equitable representation of communities in all central and local public bodies and at all levels of employment within such bodies, while respecting the rules concerning competence and integrity that govern public administration." In order to implement this provision "all state bodies falling within the scope of the civil servants law are to adopt an annual plan for adequate and equitable representation. These plans are to include detailed information about current representation, measures taken and an action plan. During the course of 2004 the Agency for Civil servants provided training to 600 persons from different ethnic communities for administrative or professional auxiliary staff positions..."

ECRI recommended that "the authorities monitor the impact and possible backlash of policies to bring about equitable representation and take steps to prevent and diminish negative side effects. This could include measures such as: presenting clear information about the manner the process is being implemented and the role of merit; retraining programmes for any individuals who lose their employment due to this process." See European Commission Against Racism and Intolerance. *Third Report on "the Former Yugoslav Republic of Macedonia"*. CRI(2005)4, Adopted on June 25, 2004, paragraphs 147, 148 and 153.

¹¹² The experts included "jurists specializing in relevant international law, political scientists specializing in constitutional orders and election systems, and sociologists specializing in minority issues."

¹¹³ *The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note*, paragraphs 12 and 13.

¹¹⁴ See examples of existing bodies in the following documents: Secretariat of the Migration and Roma/Gypsies Department DGIII Social Cohesion Council of Europe, *Preliminary analysis*, under heading IV "At the level of non-governmental consultative/advisory structures and councils for combating

discrimination;" Van der Stoel, pp. 142 -147; E.U. Network of Independent Experts on Fundamental Rights, *Thematic Comment No. 3*, pp. 58 - 60.

¹¹⁵ "Roma representatives' position and room for manoeuvre is all the more limited if the representative bodies on which they sit are non-governmental or purely advisory and if these bodies include representatives of all minorities... Generally speaking, consultative non-governmental bodies exclusively reserved for Roma are preferable." Secretariat of the Migration and Roma/Gypsies Department DGIII Social Cohesion Council of Europe, *Preliminary analysis*, p. 11.

¹¹⁶ For further discussion on problems of representation within consultative Commissions, see discussion of the Spanish Consultative Commission in Van der Stoel, pp. 144 -145. See also discussion on the "Departmental Consultative Commissions on Travellers" and the currently non-functional "National Consultative Commission for Gypsies and Travellers" in European Roma Rights Center, *Written Comments*, and Section 2.5 "Arbitrary Limitations on Participation in Public Life".

¹¹⁷ Secretariat of the Migration and Roma/Gypsies Department DGIII Social Cohesion Council of Europe, *Brief analysis*, Section on "Representation of Roma and Travellers at the level of ministries and other governmental structures". See also examples listed in Secretariat of the Migration and Roma/Gypsies Department DGIII Social Cohesion Council of Europe, *Preliminary analysis*, Section III "At the level of ministries, (inter)ministerial commissions and other governmental structures"

¹¹⁸ See discussion of Czech and Finnish examples in Van der Stoel, pp. 151 - 152.

¹¹⁹ Secretariat of the Migration and Roma/Gypsies Department DGIII Social Cohesion Council of Europe, *Brief analysis*, para 8. See also Secretariat of the Migration and Roma/Gypsies Department DGIII Social Cohesion Council of Europe, *Preliminary analysis*, Section III, "At the level of ministries, (inter)ministerial commissions and other governmental structures". COE Commissioner for Human Rights, Gil Robles noted that: "Some commentators have noted that the creation of special Roma posts within the administration has often more of a symbolic value, rather than a concrete impact. I have moreover been informed that those holding an official position representing the interests of the Roma, do not always communicate in an effective manner with Roma communities and, in particular, with young Roma." Robles, paragraph 19.

¹²⁰ Savelina Russinova discusses the potential negative impact of policies putting Roma in low-ranking positions within the public administration: "The second fallacy that should be addressed is the assumption that a token number of Roma in the public administration can have any impact on Roma-related policies. The model existing in Central and Eastern Europe of placing one or two Roma individuals in low-ranking positions in a limited number of public offices has by all evidence failed to lead to any satisfactory policy-formation and policy implementation on Roma in these countries. This model, again, has proved to be more damaging than beneficial for Roma. In addition, lack of targeted action to prepare Roma for positions in the public administration has also left many of them ineffective. The effect has been alienation between Roma communities which expected to see their needs addressed, and their representatives who did not have the powers and the knowledge to fulfill expectations. The more serious effect has been the persistent undermining in the public consciousness of the feasibility of Roma participation in public affairs." Russinova, Savelina, "Political Rights of Roma"

¹²¹ The adhoc consultations of Roma organisations in Bulgaria during the development of the Framework Programme for Equal Integration of Roma have been widely praised. These consultations, lead by the non-governmental organisation *Human Rights Project* involved circulating a draft document amongst over 70 Roma organisations from across the country and was "widely discussed, both by activists and ordinary people, formally and informally." See Russinov, Bulgarian *Framework Programme*, pp. 50 - 54. See also Van der Stoel, pp. 146 – 147.

