



European Network Against Racism
Réseau européen contre le racisme

ENAR Shadow Report 2012-2013

ENAR SHADOW REPORT

**Racism and related discriminatory practices in
employment in Europe**

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Racism is a reality in the lives of many ethnic and religious minorities in the EU. However, the extent and manifestations of this reality are often unknown and undocumented, especially in official data sources, meaning that it can be difficult to analyse the situation and to establish solutions to it.

The ENAR Shadow Reports are produced to fill the gaps in the official and academic data, to offer an alternative to that data and to bring an NGO perspective on the realities of racism in the EU and its Member States. NGO reports are, by their nature, based on many sources of data, official, unofficial, academic and experiential. This allows access to information which, while sometimes not backed up by the rigours of academic standards, provides the vital perspective of those that either are or work directly with those affected by racism. It is this that gives NGO reports their added value, complementing academic and official reporting.

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Foreword

I am delighted to present this latest edition of the European Network Against Racism's Shadow Report on Racism in Europe. It is based on 23 national Shadow Reports and provides a crucial and unique civil society perspective on the situation of racism and related discrimination in Europe, from March 2012 to March 2013.

This year, ENAR chose to focus on racism and discrimination in the field of employment. Despite the lack of comparable and reliable equality data, disaggregated by ethnic origin, religion and other characteristics, this report sheds light on the current labour market situation in Europe and manifestations of discrimination in employment, as well as the way in which discrimination is tackled via policies and public and private initiatives.

Evidence from the national Shadow Reports shows that despite the existence of a legal framework, discrimination in employment is still experienced across Europe as a widespread and pervasive phenomenon. Migrants and ethnic and religious minorities continue to face unequal treatment in the labour market. In addition, the economic and financial crisis has further exacerbated the employment gap between minorities and migrants on the one hand, and the majority population on the other.

Worryingly, the report finds that despite the existence of legislation and/or policy measures covering discrimination in employment in all Member States, they are not always as efficient as they should be. There is no comprehensive policy framework specifically addressing discrimination in employment and the procedures in place to seek redress against discrimination remain complex. The lack of political will to tackle discrimination, coupled with negative political and public discourses on ethnic minorities and migrants in a number of Member States, has not made the situation any better.

The picture is not all bleak: this report highlights numerous efforts being made by institutions and organisations to promote equality, anti-racism and anti-discrimination in the field of employment (and beyond). However, all these initiatives taken together form a scattered landscape in which efforts are not centrally organised or monitored.

ENAR works precisely to fill this void by consolidating the different actions undertaken by ENAR members across every EU Member State. As the only pan-European network of NGOs working to counter discrimination and racism in Europe, a huge potential is there to steer progressive change towards full equality, solidarity and well-being for all. But as many national Shadow Reports mention, it is not uncommon for ambitious programmes to fail because of changes in politics or funding cuts. All this contributes to slowing the mobilisation of key actors in combating discrimination and racism in employment (and beyond) effectively and sustainably throughout the European Union.

In addition, while an active civil society is welcome and necessary, it is not the responsibility of civil society alone to uphold equality and human rights. States

urgently need to show real political commitment and invest in action to curb racism and discrimination in employment.

Ahead of the 2014 European Elections, the stakes are high: estimates show that ethnic and religious minorities represent around 12% of the total European population. As for migrants, they constitute 5% of the total working age population of the European Union. How will European Parliament candidates address the question of access to employment for minorities and migrants? How could concerted efforts to combat discrimination in employment support Member States in reaching the Europe 2020 targets? We hope to start bringing some answers to these questions in this report and will continue to offer suggestions on ways to tackle this challenging situation.

Finally, we are very grateful to all the dedicated people who have contributed to ENAR's Shadow Reports, and for the valuable support of the European Commission and the Open Society Foundations in making the publication of this unique monitoring tool possible.

Sarah Isal
ENAR Chair

Executive summary

ENAR's Shadow Report on racism and racial discrimination in employment in Europe is based on 23 national Shadow Reports from EU Member States¹ and Turkey. It covers the period between March 2012 and March 2013.

High **unemployment** among migrants and ethnic and religious minorities continues to be problematic, especially for Roma and for low-skilled and non-EU migrants. The **economic and financial crisis** has further exacerbated the employment gap between minorities and migrants on the one hand, and the majority population on the other. At the same time, **political and public discourses** on migrants and minorities are increasingly portraying them as economic, security and cultural threats.

Despite the existence of a legal framework, discrimination in employment is still experienced as a widespread phenomenon. Given that current EU labour market indicators only reveal rough differences between target groups and the national average, **monitoring discrimination in the labour market** cannot be carried out by only looking at labour market indicators, especially since vital comparable data remains amiss. By looking at concrete examples and manifestations of racism and discrimination, this report sheds light on perceptions of discrimination in employment, the groups most vulnerable to such discrimination, discrimination in access to employment and discrimination in the workplace.

Five groups are identified as being most vulnerable to discrimination in employment: migrants from non-EU Member States, including undocumented migrants, refugees and asylum seekers; Roma; Muslims; people of African descent and Black Europeans; and women with a minority or migrant background.

At the **stage of recruitment**, discrimination manifests itself, for example, when there are no public job postings, the selection is on the basis of names and addresses, or there is a requirement to add a picture to the letter of application. Access to employment is further often (indirectly) hampered by discriminatory regulations of recruitment agencies, by a number of institutional policies, the problematic procedure of recognition of foreign qualifications and the lack of personal networks.

With regard to **discrimination in the workplace**, migrants and ethnic and religious minorities are often paid less than their mainstream national colleagues, encounter a glass-ceiling effect, are prone to precarious and difficult working conditions, are often victims of harassment and abusive dismissal, and are discriminated against based on wearing religious symbols.

The European Union's engagement to combat discrimination in employment is founded on a solid **legal framework**. When looking at this legal framework on a national level, the analysis reveals that EU anti-discrimination legislation has been

¹ Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain and the United Kingdom.

transposed into national law but that there remain a number of gaps in implementation and protection mechanisms. In addition, **none of the reviewed countries have adopted a comprehensive national strategy on discrimination in employment** although some national policies might indirectly tackle discrimination in employment or focus on specific groups.

Due to **significant obstacles to seek judicial remedies**, victims of discrimination in employment do not usually bring their case to court. Key obstacles include the difficulty to prove discrimination, a lack of trust in the judicial system, lack of awareness of legal provisions, the length and cost of proceedings, and the fear of re-victimisation.

Equality bodies and Ombudsman institutions can provide legal assistance to potential victims of discrimination in the field of employment. However, there are concerns regarding their independence and limited financial resources. In a number of Member States, **labour inspectorates** are active in combating discrimination, although they do not always have expertise on and/or awareness of racial discrimination.

Civil society (trade unions and NGOs) plays a key role in combating discrimination in employment. The level of activity of trade unions varies between countries. Some national reports mention examples of good practices while in others, the level of involvement of trade unions is very low. In all EU countries there is at least one NGO focusing on racism and discrimination in employment. Their activities often include campaigning, raising awareness, and providing information, training, or counselling.

Employers and employer organisations are generally less active in fighting discrimination in employment although there are examples of good practices to be mentioned.

The report concludes that all these initiatives taken together form a scattered landscape in which efforts are not centrally organised or monitored, and that the lack of a comprehensive framework hinders efforts to fight discrimination in employment effectively.

Recommendations

Realising equality and maximising the positive potential of diversity continue to be among the key challenges facing labour markets in the EU Member States. The inclusion of migrants and ethnic and religious minorities in their respective majority communities is determined to a large extent by their opportunities to actively participate in gainful and quality employment.

Recommendations for future work in addressing racism and related discrimination in employment include:

To European Union institutions

- Adopt a common EU framework for the collection and analysis of reliable and comparable disaggregated equality data for the purpose of combating discrimination, including in employment.
- Conduct in-depth qualitative and quantitative research and analysis on the effects and impact of austerity measures on marginalised groups in society, including migrants and ethnic and religious minorities (with a focus on the situation of women). A coherent and transparent consultation with relevant organisations and stakeholders should be foreseen to ensure the full participation of the first concerned.
- Ensure that labour market regulations respect the “equal status for equal work” principle and that all workers (EU Member State nationals, EU migrants and non-EU migrants) enjoy equal treatment regarding work conditions, social rights and access to legal redress.
- Set up common EU standards on equality bodies ensuring a broad mandate to cover employment, the possibility to initiate court proceedings either in the victim’s and/or their own name and adequate financial and human resources, in order to fulfil their task in an independent and effective manner.
- Develop guidelines for employers to accommodate religious and cultural diversity in the workplace.
- Introduce controlling mechanisms at national level to strengthen standard setting initiatives such as diversity charters and encourage the development of diversity labels as effective monitoring tools. Promote existing pan-European diversity labels taking into account ethnic and cultural origin.
- Establish common EU standards on labour inspection, geared towards detecting discrimination on the grounds of ethnic origin and religion/belief.

To national governments

- Collect equality data and monitor labour market indicators to measure equality, which include the employment position of migrants and minority groups, in respect of privacy and fundamental rights standards.
- Adopt legislation relative to reasonable accommodation of cultural and religious diversity, and approaches to tackle religious discrimination in employment in order to ensure the protection of all workers' rights.
- Ensure that any restriction on the wearing of religious and cultural symbols and dress at work is limited to very well-defined and narrow circumstances and pursues a legitimate goal, in accordance with international human rights standards.
- Strengthen rules and practices on labour inspections to combat exploitation of migrants and minorities including outside the regular labour market, in accordance with ILO standards, and reinforce complaint mechanisms to ensure that all migrant groups – regular and irregular – have access to legal redress.
- Ensure training on non-discrimination legislation in employment and case-law for judges, prosecutors and lawyers. Trainings on cultural understanding and unconscious bias should also take place and ran by organisations representing most discriminated groups.
- Ease and ensure the process of recognition of foreign qualifications, making it free of charge, and improve conditions for assessing and accrediting informal qualifications or practical work experience.
- Ensure stable and adequate resource allocation to National Human Rights Institutions and equality bodies so that they can pursue the missions they are entrusted with in European legislation; ensure, especially during the economic crisis, that no recruitment moratorium in the public sector applies to them.
- Ensure judicial and non-judicial complaint mechanisms for employment discrimination cases are transparent and clear information is available to victims when reporting discrimination.
- Ensure public sector employers have a positive equality duty, which implies the duty to recruit professionals from migrants and minority groups and the duty to mainstream diversity in public procurement policies (ensure that external contractors implement diversity management policies with a focus on ethnic and religious minorities and migrants).
- Develop national/regional standard setting initiatives such as diversity charters and ensure control mechanisms for the implementation of such initiatives. Incomplete implementation should not give way to claiming official participation in such standard setting initiatives at national level.

To equality bodies

- Proactively collect and publish data on court cases and complaints concerning discrimination in employment and disaggregate data by ground of discrimination and field of complaint.
- Pro-actively conduct research on ethnic and religious minorities' discrimination experiences in employment by using surveys to overcome underreporting of discrimination cases.
- Launch public campaigns to better inform both employers and groups of victims of discrimination about anti-discrimination legislation, complaint procedures and relevant developments in non-discrimination case-law.

To civil society organisations

- Conduct systematic monitoring and report discriminatory practices in employment and effective practice addressing underlying inequalities and discrimination.
- Continue to promote greater awareness among migrants and ethnic minority groups as to what constitutes discrimination in employment and how to report it.
- Work with both public and private sector organisations to share good practices in combating racism and related discrimination in employment and build coalitions.
- Increase coordination between anti-racist organisations at regional/national level to cater for further specialisation in monitoring, advocacy and litigation in the field of employment.

To employers

- Mainstream the fight against racism and related discrimination in the workplace in Corporate Social responsibility and diversity strategies.
- Monitor and review recruitment, progression and retention of workforce by equality strands in order to identify direct or indirect discriminatory practices and adopt corrective measures which will reduce inequalities in each of these areas.
- Develop clear internal regulations against racism, related discrimination and harassment in the workplace. These regulations should include clear information for employees who are victims or witnesses of discrimination, internal remedy procedures and the establishment of a complaint desk/trusted representative to assist victims in reporting discrimination cases either to court or to equality bodies.
- Sign and implement diversity charters, which exist in several EU Member States and which enable companies to share good practices in the recruitment of migrants and ethnic minorities. Implement diversity labels where they exist (such as the AFNOR certification in France or the European Holistic Management Certificate™).

To trade unions

- Develop internal strategies to support delegates in addressing racism and related discrimination within trade union structures and affiliates, and in supporting victims of racism and related discrimination in the workplace.
- Develop and promote good practices in monitoring and addressing racism and related discrimination in employment, including on the grounds of culture/religion.
- Accurately inform delegates and employees on their rights and duties in case of discrimination and racism in employment.
- Place racism and related discrimination in employment on the agenda in social dialogues with both the government and employers' organisations.
- Closely cooperate with other trade unions, employers and NGOs, including at EU level, to develop innovative ideas to address discrimination in the workplace.

To local governments

- Monitor information on the local employment situation in order to identify local labour market profiles of ethnic and migrant groups.
- Work with front line organisations to deliver programmes which will improve the employability of local migrants and minorities. Share and replicate good practices that occur in other municipalities.
- Use the leverage of a positive equality duty in all call for tenders and public procurement policies, requiring external contractors to prove that they actually implement diversity management policies that include a focus on ethnic and religious minorities and migrants.

Definitions

In order to define unequal and negative treatment of migrants and ethnic and religious minorities in employment, several concepts should be reviewed for purposes of understanding, particularly as they appear intermittently in the different national Shadow Reports.

The term '**migrant**', as used for the purposes of this report, may include long-term and short-term migrant workers, students, asylum seekers and refugees, stateless persons, spousal and family dependents, migrant women and children, and undocumented migrants. They may include third-country nationals (persons who are not nationals of an EU Member State) and intra-EU migrants.

The term '**minorities**' refers in this report to people from religious, linguistic, ethnic and national minorities. Under international law, minorities do not refer to migrants, but they may include people with a migration background. There is no international agreed definition as to which groups constitute minorities. According to a definition offered in 1977, a minority is: "A group numerically inferior to the rest of the population of a state, in a *non-dominant position*, whose members – being nationals of the State – possesses ethnic, religious, or linguistic characteristics differing from the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language".² Meanwhile, the understanding of a minority is no longer explicitly linked to their numbers in a certain context, but rather to historically and structurally embedded disadvantages affecting a certain minority community over time. A **religious minority** is a group of persons having a faith which is different from that held by the majority.

Discrimination is a human rights violation prohibited by a range of binding human rights standards. The UN Human Rights Committee has defined discrimination as: "any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms".³

Direct discrimination occurs when one person is treated less favourably than another is, has been or would be treated in a comparable situation, on a ground covered by the EU equality directives.⁴

² United Nations Office of the High Commissioner for Human Rights, *Minority Rights: International Standards and Guidance for implementation*. Available at: http://www.ohchr.org/Documents/Publications/MinorityRights_en.pdf.

³ United Nations Human Rights Committee, *General Comment N.18: Non-discrimination*, Thirty-seventh session (1989), Para 7.

⁴ The terms direct discrimination, indirect discrimination and harassment are defined in the EU Equality Employment Directive 2000/78/EC and the EU Racial Equality Directive 2000/43/EC. Available at: http://europa.eu/rapid/press-release_MEMO-08-69_en.htm.

Indirect discrimination occurs when an apparently neutral provision, criterion or practice would put persons having a particular racial or ethnic origin, religion or belief, disability, age, or sexual orientation at a particular disadvantage compared with other persons; unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.⁵

Harassment is considered to be discriminatory if the unwanted conduct is related to a protected ground and if its purpose or effect is to “violate the dignity of a person” and/or to create “an intimidating, hostile, degrading, humiliating, or offensive environment”.⁶

Racism is a political term with deep historical roots that reflects the belief that certain ‘racial’ groups are biologically inferior to others. The literal understanding of the term racism - unsurprisingly - typically correlates to historical repressive structures of colonialism and Afrophobia, and with the apartheid system in South Africa. It has also been used to justify slavery and the on-going inequalities between White and Black people throughout history, evident by segregation and incarceration practices, for instance, in the United States. The traditional notion of racism has evolved towards individual and collective attitudes and behaviours which involve reducing ‘otherness’ to what is seen as an ‘inferior’ or adverse identity characteristic, which can be origin or skin colour, ‘culture’, beliefs or identity and which are socially constructed as ‘biological races’ featuring essentialised characteristics, which would allegedly justify social hierarchy and discrimination. Racism is therefore intrinsically linked to majority-minority power relationships within any given society. Racism is typically expressed through individual practices as well as institutional policies and procedures - even when these are operated by fair-minded individuals.

