

Equality Bodies Countering Ethnic Profiling:

Focus on Law Enforcement Authorities in Europe



EQUINET
European Network
of Equality Bodies

BACKGROUND INFORMATION



Equinet, the European Network of Equality Bodies, brings together **49 equality bodies from 36 European countries**. Equality bodies are public institutions set up across Europe to promote equality and tackle discrimination on grounds of gender, race, age, sexual orientation, religion and belief, disability or other protected grounds. They play a fundamental role in the European non-discrimination architecture. As a first point of contact for victims of discrimination, equality bodies have an extensive understanding of how discrimination affects people in Europe. In November 2018, Equinet, in collaboration with the Open Society Justice Initiative, organised a first-of-its-kind seminar on ethnic profiling for European equality bodies.

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The work of equality bodies on ethnic profiling by law enforcement in Europe

WHAT IS ETHNIC PROFILING?

Ethnic profiling is the use by law enforcement of race, ethnicity, religion or national origin as the basis for suspicion in directing discretionary law enforcement actions—instead of individual conduct or objective evidence as the rule of law would require. In short, ***ethnic profiling occurs when people are targeted because of who they are and not what they have done***.

Ethnic profiling may manifest itself in various law enforcement actions (including identity checks, stop and searches, border and customs checks, fines, raids, vehicle inspections, surveillance and data mining) and contexts (like domestic policing, immigration control or counter-terrorism). It can take place in the discretionary decision-making of individual law enforcement officers, but may also result from law enforcement policies and practices that adversely impact certain ethnic, racial, religious or national groups disproportionately even if not designed to explicitly target them.

Ethnic profiling is unlawful, unfair and ineffective, and it can lead to the stigmatisation of individuals and communities, undermine trust in law enforcement and damage police-community relations.

As a form of discrimination, ethnic profiling violates the right to non-discrimination under international, European and domestic law, and it can lead to the



EU MIDIS II SURVEY

In the absence of relevant and comparable official data, the EU's Fundamental Rights Agency conducted an EU-wide survey of 25,515 minority respondents to measure their experience with discrimination, including their encounters with the police. The EU MIDIS II survey was carried out in 2015-2016, interviewing people with different ethnic minority and immigrant backgrounds only. There is no majority population comparator.

→ **EU MIDIS II full results here:**

https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-midis-ii-main-results_en.pdf

violation of other important fundamental rights, including freedom of movement, freedom of religion and the right to privacy. Institutions of the United Nations, Council of Europe and the European Union have expressed concerns and issued recommendations in relation to ethnic profiling. Furthermore, the United

Nations Human Rights Committee, the European Court of Human Rights, as well as a developing body of national jurisprudence in Europe have rejected ethnic profiling as a form of ethnic discrimination.

Ethnic profiling is unfair and ineffective. Focusing on racial and ethnic characteristics results in a disproportionate police attention on minority ethnic groups and distributes criminal justice unequally across societies. This has negative impacts on affected individuals, communities and law enforcement. Victims of ethnic profiling report feeling persecuted and harassed by the police. The practice stigmatises minority communities by perpetuating negative stereotypes, legitimising racism and eroding trust in law enforcement and the criminal justice system. Ethnic profiling thus undermines the efficacy of law enforcement by misdirecting scarce resources and alienating individuals and communities whose cooperation would be an asset in effective crime detection and prevention.



OVERALL PICTURE

26 % of all respondents were stopped by the police in the five years preceding the survey.

Of those stopped during that period, 33 % believe that the most recent stop was because of their immigrant or ethnic minority background.

- EU MIDIS II

EQUALITY BODIES' MANDATE

According to EU legislation, each EU Member State is required to set up an equality body covering the grounds of race, ethnicity and gender. However, many EU Member States have gone beyond these requirements and empowered their equality bodies to address discrimination on further grounds, including religion and belief, sexual orientation, disability, nationality, origin, language or age.