¹²² Van der Stoel, p. 154, 162. See also Committee on the Elimination of Racial Discrimination. *General Recommendation 27, Discrimination against Roma*. Fifty-seventh session, 2000, "Measures concerning participation in public life".

¹²³ The importance of capacity-building was stressed by participants at the recent Granada meeting assessing Roma-directed policies: "As far as the readiness of various Roma communities and organisations to act as equal partners in policy development is concerned, conference participants stressed the need of investing more in community empowerment programmes which would prepare Roma representatives to face the challenges of an equal footing partnership with government representatives.... Roma representatives stressed that Roma communities and organisations have not been adequately resourced for capacity building, so they can participate effectively in shaping policies and services and address the new

demands brought about by the participation/partnership approach. Centro de Investigaciones Legales y Sociales, p. 7.

¹²⁴ See discussion in Council of Europe's Migration and Roma/Gypsies Division, European Union's European Monitoring Centre on Racism and Xenophobia (EUMC), and Office of the OSCE High Commissioner on National Minorities, *Barriers*, and pp. 29 - 33.

¹²⁵ ECRI has highlighted the need for such general campaigns as well as specifically targeted initiatives in many of its first, second and third round country reports.

¹²⁶ Robles, p. 8.

¹²⁷ European Commission against Racism and Intolerance, *General Policy Recommendation No. 7*, paragraph 18.

¹²⁸ See discussion in Hollo, Lanna. *Identifying and Developing*, p. 35.

¹²⁹ "Appropriate governmental structures should be set up in the member states in order to design and implement the policies envisaged under the strategy and to monitor their implementation in an efficient way. These bodies should be well coordinated, composed of high level officials and work in close co-operation with Roma representatives and officials. The representatives of the Roma community on these bodies should be selected by the community itself." *Draft Recommendation of the Committee of Ministers of the Council of Europe on Policies towards Roma/Gypsies in Europe*. MG-S-ROM (2002) 3 Rev. 2, Strasbourg, August 2002, section II "Implementing the Strategy", pt.1.

¹³⁰ As noted in the conclusions of the Granada Meeting, the lack of sufficient powers, political will and resources have frequently hindered effective implementation of national action strategies: "In many countries where Roma programmes are being implemented, the official structures in charge with the implementation struggle with a lack of funding, staff, authority and/or political support, making it difficult for them to communicate and coordinate implementation of the programme by ministries, as well as by regional and local governments. As a result, Roma programmes tend to be marginalised within the context of broader governmental programme(s) mirroring the marginalization of Roma communities in society. National governments need to take special care to avoid such "ghettoisation" of Roma issues - and take immediate action to mainstream Roma issues within relevant national policies." Centro de Investigaciones Legales y Sociales, pp. 9-10. ECRI has described such problems in numerous countries. For example, in its third report on Bulgaria ECRI observed that: "The Framework Programme for Equal Integration of Roma in Bulgarian Society is unanimously considered to be well structured and fairly comprehensive and to meet the needs of the Roma community effectively...There is, however, a unanimous feeling within the Roma community and among non-governmental organisations that, apart from a few initiatives mentioned in this report, the programme has remained a dead letter and that the few measures taken under it for the benefit of Roma are the result of isolated initiatives by non-governmental organisations, taken with the support of European or other foreign funds. As far as the government is concerned, there appears to be no integrated policy for implementing the programme, and no significant sum has been earmarked in the state budget and local authority budgets to fund its implementation. The view in certain quarters is that the government lacks the political resolve to carry through such a programme..." European Commission against Racism and Intolerance. *Third Report on Bulgaria*. CRI(2004)2, adopted June 27, 2003, paragraphs 104 and 105.