⁵ Ibid.

⁶ Ibid.

1. Introduction

This 2012/13 European Shadow Report is mainly based on data and information from ENAR's 2012/13 national Shadow Reports, which have been written by independent national experts in 22 Member States⁷ and the candidate country Turkey. The national Shadow Reports cover the period from March 2012 to March 2013. They include information about the national labour market outlook, the national legal framework addressing discrimination in employment, manifestations of discrimination in employment, and the way in which discrimination is tackled via policies and public and private projects. The national Shadow Reports are available at http://www.enar-eu.org/Page_Generale.asp?DocID=15294&langue=EN.

Despite the lack of comparable and reliable equality data, disaggregated by ethnicity, religion and other characteristics for each EU Member State and Turkey, this Shadow Report sheds light on the current labour market situation in Europe. It draws on national-level experiences and data described in the national Shadow Reports as well as EU institutions' reports and statistical data. As such, it contributes to knowledge regarding developments and manifestations of discrimination in the labour market in Europe and provides a number of concrete examples as well as remedies occurring in different EU Member States.

1.1 General EU context

The ethnic and national composition of work forces and populations is changing visibly. On 1 January 2012 the foreign population of the EU-27 was 20.7 million, representing 4.1 % of the EU-27 population, while the foreign-born population was 33.0 million. There is a particularly high proportion of non-nationals (10 % or more of the resident population) in Cyprus, Latvia, Estonia, Spain, Austria and Belgium.⁸ In the UK, where ethnic statistics are collected, the last census in 2011 revealed that 14% of the British population is non-White.⁹ In an increasing number of cities, the changes are even more striking. For instance, 49.5% of the population of Vienna, in Austria, is foreign born or has at least one foreign born parent.¹⁰

The International Labour Organisation calculated that 105 million of the 214 million people worldwide living outside their countries of birth or citizenship in 2010 are economically active, i.e. they are employed, self-employed or otherwise engaged in

⁷ Austria, Belgium, Bulgaria, Croatia, Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, United Kingdom.

⁸ Eurostat, *Migration and migrant population statistics*. 2013. Available at: http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Migration_and_migrant_population_statistics.

⁹ Office for National Statistics, *Ethnicity and National Identity in England and Wales 2011*. 2012. Available at: <http://www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-for-local-authorities-in-england-and-wales/rpt-ethnicity.html#tab-conclusions>.

¹⁰ Taran Patrick, *Speech given at ENAR's 5th Equal@work meeting on the Glass Ceiling Effect of Minorities in Europe*. 6 December 2013, Brussels.

remunerative activity. Given an estimate of one accompanying dependent for each active adult, well over 90% of migration today is bound up in labour and employment outcomes. These figures do not register the millions more people around the world in short-term, temporary situations where they are not counted as residents.¹¹

Table 1: Employment, unemployment and participation rates by origin in OECD European countries in 2011 (%)¹²

Country	Employment rates	Unemployment rates	Participation rates
EU27 + EFTA	68,1	11,1	76,6
Other European countries	59,4	14,3	69,3
North Africa	48,3	25,2	64,6
Other African countries and Middle East	58,0	19,6	72,1
North America	67,4	7,1	72,6
Other American countries and Caribbean	62,0	22,2	79,6
Asia	62,4	9,8	69,2
Others	78,7	3,2	81,2
Foreign-born (total)	61,6	15,5	72,9
Native-born	65,4	8,8	71,7

Source: OECD, International Migration Outlook, 2012.

Europe's demographic challenges

Demographic changes in Europe are clearly being felt or anticipated. The total fertility rate (the number of live births per woman) in the EU-27 has declined to a level well below the replacement level in recent decades.¹³ These Member States will consequently be facing increasing departures from the work force over the next 15 years. Patrick Taran, of the Global Migration Policy Associates, estimates that within 15 years, the majority of the world's countries and populations will be in serious work force decline. For instance, Germany is expected to lose five million members of its work force in the next ten years. According to a recent study, Switzerland will need 400,000 additional workers by 2030.¹⁴

¹¹ Ibid.

¹² OECD European countries do not include Turkey because no data by region of birth is available for Turkey.

¹³ Eurostat, *Fertility statistics*. 2012. Available at: http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Fertility_statistics.

¹⁴ Taran Patrick, 2013.

Table 2: Composition of population in the European Union in 2012 (%)

Country	Native-born	EU-27	Non-EU 27
Belgium	84,7	7,2	8,1
Bulgaria	98,8	0,4	0,8
Czech Republic	96,3	1,3	2,4
Denmark	90,5	3,0	6,5
Germany	87,0	4,2	7,9
Estonia	83,9	1,5	14,5
Ireland	84,2	11,0	4,8
Greece	88,8	2,8	8,3
Spain	86,6	4,6	8,9
France	88,7	3,3	8,0
Croatia	-	-	-
Italy	91,0	2,9	6,1
Cyprus	76,1	12,6	10,6
Latvia	85,4	1,5	13,1
Lithuania	95,1	0,6	4,3
Luxembourg	58,6	31,4	9,8
Hungary	95,3	3,2	1,5
Malta	91,6	4,2	4,2
Netherlands	88,6	2,8	8,6
Austria	84,1	6,5	9,3
Poland	98,2	0,7	1,1
Portugal	91,9	2,0	6,1
Romania	99,1	0,4	0,5
Slovenia	88,8	1,0	10,2

Slovakia	97,1	2,4	0,5
Finland	95,1	1,7	3,1
Sweden	84,9	5,2	9,9
United Kingdom	87,8	4,1	8,0
Turkey	-	-	-

Source: Eurostat, The composition of the population in EU Member States, 2012. The numbers are the percentages of nationals, EU migrants and non-EU migrants living in the Member States, based on the country of birth.

Concerns about work force entrants compensating these depleting figures have gradually raised more attention in the direction of migrants' and minorities' contributions to European society. For instance, economists in Germany have been stressing the need for more migrants in order to fill labour market needs. This is because they can meet the needs related to demographic changes, but also because they contribute important skill sets.

The competencies and skills required of work forces worldwide are also more complex, diverse and specialised. A forecasting study by the McKinsey Global Institute estimated that the global shortage of high skilled and trained technical skills is projected to reach 85 million by 2020.¹⁵ At a time when employers around the world today complain that they cannot fill one in three jobs on offer with the needed level of skills, this seven-year warning is fast approaching. Michael Hüther, head of the Cologne Institute for Economic Research, a think tank that is aligned with employers' associations, assesses that today's immigrants are on average better qualified than German workers.¹⁶

Migration has become essential to ensure Europe's continuous development and economic growth. During 2011, there were about 1.7 million migrants moving to the EU from a non-EU country. In addition, 1.3 million people migrated from one Member State to another Member State.¹⁷

Europe's economic challenges

The current economic and financial crisis has led to a rise in unemployment (with youth particularly affected) as well as increased job competition. Austerity measures and related financial 'reforms' imposed by international lenders have contributed to heightening wealth disparities across Europe and have had a negative impact on the social and economic rights of the most vulnerable.

¹⁵ McKinsey Global Institute, *The world at work: Jobs, pay, and skills for 3.5 billion people*. 2012.

¹⁶ 'Welfare for Immigrants: EU Wants Fortress Germany to Open Up'. *Spiegel Online*, 14 January 2014. Available at: <http://www.spiegel.de/international/germany/brussels-may-force-germany-to-loosen-access-to-social-benefits-a-943224-2.html>.

¹⁷ Eurostat, *Migration and migrant population statistics*. 2013.

According to a report by the Council of Europe's High Commissioner for Human Rights as well as the national Shadow Reports, human rights have been significantly eroded due to austerity policies in the different EU Member States. The economic crisis, coupled with the failure to invest in essential social protection, health and education programmes, has had dire consequences on vulnerable groups, especially children, young persons, the elderly and communities vulnerable to structural disadvantages and discrimination, including migrants and ethnic and religious minorities. In addition, youth unemployment in Europe has reached record levels, with millions of young people unemployed with scarred futures.¹⁸

Many Europeans believe the economic crisis is contributing to more discrimination in the labour market, in particular on the grounds of 'older' age (67% of the respondents), disability (53%) and ethnic origin (52%).¹⁹

Europe's challenges with populism

As most Member States' economies have been hit by the economic and financial downturn, and in light of lacking innovative solutions to move Europe out of the crisis, many politicians have resorted to stirring up sentiment against immigrants and ethnic minorities as well as against the European Union. The political and public discourse on migrants and ethnic and religious minorities in the EU Member States has increasingly shifted towards a security-based discourse, portraying migrants and ethnic minorities as economic, security and cultural threats to society. The public perception of ethnic and religious minorities in most countries remains largely negative: they are often accused of taking job opportunities from the native labour force, of abusing the welfare system and of increased crime rates. They are used as scapegoats for everything that goes wrong in society and their return has been called for as a solution to high unemployment rates.²⁰ Besides this security-based discourse, a utilitarian approach (or superiority-based approach) is also very much present, which considers migrants as labour force entities, filling jobs that the bulk of EU citizens do not want to carry out.

- ⇒ In Greece, the far-right Golden Dawn party pledged to "protect the country from an unprecedented invasion and halt the immigration problem, which is perhaps even a greater problem than the financial crisis".²¹
- ⇒ When Hungary's Jobbik party discussed the conflict in Gaza, it stated that "this is the time for us to count how many people of Jewish origin have a seat in the

¹⁸ Council of Europe Commissioner for Human Rights Nils Muiznieks, *Launch of the report 'Safeguarding human rights in times of economic crises'*. 4 December 2013. Available at: <https://wcd.coe.int/ViewDoc.jsp?id=2130915>.

¹⁹ European Commission, *Special Eurobarometer 393: Discrimination in the EU in 2012*. 2012. Available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf.

²⁰ The 2012 annual report of the FRA confirms that racist and xenophobic attitudes in EU Member States increasingly reflect the perception that Roma, Jewish people, Muslims and/or migrants represent a threat to society. European Union Agency for Fundamental Rights, *Fundamental rights: challenges and achievements in 2012*. 2013. Vienna: FRA.

²¹ ENAR 2012/13 Shadow Report: Greece.

Hungarian parliament and government, as they present a national security risk for Hungary".²²

- ⇒ Ruža Tomašić, a right-wing politician in Croatia, now a member of the European Parliament, stated that "Croatia is for Croats while everyone else is just a guest".²³
- ⇒ The True Finns party, which makes inflammatory racist statements against migrants, and particularly against Muslims, compares Muslims to "a Trojan horse in European society, waiting for the call to jihad".²⁴

Immigrants are also commonly described as 'welfare shopping' in many EU Member States. Andreas Scheuer, Germany's General Secretary of the Christian Social Union party, for instance, accused the European Commission of giving "free admission to the German social safety net", predicting a serious influx of immigrants from Bulgaria and Romania.²⁵ In the UK as well, there were frequent references to "tidal floods of new immigrants" (MEP Bloom, UKIP) from Romania and Bulgaria.²⁶ Despite the lack of evidence confirming that these immigrants become a burden on Germany's and other EU Member States' social welfare systems, anti-immigrant sentiment remains.²⁷

A number of politicians also use the argument to restrict immigration due to fears of possible negative impacts on employment, transport, housing, etc. The Shadow Reports of France and the Netherlands indicate that immigration policies have increasingly become more restrictive.

Not only do politicians play an important role in strengthening the security-based discourse, also the media is said to have a crucial impact on the general perception on migrants, asylum seekers, refugees and ethnic and religious minorities. For instance, in Croatia, the best-selling daily newspaper Jutarnji List portrayed asylum seekers as a threat to the inhabitants of Dugave, a neighbourhood of Zagreb which is home to an Asylum Reception Centre.²⁸

The Roma and Traveller populations are particularly targeted in public and political discourses.

²² ENAR 2012/13 Shadow Report: Hungary.

²³ ENAR 2012/13 Shadow Report: Croatia.

²⁴ ENAR 2012/13 Shadow Report: Finland.

²⁵ 'Welfare for Immigrants: EU Wants Fortress Germany to Open Up'. *Spiegel Online*, 14 January 2014.

²⁶ Düvell Franck, 'Romanian and Bulgarian migration to Britain: facts behind the fear'. *Open Democracy*, 28 March 2013. Available at: <http://www.opendemocracy.net/ourkingdom/franck-d%C3%BCvell/romanian-and-bulgarian-migration-to-britain-facts-behind-fear>.

²⁷ According to Herbert Brücker, from the Institute for Employment Research, a German research institution, Romanian and Bulgarian citizens receive social benefits less often than the average for foreigners living in Germany. 'Immigrant's Plight: Leaving Germany on Bus of Broken Dreams'. *Spiegel Online*. 9 August 2013. Available at: <http://www.spiegel.de/international/europe/eastern-immigrants-struggle-with-unemployment-in-germany-a-915481-2.html>.

²⁸ ENAR 2012/13 Shadow Report: Croatia.

- ⇒ In Bulgaria, the nationalist party Ataka and the mainstream media portray the Roma as criminals or ‘dirty gypsies’. Roma are also attacked with racist slurs in the media, with popular newspapers portraying Roma as criminals, murders, rapists and muggers.²⁹
- ⇒ In Hungary, the Hungarian Daily described the Roma as animals.³⁰
- ⇒ In Spain, the television programme ‘Palabra de Gitano’ (Gypsy talk) contributed to the further deterioration of the social image of Roma people.³¹

In addition, the Shadow Reports note that 9/11 has had lasting ramifications and impacts on discrimination of Muslim populations in particular in the labour market. A shift in attitude is reported in the Shadow Reports of France, Luxembourg and Finland, with increased anti-Muslim sentiment and acts of racism following the terrorist attacks in New York City over ten years ago.

“Islam and Muslims have increasingly been targeted. Since 9/11, anti-Muslim sentiment has increasingly grown next to an old anti-Arab racism. Muslims are portrayed as a segregated group not integrated within French society, who is a burden – if not a threat – to France.” [Shadow Report of France]

1.2 Data on discrimination in employment

Comparable and reliable data is necessary to devise equality policies that effectively address discrimination in employment and to monitor their implementation. Data should both measure inequalities and assess progress made over time in advancing towards equality of outcome. The 2012 Eurobarometer on discrimination in the EU confirms the need for such data by showing that discrimination is common in the EU Member States.³² The three most widely perceived grounds of discrimination are ethnic origin (56%), disability (46%) and sexual orientation (46%). Despite these results, no estimates are available on how many people experience inequality as a result of their racial or ethnic origin.

Based on the analysis of the national Shadow Reports, the collection of official data on the experience of migrants and minorities in the European labour market remains scarce in many European countries. Despite promising practices initiated by equality bodies, such as in France and in Belgium, the data collected is not disaggregated in categories that are relevant to actually measure discrimination. While most EU countries collect employment data disaggregated by country of birth or citizenship, only the UK collects and monitors data on ethnic origin. The lack of official comparable data makes it very difficult to assess the extent of discrimination in

²⁹ ENAR 2012/13 Shadow Report: Bulgaria.

³⁰ ENAR 2012/13 Shadow Report: Hungary.

³¹ ENAR 2012/13 Shadow Report: Spain

³² European Commission, 2012.

employment in Europe. This is why comparisons between the EU Member States regarding the incidence of discrimination are made only with great caution.

The lack of equality data on the ground of ethnic origin is rooted in Europe's history of human rights violations against minorities. Respect for privacy is very important in Europe, as is enshrined in both European data protection legislation and in cultural norms. However, the European Data Protection Directive, currently under reform,³³ does not include a blanket prohibition of the collection of data revealing ethnic origin. The processing of personal data revealing ethnic origin is, in principle, forbidden, but there are several exceptions to this general rule in EU law, including: the data subject has given explicit consent to the processing of this data, the data is necessary for the defence of legal claims, and the data is processed by States for reasons of substantial public interest.³⁴ The processing of such data should also be conducted according to adequate standards.

A large number of EU Member States have adopted a strict interpretation of the EU legislation, as reported by the Shadow Reports of France, Hungary, Spain, Luxembourg, Slovakia, Croatia, Turkey, Italy, Belgium, Poland, Greece, Ireland, the Czech Republic, Latvia, Austria, Bulgaria, the Netherlands, Finland, Lithuania, Germany and Portugal. This results in a huge data gap on the situation of ethnic and religious minorities in employment.