DIFFERENCES BETWEEN DIFFERENT ETHNIC MINORITIES (AND THE MOST AFFECTED ONES)

In relation to the most recent police stops among those stopped in the five years before the EU-MIDIS II survey, on average, **nearly every second respondent with Asian (47 %), Sub-Saharan (41 %), North African (38 %) and Roma background (42 %) thought they were stopped due to reasons related to their immigrant or ethnic background.**



- EU MIDIS II

Equality bodies across Europe, as public institutions concerned with promoting equality as a fundamental value and combating discrimination, have been playing an increasingly important role in the fight against ethnic profiling. Even when their mandate, especially for legal work, is limited in relation to the activities of law enforcement, some equality bodies have found creative ways to address the problem of ethnic profiling by using their other competences such as research, awareness-raising or public statements. Furthermore, equality bodies usually have the power to assist any victim of discrimination irrespective of their nationality or migration status.

AREAS OF WORK

This Factsheet and the Compendium of Promising Practices highlight European equality bodies' work on ethnic profiling through research, legal casework, engagement with law enforcement, awareness raising and public statements. The purview of these publications is limited to equality bodies' work on ethnic profiling conducted by state law enforcement agencies. Therefore, it excludes wrongdoing by private actors (e.g. security guards employed by private firms) unless they are fulfilling their responsibilities on behalf of the state.

RESEARCH

Research on ethnic profiling is crucial to demonstrate problematic practices and impact where there is a lack of data, as it provides important reference points for advocacy, litigation and reform. Equality bodies have specific expertise on discrimination and access to information not always publicly available, which can support robust research into ethnic profiling practices. Research conducted by equality bodies has proved to be useful for raising awareness of problems, supporting litigation and suggesting practical remedies for change. Equality bodies note the critical importance of incorporating the voices and interests of the communities most affected in any research on ethnic profiling. Some equality bodies have implemented research projects in collaboration with law enforcement, which has in turn provided access to data that otherwise may be withheld. Such engagement has also opened opportunities for institutional relationship building, advocacy and awareness raising with state agencies. Additionally, some equality bodies have issued guidance and recommendations to the police on how best to collect data and conduct research on ethnic profiling within their own forces.



DIFFERENCES BASED ON SEX AND AGE

A look at gender differences reveals that **men are stopped by the police more often than women** across all surveyed target groups (e.g. immigrants and descendants of immigrants from North Africa – 48 % vs 13 %). **Young respondents (16-34) are more frequently stopped.** The police stop rate among older respondents is closer to the target group average, with stops less prevalent for the oldest age groups.