¹³¹ ECRI has highlighted this problem in numerous country reports. See for example: European Commission against Racism and Intolerance. *Third Report on the Czech Republic*. CRI(2004)22, adopted on December 5, 2003, paragraphs 92 - 105; European Commission against Racism and Intolerance. *Third Report on Greece*. CRI(2004)24, adopted on June 8, 2004, paragraphs 70 - 73; and European Commission against Racism and Intolerance. *Third Report on Hungary*. CRI(2004)25, December 5, 2003, paragraphs 76 - 78.

¹³² Robles, paragraph 10.

¹³³ *Third Report on the Czech Republic*, paragraph 100.

¹³⁴ This proposal is discussed in greater detail in the next section of this paper "Comprehensive anti-discrimination legislation"

¹³⁵ See Part I of this paper, "Measures to ensure that Roma are able to preserve, develop and promote their distinct identities" for a more detailed discussion of the discrimination entailed by not ensuring that Roma may benefit equally from rights and services without this posing a threat to their identities.

¹³⁶ In the introduction to an overview of the state of implementation of the Racial Equality Directive in the 15 'older' EU member States, Migration Policy Group commented that in July of 2004: "the European

Commission launched infringement proceedings under Article 226 of the EC Treaty against Austria, Finland, Germany, Greece and Luxembourg, for failing to adopt the laws, regulations and administrative provisions necessary fully to comply with the Racial Equality Directive (i.e. failure to communicate to the Commission the measures it has taken to transpose the directives). Infringement proceedings were launched against the same five plus Belgium for failure to adopt the laws, regulations and administrative provisions necessary fully to comply with the Employment Equality Directive." Chopin, Cormack and Niessen, p. 2. As of August 2005, the European Court of Justice had found Austria, Finland, Germany and Luxembourg to be in breach of EU law by failing to transpose fully the Racial Equality Directive. See details on the website of the European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities at:

http://europa.eu.int/comm/employment_social/fundamental_rights/legis/lginfringe_en.htm. The complaint against Greece was discontinued as Greece published a new law on equal treatment in January 2005. See European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities. *Equality and Non-discrimination Annual Report 2005*. April 2005, pp. 12 - 18.

Non-communication infringement procedures were also launched against the Czech Republic. Further infringement procedures for "non-conformity" are due to be launched against a number of old and new Member States later in 2005. Claude Moraes. *Draft Report on the protection of minorities and anti-discrimination policies in an enlarged Europe*. Committee on Civil Liberties, Justice and Home Affairs, European Parliament, Provisional 2005/2008 (INI), footnote 2.

¹³⁷ ECRI recommends that "the law should provide that the prohibition of discrimination applies to all public authorities as well as to all natural or legal persons, both in the public and the private sectors, in all areas, notably: employment; membership of professional organisations; education; training; housing; health; social protection; goods and services intended for the public and public places; exercise of economic activity and public services." ECRI, *General Policy Recommendation No. 7*, paragraph 7.

¹³⁸ The scope of the Directive as provided in Article 3 includes in both the public and private sectors: "(a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion; (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; (c) employment and working conditions, including dismissals and pay; (d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations; (e) social protection, including social security and healthcare; (f) social advantages; (g) education;

(h) access to and supply of goods and services which are available to the public, including housing." ¹³⁹ Mark Bell commented on the current lacunae in the Racial Equality Directive as follows: "Whilst Article 3(1) applies to 'public bodies', this is only to the extent their functions fall within the list of activities in that provision. Therefore, racial discrimination in the recruitment of immigration or police officers is prohibited, but there is no protection against racial discrimination in the administration of immigration controls or police powers. This is a particularly notable omission given the competence of the Community for immigration and asylum policy since the Treaty of Amsterdam. In relation to police and judicial bodies, it could be argued that these activities fall outside the legal competence conferred by the EC Treaty. However, there remain opportunities for the European Union to address discrimination in the police and judiciary under the aegis of the Treaty on European Union." Bell, p. 37.

¹⁴⁰ See ECRI, *General Policy Recommendation No. 7*, paragraph 1, definitions. ECRI provides that the list of grounds of racial discrimination (direct and indirect) should cover "grounds such as race, colour, language, religion, nationality, or national or ethnic origin." See also ECRI, *General Policy Recommendation No. 7*, Explanatory Memorandum, paragraph 6.

¹⁴¹ See detailed discussion of this issue in European Roma Rights Center. *Written Comments of the European Roma Rights Center to the European Commission "Green Paper: Equality and Non-Discrimination in an Enlarged Europe*. August 16, 2004. See also European Roma Information Office. *Answers to the Green Paper*. Available on the internet at: <http://www.erionet.org/AnswerGP.html>. Parallel arguments have been made by many anti-racist organisations. Such a loophole could evidently be misused

to justify discrimination against persons belonging to any groups perceived as 'foreign', leaving a slippery hole in protection against racial and ethnic discrimination.