The two EU Equality Directives³⁵ do not provide for a direct legal duty for employers to monitor the diversity of their workforce. The Employment Equality Directive, however, mentions that Member States should take "adequate measures to promote social dialogue (...) with a view to fostering equal treatment, including through the monitoring of workplace practices". The EU 2020 strategy target on employment aims to bring 75% of the population into employment, including through better integration of legal migrants and outreach to otherwise excluded populations. Target-setting would only be possible and effective if the data towards these strategy targets is available and monitored over time.

ENAR believes that equality data is critical to identify and measure patterns of exclusion and discrimination in employment, and monitor progress (or lack thereof) achieved by different groups at various stages of their career progression.³⁶

Despite data challenges, the present report aims to join existing (and limited) statistical data with qualitative information from the national Shadow Reports in order to present a clear picture of discrimination in employment, and to offer solutions towards achieving a diverse workplace and establishing structures in society that allow equal opportunities in employment for all.

³³ See: http://ec.europa.eu/justice/newsroom/data-protection/news/120125_en.htm.

³⁴ See Directive 95/46/EC on the protection of individuals with regards to the processing and on the free movement of such data, Article 8.

³⁵ The EU Racial Equality Directive and the Employment Equality Directive. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML> and <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>.

³⁶ For more information about ENAR's project on equality data beyond employment, see: <http://www.enar-eu.org/Page.asp?docid=32201&langue=EN>

2. The context: labour market outlook

Labour market data, disaggregated by ethnic origin or nationality, can provide a snapshot of inequalities in the different EU countries, but not necessarily of direct discrimination. As touched on in the introduction, data collection mechanisms that enable a comparative and reliable depiction of discrimination in different areas does not exist systematically, making it difficult to ascertain exactly who is impacted by discrimination in the labour market on grounds of ethnic origin. Nonetheless, the national Shadow Reports, combined with other sources of information, such as Eurostat data, enable a solid description of the current labour market situation in Europe as its impacts migrants and minorities.

Employment levels

It is often presumed that migrants experience barriers in accessing the labour market, and consequently, are likely to be employed at a lower rate than native nationals. This is true in several EU Member States, as shown in the table below. However, in Cyprus, the Czech Republic, Hungary, Italy, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania and Slovakia, the percentage of non-EU born in gainful employment surpasses the percentage of native-born employed, indicating how important non-EU migrants are to these countries' and the EU's economies. In countries where data is collected on persons of foreign origin (which can include both nationals and non-nationals), there is an employment gap between 'native' nationals and persons of foreign origin. In Belgium for instance, the employment rate is 74% for 'natives' (nationals born in Belgium of parents born in Belgium) and respectively 46 % for persons of Latin-American origin, 44% for persons of North African origin and 40% for persons of sub-Saharan origin.³⁷

Table 3: Percentage of employed by country of birth (EU-27, non-EU and native-born) for the EU Member States for 2012

Country	EU-27	Non EU-27	Native-born	Total
Austria	72,0	63,6	73,8	72,5
Belgium	61,5	45,4	63,8	61,8
Bulgaria		54,2	58,8	58,8
Croatia	48,2	46,2	51,1	50,7
Cyprus	68,0	69,3	63,2	64,6
Czech Republic	63,0	73,6	66,5	66,5
Denmark	72,0	56,4	74,2	72,6

³⁷ ENAR 2012/13 Shadow Report: Belgium.

Estonia	58,9	67,1	67,2	67,1
Finland	75,7	55,8	69,6	69,4
France	65,7	54,6	64,9	63,9
Germany			73,9	72,8
Greece	53,8	49,0	51,4	51,3
Hungary	66,5	66,5	57,0	57,2
Ireland	61,2	53,4	58,9	58,8
Italy	62,0	59,2	56,3	56,8
Latvia	53,0	62,2	63,2	63,0
Lithuania		64,5	61,9	62,0
Luxembourg	73,6	61,0	60,7	65,8
Malta	55,9	65,3	58,9	59,0
Netherlands	73,9	61,0	76,9	75,1
Poland	63,1	61,3	59,7	59,7
Portugal	72,0	64,9	61,3	61,8
Romania		68,6	59,5	59,5
Slovakia	64,2	62,6	59,7	59,7
Slovenia	74,7	63,0	64,1	64,1
Spain	55,3	50,4	56,2	55,4
Turkey				48,9
United Kingdom	74,8	62,7	70,8	70,1

Source: Eurostat, Labour Force Survey, Employment rates by sex, age and country of birth (%) for the EU Member States, 2013.

Youth employment levels

Due to the scarcity of jobs at the moment in Europe, particularly affecting youth and recent graduates, it is important to also consider the percentage of youth employment by country of birth. Here, it is evident that non-EU born persons have lower percentages of employment than both the native-born and persons born in the EU-27, except for in the Czech Republic, Croatia, Greece, Luxembourg and Malta.³⁸

³⁸ Eurostat, Labour Force Survey, Employment rates by sex, age and country of birth (%) for the EU Member States, 2013.

In Cyprus, Italy, Portugal and Spain, the number of non-EU born youth in employment is higher than native-born, but slightly less than that of youth born in the EU-27.

Unemployment levels

Migrants face higher rates of unemployment compared to the majority population.

Linked to Europe's economic situation and the scarcity of jobs, the general unemployment rate in the EU is clearly on the rise.

Table 4: Percentage of unemployed by country of birth (EU-27, non-EU and native-born) for the EU Member States for 2012

Country	EU-27	Non-EU 27	Native-born	Total
Austria	6,2	9,6	3,6	4,4
Belgium	9,8	22,4	5,9	7,6
Bulgaria	-	-	12,4	12,4
Croatia	17,2	20,0	15,9	16,3
Cyprus	14,8	12,7	11,4	12,1
Czech Republic	10,9	6,2	7,0	7,0
Denmark	11,3	16,6	6,8	7,7
Estonia	-	13,0	10,0	10,4
Finland	8,5	18,8	7,5	7,8
France	9,0	18,2	9,1	9,9
Germany	-	-	5,0	5,6
Greece	25,6	35,6	23,4	24,5
Hungary	10,4	-	11,0	11,0
Ireland	17,6	16,5	14,4	15,0
Italy	13,2	14,2	10,4	10,8
Latvia	-	18,6	14,9	15,3
Lithuania	-	15,5	13,6	13,6

Luxembourg	5,3	12,2	3,8	5,2
Malta	10,8	8,0	6,3	6,5
Netherlands	6,6	11,7	4,6	5,3
Poland	-	-	10,2	10,2
Portugal	14,8	20,8	16,1	16,4
Romania	-	-	7,3	7,3
Slovakia	-	-	14,0	14,0
Slovenia	8,8	11,1	8,8	9,0
Spain	29,9	36,5	23,0	25,2
Turkey	-	-	-	8,3
United Kingdom	7,7	10,1	7,8	8,0

Source: Eurostat, Labour Force Survey, Unemployment rates by sex, age and country of birth (%) for the EU Member States, 2013.

In line with the Eurostat statistics, all national Shadow Reports underline that migrants face higher rates of unemployment compared to the majority population. Currently in Austria, for instance, the unemployment rate for migrants is double that of the Austrian population and in Finland it is even three times the national average. Especially low-skilled migrants and non-EU migrants face high unemployment rates. Several national Shadow Reports mention particularly high rates of unemployment affecting people of African descent and Black Europeans³⁹ as well as Muslim, Turkish and North African migrants.⁴⁰ In the UK, where ethnic data is collected, almost all ethnic minority groups have a higher proportion of their male population unemployed than their White British counterparts. This is particularly acute for men of Black backgrounds (African, Caribbean, Black Other and Mixed) who are 2.5 to 3 times more likely to be unemployed than White British men.⁴¹

- ⇒ African migrants in **Spain** are twice as likely to be unemployed as people from the majority population.⁴²
- ⇒ In the **Netherlands**, Moroccans have the highest unemployment rates.⁴³

³⁹ ENAR 2012/13 Shadow Reports: Spain (African migrants, not specified), Ireland (Black African migrants, not specified), the UK (African, Caribbean, Black, Other, and Mixed), Finland (Somali migrants), the Netherlands (Antillean migrants), France (Sub-Saharan Africans).

⁴⁰ ENAR 2012/13 Shadow Reports: Spain (Muslim migrants, not specified), the Netherlands (Turkish and Moroccan migrants), Austria (Turkish migrants), Bulgaria (Turkish migrants), France (Turkish migrants, Moroccan migrants, Tunisian migrants, Algerian migrants).

⁴¹ ENAR 2012/13 Shadow Report: United Kingdom.

⁴² ENAR 2012/13 Shadow Report: Spain.

⁴³ ENAR 2012/13 Shadow Report: The Netherlands.

The global **economic crisis** has further exacerbated the employment gap between minorities and migrants on the one hand, and the majority population on the other, as highlighted in the Shadow Reports of Belgium, Bulgaria, Croatia, the Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Poland, Turkey, Slovakia and Spain.

The rising unemployment figures among migrant and ethnic minority communities are linked to increased labour market pressure and job competition. Migrants and minorities are in a less favourable situation than the majority population: typically, they are the first to lose their jobs as a result of staffing cuts and redundancies and are less likely to be hired, with longer waiting periods before re-entering the workforce. The Shadow Reports of Hungary, Bulgaria, Greece, Spain, Italy, France and the Netherlands all remarked on this trend.

A number of national Shadow Reports also attribute the disproportionate increase of unemployment among migrants and minorities during the crisis to the fact that ethnic minority and migrant workers mainly work or worked in the public sector, areas that have been most affected by the crisis, i.e. as regards redundancies and budget cuts.

"The current economic crisis seems to have a specific impact on migrant groups. Since the workforce supply is currently higher than the demand, recruiters have plenty of choice between candidates with a 'mainstream' background and candidates with a 'non-typical' background. Recruiters more often choose the first group of candidates." [Shadow Report of France]

Social exclusion from the formal labour market has become a prevalent issue in a number of EU countries, identified as one of the main explanations for the increased activity of migrants and minorities in the informal economy.

The Roma community was hit especially hard by the economic crisis, especially when compared with the majority population. The Bulgarian Shadow Report mentions, for instance, that the risk of unemployment among Roma is twice as high as other ethnic groups. In Ireland, 84% of the Irish Travellers are unemployed, while the unemployment rate for Roma in the Czech Republic is 39% against 6% of the majority population. Similarly, a study by the EU Fundamental Rights Agency showed that among eleven Member States, one out of three Roma respondents reported that they were unemployed.⁴⁴ According to the UNDP/World Bank/EC data, the unemployment rates for Roma women are on average one third higher than those of Roma men.⁴⁵ In Hungary for instance, the employment position of Roma women (compared to that of Roma men) is much worse than that of non-Roma women and only 13-16% of them are employed.⁴⁶

⁴⁴ European Union Agency for Fundamental Rights and United Nations Development Programme, *The situation of Roma in 11 Member States*. 2012. Luxembourg: Publications Office of the European Union. These countries were: Bulgaria, Czech Republic, Greece, Spain, France, Hungary, Italy, Poland, Portugal, Romania and Slovakia.

⁴⁵ UNDP/World Bank/EC regional Roma survey 2011.

⁴⁶ ENAR 2012/13 Shadow Report: Hungary.

Youth unemployment levels

Youth unemployment rates are generally much higher than unemployment rates for all ages. From the beginning of 2009, the gap between youth and total unemployment rates increased, and in 2012 the youth unemployment rate was 2.6 times the total rate.⁴⁷ The high unemployment rate among migrant and minority youth in Europe is even more staggering.

According to the Council of Europe, “the correlation of spiralling unemployment among young people under 25 with the crisis years is undisputed. Over half of all young people are officially unemployed in Spain, Portugal and Greece, with little improvement expected until 2016. The rate of young people not in employment, education or training (NEET) has increased by around 1% since 2008 region-wide, and by 4% and 6% in Spain and Greece respectively, with severe and long-lasting ‘scarring’ consequences for these young people”.⁴⁸

⁴⁷ Eurostat, *Labour Force Survey, Unemployment rates by sex, age and country of birth for the EU Member States, 2013*.

⁴⁸ Council of Europe Commissioner for Human Rights, December 2013.

3. Manifestations of racism and discrimination in employment

Given that the current EU labour market indicators only reveal rough differences between target groups and the national average, monitoring discrimination in the labour market cannot be carried out by only looking at labour market indicators, especially since vital comparable data remains amiss. By looking at concrete examples and manifestations of racism and discrimination, this section sheds light on perceptions of discrimination in employment, the groups most vulnerable to such discrimination, discrimination in access to employment and discrimination in the workplace. It is important to note that the discriminatory patterns highlighted here are not just temporary but often persist over time, resulting in lasting disadvantages for individuals.

3.1 Perceptions of discrimination in employment

- ⇒ Ethnic origin remains the most widely perceived ground for discrimination in the EU (56%).
- ⇒ Europeans are more likely to believe discrimination is widespread in employment than in other areas of life (albeit with large variations between countries).
- ⇒ 39% of Europeans believe skin colour or ethnic origin would be a factor that could put job applicants at a disadvantage.⁴⁹

Labour market discrimination is considered as a major and widespread phenomenon, resulting in the disadvantage of certain groups throughout Europe. This is confirmed in the Shadow Reports of Belgium, Croatia, Finland, France, Germany, Greece, Hungary, Luxembourg, Malta, Spain and the UK. Surveys, such as the one undertaken by the survey institute CSA⁵⁰ in France, also confirm this assessment. In CSA's survey, 60% of those interviewed were also in support of a strong fight against discrimination. In other Member States, as reported by the Shadow Reports of Ireland, Lithuania and Turkey, people generally do not perceive discrimination in the labour market on grounds of ethnicity or nationality as a major issue. In Lithuania, for instance, labour market discrimination is neither on the political agenda nor in public discourse.

In addition, when asked if they have personally experienced discrimination during the past years, 27% of Europeans who belong to an ethnic minority group reported feeling discriminated against on grounds of ethnic origin.⁵¹ According to a survey carried out by the Public Affairs Authorities in Slovakia, for example, four out of five

⁴⁹ European Commission, 2012.

⁵⁰ CSA Survey Institute, *Xénophobie, Antisémitisme, Racisme, Anti-racisme et Discriminations en France*. 2012. Available at: <http://www.csa.eu/fr/index.aspx> <http://www.csa.eu/fr/index.aspx>.

⁵¹ European Commission, 2012.

respondents said they often encountered discrimination on the labour market.⁵² In Croatia, 45% of the complaints received by the Ombudsman Office related to discrimination in employment.⁵³ In Italy, 659 complaints received by the Equality Body in 2012 dealt with discrimination and unequal treatment in employment.⁵⁴

Figures from the 2012 Eurobarometer on Discrimination in the EU and from surveys conducted by FRA and the United National Development Programme (UNDP) (in association with the World Bank) show that Roma and Travellers are particularly likely to face discrimination in employment.

- ⇒ According to the FRA survey, more than half of the Roma respondents looking for work said that they experienced discrimination due to their Roma background in the 12 months preceding the survey.⁵⁵
- ⇒ In Hungary, a study demonstrated that people believe Roma to be more likely than other groups to experience discrimination with regard to hiring, firing, allocation of responsibilities at work and in dealings with policy, as well as in education.⁵⁶

When asked about perceptions of people facing discrimination in employment, the Shadow Reports of Austria, Finland, Lithuania, Poland, Spain and the UK reveal that people often don't like to accept that they may be personally targeted for discrimination based on some particular characteristic they have. They are also often reluctant to report discriminatory practices due to a complicated bureaucracy, a small number of existing convictions, and/or due to the fear of dismissal (more on this is addressed in Chapter four).

3.2 Groups vulnerable to discrimination in employment

The manifestations of discrimination in employment vary depending on a number of factors, often closely linked with the national and local contexts, the population most likely to fall victim to discrimination in a given context, the education and skill-level of the individual, the degree of vulnerability of the individual as well as whether trying to access the labour market or already within the work force, among others.

Although the situation differs between EU Member States, an analysis of the national Shadow Reports reveals that five broad groups are overwhelmingly identified as being most vulnerable to discrimination in employment: migrants from non-EU Member States including undocumented (irregular) migrants, refugees and asylum seekers; Muslims (and especially Muslim women); Roma and Travellers; people of African descent and Black Europeans; and generally all women with a minority or migrant background. Multiple forms of discrimination in employment occur in all EU Member States.

⁵² ENAR 2012/13 Shadow Report: Slovakia.

⁵³ ENAR 2012/13 Shadow Report: Croatia.

⁵⁴ ENAR 2012/13 Shadow Report: Italy.

⁵⁵ European Union Agency for Fundamental Rights, 2012 and European Commission, 2012.

⁵⁶ ENAR 2012/13 Shadow Report: Hungary.