- EU MIDIS II

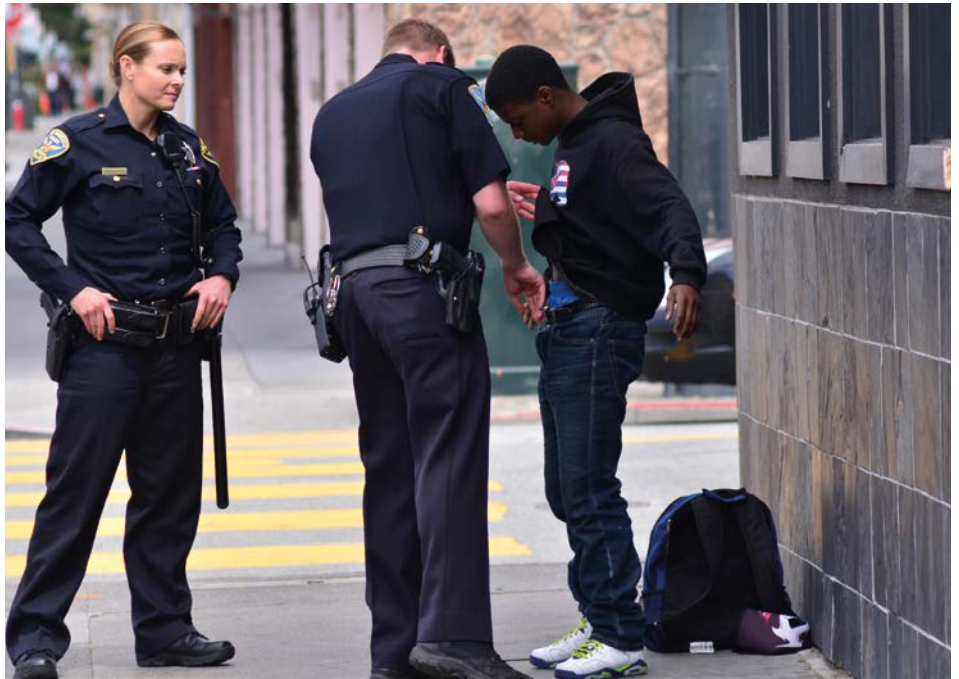
LEGAL CASEWORK

Equality bodies have been playing an increasingly relevant role in identifying cases of ethnic profiling in Europe. They have investigated and adjudicated complaints, taken enforcement action and intervened in litigation. Cases have concerned allegations of discriminatory stops, identity checks and searches as well as a registry of Roma individuals and fines targeted at specific minority groups. Outcomes have included issuing recommendations, reaching settlements and obtaining court rulings confirming the obligations of the police and the state to act fairly and not to discriminate. Equality bodies have also monitored progress following decisions and settlements. Crucially, the involvement of equality bodies in litigation offers additional expertise in discrimination and adds legitimacy to legal arguments. It may also provide access to data and evidence through official requests and investigations, as well as open up avenues for engagement with law enforcement.



ENGAGEMENT WITH LAW ENFORCEMENT

Equality bodies have engaged with law enforcement in a variety of ways, relying on both collaborative and more adversarial approaches. One common form of engagement is through provision of trainings that incorporate guidance on ethnic profiling specifically. While trainings can be useful at setting basic standards, there is little evidence that trainings change officer behaviour or institutional practices driving ethnic profiling. Training sessions could easily serve as a cover for law enforcement to seemingly address ethnic profiling while failing to change policy or practice. This underlines the importance of combining training with longer-term initiatives that include leadership, strong policies on ethnic profiling and monitoring police actions. Equality bodies have also followed up on research results, issued recommendations or general motions, and organised multi-stakeholder meetings to engage with law enforcement on the subject in a cooperative manner. Other equality bodies have taken a more confrontational approach, investigating police practice or taking legal action against ethnic profiling.



PUBLIC STATEMENTS

Equality bodies may issue public statements on ethnic profiling even when their mandate is constrained. Public statements acknowledging the problem at the level of practice and its human rights implications are especially relevant in contexts where law enforcement authorities do not recognise the existence of ethnic profiling or merely attribute it to “bad apples” within their ranks. Be it through written submissions to the police or police oversight bodies, warnings to legislators with respect to draft bills or public guidance on how to prevent it, equality bodies have publicly expressed concerns about ethnic profiling on multiple occasions.

AWARENESS RAISING

Equality bodies are well positioned to raise awareness on ethnic profiling but they have yet to do so in most European countries. Awareness raising on ethnic profiling is essential given the lack of ethnically disaggregated data in most of Europe, which could readily prove discriminatory patterns of practice by law enforcement. Some equality bodies have organised conferences and panel discussions on ethnic profiling, bringing together various stakeholders, such as civil society (including affected communities), law enforcement, researchers and elected officials. Promising practice examples on other issues that equality bodies could replicate vis-a-vis ethnic profiling include awareness-raising and know-your-rights campaigns; relevant recommendations and decisions publicised in the media; exhibits to demonstrate human impact; or community consultations. Raising the profile of the issue could help build trust with minority communities and remedy the problem of underreporting on the subject.



COMPARISON WITH MAJORITY POPULATION

In 2017/18, there were **3 stop and searches for every 1,000 White people, compared with 29 stop and searches for every 1,000 Black people and 8 for every 1,000 Asian people**. Therefore, during this period Black people were 9 and a half times as likely to be stopped and searched as White people, while Asians nearly three times.

- UK Home Office statistics

MAIN CHALLENGES AND RECOMMENDATIONS

Equality bodies have identified a number of challenges affecting their work in this area and the discussions at the seminar suggested approaches for overcoming these difficulties:

➔ **Institutional constraints:** Several equality bodies reported they lack the mandate, have limited awareness or knowledge, or face political obstacles to engage on ethnic profiling. A combination of these factors and the challenge of implementing a wide-ranging mandate with scarce resources has led to the majority of equality bodies not addressing ethnic profiling as one of their strategic priorities.