¹⁴² "Segregation" figures amongst a list of acts that ECRI suggests should be clearly stipulated in law as a form of discrimination as "practice demonstrates that these acts tend to be overlooked or excluded from the scope of application of the legislation." See ECRI, *General Policy Recommendation No. 7*, paragraph 6 and Explanatory Memorandum, paragraph 15.

¹⁴³ See also related discussion in Part III of this report

¹⁴⁴ See ECRI, *General Policy Recommendation No. 7*, paragraph 9.

¹⁴⁵ See detailed discussion of how public procurement can be utilised as a means of fighting against racial and ethnic discrimination in Cormack, Janet and Jan Niessen. "Public Procurement and anti-discrimination Legislation." in Isabelle Chopin and Jan Niessen ed. *Combating Racial and Ethnic Discrimination: Taking the European Legislative Agenda Further*. Commission for Racial Equality and Migration Policy Group, March 2002, pp. 35 - 53. .

¹⁴⁶ Article 14 (a) Racial Equality Directive.

¹⁴⁷ ECRI's recommends that: "the law should provide the necessary legal tools to review, on an ongoing basis, the conformity with the prohibition of discrimination of all laws, regulations and administrative provisions at the national and local levels. Laws, regulations and administrative provisions found not to be in conformity with the prohibition of discrimination should be amended or abrogated." ECRI, *General Policy Recommendation No. 7*, paragraph 13.

¹⁴⁸ Article 8 Racial Equality Directive.

¹⁴⁹ See discussion in Miguel Sierra, Gratia, Brocard, Houtzager, Lappalainen and Isal, pp. 8 - 10.

¹⁵⁰ See discussion in Miguel Sierra, *Towards Equal Treatment*, pages 14 and 17.

¹⁵¹ See above "the importance of data in the fight against discrimination."

¹⁵² "Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive."

¹⁵³ See discussion in Bell, p. 43.

¹⁵⁴ ECRI, *General Policy Recommendation No. 7*, paragraph 26.

¹⁵⁵ A recent review of the implementation of European anti-discrimination legislation by member states noted: "There is not always evidence that the introduction of norms that are hard for the average citizen to find or to understand has been accompanied by adequate information campaigns to explain equality rights and obligations, and what can be done in the face of discrimination or to avoid it. There is a real risk that new anti-discrimination legislation will go largely unnoticed, and as a result rarely applied, not only by victims of discrimination, but potentially also by lawyers and judges. Citizens may not even know their obligations under the law and that particular forms of discrimination are prohibited. Article 10 of the Racial Equality Directive and Article 12 of the Employment Equality Directive do require member states to disseminate information about equality laws - both old and new - to all persons concerned through all appropriate means throughout their territory. Failure to do this is a breach of the directives." See Chopin, Cormack, and Niessen, p. 3. A recent report by the European Parliament also stresses the importance of training and informational measures in order for anti-discrimination legislation to be effective. See Moraes, paragraph 9.

¹⁵⁶ See related discussion above.

¹⁵⁷ European Parliament. *Resolution on the situation of the Roma in the European Union*. RC\565094EN.doc, 25.04.2005, paragraph 6.

¹⁵⁸ See for example, European Roma Information Office. *Answers to the Green Paper*. Available on the internet at: <http://www.erionet.org/AnswerGP.html>.

¹⁵⁹ For instance, a recent assessment of Phare programming on Roma, included the observation that: "Phare programmes clearly demonstrated that existing policies and practices in Central and Eastern Europe were failing Roma. The overall lack of vision and direction means there was no clear underpinning policy direction or commitment." Focus Consultancy Ltd., the European Roma Rights Center and the European Roma Information Office, *Situation*, p. 15.

¹⁶⁰ See, for example, European Roma Rights Center. "Binding States to Roma Inclusion" in *Roma Rights Quarterly*, 1/2005: Positive action to ensure equality, on the Internet at: http://www.errc.org/Romarights_index.php.

¹⁶¹ Lívía Járóka, PPE-DE Group; Viktória Mohácsi, ALDE Group. Both MEPs are from Hungary.

¹⁶² In a recent resolution, the European Parliament called on "political parties, at both national and European level, to review their party structures and procedures with the aim of removing all barriers that directly or indirectly militate against the participation of Roma and incorporate policies geared to full Roma integration into their mainstream political and social agenda.", European Parliament. *Resolution on the situation of the Roma in the European Union*. RC\565094EN.doc, 25.04.2005, paragraph 23.