Migrants, including undocumented (irregular) migrants, refugees and asylum seekers

The national Shadow Reports show clear distinctions in treatment in employment based on ethnic origin, nationality and migrant legal status differentiations. With regard to nationality, it can be said that EU citizens generally tend to experience less discrimination in the labour market than third country nationals, but this also depends on the country of origin of the third country national. Some, for instance from the USA or Australia, enjoy more privileged positions due to their native English knowledge, among others. Many migrants such as asylum seekers or refugees encounter labour market restrictions as a result of their legal status or pending decisions on their residence rights.

Despite the acknowledgement that data on these groups is often lacking or difficult to obtain, the Shadow Reports of Austria, Bulgaria, Croatia, the Czech Republic, France, Germany, Greece, Hungary, Italy, Lithuania, Malta, Poland, Turkey and Spain emphasise that irregular migrants, asylum seekers and refugees are the most vulnerable to discriminatory practices.

"On 17 April 2013, 35 migrant workers out of 150, most of them undocumented, were shot in a strawberry farm in Greece after requesting that the salaries that were owed be paid. The migrants – mainly from Bangladesh – reported that they had been working unpaid and under inhumane conditions in the strawberry fields for six months." [Shadow Report of Greece]

The reasons attributed to refugees and asylum seekers being most vulnerable include lengthy administrative procedures for obtaining a legal status. The dependency of irregular migrants on their employer also makes them particularly vulnerable. In addition, in order to be supported both legally and by social security provisions, asylum seekers, refugees and irregular migrants are often obliged to obtain a work permit. To obtain a work permit is, in turn, often a very lengthy process and dependent on whether an individual has a job and is deemed most compatible for the position. Migrant women are in a particularly precarious situation in the labour market.

The Czech and Spanish Shadow Reports have identified the growing number of irregular forms of employment - as a result of the economic crisis in Europe - as having the most visible effect on the precarious situation of these migrants.

Roma and Travellers

Roma and Travellers are identified the most consistently across the national Shadow Reports as victims of labour market discrimination on the ground of ethnicity. Although the size and composition of the Roma and Traveller population differs across EU Member States, they are recognised as highly discriminated against in the Shadow Reports of Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Finland,

France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Slovakia, Spain, Turkey and the UK. A study carried out by the World Bank in 2012 revealed that Roma respondents in Slovakia reported the highest levels of experienced ethnic discrimination when looking for a job (78%), followed by the Czech Republic (73%), Bulgaria (55%), Hungary (45%) and Romania (30%).⁵⁷

Moreover, Roma women are also said to suffer multiple disadvantages. They have a disproportionate share of work in the family and have limited access to day-care institutions for their children.

Muslims

Among those experiencing discrimination on the ground of religion or belief, Muslim people (and especially Muslim women) tend to experience the most severe labour market discrimination, as evidenced by the Shadow Reports of Austria, Belgium, Bulgaria, the Czech Republic, Croatia, Finland, France, Germany, Greece, Italy, Lithuania, Luxembourg, the Netherlands, Poland, Spain, Turkey and the UK.

Muslim women are especially disadvantaged as a result of experiences with multiple forms of discrimination. A Muslim woman with a migrant background and who wears a headscarf is described in the German Shadow Report as a woman embodying three major obstacles, inhibiting labour market access. The intersection of these different characteristics results in multiple forms of discrimination and greater disadvantages.

Moreover, existing stereotypes reinforce negative images of Muslims as a threat to society. Muslim men are perceived as 'backwards' and Muslim women wearing headscarves are considered 'oppressed'. Such imagery has been strengthened in a number of EU Member States by parties like the Golden Dawn in Greece or the True Finns in Finland, among others.

People of African descent / Black Europeans

According to the Shadow Reports of the UK, Ireland and Bulgaria, Black people experience more discrimination based on their skin colour. For instance in Ireland, the results of the Special 2010 Equality Module of the Quarterly National Household Survey showed that discrimination is most experienced by Black Africans & Ethnic Minority EU individuals. Black Africans in Ireland are seven times more likely to report discrimination in the workplace and have lower chances of employment.⁵⁸

The Shadow Reports of some other countries such as Austria or Croatia mention a 'shift' from discrimination against Black people to discrimination against Muslims and Muslim women wearing headscarves.

⁵⁷ World Bank, *Reducing Vulnerability and Promoting the Self-Employment of Roma in Eastern Europe through Financial Inclusion* 2012. World Bank.

⁵⁸ ENAR 2012/13 Shadow Report: Ireland.

Forms of discriminatory practices

A first distinction can be made between **direct discrimination** and **indirect discrimination**.⁵⁹ Indirect discrimination may be exemplified by some policies that indirectly restrict access of ethnic/religious minorities and migrants in public sector employment, resulting generally in low representation of these groups in this sector. In Poland, for example, state professional exams, e.g. the state examination for lawyers or medical doctors, are held on Saturdays, which can be interpreted as a case of indirect religious discrimination since Saturday is a religious holiday for several denominations.⁶⁰

Direct discrimination on the basis of origin occurs, for example, in the taxi industry in Ireland. A report written by the Irish Centre for Human Rights revealed severe discrimination against African taxi drivers in the Galway taxi industry. Almost all African taxi drivers are self-employed due to discrimination in employment, while 83% of Irish taxi drivers are employed by a taxi company.⁶¹

The national Shadow Reports also mention the occurrence of **administrative discrimination**. Administrative discrimination refers to the application of additional barriers when accessing the labour market, for instance, lengthy and opaque procedures in obtaining work permits and residence permits; reluctant employers cautious of hiring migrants because of associated fears of administrative costs and burden; the failure to recognise foreign qualifications; or ineffective and lengthy procedures linked to regularisation programmes. This is also known as structural discrimination.

“Foreign workers suffer from what one could call ‘administrative discrimination’ when they have to cope with ineffective and lengthy procedures ... or do not have the possibility to travel during renewal of the residence permit”... “The badly functioning administrative machine is a cause of distress for migrant workers (...) During such long procedures foreign workers are often stuck and treated like criminals.” [Shadow Report of Italy]

⁵⁹ Council Directive 2000/78/EC of 27 November 2000 on establishing a general framework for equal treatment in employment and occupation.

⁶⁰ Saturday is the Jewish day of rest (Shabbat). In addition, in 2013, the three-day celebration of the end of Ramadan included a Saturday, in addition to Alban Elfed (Pagan, Wiccan, Druid), Navratri which is one of the greatest Hindu festivals (Hindu), Midwinter (Pagan, Wiccan, Druid), Candlemas (Pagan, Wiccan, Druid), Buddha Day (Buddhist), and Midsomer (Pagan, Wiccan, Druid).

⁶¹ Jaichand V., *Riding Along with Racism, Research on the Galway Taxi Industry: Employment Opportunities, Patterns of Public Use and User Perceptions*. 2010. Galway; Irish Centre for Human Rights.

3.3 Discrimination in accessing employment

Discriminatory practices often place migrants and minorities at a disadvantage already when they attempt to access the labour market, i.e. when they try to apply for a job. Accessing employment is identified as a major problem for certain groups of migrants and minorities in almost all the national Shadow Reports. This reality is confirmed by other European studies, such as reports by the Network of socio-economic experts in the non-discrimination field.⁶²

- ⇒ According to a study carried out in Hungary in 2010, 64% of the respondents admitted having experienced discrimination when looking for a job.⁶³
- ⇒ An OECD study carried out in 2009 demonstrated that migrants in Germany are less likely to find employment than Germans with the same level of education but without a migrant status or background.⁶⁴ Only 64% of professionally qualified women with a migration background were employed in a job conform with their education, compared to 86% of their non-migrant peers in age, gender and qualification.
- ⇒ In a survey in Lithuania, national minorities (and especially women) indicated that access to the labour market is one of the main problems in employment.⁶⁵

Discriminatory practices at the stage of recruitment

Some of the most reported unjustified obstacles in recruitment policies refer to both direct and indirect discrimination. At the point of application, discrimination manifests itself for example when there are no public job postings, the selection is on the basis of names and addresses, or there is a requirement to add a picture to the letter of application.

There is a growing consensus among researchers that discrimination at the stage of recruitment can best be measured by conducting field experiments.⁶⁶ Initially, these experiments were done by relying on real people, who resemble each other as closely as possible in all respects, except for the variable of interest (for instance ethnic origin) to apply for the same jobs. When differences in treatment occur between the two candidates, influencing the probability of being hired, it is concluded that there is discrimination. More recently, the experimental technique has been

⁶² Network of socio-economic experts in the non-discrimination field, *Synthesis report 2010 part II - Ethnic minorities, migrants and employment*. 2010.

⁶³ ENAR 2012/13 Shadow Report: Hungary.

⁶⁴ ENAR 2012/13 Shadow Report: Germany.

⁶⁵ ENAR 2012/13 Shadow Report: Lithuania.

⁶⁶ Bovenkerk F., *Testing Discrimination in Natural Experiments: a Manual for International Comparative Research on Discrimination on the Grounds of 'Race' and Ethnic Origin*. 1992. Geneva: International Labour Organisation; Fix M. & R.J. Struyk (eds.), *Clear and Convincing Evidence. Measurement of Discrimination in America*. 1993. Washington D.C.:The Urban Institute Press; Riach P.A. & Rich J., 'Field Experiments of Discrimination in the Market Place?'. *The Economic Journal* Vol. 112 No. 483; Riach P.A. & Rich J., 'Fishing for Discrimination'. *Review of Social Economy* Vol.42(4). 2004.

applied by sending written resumes to vacancies, instead of using real persons, so-called correspondence tests.⁶⁷ In Belgium, correspondence tests indicate that a candidate of foreign origin is more likely (6.6 percentage points) to suffer from a discriminatory disadvantage and less likely (4.5 percentage points) to benefit from a discriminatory advantage when invited to a job interview.⁶⁸

Such research projects reveal that **name-based discrimination** at the point of application is prominent in a number of countries.

- ⇒ In the UK, a test commissioned by the Department for Work and Pensions found that people with minority ethnic or foreign sounding names are a third less likely to be shortlisted for jobs than people with ‘white’ sounding names.⁶⁹
- ⇒ In France, a testing carried out by the Céreq Institute between 2011 and 2012 in the Provence-Alpes-Côte d’Azur region showed that young graduates from North Africa in possession of an Advanced Technician’s Certificate were invited less frequently to job interviews.⁷⁰
- ⇒ In the Czech Republic, a CV testing carried out by the Prague based academic institute CERGE-EI revealed that an applicant with a majority-sounding name is 75% more likely to be invited to a job interview, compared to an applicant with a Roma-sounding name.⁷¹

Some of the national Shadow Reports also mention discrimination on the basis of one’s **address**.

- ⇒ In Turkey, applicants born in East Anatolia, a region where many Kurds reside, experience discrimination when applying for a job.
- ⇒ In France, applicants who live in socially disadvantaged areas, e.g. poorer suburbs of Paris or Lyon among other major cities, also face discrimination.

The requirement of adding **a photo** to the letter of application is also experienced as a form of discrimination at the stage of the job application, as reported by the Shadow Reports of Slovakia, the Czech Republic, Spain, Germany and Portugal, but is difficult to prove. This is a major obstacle in finding a job, in particular for Muslim women wearing a headscarf.

This form of discrimination on the basis of wearing **religious symbols** or clothing like a headscarf or a turban during the process of job application is reported in a number of Shadow reports, e.g. Germany, Belgium, France, Luxembourg, Austria, the

⁶⁷ Lahey J.N. & Beasley R.A., ‘Computerizing Audit Studies’. *Journal of Economic Behavior & Organization* 70. 2009; Oreopoulos P., ‘Why Do Skilled Immigrants Struggle in the Labor Market? A Field Experiment with Six Thousand Résumés’. *American Economic Journal: Economic Policy* Vol.4(3). 2011; Capéau, B., Eeman, L., Groenez, S., Lamberts, M., *Wie heeft voorrang: jonge Turken, prille grijsaards of aanstaande moeders? Een experimenteel onderzoek naar discriminatie op basis van persoonskenmerken bij de eerste selectie van sollicitanten*. 2012. Leuven: HIVA.

⁶⁸ CGKR, *Diversiteitsbarometer Werk*. 2012. Brussels; Capéau, B., Eeman, L., Groenez, S., Lamberts, M., *Wie heeft voorrang: jonge Turken, prille grijsaards of aanstaande moeders? Een experimenteel onderzoek naar discriminatie op basis van persoonskenmerken bij de eerste selectie van sollicitanten*. 2012. Leuven: HIVA.

⁶⁹ ENAR 2012/13 Shadow Report: United Kingdom.

⁷⁰ ENAR 2012/13 Shadow Report: France.

⁷¹ ENAR 2012/13 Shadow Report: Czech Republic.

Netherlands and Spain. An (unpublished) study conducted by the Austrian University of Linz concluded that Muslim women are particularly vulnerable to job discrimination, as alluded to in the previous section relative to Muslim women and the intersection of discrimination grounds.⁷² In general, Muslims, man or woman, seem to experience vast discrimination on the basis of religion when attempting to access employment. When they do find a job, it is most of the time ‘behind the scenes’, because employers fear that when they carry out ‘visible’ jobs, it will cause their clients to refuse or reject their services or products.

“According to Gbril Jarirodin Riaza, Director of the Observatorio Andalusi, qualified young Muslims are often rejected due their appearance, e.g. beard or veil. He knows a young Muslim woman, who finished her university studies in pharmacology with the second best grade, but could not find a job for three years because she did not want to take off her veil. In other cases, he says, employers say to Muslim candidates that the vacancy is already filled due to stigma, prejudices and discrimination.” [Shadow Report of Spain]

The requirement of certain **language skills** is another example of an often unjustified obstacle in recruitment policies, for instance when proficiency of the domestic/native language is required for a job in which language skills are less relevant for completing the job at hand, e.g. cleaning.

The role of recruitment agencies in access to employment

Based on the findings of the Shadow Reports of Austria, Germany, the Netherlands and the UK, recruitment agencies can play an important role in discrimination at the stage of recruitment.

- ⇒ In the UK, a study found that ethnic minority candidates were 15% less likely than white candidates to be offered a job by a recruitment agency, yet had the same rates of being offered a job when applying to the company directly (29%).⁷³
- ⇒ In Austria, discriminatory practices of recruitment agencies comply with a request from an employer to not, for instance, introduce candidates with a migrant background.⁷⁴
- ⇒ In the Netherlands, studies show that 57% of the recruitment agencies complied with a request not to introduce Moroccan, Turkish or Surinamese candidates. Moreover, on most occasions, the recruiters expressed their understanding for this request.⁷⁵

Institutional policies imposing an extra barrier to access employment

According to the national Shadow Reports (including the Czech Republic, Germany, Hungary, Italy, Lithuania, Poland, Slovakia and Spain), **administrative discrimination** sometimes puts an immense burden on migrants. A number of

⁷³ ENAR 2012/13 Shadow Report: United Kingdom.

⁷³ ENAR 2012/13 Shadow Report: United Kingdom.

⁷⁴ ENAR 2012/13 Shadow Report: Austria.

⁷⁵ ENAR 2012/13 Shadow Report: The Netherlands.

policies impose an extra barrier on migrants and minority groups in accessing employment, ranging from policies related to assimilation tests, required working experience, recruitment regulations in the public sector, the granting of work permits, language provisions, etc.

Integration policies in many European countries are undergoing serious budget cuts, which has a negative impact on the provision of language course for migrants for instance. In the Netherlands, for example, as of 1 January 2013, language courses within the framework of civic integration policies are no longer offered by the Dutch municipalities. As a result, communities have resorted to organising these courses themselves.

In Luxembourg, only nationals have full access to jobs in the public sector. Although European legislation stipulates that EU nationals have the right to work in another EU country, including in the public sector, in Luxembourg structural barriers inhibit this practice from effectively being carried out. In spite of this legislation, limited access to the public sector is widely acknowledged to hinder labour market opportunities for migrant workers.⁷⁶

In Greece, work experience in the country is said to be a prerequisite to find a job, which imposes a barrier on migrants in accessing employment.⁷⁷ In Ireland, it is also necessary to have work experience in the country as well as a Catholic Religious Certificate in order to get many positions.⁷⁸

The importance of recognising foreign qualifications to access employment

In most EU Member States, foreign qualifications need to be recognised by a specific institution. The process of recognition is often very lengthy and burdensome, especially when a diploma is obtained outside the European Union. Far too frequently, the inability to have previous skills and qualifications from abroad recognised in Europe results in preventing whole populations of migrants from being able to access the labour market.