- *Working with a limited legal mandate:* Some equality bodies have found creative ways to address ethnic profiling by using their various competences such as research, awareness-raising or public statements.
- *Gaining awareness and knowledge:* This Factsheet, the accompanying compendium and other [resources](#) may be used to raise equality body personnel's awareness on the subject and to select promising practices that could be adapted and implemented.
- *Overcoming political obstacles:* Engaging on ethnic profiling can be contentious, especially in the current climate of increased sensitivity around migration and terrorism. However, ethnic profiling is a form of ethnic discrimination, which is a type of discrimination condemned by all states and prohibited in European legislation. Framing work around ethnic profiling in terms of ethnic discrimination thus may help overcome political resistance. Importantly, equality bodies can also work with civil society and identify champions among elected officials and law enforcement bodies to help overcome political obstacles.

➔ **Lack of data (collection):** Ethnic profiling is often the result of indirect discrimination and only becomes evident when looking at the disproportionate distribution of law enforcement actions across different population groups. However, most European countries do not collect or release ethnic data, despite the fact that [data protection standards do not prohibit the collection of ethnic statistics](#). Prominent anti-discrimination bodies have repeatedly [called for the collection of ethnic statistics on law enforcement activities](#) for the purposes of monitoring and addressing ethnic profiling. As the leading non-discrimination agencies in their respective jurisdictions, equality bodies can and should be at the forefront of data collection efforts: they can undertake their own data gathering and ask the police and other authorities to provide access to or collect data (for example, through the [introduction of stop forms/apps](#) on which officers record their activities).

➔ **Evidentiary issues:** The absence of ethnically disaggregated data creates a challenge for victims of ethnic profiling and their legal representatives to provide proof of disputed encounters. Individual law enforcement measures may very well be legal and will only collectively—at the level of a pattern of practice—constitute discrimination when they disproportionately and illegitimately target minorities. In certain ethnic profiling cases, courts have been resistant to shifting the burden of proof (the obligation of a party to prove its allegations)—which is an essential procedural step in every discrimination case, but especially in cases where the victim has no access to relevant data. Equality bodies should continue to argue for the onus to be shifted to the state where a prima facie case of discrimination has been established as well as for states to fulfil their positive obligations to address discrimination.



- ➔ **Research problems:** Research on ethnic profiling practices by law enforcement may present its own set of challenges: victims may be hesitant to provide testimony, law enforcement may reject the problem even exists, and the lack of data could seriously hinder quantitative research on the subject. Equality bodies could draw upon research carried out by non-governmental organisations or form research consortiums that include law enforcement as well as civil society where suitable to overcome methodological challenges and facilitate access to data.

- ➔ **Underreporting and outreach to affected communities:** Victims of ethnic profiling may refuse to share their experience due to trauma, fear of reprisal or because they have become desensitised to the practice and do not view it as a human rights violation. This could result in underreporting of complaints (a recurring challenge cited by equality bodies) and make outreach to affected communities on the subject especially challenging. More public engagement on the subject (including through awareness raising events or campaigns), more emphasis on developing trust in impacted communities, recruiting diverse staff with cultural competency and improving the efficiency of complaints processes may help overcome these problem by building affected communities' trust in equality bodies.

- ➔ **Engagement with law enforcement:** Engaging on ethnic profiling with law enforcement may pose specific challenges for equality bodies. Discrimination is a sensitive subject and law enforcement agencies may become defensive and close ranks. Working in a collaborative manner, through research partnerships or training, may support meaningful exchange. Focusing on developing practical interventions and replicating good practices from other law enforcement agencies may support positive change.