¹⁶³ "At present there is not a single Roma official working in the European Commission." Wilkens, Andre. *Presentation at European Parliament hearing Promoting EU Fundamental Rights, from words to deeds, or how to make rights a reality*. Open Society Institute, Brussels, April 2005.

¹⁶⁴ See discussion in Focus Consultancy Ltd., the European Roma Rights Center and the European Roma Information Office, *Situation*, p. 46.

¹⁶⁵ European Roma Information Office. *Answers to the Green Paper*.

¹⁶⁶ See discussion in Focus Consultancy Ltd., the European Roma Rights Center and the European Roma Information Office, *Situation*, p. 47.

¹⁶⁷ See discussion on need for civil society capacity building in Open Society Institute, *Lessons Learned Roma Programming, Conclusions and Recommendations*, May 2005.

¹⁶⁸ The Open Society Institute commented in a recent paper summarising lessons learned based on its own experience as a grantmaker that: "There is on the one hand a need for sustainable, long-term institutional core support for civic groups. Any semblance of strategic advocacy requires a minimum prospect that Roma-led NGOs do not exist in a state of perpetual existential crisis that precludes any forward planning. On the other hand there is a need for a degree of 'enlightened opportunism' and a capacity for flexible, imaginative, and informed grant making to be able to respond to and take advantage of changing and often dynamic political situations." Open Society Institute, *Lessons Learned* p 6.

¹⁶⁹ E.U. Network of Independent Experts on Fundamental Rights. *Thematic Comment No. 3*, p. 18.

¹⁷⁰ For more information about this Working Party, see website at: http://europa.eu.int/comm/justice_home/fsj/privacy/workinggroup/index_en.htm

¹⁷¹ For further information about this Working Group, see website of the EC Directorate-General of Employment, Social Affairs and Equal Opportunities at: http://europa.eu.int/comm/employment_social/fundamental_rights/policy/aneval/data_en.htm

¹⁷² Reuter, Niklas, Timo Makonnen, and Olli Oosi. *Study on Data Collection to measure the extent and impact of discrimination in Europe*. Net Effect Oy, 2004. Available on the Internet at: http://europa.eu.int/comm/employment_social/fundamental_rights/pdf/pubst/compstud04fin.pdf

¹⁷³ Simon, p. 82.

¹⁷⁴ During European days or European years, actions across the European Union are devoted to designated issues. For instance September 26 is designated as the European Day of Languages and events are carried out by individuals, organisations and public authorities in order to celebrate Europe's linguistic diversity and the benefits of being able to speak another language.

¹⁷⁵ The European Parliament has specifically urged the Commission "to include the issue of combating Anti-Gypsyism/Romaphobia across Europe among its priorities for the 2007 European Year of Equal Opportunities for All" and also called on "political and civil society at all levels to make it clear that racial hatred against the Roma can never be tolerated in European society". European Parliament, *Resolution on the situation of the Roma in the European Union*, paragraph 4.

¹⁷⁶ See Focus Consultancy Ltd., the European Roma Rights Center and the European Roma Information Office, *Situation*, p. 47; Open Society Institute, *Lessons Learned*, p. 15.

¹⁷⁷ European Roma Information Office. *Answers to the Green Paper*.

¹⁷⁸ Discussion around the Proposal for a Framework Decision on combating Racism and Xenophobia is currently stalled.

¹⁷⁹ For example Bulgaria, the Czech Republic, Hungary, Romania and Slovakia were all countries in which the EU expressed concern over the situation of Roma and identified improvement as a short or medium-term priority. All adopted national strategies focused specifically on Roma. See discussion in Guglielmo, Rachel. "Human Rights in the Accession Process: Roma and Muslims in an Enlarging EU", in

Toggenburg, Gabriel, ed. *Minority Protection and the Enlarged European Union: the Way Forward*, OSI, 2004, pp. 37 - 58.

¹⁸⁰ Rachel Guglielmo points out that the formal adoption of these strategies "has not been matched by a commitment to ensure their effective implementation." Guglielmo, *Ibid.* p. 43.