This is likewise often used to explain the situation of **underemployment** experienced by migrants and asylum seekers, according to the Shadow Reports of Austria, Croatia, the Czech Republic, Finland, Germany, Italy, Lithuania, Luxembourg, Malta and Sweden. Underemployment refers to the situation in which an individual carries out a job for which he or she is overqualified.

The role of personal networks in accessing employment

The lack of personal networks is reported in the Shadow Reports of Austria, Finland, Hungary, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Turkey and the UK as a barrier for migrants and minorities to access employment. In the Shadow

⁷⁶ Eurofound (European Foundation for the Improvement of Living and Working Conditions), *Employment and Working conditions of migrant workers*. 2007. Dublin: Eurofound.

⁷⁷ ENAR 2012/13 Shadow Report: Greece.

⁷⁸ ENAR 2012/13 Shadow Report: Ireland.

Reports of Luxembourg and Finland, for example, having a network is said to be very important because jobs are often not advertised and recruitment is often done by referring to family and friends. Also in Malta, the lack of social capital is reported as hindering migrants' access to employment.

"The lack of social capital hinders migrants' access to employment, particularly when taking into account the nature of the Maltese labour market, which is primarily centred around small companies employing less than ten persons and which often recruit informally." [Shadow Report of Malta]

The Austrian and Hungarian Shadow Reports also mention that existing networks of migrants and minority groups are restricted to sectors that are dominated by these groups. The lack of broad informal networks is considered as a barrier to upwards mobility and integration in the wider society.

3.4 Discrimination in the workplace

Discrimination in the workplace, once in a particular job/occupation, is a persisting socio-political issue in EU Member States. In France, for example, 83% of the complaints received by SOS Racisme in 2012 were related to discrimination in the workplace, compared to 77% in 2011.⁷⁹

The main forms of discrimination in the workplace reported by the national Shadow Reports are manifested by the lack of career prospects, lower salaries, poor working conditions, positions in low-paid jobs, harassment, exploitation, overrepresentation in temporary, seasonal, instable and precarious work, language and clothing requirements, abusive dismissal, and failure to comply with religious and dietary needs.

Lower wages and low-paid jobs

All the national Shadow Reports allude to the fact that migrants and ethnic and religious minorities are more likely to be employed in lower-paid jobs (closely linked to problems of underemployment) and are also typically paid less than their colleagues from the majority population. This discrepancy is particularly visible among non-EU immigrants and Roma.⁸⁰

⇒ In Poland, qualitative research showed that according to the majority of foreign workers, the wages of native Poles were typically higher than those of non-Polish nationals performing comparable jobs.⁸¹

⁷⁹ ENAR 2012/13 Shadow Report: France.

⁸⁰ This conclusion is based on all national Shadow Reports, and also drawn in the study by Norface Migration, *Immigration: The European Experience, Discussion Paper No. 2012-01*. 2012.

⁸¹ Klaus W., *Polish employers' compliance with migrating workers' rights*. 2012. Warsaw.

- ⇒ The Greek Labour Force Survey showed that non-EU migrants earn 25.3% less than the average native when it comes to comparing hourly wages in Greece.⁸²
- ⇒ In Hungary, wages paid to Roma are lower than the Hungarian minimum wage.⁸³
- ⇒ According to the working climate index in Austria, migrants with a Turkish background earn on average 300 Euros or 20% less than their Austrian colleagues without a migrant background having the same level of qualifications, while employees from the former Yugoslavia earn 10% less.⁸⁴
- ⇒ In Turkey, a survey revealed that 36% of the interviewed Kurds do not have a regular income and that the monthly income of all interviewed Kurds' remains below the hunger or poverty limits set each year by the government.⁸⁵

The position of migrant and minority women is even more unsettling. The Italian Shadow Report, for instance, notes the additional gender wage gap that negatively affects minority women, which coupled with ethnic wage gaps, results in extremely low wages for ethnic minority women in Italy, alluding to the added complexity of multiple forms of discrimination. In other EU countries, migrant women's wages are also often lower than those of their male counterparts. A European Union study showed that non-EU migrant women experience higher unemployment rates compared to EU-born migrant women, native-born women and migrant men.⁸⁶

Occupation, sectors and quality of work

Broadly speaking, migrants and ethnic and religious minorities are more likely to be employed as unskilled workers compared with the majority population and are subsequently less likely to be employed at the higher end of the labour market.

- ⇒ In Italy, 34% of foreigners are employed as unskilled workers compared with 8% of the majority population.⁸⁷
- ⇒ In Austria, almost double as many migrants are manual labour workers compared with the majority population.⁸⁸
- ⇒ According to a study by the European Roma Rights Centre in 2007, less than 10% of Roma are employed at the higher end of the labour market.⁸⁹

The Shadow Reports of Italy, Malta and Poland mention that migrants and minorities often work in **3D-jobs and sectors: dangerous, dirty and demeaning**, which tend to be low-skilled jobs that are deemed less wanted or valued by the wider society. In addition, they are often more precarious, with insecure conditions and greater vulnerability. National Shadow Reports, in particular from the southern and eastern EU countries, note that both migrants and minorities are more likely to be employed

⁸² ENAR 2012/13 Shadow Report: Greece.

⁸³ ENAR 2012/13 Shadow Report: Hungary.

⁸⁴ ENAR 2012/13 Shadow Report: Austria.

⁸⁵ ENAR 2012/13 Shadow Report: Turkey.

⁸⁶ Rubin, J., Rendall, M.S., Rabinovich, L., Tsang, F., Janta, B. and van Oranje-Nassau, C., *Migrant women in the EU labour force*. RAND Technical Report. 2008. Available at: http://www.rand.org/pubs/technical_reports/TR591z3.html.

⁸⁷ ENAR 2012/13 Shadow Report: Italy.

⁸⁸ ENAR 2012/13 Shadow Report: Austria.

⁸⁹ This report was produced by the European Roma Rights Centre on the basis of empirical research in Bulgaria, the Czech Republic, Hungary, Romania and Slovakia.

in the **informal economy** than persons from the majority population. Jobs in the informal economy are often seasonal, as is the case for construction and agricultural sector jobs. As a consequence, they are without formal contracts, social rights, social insurance protection and social security, and the health and safety of workers is often put at risk. Women are often heavily concentrated in female-dominated occupations, such as catering, domestic work, manufacturing industries like textile and clothing, and healthcare occupations.⁹⁰ Many Roma in Europe work in the informal sector, and a number of national Shadow Reports (from Bulgaria, Turkey and Slovakia) also mention the seasonal character of Roma employment.

“Undocumented migrants work in the underground economy (i.e. legal activities outside the official economy) characterised by the absence of formal contracts, irregular use of workforce, tax evasion, lack of social security and high job instability.” [Shadow Report of Italy]

According to the Irish and Italian Shadow Reports, **self-employment** among foreign workers has increased as a result of the economic and financial crisis. The Irish Shadow Report notes that people of African descent, who experience discrimination in accessing employment, increasingly consider working for themselves, many of whom do, as taxi drivers. According to the UK Shadow Report, the high rates of self-employment among ethnic minorities, coupled with high unemployment, inactivity and low pay, suggests that minorities have difficulty accessing the UK labour market.

Lack of career prospects / glass ceiling effect

In 10 out of the 23 national Shadow Reports, the lack of career prospects is highlighted as a form of structural discrimination in employment which prevents ethnic minorities and migrants from climbing the career ladder or reaching their full potential. This is often referred to as the glass ceiling effect, which is described as the result of “barriers based on attitudes and patterns that prevent qualified individuals from advancing upward in their organisation into management-level positions”.⁹¹

- ⇒ Migrants interviewed in Lithuania indicate limited opportunities for promotion on the basis of their ethnic origin.⁹²
- ⇒ In the Czech Republic, respondents of a recent survey stated, for instance, that they had been denied promotion with the explanation “that it is not yet time for a black person to work in a management position”.⁹³
- ⇒ In the UK, the last Citizenship Survey found that people from minority backgrounds were more likely to feel that they were refused a job and refused a promotion in the past five years due to their origin or religion.⁹⁴

⁹⁰ ENAR 2012/13 Shadow Reports: Austria, France, Greece, Italy, Poland, Turkey and the United Kingdom.

⁹¹ Martin, L., *A report on the glass ceiling commission*. 1991. Washington, DC: U.S. Department of Labor, 1991; European Network Against Racism, *Equal@Work European Conference: Glass ceiling for ethnic minorities*. 5-6 December 2013, Brussels.

⁹² ENAR 2012/13 Shadow Report: Lithuania.

⁹³ ENAR 2012/13 Shadow Report: Czech Republic.

⁹⁴ ENAR 2012/13 Shadow Report: United Kingdom.

- ⇒ In Bulgaria, a study conducted by the Open Society Institute revealed that few of the respondents agreed upon having a migrant or an individual with a minority background on the management team of the company they work for.⁹⁵

Difficult working conditions

Discrimination in the workplace often crystallises in difficult working conditions. Moreover, such precarious working conditions often violate health and safety regulations.

- ⇒ In Austria, migrants who apply for Austrian citizenship or want to reunite with their families first need to prove that they have a steady and sufficient income. In this context, employers are known to force migrants, dependent on work permits linked to residence rights, to take on certain jobs “with working conditions that nobody else would accept”.⁹⁶
- ⇒ In Ireland, mushroom picking is said to be an occupation where migrant workers have to endure working hours and working conditions which “would not be tolerated by native employees”.⁹⁷
- ⇒ In Turkey, Kurds carry out seasonal work in the agricultural sector commonly have to work from 12 to 14 hours a day and the working and living conditions are very poor, especially with regard to housing and health.⁹⁸

In addition, in some jobs, language restrictions are applied, preventing any language being spoken other than the national language in the workplace, including even during the work break. This is reported in the Shadow Reports of Ireland, Austria, Portugal, Turkey and Lithuania.

“A recent survey demonstrated that over a quarter of interviewed migrant care workers were not allowed to speak their native language during work time, not even during a personal break.” [Shadow Report of Ireland]

A consequence of the economic crisis is evident in the increase in inhumane treatment of migrant workers. Unfortunately, high unemployment often results in weakening workers’ bargaining power and lowering their labour rights. This in turn leads to the increased likelihood of worker vulnerability, especially considering growing demand for cheap labour, coupled with deteriorating economic conditions and fewer public authorities available to conduct labour inspections or offer supportive protection services.⁹⁹

Harassment

Migrants and ethnic and religious minorities are often victims of harassment and bullying by co-workers or employers. In most cases, according to several national

⁹⁵ ENAR 2012/13 Shadow Report: Bulgaria

⁹⁶ ENAR 2012/13 Shadow Report: Austria.

⁹⁷ ENAR 2012/13 Shadow Report: Ireland.

⁹⁸ ENAR 2012/13 Shadow Report: Turkey.

⁹⁹ Council of Europe Commissioner for Human Rights Nils Muiznieks, December 2013.

Shadow Reports, neither the managers nor the victim complaints officer intervenes. The latter often fails to intervene out of fear of losing her/his job. Instead, victims are more likely to file reports outside the workplace. In Austria, for example, cases of harassment are frequently reported to a competent NGO and the Ombudsman for Equal Treatment. Among recurring expressions of harassment are jokes, insulting remarks, degrading treatment by the employer, or racist speech.

"In a case that was tackled by the Equal Treatment Commission, a man had been harassed by two of his colleagues who repeatedly called him 'nigger' and 'scum-nigger'. When he turned to the shift supervisor, the supervisor transferred him to another group but then took back the transfer after a couple of hours. During a talk with the production manager, the manager praised his motivation and ensured his support but said it would not possible to change shifts. After working in his old group for another month without incidents, he was called to the office of the production manager where he was told that it had been decided to terminate the work relationship." [Shadow Report of Austria]

In some cases, organisational cultures legitimise hostile working environments targeting those who do not fit the average norm, as mentioned by, for example, the UK Shadow Report. In particular in the case of migrants, behaviours ranging from misunderstandings to harassment are unmediated or unchallenged by colleagues or employers.

Abusive dismissal

Migrants and ethnic minorities seem to suffer disproportionately from abusive dismissal practices, as reported by the Shadow Reports of Belgium, Bulgaria, France, Hungary, the Netherlands, Poland, Slovakia and the UK.

- ⇒ In the Netherlands, a report published by the local anti-discrimination bureau in 2012 showed that more than 7% of the received complaints related to discrimination in the labour market in 2011 deal with abusive or threatened dismissal practices.¹⁰⁰
- ⇒ A Polish study on threatening dismissal practices concluded that in many cases migrant workers are forced to work overtime under the threat of dismissal.¹⁰¹

"A Roma cook was dismissed due to a disciplinary violation, while his non-Roma colleague had only been fined and warned when violating the same disciplinary rule. He took his complaint to court but the court rejected his claim." [Shadow Report of Hungary]

A reported case of abusive dismissal in the UK highlights the important role of the employer in regard to discriminatory practices in the workplace. Instead of using a case of discrimination in the workplace as an opportunity to change the company

¹⁰⁰ ENAR 2012/13 Shadow Report: The Netherlands.

¹⁰¹ ENAR 2012/13 Shadow Report: Poland.

culture, a man was harassed and dismissed by his boss at the Government Communications Headquarters (UK Intelligence Agency) after he wrote an internal report that highlighted the ‘racist culture’ in the department.¹⁰²

Religious symbols and dietary needs

Muslim (women) in particular experience discrimination due to their religious affinity in the workplace. They experience hostility when employers or colleagues make derogative or humiliating comments about their religion or appearance, in addition to requirements not to reveal their religious identity to colleagues or costumers.

ENAR’s 2011/12 Shadow Report on Racism in Europe, which included a focus on Islamophobia, highlighted that Muslim women face double discrimination on the basis of both their religion and their gender, in particular in employment.¹⁰³ Amnesty International’s report on discrimination against Muslims in Europe also concluded that “restrictive dress-code policies and legislation are enforced in, for example, Belgium, France, the Netherlands, Spain and Switzerland. Muslims, and especially Muslim women, who express their cultural or religious background by wearing specific forms of dress or symbols have been denied employment or excluded from classrooms”.¹⁰⁴

“A woman of Moroccan nationality who worked as a nurse in the Sant Camil Hospital experienced constant rejection by her colleagues and was obliged to remove her veil. Official sources of the hospital denied the existence of a special policy for the prohibition of the veil and referred to the requisites of uniformity and hygiene as a justification.” [Shadow Report of Spain]

Besides discrimination based on wearing religious symbols, organisational cultures can make people feel isolated or disadvantaged. For instance and with regard to Muslims, the national Shadow Reports mention that they are not given time to pray, that the workplace lacks accommodation for religious practices, and that they are forced to lunch during Ramadan.

Institutional policies resulting in unequal treatment in the workplace

According to the national Shadow Reports, data on institutional policies resulting in unequal treatment is largely lacking. The little evidence provided by the national Shadow Reports shows that a number of objective criteria negatively affect minorities and migrants.

- ⇒ In Ireland, those without a Catholic Religious Certificate become ‘outsiders’ and are more vulnerable to discrimination in the workplace.¹⁰⁵

¹⁰² ENAR 2012/13 Shadow Report: United Kingdom.

¹⁰³ ENAR 2011/12 Shadow Report on Racism in Europe.

¹⁰⁴ Amnesty International, *Choice and Prejudice, Discrimination against Muslims in Europe*. 2012.

¹⁰⁵ ENAR 2012/13 Shadow Report: Ireland.

“In Ireland, a woman was refused a permanent teaching post at a national school because she did not have a Catholic Religious Certificate. The Complaint was brought into court and she received a compensation of €12,697 for discrimination on the ground of religion.” [Shadow Report of Ireland]

- ⇒ The Portuguese Shadow Report cites the requirement of Portuguese nationality to work in public administration and the limitation of the duration of contracts to the length of the residence permit as instances of unintentional behaviour or institutional policies resulting in unequal treatment.¹⁰⁶
- ⇒ In Spain, the prohibition of wearing a veil due to uniformity and hygiene standards is classified as an objective criteria resulting in discrimination in employment.¹⁰⁷

¹⁰⁶ ENAR 2012/13 Shadow Report: Portugal.

¹⁰⁷ ENAR 2012/13 Shadow Report: Spain.

4. Tackling the challenges

4.1 Legal framework¹⁰⁸

The European Union has a legislative framework to combat racial discrimination in employment: the EU Racial Equality Directive and the Employment Equality Directive.¹⁰⁹ These legislations have by now long been transposed into the laws of Member States, but there remain numerous enduring inconsistencies in their implementation and protection mechanisms.