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ALBANIA

Commissioner for the Protection from Discrimination
www.kmd.al

AUSTRIA

Austrian Disability Ombudsman
www.behindertenanwalt.gv.at

AUSTRIA

Ombud for Equal Treatment
www.gleichbehandlungsanwaltschaft.gv.at

BELGIUM

Institute for the Equality of Women and Men
www.igvm-iefh.belgium.be

BELGIUM

Unia (Interfederal Centre for Equal Opportunities)
www.unia.be

BOSNIA AND HERZEGOVINA

Institution of Human Rights Ombudsman of Bosnia and Herzegovina
www.ombudsmen.gov.ba

BULGARIA

Commission for Protection against Discrimination
www.kzd-nondiscrimination.com

CROATIA

Office of the Ombudsman
www.ombudsman.hr

CROATIA

Ombudsperson for Gender Equality
www.prs.hr

CROATIA

Ombudswoman for Persons with Disabilities
www.posi.hr

CYPRUS

Commissioner for Administration and Human Rights (Ombudsman)
www.ombudsman.gov.cy

CZECH REPUBLIC

Public Defender of Rights
www.ochrance.cz

DENMARK

Board of Equal Treatment
www.ast.dk

DENMARK

Danish Institute for Human Rights
www.humanrights.dk

ESTONIA

Gender Equality and Equal Treatment Commissioner
www.volinik.ee

FINLAND

Non-Discrimination Ombudsman
www.syrjinta.fi

FINLAND

Ombudsman for Equality
www.tasa-arvo.fi

FRANCE

Defender of Rights
www.defenseurdesdroits.fr

GEORGIA

Public Defender of Georgia (Ombudsman)
www.ombudsman.ge

GERMANY

Federal Anti-Discrimination Agency
www.antidiskriminierungsstelle.de

GREECE

Greek Ombudsman
www.synigoros.gr

HUNGARY

Equal Treatment Authority
www.egyenlobanasmod.hu

HUNGARY

Office of the Commissioner for Fundamental Rights
www.ajbh.hu

IRELAND

Irish Human Rights and Equality Commission
www.ihrec.ie

ITALY

National Equality Councilor
www.lavoro.gov.it/ministro-e-ministero/Organigaranzia-e-osservatori/ConsiglieraNazionale/Consigliera-nazionale-di-parita

ITALY

National Office against Racial Discrimination - UNAR
www.unar.it

LATVIA

Office of the Ombudsman
www.tiesibsargs.lv

LITHUANIA

Office of the Equal Opportunities Ombudsperson
www.lygybe.lt

LUXEMBURG

Centre for Equal Treatment
www.cet.lu

MALTA

Commission for the Rights of Persons with Disability
www.crpdp.org.mt

MALTA

National Commission for the Promotion of Equality
www.equality.gov.mt

MOLDOVA

Council on Preventing and Eliminating Discrimination and Ensuring Equality
www.egalitate.md

MONTENEGRO

Protector of Human Rights and Freedoms (Ombudsman)
www.ombudsman.co.me

NETHERLANDS

Netherlands Institute for Human Rights
www.mensenrechten.nl

NORTH MACEDONIA

Commission for the Protection against Discrimination
www.kzd.mk

NORWAY

Equality and Anti-Discrimination Ombud
www.ldo.no

POLAND

Commissioner for Human Rights
www.rpo.gov.pl

PORTUGAL

Commission for Citizenship and Gender Equality
www.cig.gov.pt

PORTUGAL

Commission for Equality in Labour and Employment
www.cite.gov.pt

PORTUGAL

High Commission for Migration
www.acm.gov.pt

ROMANIA

National Council for Combating Discrimination
www.cncd.org.ro

SERBIA

Commissioner for Protection of Equality
www.ravnopravnost.gov.rs

SLOVAKIA

National Centre for Human Rights
www.snslp.sk

SLOVENIA

Advocate of the Principle of Equality
www.zagovornik.si

SPAIN

Council for the Elimination of Ethnic or Racial Discrimination
www.igualdadynodiscriminacion.msssi.es

SPAIN

Institute of Women and for Equal Opportunities
www.inmujer.es

SWEDEN

Equality Ombudsman
www.do.se

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Equality and Human Rights Commission
www.equalityhumanrights.com

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www.equalityni.org

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