¹⁸¹ A recent example where the European Commission adopted such a method involved letters sent by Commissioners Vladimir Špidla and Danuta Hübner, (Commissioners responsible for the European Regional Development Fund and European Social Fund respectively), inviting Ministers in different countries to use Structural Funds to co-finance activities promoting Roma inclusion, including those which are part of the Roma Decade initiative. For example: Špidla, Vladimir and Danuta Hübner. *Letter to Mr. Radko Martinek*. D(05)386 JS/mw, Brussels, May 17, 2005; Špidla, Vladimir and Danuta Hübner. *Letter to Mr. Laszlo Gyurovszky*. D(05)386 JS/mw, Brussels, May 17, 2005.

¹⁸² In numerous countries, problems Roma face in gaining access to social protection, social advantages, employment and education are related to their situation of *de facto* statelessness or lack of citizenship documents. See discussion in E.U. Network of Independent Experts on Fundamental Rights. *Thematic Comment No. 3*, pp. 54 - 55.

¹⁸³ See discussion in Part 1 of this paper, "Measures to ensure that Roma are able to preserve, develop and promote their distinct identities".

¹⁸⁴ E.U. Network of Independent Experts on Fundamental Rights, *Report 2003*, p. 103.

¹⁸⁵ In the subsequent discussion, the report states that: "...with regard to the necessity of achieving the integration of the Roma, the mere prohibition of direct or indirect discrimination does not suffice. Equal treatment in this case involves taking into account a) the need to achieve *desegregation* of Roma in the area of housing and in particular of education, whether the situations of segregation that are encountered are the result of deliberate choices made by the public authorities or of personal preferences; b) the need to *compensate for past discrimination* which resulted in a particularly unfavourable situation for the Roma in social and economic life as a whole, by adopting a policy of *affirmative action* to integrate the Roma in the community; c) the need to encourage the integration of the Roma minority while respecting the attachment to an itinerant life which some of its members may still have." E.U. Network of Independent Experts on Fundamental Rights, *Ibid.* P. 104.

¹⁸⁶ European Roma Rights Center. "EU Roma Integration Directive - Filling the Gap in the Equality Legal Regime". *Roma Rights Quarterly*, 1/2005: Positive action to ensure equality, on the Internet at: http://www.errc.org/Romarights_index.php, p. 18.

¹⁸⁷ The UN Committee for the Elimination of Racial Discrimination indicated clearly in its General Recommendation XIX on article 3 of the Convention that the ban covers all segregation, whether caused by state or non-state actors, whether intentional or a by-product of other actions. The Committee also makes clear that "the obligation to eradicate 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." Forty-seventh session (1995)

¹⁸⁸ Elaborating upon the manner that such a Directive could bind states, Alexandra Xanthaki suggested: "Ideally a European directive on Roma integration would be binding as to the result to be achieved (Roma integration), but would allow States a discretion as to the form and mode of implementation. After the deadline for the implementation of a directive passes, any European citizen is able to invoke the directive in front of the national courts against the state, all organs of the administration, including municipalities (see the Fratelli case), and private organisations that have been given special powers by the state, enjoy special status and provide a public service (see the Foster case). In other words, any Roma person would be able to invoke the directive in front of the national courts against a wide range of organisations, such as local authorities, schools, hospitals, housing authorities, police, if the organisation has acted contrary to Roma integration, even where there is no relevant national law (direct effect). Any such authority must take Roma integration into account when legislating, when administering policies or when performing any other official act. National courts will also be under the obligation to interpret national law as far as possible in accordance with the directive (indirect effect, Von Colson, Marleasing) If the directive is not implemented, then the Commission would be able to bring an action against the Member State before the European Court of Justice for violation of Community law (article 226) and the individual will be able to seek damages before the national courts (Francovich, Factortame III/Brasserie du Pecheur). This is the case with all directives." Xanthaki, Alexandra. "The Proposal for an EU Directive on Integration". *Roma Rights*

Quarterly, 1/2005: Positive action to ensure equality, on the Internet at: http://www.errc.org/Romarights_index.php, p. 21.

¹⁸⁹ Xanthaki, *Ibid.*, p. 21.

¹⁹⁰ European Roma Rights Center. "Binding States to Roma Inclusion" in *Roma Rights Quarterly*, 1/2005: Positive action to ensure equality, on the Internet at: http://www.errc.org/Romarights_index.php.

¹⁹¹ Focus Consultancy Ltd., the European Roma Rights Center and the European Roma Information Office, *Situation*, p. 48.

¹⁹² See Focus Consultancy Ltd., the European Roma Rights Center and the European Roma Information Office, *Situation*, p. 45. See discussion in Part 1 of this report.

¹⁹³ See discussion earlier in this paper.