The Employment Equality Directive establishes a general framework for equal treatment of individuals in the European Union, regardless of religion or belief, disability, age or sexual orientation, as regards access to employment or occupation, vocational training and membership in employer and employee organisations. The Racial Equality Directive offers legal protection against discrimination on the grounds of race or ethnic origin in employment, education, social security, health care and access to goods and services.

According to the national Shadow Reports, a number of EU Member States' legislative provisions comply with standards within the Employment Equality Directive. The French Shadow Report, for example, indicates that the transposition of EU Directives in the early 2000s strengthened the French legal framework and enabled full implementation of the French anti-discrimination law. Other countries that amended their national legal framework in order to comply with the EU Directives are Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Finland, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia, Spain, the Netherlands and the UK.¹¹⁰

However, a number of gaps in the legal framework are identified in the national Shadow Reports, including the limited mandate of the equality body, distinctions made between the private and public sectors, problems regarding law enforcement and implementation, lack of awareness about existing laws, problems regarding transparency of the legal framework and judicial procedures, and an ineffectiveness of the system to issue sanctions.

¹⁰⁸ This section is based on data provided in the national Shadow Reports. For more and comprehensive information on the legal transposition of EU Directives in EU Member States and the legal framework addressing discrimination in employment in the EU Member States, refer to the European Network of Legal Experts in the Non-Discrimination Field: <http://www.non-discrimination.net/>.

¹⁰⁹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin **and** Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

¹¹⁰ The deadline for transposition in 'old' Member States (including Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia) was May 2004; for Romania and Bulgaria it was on 1 January 2007.

In addition, there is no common legal duty for employers to accommodate cultural and religious diversity in EU anti-discrimination legislation. The Employment Equality Directive provides for the duty of reasonable accommodation only on the ground of disability. But it could be possible to build on the reasonable accommodation provision for persons with disabilities, contained in the Employment Equality Directive, in order to address religious discrimination. In this regard, a reasonable accommodation is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee, with a cultural or religious background that is different from the majority population, to participate in the application process or to perform essential job functions on an equal basis with others, unless such measures would impose a disproportionate burden on the employer. However, efforts to foster the application of reasonable accommodation in line with religious symbols and dietary needs have been slow to come.¹¹¹

4.2 Public policies

It should be noted that none of the reviewed countries have adopted a comprehensive national strategy on discrimination in employment although some national policies might indirectly tackle discrimination in employment or focus on specific groups (e.g. the Roma).

In a number of countries, employment is part of the national action plan against racism and discrimination, or action plan for the inclusion of minorities. In Croatia, the Plan of Admission of the Members of National Minorities into State Services for the Period 2011/2014 states that 802 members of national minority groups, including Roma and Serbs, are to be employed by 2014. However, the implementation of this policy has been far from successful, according to both the government's report and civil society assessment.¹¹² In Spain, the 2011 Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance set up multiple objectives and measures to guarantee equal treatment in employment. It prohibits any limitations, segregation or exclusion on any ground in access to employment, training, labour conditions or dismissal. It also aims to promote on equal terms with others access and permanence in the labour market of racial or ethnic minorities. Finally, the Comprehensive Strategy promotes monitoring and reporting mechanisms of racist and xenophobic attitudes in the field of employment. The strategy's implementation however, has been compromised by the economic crisis.¹¹³

¹¹¹ For more information, see ENAR, *Report of the 3rd Equal work meeting: Reasonable accommodation of cultural diversity in the workplace*. 2012. Brussels: European Network Against Racism. Available at: http://cms.horus.be/files/99935/MediaArchive/publications/3rd%20Adhoc_report_FINAL.pdf

¹¹² ENAR 2012/13 Shadow Report: Croatia.

¹¹³ ENAR 2012/13 Shadow Report: Spain.

Some countries have adopted national strategies for Roma integration that cover employment. In 2012, following a call by the European Commission,¹¹⁴ all Member States presented a National Roma Integration Strategy or a corresponding set of policy measures within their broader inclusion policies. One of the four key goals included in these policies is a reduction in the employment gap between Roma and the rest of the population. It should be noted that the development of these strategies does not imply there were no action plans before 2011, but rather that most of the existing action plans were simply not successful enough, i.e. they did not achieve the desire outcome to foster the inclusion of Roma.

“The ACCEDER Programme in Spain, developed in 2000 and financed by the European Social Fund, aimed to develop special actions for Roma in the field of vocational training and employment. Goals included: attracting members of the Roma population into the labour market, increasing professional qualification and access of Roma to occupations and jobs, facilitating general services in vocational training and employment, and promoting services in basic education to enhance the employability of Roma and prevent school failure. The ACCEDER project has been recognised at European level as an example of good practice and is often celebrated for its success”. [Shadow Report of Spain]

The National Roma Integration Strategies can include, for example, vocational training and labour education courses. For instance, the Strategy in Hungary aims to encourage placement in the open labour market, transitional employment and public work programmes.¹¹⁵ Several countries (e.g. Belgium, Germany, Estonia, France, Cyprus, Latvia, Luxembourg and the Netherlands) additionally mention that measuring the impact of the equal treatment approach on the situation of Roma is necessary, that the impact of policies should be monitored, and data should be collected.

A 2012 study produced by the European Roma Policy Coalition, under the rotating chairmanship of ENAR, revealed that many of the national strategies were deeply flawed, reflecting a complete lack of political will to support Roma inclusion. The study criticised the lack of attention governments gave to the National Roma Integration Strategies, both in their design and implementation, obvious by the lack of specific targets, evaluation and monitoring mechanisms, budget setting, or assignment of responsible authorities/contacts. The strategies therefore need to be improved to make a real difference in the lives of Roma by 2020.¹¹⁶ The European

¹¹⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *National Roma Integration Strategies: a first step in the implementation of the EU Framework*, COM/2012/0226. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52012DC0226:en:NOT>.

¹¹⁵ ENAR 2012/13 Shadow Report: Hungary.

¹¹⁶ European Roma Policy Coalition, *ERPC welcomes European Commission’s negative assessment of the National Roma Integration Strategies*. 23 May 2012. Available at: <http://cms.horus.be/files/99935/MediaArchive/pdfpress/ERPC%20press%20statement%202012-05-12%20final.pdf>.

Commission also assessed the National Roma Integration Strategies in May 2012 and concluded that insufficient progress had been made.

On a more positive note, **regional and local authorities have developed targeted initiatives related to promoting diversity or combating discrimination in employment**. For instance, the Brussels region introduced the ‘Diversity Charter’ in 2005. By signing the Diversity Charter, a company, non-profit organisation or public service makes five commitments, from promoting the principle of non-discrimination in its human resource management to introducing a diversity plan with concrete actions to promote diversity.¹¹⁷ However, the ‘Diversity Charter’ is not legally binding for employers.¹¹⁸ In France, in each department, the Joint Committee on Equal Opportunities (COPEC) fosters dialogue between companies, social partners, local authorities and other key actors in the field of employment in order to fight discrimination and promote diversity.¹¹⁹ In Ireland, the South Dublin County Council put in place a scheme in 2005 designed to prepare promising candidates for the Clerical Officer competitions. The project has made a considerable impact on tackling unemployment in the Traveller community.¹²⁰ In the UK, the London Borough of Tower Hamlets commissioned research in 2012 to identify barriers to employment for Bangladeshi and Somali women in the borough, designed employability interventions and worked with NGOs to help these women enter the workforce.¹²¹

Migration policies tend to focus on migrants’ participation in the labour market rather than on discrimination and racism faced by migrants. This is the case in Bulgaria, Croatia, Hungary, Ireland, Lithuania, Slovakia and the Netherlands. For instance, in Ireland, there are policies implemented for fast tracking the naturalisation process and for the lifting of work permit restrictions specifically for Bulgarian and Romanian migrants.¹²² In Bulgaria, a policy is designed to improve refugees’ access to the labour market and in the Netherlands there is an action plan for functional illiteracy which aims to improve the participation of vulnerable groups (including non-western migrants) in the labour market.¹²³ At the regional level in Italy, the Region of Puglia has introduced measures to counter exploitation, undeclared work and forced labour in the countryside, including against migrant workers.

A critical assessment of this utilitarian approach to migration is that politicians appear less concerned about labour market discrimination and racism than about developing a migration policy that attracts only those people deemed beneficial to the receiving society, i.e. to the overall economic development of their country. Migrants and minority groups are considered as second class citizens, necessary entities for carrying out the jobs that nationals do not want to carry out.

¹¹⁷ See <http://www.diversite.irisnet.be/-Pret-pour-plus-de-diversite-dans-.html>.

¹¹⁸ ENAR 2012/13 Shadow Report: Belgium.

¹¹⁹ ENAR 2012/13 Shadow Report: France.

¹²⁰ ENAR 2012/13 Shadow Report: Ireland.

¹²¹ ENAR 2012/13 Shadow Report: United Kingdom.

¹²² ENAR 2012/13 Shadow Report: Ireland.

¹²³ ENAR 2012/13 Shadow Reports: Bulgaria, the Netherlands.

Overall, assessment of public policies to combat discrimination in employment reveals that, when national strategies exist, they often remain unimplemented because of:

- *limited budget allocated to the implementation of the policies*
- *temporary nature of the strategies*
- *lack of adequate monitoring mechanisms*
- *absence of equality data to measure progress*
- *lack of political will to effectively combat discrimination in employment*

4.3 Access to effective remedies

Judicial remedies

Depending on the facts and circumstances of the case, the most common judicial remedies are civil, administrative and criminal proceedings. However, the lack of judicial data on non-discrimination court cases, judgments and remedies hinders the capacity to analyse the implementation of the Employment Equality Directive. Many States do not keep data on discrimination complaints or do not disaggregate judicial statistics by nature of complaint. Very often, civil proceedings in cases of discrimination are not labelled as such, and it is therefore very difficult to keep track of these cases in databases, without going through jurisprudence analyses.¹²⁴ Indeed, some national Shadow Reports remark that very few cases regarding discrimination in general are brought before court, and even fewer concerning discrimination in employment on the grounds of race, ethnic origin, or religion/belief. For instance, in Greece, no court complaint on discrimination on the ground of origin or religion in employment was filed in the last three years.

In Ireland, where data is available, race continued to be the most frequently cited ground in complaints on employment and pensions before the Equality Tribunal, although this category has fallen sharply, with 137 cases referred in 2011 and 259 in 2010.¹²⁵ Overtime though, the below chart shows that in the early years of the Tribunal there were relatively few cases on the race ground, while it is now the single most common ground of discrimination invoked by complainants, although most of the cases have been unsuccessful.¹²⁶

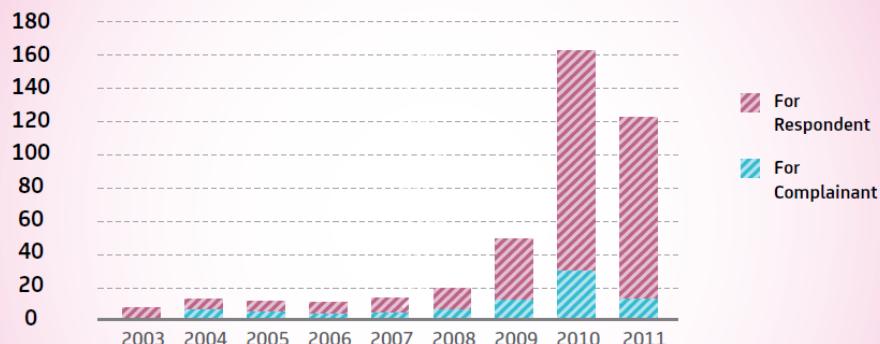
¹²⁴ Open Society Foundations, *The Race Equality Directive: A Shadow Report. Lessons learnt from the implementation in the nine EU member states.* 2013. Available at: <http://www.opensocietyfoundations.org/sites/default/files/Race-Equality%20Directive-Shadow-Report-20130711.pdf>.

¹²⁵ Equality Tribunal, Annual Report 2011. Available at: http://www.labourcourt.ie/en/Publications_Forms/Archived_Publications/Equality_Tribunal_Annual_Report_2011.pdf.

¹²⁶ ENAR 2012/13 Shadow Report: Ireland.

FIGURE 21

DECISION IN EMPLOYMENT EQUALITY CASES ON RACE GROUNDS BY THE EQUALITY TRIBUNAL 2003-2011



Source: Equality Tribunal, Annual Reports

Source: Decisions in employment equality cases on the ground of race by the Equality Tribunal in Ireland, Reproduced from Power J., Szlovak P., Migrants and the Irish Economy, The Integration Centre, 2012.

In the UK, in the 2011/12 period, 4,800 cases were brought on the grounds of race discrimination (1.4% of the total) before employment tribunals, which represents a decrease from previous years (5,000 claims in 2010/11 and 5,700 in 2009/10). Cases of discrimination on grounds of religion or belief accounted for 940 of the cases accepted in 2011/12 (0.03% of the total), as compared with 880 in 2010/11 and 1000 in 2009/10.¹²⁷

Despite the lack of judicial statistics, important developments regarding **relevant case-law** from Member States include:

- In the **Irish case Vaicikauskas & Anor**,¹²⁸ the dismissal of the entire non-Irish workforce was found to be discrimination, and each complainant was awarded €2,500 in 2010.
- In the **UK**, a large compensation was awarded in 2012 to a Black British citizen who was illegally dismissed from a management position in the Central Manchester University National Health Service Foundation Trust. Evidence shows that while 6.9% of Central Manchester's population is Black Caribbean, only 0.7% of the Trust workforce are Black Caribbean, a total of 69 staff out of 9341 staff. Those Black Caribbean employed are at the bottom of the ladder, with not a single Black Caribbean person being employed in the top five pay bands except in medical and dental grades where one in 300 is Black Caribbean.¹²⁹

¹²⁷ ENAR 2012/13 Shadow Report: United Kingdom.

¹²⁸ Equality Tribunal, *Vaicikauskas & Anor v Ashfield Builders Ltd.*, DEC-E2010-156.

¹²⁹ Kline, Roger, 'After Lawrence we should be ashamed'. *The Justice Gap*, 19 February 2014. Available at: <http://thejusticegap.com/2012/01/after-lawrence-we-should-be-ashamed/>.

- In the **Netherlands**, criminal law was applied in 2010 in a case where three store managers and one HR official of a supermarket chain took the decision not to appoint any employee of Moroccan origin in stores located in railway stations. The public prosecutor required a €750 fine and an additional conditional fine.¹³⁰

With regard to discrimination in employment based on religion, these are some of the relevant cases:

- In **Ireland**, it was found that the retraction of an offer of a permanent teaching post at a national school had been influenced by the complainant not having a Catholic Religious Certificate – she was awarded €12,697 for discrimination on the ground of religion.¹³¹ In another case involving a sales representative of South African origin, the Equality Officer awarded €5,000 for the effects of harassment and €10,000 for the effects of discrimination regarding access to promotion.¹³²
- The **Belgium** highest administrative court (Conseil d'Etat) upheld the prohibition on wearing religious symbols for school teachers by a 27 March 2013 judgment concerning an internal regulation of the City Council of Charleroi.¹³³
- In **France**, in one highly publicised case (known as the *Baby Loup* case), a social worker in a day-care centre for children was dismissed when she started wearing the Islamic veil. Quashing the lower courts' decisions, the Supreme Court decided that the principle of secularity "cannot be invoked by a private employer to hinder the protection against discrimination on the ground of religion afforded to employees of the private sector who are not in the position of managing a public service".¹³⁴ However, the Paris Court of Appeal has since ruled the sacking legal.¹³⁵ The complainant is likely to appeal to the Supreme Court again.
- In **Germany**, the rejection of an application based on the wearing of a headscarf was considered unlawful by the Berlin Labour Court. The case was brought by a Muslim woman who had applied for vocational training at a dentist's practice. The dentist found her suitable for the position but objected to her wearing a headscarf. The Berlin Labour Court ruled that the fact that

¹³⁰ European Network of Legal Experts in the Non-Discrimination Field, *European Anti-Discrimination Law Review n° 12. July 2011.* Available at: <http://www.non-discrimination.net/content/media/Review%202012%20EN.pdf>.

¹³¹ Equality Tribunal, *A Complainant v A Respondent & A Government Department*, DEC-E2010-189.

¹³³ Conseil d'Etat, Assemblée Générale de la Section du Contentieux Administratif, *Arrêt no 223.042 du 27 mars 2013.* Available at: <http://www.raadvst-consetat.be/arr.php?nr=223042&l=fr>.

¹³³ Conseil d'Etat, Assemblée Générale de la Section du Contentieux Administratif, *Arrêt no 223.042 du 27 mars 2013.* Available at: <http://www.raadvst-consetat.be/arr.php?nr=223042&l=fr>.

¹³⁴ European Network of Legal Experts in the Non-Discrimination Field, *European Anti-Discrimination Law Review n° 17. November 2013.* Available at: <http://www.non-discrimination.net/content/media/Review%202017%20EN%20web%20version.pdf>.

¹³⁵ Le Bars, Stéphanie, 'Baby Loup: le licenciement de la salariée voilée confirmé'. *Le Monde*, 27 November 2013. Available at: http://www.lemonde.fr/europe/article/2013/11/27/decision-attendue-dans-l-affaire-de-la-creche-baby-loup_3520827_3214.html.

the applicant was disqualified after she refused to remove her headscarf during working hours amounted to discrimination on grounds of religion.¹³⁶

The low volume of cases concerning discrimination in employment relates to the fact that there are numerous obstacles for migrants and minority groups to seek legal help. Most frequently mentioned in the national Shadow Reports is the **difficulty for the complainant to prove discrimination**. To counter this difficulty, the EU Employment Equality Directive foresees a reversal of the burden of proof. If the plaintiff claims facts from which it can be presumed that there has been direct or indirect discrimination, the defendant must then prove that there has been no breach of the principle of equal treatment. Unfortunately, even though the objective of the reversal of the burden of proof is to allow victims of discrimination a real opportunity to defend their rights before a court, it is still extremely difficult to actually prove discrimination.¹³⁷

A commonly used method to prove discrimination in employment is the use of witnesses. However, there are considerable obstacles and problems concerning this practice.

"In many cases it is difficult to find witnesses wanting to give evidence before court, especially if they still work in the company and have to testify against their employer. More often than not, the complaint is not able to prove discrimination through the use of witnesses". [Shadow Report of Austria]

An alternative approach to prove discrimination is 'situation testing', an artificial reproduction of a situation that could lead to discrimination to assess how an allegedly discriminatory organisation/individual would react. Testing was first used by NGOs and has now become admissible as proof of discrimination in court.¹³⁸ Although this method is relatively new, and is mainly used in the field of access to goods and services, an example from Lithuania illustrates the potential effectiveness of this approach.

"In Lithuania, the situation testing method was successfully used to prove that discrimination against a Roma women occurred during her recruitment in a café. A Lithuanian woman of a similar age as the complainant was sent to the café a few hours after the Roma woman had been told that the place was no longer vacant. The Lithuanian woman was immediately accepted. The results from the situation testing were approved and later used in court to successfully challenge discriminatory behaviour." [Shadow Report of Lithuania]

¹³⁶ European Network of Legal Experts in the Non-Discrimination Field, *European Anti-Discrimination Law Review n° 16*. July 2013. Available at: <http://www.non-discrimination.net/content/media/Review%202016%20EN.pdf>.

¹³⁷ Open Society Foundations, 2013.

¹³⁸ Migration Policy Group and Swedish Centre For Equal Rights, *Proving Discrimination Cases - the Role of Situation Testing*. 2009.

Other barriers to access to justice include:

- **Lack of trust in the judicial system.** Some migrants and people from minority groups who are victims of discrimination do not always trust the fact that judicial institutions would provide redress. A FRA report also highlights the frequent disadvantage of complainants against their employer, who can afford stronger legal representation. The report also provides evidence that judges often “lack knowledge about equal treatment legislation”.¹³⁹
- **Lack of awareness of legal provisions.** Migrants and minorities often lack information and knowledge about the institutions and legal provisions that can help them in case they feel discriminated in the field of employment. The complexity and opacity of complaint mechanisms are also a deterrent for victims when reporting discrimination. The results of the 2012 Special Eurobarometer show that not even four in ten Europeans (37%) would know their rights should they fall victim to discrimination or harassment.¹⁴⁰
- **Length of proceedings.** The length of some non-discrimination proceedings might deter discrimination victims to seek redress.
- **Financial barriers.** Court cases are usually associated with costly procedures. There is not always affordable legal aid and the complainant sometimes has to pay the defendants' legal costs in case he/she loses.
- **Fear of victimisation.** The protection of complainants against victimisation – adverse treatment or consequences – is another problematic issue in employment cases.

“In February 2013, a Sikh bus driver, Gill, was prohibited from wearing his turban, arguing that it was not part of his work wear, and that it would upset some passengers. Gill argued that no passenger or his work colleagues had complained. The story, naturally, triggered animated discussions on social media sites, particularly those frequented by xenophobic, anti-immigrant groups. It also made headlines in India, his country of origin. Gill appealed to the Office of the Ombudsman for Minorities. In late June, the Southern Finland Regional State Administrative Agency ruled that the bus company's ban on wearing the turban was discriminatory, because it placed the plaintiff in an unfavourable position due to his religion. The agency ordered the bus company to redress the problem by September. Obviously afraid of victimisation or losing his job (in one interview, he had intimated his plan to buy a house), Gill announced that he would not wear the turban, after all.” [Shadow Report of Finland]

In Slovenia, there is no *actio popularis* available in the field of discrimination. This means that only a person (natural or legal) who has a legal interest can initiate a case before the labour and social courts. The Advocate of the Principle of Equality does not have the power to initiate a case before a court. NGOs and trade unions cannot represent the victims in courts as they are not law firms, which are the only

¹³⁹ European Union Agency for Fundamental Rights, *Access to justice in cases of discrimination in the EU*. 2012. Vienna: FRA.

¹⁴⁰ European Commission, 2012.

legal persons that are allowed to represent in court. Victims can, however, be represented by an individual working or engaged in a trade union or an NGO.¹⁴¹

These obstacles seriously hinder the effectiveness of anti-discrimination legislation in protecting individuals facing discrimination. For example, in the Netherlands, it is believed that the level of evidence required by courts, combined with the risk of the case failing, acts as a deterrent for victims and their lawyers.

Non-judicial remedies

There are considerable differences between EU countries in the way non-judicial remedies for discrimination in employment cases operate. While in some countries the labour inspectorate is responsible for discrimination in employment, in other countries this is solely the task of the equality body. Civil society initiatives attempt to fill the gaps in countries, where ombudsman institutions or equality bodies are not sufficient.

➤ Ombudsman institutions or equality bodies

As required by the EU Race Directive, Member States had to designate a body to promote equal treatment on the grounds of racial or ethnic origin. In most Member States, these institutions have been established. All equality bodies, apart from Denmark, Italy, Malta, Portugal, Spain and Finland, also cover the ground of religion. A majority of equality bodies are competent to handle individual complaints and provide free legal recommendations and assistance.

In addition to providing legal assistance, most equality bodies and ombudsman institutions are active in their aim to promote equal treatment and human rights. Activities carried out by these institutions include research, communication activities, language training courses, court-case interventions, the organisation of workshops, and the provision of information. In addition, various institutions actively cooperate with other organisations such as NGOs, labour inspectorates and civil society initiatives. For instance, in the Czech Republic, the Ombudsman cooperates with NGOs in conducting situation testing to uncover and tackle discriminatory practices. Similar examples are mentioned in the Shadow Reports of Lithuania, Luxembourg and Spain.

The EU Race Directive does not set up any criteria for the institutional framework of equality bodies or ombudsman institutions in order to fulfil their tasks in an independent and effective manner".¹⁴² Therefore, institutions vary in terms of their resources, powers, independence, competency and effectiveness. For example, in around one third of Member States, equality bodies may themselves initiate court proceedings either in the victim's and/or their own name. However, even for those

¹⁴¹ ENAR 2012/13 Shadow Report: Slovenia.

¹⁴² European Network of Equality Bodies, *Equality law in practice: Report on the implementation of the race and general framework directives*. 2013.

Member States who have this mandate, their ability to initiate legal action requires adequate financial and staffing capacity.¹⁴³

Even though in most EU Member States the ombudsman and equality bodies play a prominent role in discrimination in the field of employment, one of the main concerns regarding the functioning of these institutions concerns their independence (e.g. in Malta, Bulgaria, Austria, Hungary, Spain and Italy). In Bulgaria for instance, commissioners are allegedly chosen mainly on the basis of their political views rather than their professional credentials. The Finnish Shadow Report regrets that the Ombudsman and Discrimination Tribunal (who monitor the implementation of the legal framework addressing discrimination) have no mandate to intervene in matters relating to labour market discrimination. Other concerns include the restriction of financial resources for the ombudsman institutions and equality bodies (e.g. in Austria, Spain, Luxembourg and Italy) and their lack of visibility among the general public (e.g. in Malta and France). The lack of visibility of these institutions is also evidenced by research published by the European Union Fundamental Rights Agency in 2010. An overwhelming majority (i.e. 80 % of the surveyed people with an immigrant or ethnic minority background in all 27 EU Member States during 2008) could not think of a single organisation that could support victims of discrimination as shown in the chart below.¹⁴⁴



Source: European Union Agency for Fundamental Rights, EU-MIDIS Minorities and Discrimination Survey: Rights Awareness and Equality Bodies, 2010.

Despite the fact that recommendations by the equality body or ombudsman are in most countries not legally binding, most people follow them. In Hungary, as an exception, the decisions of the equality body are legally binding and may also be made public, as illustrated by the case below.

Relevant developments regarding complaints before equality bodies that have a quasi-judicial role include:

- In Hungary in 2010, a Roma applicant was rejected when he applied for a job as a security guard. The applicant asked about the job in person several times and met all the criteria. He saw that other applicants were hired for the same position

¹⁴³ European Union Agency for Fundamental Rights, *The Racial Equality Directive: application and challenges*. 2011. Vienna: FRA. Available at: http://fra.europa.eu/sites/default/files/fra_uploads/1916-FRA-RED-synthesis-report_EN.pdf.

¹⁴⁴ European Union Agency for Fundamental Rights, *EU-MIDIS Minorities and Discrimination Survey: Rights Awareness and Equality Bodies*. 2010. Vienna: FRA.

while his application was repeatedly rejected. The Authority ruled that direct discrimination on the basis of ethnicity had occurred and fined the shop HUF 1.5 million (approximately €5,000).¹⁴⁵

- In the Netherlands, the equality body ruled that job advertisements seeking applicants who are not receiving social benefits is discriminatory on the grounds of racial/ethnic origin.¹⁴⁶

Countries that keep data on the nature of discrimination complaints state that only a small proportion of the complaints related to discrimination in the field of employment. For instance, the Ombudsman in the Czech Republic received in the reporting period 215 complaints about discrimination in general, of which 8 fell under employment and work administration. Some argue that the reason why such a small percentage of complaints are employment-related is that people fear losing their jobs (e.g. this is mentioned in the Shadow Reports of Finland and Spain). In Bulgaria, between March 2010 and March 2013, there were 51 decisions from the Commission on Protection of Discrimination, but none on the ground of race.

The European Network of Equality Bodies reports that the most common issues being addressed by equality bodies on the ground of racial or ethnic origin are discrimination in the recruitment process, discriminatory dismissals and harassment. Issues that are reported to a lesser degree include working conditions, promotion and unequal pay.¹⁴⁷

➤ **Mediation or conciliation**

Mediation or conciliation is also available in some countries and could provide a good alternative in cases where victims fear being victimised or are looking for flexible solutions to their cases. The Shadow Reports of Belgium, Bulgaria, the Czech Republic, Finland, Ireland, Germany, Luxembourg, Croatia, Lithuania, Slovenia, France and the UK mention that mediation is available as a service in all types of proceedings. Victims of discrimination are often encouraged to settle their claims out of court by using mediation.

- ⇒ In the Czech Republic, court proceedings are perceived as a last option in discrimination cases and mediation or out-of-court settlements are more common (approximately three quarters of discrimination disputes on all grounds and in all fields are settled out of the court).¹⁴⁸
- ⇒ In Belgium, public bodies in charge of vocational training have established mediation services. However, the equality body reports that they are not always aware of anti-discrimination legislation.¹⁴⁹

Mediation contributes to some extent to limiting the case-law on discrimination and awareness of discrimination in society, as mediation and out-of-court settlements are usually not made public. In Germany for instance, trade unions can intervene in

¹⁴⁵ ENAR 2012/13 Shadow Report: Hungary.

¹⁴⁶ European Network of Legal Experts in the Non-Discrimination Field, November 2013.

¹⁴⁸ ENAR 2012/13 Shadow Report: Czech Republic.

¹⁴⁹ ENAR 2012/13 Shadow Report: Belgium.

cases of bullying or discrimination in the workplace and provide a framework to negotiate an agreement. Those complaints however are not public. The number of actual discrimination cases in the labour market can therefore be estimated much higher than the official reported number.¹⁵⁰

➤ Labour inspectorates

Labour inspectorates are responsible for the general application of labour law and do not always have particular expertise in matters pertaining to racial discrimination.¹⁵¹ Nevertheless, in some Member States labour inspectorates have made positive progress towards reaching their full potential in combating discrimination.¹⁵²

- ⇒ The labour administration in Belgium has set up a unit to advise and train labour inspectors on discrimination issues.¹⁵³
- ⇒ In the Netherlands, the labour inspectorate has paid increasing attention to the exploitation of migrants.¹⁵⁴

Labour inspectorates monitor and enforce compliance with labour legislation (e.g. ensure that companies pay minimum wages and detect and combat illegal labour). They use both announced controls and unannounced on-the-spot checks. For instance, in Slovakia, the labour inspectorate can either react to motions filed by individual complaints or take initiatives in conducting their own inspections.

Competences of labour inspectorates differ between countries. In France, Turkey, Slovakia, the Netherlands and the Czech Republic, the labour inspectorate is competent to impose sanctions. For example, in Turkey, the labour inspectorate may issue sanctions in cases of workers being employed without any social security membership. This is reportedly the case for unqualified jobs in which people from ethnic minority groups such as Kurds or Roma are often employed.¹⁵⁵ In contrast, in Lithuania and Luxembourg, the labour inspectorate does not have the power to issue judicially binding decisions or to impose any sanctions.

In Poland, inspectors do not have the mandate to decide whether particular cases are discrimination cases or not, as this is assigned to the labour courts. "They are neither entitled to refer the victim to court, nor to file a complaint in court against an employer who is suspected of discrimination."¹⁵⁶

Nevertheless, lack of awareness of non-discrimination legislation and of activities in the field of discrimination is still commonplace among national labour inspection

¹⁵⁰ ENAR Shadow Report 2012/13: Germany.

¹⁵¹ European Parliament, *European Union Anti-Discrimination Policy: From Equal Opportunities Between Women and Men to Combating Racism*. 1997. Available at: http://www.europarl.europa.eu/workingpapers/libe/102/default_en.htm.

¹⁵² This is not only evident from the national reports but also described in a report by the International Labour Organisation, *Work in Freedom: Discrimination at Work in Europe*. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_90_en.pdf.

¹⁵³ Ibid.

¹⁵⁴ ENAR 2012/13 Shadow Report: The Netherlands.

¹⁵⁵ ENAR 2012/13 Shadow Report: Turkey.

¹⁵⁶ ENAR 2012/13 Shadow Report: Poland.

systems. For instance, in Poland, the protection of immigrant workers is almost completely absent.¹⁵⁷ Similarly, in Slovakia, the labour inspectorate's 2012 annual report reveals the lack of experience of inspectors in assessing whether motions received are cases of discrimination.¹⁵⁸

In Ireland, Hungary and the UK, dealing with discrimination in employment falls under the responsibility of the equality body. These bodies are then responsible for monitoring enforcement of basic employment rights. Unfortunately, in Ireland, the equality body does not have the resources to conduct inspections of workplace in cases of alleged discrimination, resulting in there being no labour inspectorate concerned with discrimination or racism in the workplace.

4.4 Civil society initiatives

Trade unions

There are considerable differences in the role played by trade unions in combating racism and discrimination in employment at the national level. Best practices mentioned in the national reports include:

- initiatives to raise awareness regarding discrimination and racism in employment,
- training for union members on discrimination,
- adoption of diversity policies in the frame of social dialogue,
- initiatives focusing on migrants,
- cooperation between trade unions and NGOs.

In Italy, trade unions in the agriculture and construction sectors played an important advocacy role in fighting against labour exploitation. In January 2011, the trade unions CGIL, FLAI and FILLEA initiated a campaign to advocate for a bill introducing the criminal offence of 'gang-mastering' (abuses by gang-masters - 'caporalato' - illegally employing workers in exploitative working conditions). The campaign was successful and the crime of gang mastering was introduced in the Italian Penal Code.¹⁵⁹

In Austria, the Union of Private Sector Employees and of Printers, Journalists and Paper Workers (GPA-DJP) set up a dedicated interest group for migrant workers called work@migration. The main topics in work@migration include access to the labour market for asylum seekers and undocumented workers, recognition of foreign qualifications and every-day discrimination in the workplace. In discrimination cases, the group takes up an intermediary role and tries to find good solutions for the company.¹⁶⁰

¹⁵⁷ Ibid.

¹⁵⁸ ENAR 2012/13 Shadow Report: Slovakia.

¹⁵⁹ ENAR 2012/13 Shadow Report: Italy.

¹⁶⁰ ENAR 2012/13 Shadow Report: Austria.

BECTU, the media and entertainment union in the UK, has been holding ‘Move on up’ networking events for their members. The events are a chance for their professionals – writers, technicians and producers – to meet and make proposals to company representatives – management, executive producers and HR professionals. Since 2003 they have set up over 5,400 individual personal contacts between approximately 1,800 black and minority ethnic professionals and 730 top film and broadcasting executives.¹⁶¹

Despite the significant role of trade unions in most countries, unfortunately there are some concerns in other countries. In the Netherlands and Malta, none of the trade unions have initiatives related to racial discrimination. Similarly, in Finland, Poland, Lithuania and the Czech Republic, the level of involvement of trade unions in the field of discrimination is low.

In Greece, despite being under strain, “most trade unions show their solidarity to migrant workers and they stand by the side of minorities or foreigners who are accused of stealing jobs.”¹⁶²

An ongoing concern is that trade unions do not always share the interests of migrants and minorities, as these groups are members of trade unions only to a certain extent.¹⁶³

Also, most of the good practice reported in national Shadow Reports does not cover discrimination on the ground of religion. In a 2010 report, the European Commission surveyed trade unions in 34 European countries and found that the majority of anti-discrimination trade union initiatives at national level related to the grounds of ethnic origin while very few covered religion.¹⁶⁴

¹⁶¹ ENAR Shadow Report 2012/13: United Kingdom.

¹⁶² ENAR Shadow Report 2012/13: Greece.

¹⁶³ Working Lives Research Institute, *Racial and ethnic minorities, immigration and the role of trade unions in combating discrimination in xenophobia, in encouraging participation and in securing social inclusion and citizenship*. 2005.

¹⁶⁴ European Commission, *Trade union practices on anti-discrimination and diversity*. 2010.

Figure 5: Reported initiatives by discrimination strand

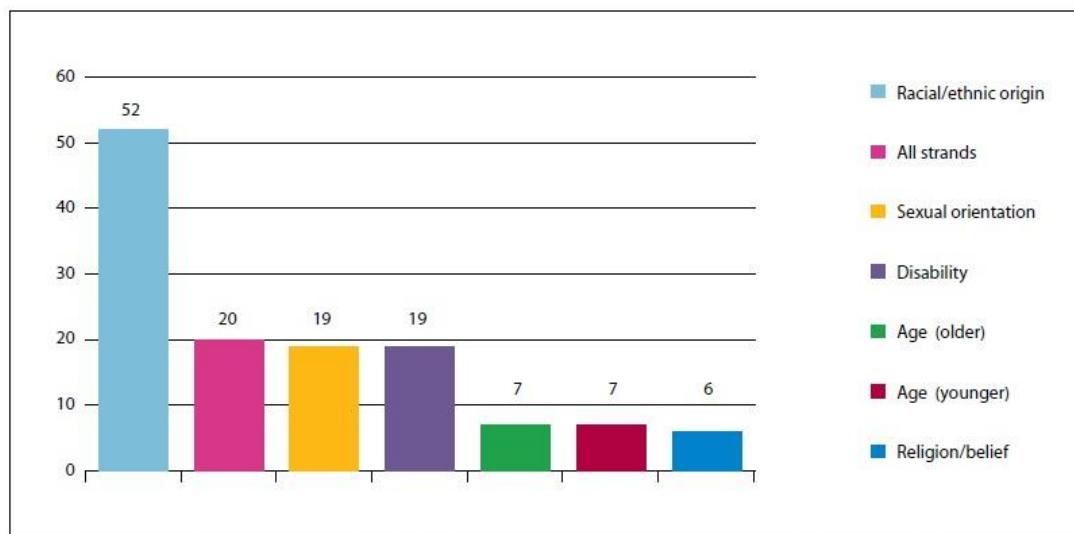


Figure 5 is an overview of all of the initiatives by strand of discrimination. It shows that the most common initiative mapped in the study concerned combating discrimination on grounds of racial or ethnic origin.

Source: European Commission, Trade union practices on anti-discrimination and diversity, report, 2010.

Non-Governmental Organisations' activities

Non-Governmental Organisations (NGOs) play a valuable role in promoting equality in the field of employment. In all EU countries there is one or more NGO focusing on combating racism and discrimination. The extent to which they pay specific attention towards the field of employment differs, however, between countries and between NGOs. In general, NGOs are active in providing information and knowledge, campaigning, raising awareness, providing (legal) advice and counselling, mediation, conducting research, providing training and education, and often have a monitoring and observatory role. Some NGOs focus on migrants and national minorities in general, others pay special attention to certain groups.

Many NGOs conduct awareness raising campaigns on discrimination, including in employment, and also focus on the integration of migrants in the labour market. With regard to ethnic and religious minorities, various NGO activities focus on specific minority groups, such as the Roma population or the Muslim population. Campaigns either target the negative stereotypes people have of these groups, or aim to help these individuals access work.

- ⇒ In the UK, the Employability Forum works in partnership with other organisations and agencies to get refugees back into their professional careers. REACHE (Refugee and Asylum Seekers Centre for Healthcare Professionals Education) Northwest, is one of the organisations which formed part of their healthcare professionals programme. REACHE works to help refugee healthcare professionals transition back into their fields in the UK. They work in partnerships with local government, local and national NHS organisations, higher education and other support organisations. They run courses on English language, communication skills, medical examination preparation, and arrange work

- placements. REACHE has helped 196 Refugee Healthcare Professionals back to their professions in the UK.¹⁶⁵
- ⇒ In the Czech Republic, the Association for Integration and Migration offers migrants qualified legal and social counselling, organises seminars for foreigners, launches campaigns focused on domestic workers, and makes use of a documentary film for migrants. In the Czech Republic, the project 'The Support of Muslim Women' aims to support disadvantaged and vulnerable Muslim women in accessing the labour market. Participants are involved in many educational activities, such as language courses, requalification courses and training workshops.¹⁶⁶
 - ⇒ In Poland, the 'Some of Many' campaign by the FROM Foundation combats the negative stereotype of Roma as uneducated and vocationally inactive people. For this project, world-famous photographer Chad Evans Wyatt portrayed dozens of polish Roma who are educated, successful in their professional life and well integrated in society. The photos, accompanied by short interviews with the subjects, have been shown in a number of touring exhibitions and are available online.¹⁶⁷
 - ⇒ In the Netherlands, 'Forum' has initiated a project called 'K!X'. This project is meant to empower youth, neutralise discriminatory practices, and help overcome obstacles in entering the labour market. K!X aims to improve the chances of youth in prevocational and vocational education (which is relatively highly attended by ethnic minorities) on the labour market. The activities of the teams that visit the schools are to introduce the pupils to companies, build up a professional network and help them build skills.¹⁶⁸

Employers' organisations

Examples of good practices by employers' organisations in combating racism and discrimination in the field of employment are scarce.

'Diversity Charters' were originally developed and implemented in France and today similar charters are developed in Austria, Bulgaria, Ireland, Poland, Luxembourg, Germany, Belgium, Italy, Spain, Sweden, the Netherlands and Finland.¹⁶⁹ The Diversity Charter consists of a short document voluntarily signed by companies, organisations and public institutions, and outlines the measures they will undertake to promote diversity and equal opportunities in the workplace, regardless of race or ethnic origin, sexual orientation, gender, age, disability or religion. Usually the Diversity Charter is initiated and promoted by employers' organisations, although in some countries the initiative is taken by NGOs, individual employers, or other civil society initiatives. Despite possible resistance when implementing the Diversity Charter, it is perceived as a success. A study in 2005 by the European Business Test Panel revealed that the majority of companies (83 %) agree that diversity initiatives

¹⁶⁵ See <http://www.employabilityforum.co.uk/other-professions/health> and <http://reache.wordpress.com/>

¹⁶⁶ ENAR 2012/13 Shadow Report: Czech Republic.

¹⁶⁷ ENAR 2012/13 Shadow Report: Poland.

¹⁶⁸ ENAR 2012/13 Shadow Report: The Netherlands.

¹⁶⁹ For more information, see <http://www.diversity-charter.com/>.

have a positive impact on their business.¹⁷⁰ On the website of the French Diversity Charter, it is mentioned that it helps in: legal compliance and protection from damage to their reputation; showing their commitment as a socially responsible company; optimising their human resources management; and improving their financial performance.¹⁷¹

"In the Netherlands, the National Consultation Platform on Minorities (LOM) launched an initiative to transfer the French good practice of Diversity Charters, despite companies' initial reticence. A tripartite alliance between social interest organisations (of disabled people, women, the LOM alliances, human right and trade unions), the government and the private sector, established in 2013, will now support the introduction of a Dutch Diversity Charter. An increasing number of Dutch companies are now convinced that the implementation of the Charter will benefit them as well as prevent discrimination, and choose to sign the Charter." [Shadow Report of the Netherlands]

Beyond the charters, promising practices include mentoring schemes. In addition, in Bulgaria, employer organisations are reportedly active in social dialogue concerning racial and ethnic discrimination. For example, they participate in the development and implementation of migrant and integration policies and are engaged in discussions relating to unemployment and low wages for migrants and national minorities.

"In Austria, the Austrian Federal Economic Chamber launched, together with two other organisations, the project 'Mentoring for Migrants'. Over a period of six months, skilled migrants who are unemployed or overqualified were tutored by a person who is well integrated in the Austrian economy. This project equipped migrants with social capital that will help them in the development of a career plan and the establishment of contacts. Numerous mentees have gained a foothold on the Austrian Labour market." [Shadow Report of Austria]

Individual employers' initiatives

Generally, individual employers are rather reserved in combating racism and discrimination in employment, especially in southern and eastern EU countries. Diversity management is the most popular initiative and in a number of countries the implementation of diversity management is successful. Different examples of diversity management can be found in the Shadow Reports of Ireland, Austria, Finland, the Netherlands, Spain, Luxembourg, Croatia, France and the UK.

Measures to promote diversity and diversity management in the workplace aim to create awareness and shift organisational culture. As the Special Eurobarometer 2012 results show, Europeans strongly support measures to promote and foster

¹⁷⁰ European Commission, *Assessing Diversity: Impact in Business*. 2013. Available at: http://ec.europa.eu/justice/events/hle-2013/files/assessing_diversity2013_en.pdf.

¹⁷¹ See <http://www.diversity-charter.com/diversity-charter-commitment.php>.

diversity in the workplace. 79% of Europeans are in favour of training employees and employers on diversity issues.

- ⇒ In the UK, the standard practice is to have a formal written policy on equal opportunities and management diversity in workplaces with 50 or more employees, in the public sector, and in workplaces that recognise trade unions.¹⁷²
- ⇒ In Ireland, 'Dublin Bus' has put in place a comprehensive Diversity and Equality Strategy. Dublin Bus employs individuals from 64 different countries of origin, comprising over 16% of their workforce. The company has, among other things, placed a map of the world in all depots in order to raise awareness of the country of origin of fellow workers, displayed anti-racism posters on all buses, created an education support scheme to eliminate skills mismatches, and has run sporting events focused on getting all staff nationalities involved.¹⁷³
- ⇒ Vienna's (Austria) public transport company 'Wiener Linien' launched a public campaign against racism in January 2013. Their slogans were: 'Together against exclusion and racism' and 'The City belongs to you. And you'. This was translated into 30 languages and published on large format posters in the main transport hubs. In addition, the campaign was supported by a video on info screens and via Facebook. The campaign aimed at sending a clear signal against racism and xenophobia and therefore contributed to increasing public awareness on racism and discrimination.¹⁷⁴
- ⇒ In Finland, a family-owned facility service enterprise called SOL has 7000 employees working in Finland of which 1200 are immigrants from all parts of the world. Back in 2007, the company established a multicultural development team and today some of its supervisors are immigrants. To promote diversity awareness, SOL has engaged professional trainers and has instilled the principle of equality in its immigrant workers.¹⁷⁵
- ⇒ U.S. Steel Košice, a steel mill based in the Eastern Slovak town of Košice, has a project entitled 'Equality of Opportunities' which furthers the employment of Roma in the city. District council chairmen, in cooperation with community workers, scout the local Romani population to find suitable job seekers. The project was launched in 2002 and has employed about 150 Roma to date.¹⁷⁶

¹⁷² ENAR 2012/13 Shadow Report: United Kingdom.

¹⁷³ ENAR 2012/13 Shadow Report: Ireland.

¹⁷⁴ ENAR 2012/13 Shadow Report: Austria.

¹⁷⁵ ENAR 2012/13 Shadow Report: Finland.

¹⁷⁶ ENAR 2012/13 Shadow Report: Slovakia.

5. Conclusions

Racism and related discrimination in employment are a reality in the lives of migrants and ethnic/religious minorities in Europe. Their extent and manifestations are often unknown and undocumented, especially in official data sources. As a consequence, it can be difficult to analyse the situation and develop solutions. Even when there is extensive official data on the employment situation of minorities, it often only reveals rough differences between target groups and the national average. Monitoring discrimination in the labour market can therefore not be limited to looking at labour market indicators. NGOs offer a vital alternative data source since they reveal ‘shadow data’ which comes directly from individuals and communities experiencing racism on a daily basis. ENAR’s Shadow Reports have become a major tool for **monitoring** the situation of racism and discrimination in EU Member States.

Labour statistics indicate that the position of migrants in the labour market in the EU Member States is vulnerable, but not as bad as is often perceived. Due to missing statistical data about ethnicity and/or the generation of migration background, little can be said about the position of minorities in the labour market and be considered evidence-based. Yet the number of examples highlighted in the national Shadow Reports as well as the secondary data from EU institutions allude to the ongoing disadvantaged position of migrants and minorities in the European labour market. The **economic and financial crisis** has not only further exacerbated the employment gap between ethnic minorities and the majority population, but also increased labour market competition between these groups. It has also strengthened public perceptions of migrants and ethnic and religious minorities as a threat to society (as people who take away jobs) or as second class citizens (as people who need to carry out the jobs that nationals do not want).

Third country nationals, including undocumented migrants, refugees and asylum seekers; Roma; Muslims; people of African descent and Black Europeans; and all women with a minority or migrant background are in particular victims of discrimination in access to employment and in the labour market.

The European Union’s engagement to combat discrimination in employment is founded on a solid legal framework. However, although the EU legal framework has been transposed in EU Member States, a number of gaps still remain, largely related to effective implementation.

In all Member States there is legislation and/or policy measures covering discrimination in employment (including legislation, equality bodies). Unfortunately, they are not always as efficient as they should be. In addition, there is no comprehensive framework specifically addressing discrimination in employment. As anti-discrimination legislation is not sufficient to tackle racism and discrimination, government support is needed to tackle the problem through different sources. However, anti-discrimination is currently not at the top of the political agenda. Increasing cuts in budgets and a lack of political will continue to impede the fight against discrimination. Throughout this European Shadow Report, we have pointed to several significant societal and political developments concerning racism and

discrimination in employment. Politicians, policy makers, media and employers in a number of Member States tend to contribute to further deepening existing stereotypes on migrants and ethnic and religious minorities, instead of developing effective policies and a sound and functioning justice system to combat discrimination and racism in and outside of employment.

Yet there are also numerous efforts being made by institutions and organisations to promote equality, anti-racism and anti-discrimination in the field of employment (and beyond). Thanks to the efforts made by various equality bodies, ombudsman institutions, NGOs, trade unions, employers' organisations and individual employer initiatives, ongoing problems linked with inequality and racial discrimination in European society remain visible to the public. Furthermore, many of these organisations actively support potential victims of discrimination in employment, raise public awareness to their problems and promote diversity in employment.

Although it is comforting to have so many organisations actively fighting racism and discrimination, all initiatives taken together form a scattered landscape in which efforts are not centrally organised or monitored. The consequence is that potential victims of racism do not automatically know where to go for questions and help. This is partly linked to budgetary cuts and staff reductions. In addition, the lack of a comprehensive framework hinders efforts to fight discrimination because initiatives are subject to changes in the economy, politics and funding.

Equality bodies, ombudsman institutions and NGOs should receive enough support to continue their efforts towards putting racism and discrimination on the political agenda, collecting data on the prevalence of discrimination and racism in employment, and supporting victims of discrimination. Simultaneously, trade unions and employers should be encouraged to fight discrimination and racism in employment and receive enough resources to do so.

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