

"Who Protects Us from the Police?"

Structural Racism in Law Enforcement in the European Union



The Equinox Initiative for Racial Justice is a people of colour-led advocacy project with solidarity and empowerment at its heart. Equinox is a coalition of racial and social justice leaders, activists and organisers from across Europe working in solidarity to influence European Union law and policy.

www.equinox-eu.com



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Concepts

Police brutality: The excessive or disproportionate use of force and ill-treatment, including physical, verbal and psychological abuse inflicted by law enforcement officials.

Racialised people/communities: Individuals and groups who have been subject to a process of racialisation and been ascribed a particular racial category. In European societies, all people are racialised; however, we use the term to refer to those that have been negatively racialised or categorised as “other”.

CEPOL - European Union Agency for Law Enforcement Training: specialised EU agency, whose goal it is to ‘develop, implement and coordinate training for law enforcement officials in the EU’.¹

Eurojust - European Union Agency for Criminal Justice Cooperation: specialised EU agency, set up to offer supportive services and facilitate coordination between the investigative authorities of different EU Member States in cases defined as serious cross-border crime.²

EUROPOL - European Union’s Law Enforcement Agency: specialised EU agency, which does not have autonomous investigative competences, but offers support and expertise to national law enforcement authorities in cases defined as serious crime.³

FRA - European Union Agency for Fundamental Rights: specialised EU agency specifically set up for the promotion and protection of fundamental rights in the European Union.⁴

FRONTEX - European Border and Coast Guard Agency: uniform, independent task force responsible for the surveillance of the European Union’s external borders. Their main responsibilities include border control and migration management.⁵

Law enforcement: National and international state entities tasked with the enforcement of the law. This report includes police, immigration control and some aspects of public health enforcement within the remit of law enforcement, and acknowledges the growing mandate and scope of law enforcement across Europe, such that law enforcement is increasingly mandated to fulfil other public roles, such as public health enforcement, immigration enforcement, etc.

Structural racism: The structures that create and maintain vulnerability, harm and precarity aligned to racial difference. Structural racism is the intertwined relationship between historical injustices, epistemic (knowledge) erasure, laws, institutions, policies, practices, and social, political and economic disparities. The effect of these factors is to further marginalise and impose violence on racialised people.

1. CEPOL (European Union Agency for Law Enforcement Training), About us, available at <https://www.cepola.europa.eu/who-we-are/european-union-agency-law-enforcement-training/about-us>.

2. EUROJUST (European Union Agency for Law Enforcement Cooperation), About Us, available at <https://www.eurojust.europa.eu/about-us/what-we-do>.

3. EUROPOL, About EUROPOL, available at <https://www.europol.europa.eu/about-europol>.

4. FRA (European Union Agency for Fundamental Rights), About FRA, available at <https://fra.europa.eu/en/about-fra>.

5. FRONTEX, Who We Are, available at <https://frontex.europa.eu/about-frontex/who-we-are/origin-tasks/>.

Equinox's approach

At Equinox, we look beyond fixed or objective notions of race or ethnicity and focus on power, the process of racialisation, and the factors that created these power dynamics.

Equinox uses “racialised people” expansively to include all those who have been subjected to different processes of racialisation. We include, but do not limit this to, people of African, Arabic, Asian, and Latin-American descent, Roma and Sinti people, Sámi people, and those that are racialised as a result of their perceived membership to Muslim, Jewish and other religious communities. We also include those who self-define with terms such as ‘Black’ and ‘people of colour’.

Racialisation is highly contextual. We note that the specificities and complexities of processes of racialisation challenge clear-cut definitions.

Summary of Recommendations

This report explores the persistent issues of racism and police brutality in Europe. Building on a global momentum of attention to racism and police brutality triggered by the 2020 protests in response to the murders of George Floyd, Breonna Taylor and Ahmaud Arbery by police officers in the United States.

This report highlights key instances, phenomena and case studies relating to the persistent police brutality in Europe, and its particular impact on racialised people and communities. It asks readers to question why the names of **Oury Jalloh, Stanislav Tomáš** or **Adil Charrot** are not equally remembered, as those who lost their lives to racist police violence on our doorsteps. It asks, in a context of an ongoing lack of recognition and accountability:

“who protects us from the police?”

The report specifically reflects on the many instances of police violence impacting racialised people in Europe, the vast majority of which have not received recognition, justice or accountability by traditional state practices, i.e. prosecution of law enforcement officers. Further, many instances of violence, harm and even death of racialised persons at the hands of European police have gone largely unnoticed in mainstream society, with recognition often limited to communities and activist circles primarily affected.

Summary of Recommendations

Our recommendations fall under three headings:

a)

The need to address structural racism in law enforcement in EU Law and Policy

b)

Protect racialised communities and anti-racist human rights defenders

c)

A democratic process on alternatives to justice and the future of law enforcement

Pointing to the glaring gaps in recognition, accountability, and meaningful structures to achieve justice for those affected by racism in law enforcement, the report offers the following recommendations to policymakers.

Address structural racism in law enforcement in EU Law and Policy

1. The European Commission to initiate EU Legislation on Discrimination in Law Enforcement

There is an urgent need for legislation in the domain of law enforcement and racial discrimination. Binding legislation is a much needed mechanism to enforce changes in law enforcement practice across the European Union. There is a particular need for an EU level general legal prohibition on racial discrimination in law enforcement, as well as meaningful mechanisms to ensure accountability for victims and their families.

2. The European Commission to develop a specific policy in the field of racial discrimination and law enforcement

There is a need for a specific policy in racial discrimination and law enforcement to complement a legislative provision. Such a policy should explore how to ensure the immediate protection and safety of racialised communities interacting with law enforcement, but also long-term mechanisms to ensure accountability and justice for instances of discrimination and violence at the hands of law enforcement officials.

3. The European Union institutions to install an EU structure to monitor and oversee structural racism in law enforcement

Within their work surrounding 'unlawful profiling', EU institutions must develop a structure internal to the European Commission with the responsibility to monitor and address racial profiling and other instances of racism in law enforcement.

4. The European Commission to conduct a Systemic Review of Racism in Law Enforcement

The European Union should undertake a systematic review of racism in law enforcement, including consistently documenting cases (including deaths), and the extent of formal accountability.

5. Develop a holistic framework to record instances of racism in law enforcement, disaggregated by race

Member States must collect data, register and research cases of racism in law enforcement, and present a holistic framework for data collection which can be disaggregated by race to measure the extent of problems such as racial profiling and deaths at the hands of law enforcement. Data related to the existence and success of formal accountability processes should also be collected and updated.

Protect racialised communities and anti-racist human rights defenders

6. EU Member States and the European Union institutions must safeguard the rights of people to document police violence and misconduct

Member States should ensure they uphold the fundamental rights of all people during their encounters with law enforcement, implementing severe consequences for those that infringe on the fundamental rights in the course of their duty. The European Commission and Parliament must exercise oversight of EU Member States, in particular, concerning the right to non-discrimination and freedom of assembly, including when used to highlight police misconduct.

7. The EU should ensure access to EU institutions for civil society and grassroots organisation

The EU should remove barriers for civil society and grassroots organisations to engage with EU institutions to demand accountability for racism in law enforcement, including ensuring parallel competences to ensure fundamental rights protections regarding law enforcement.

A democratic process on alternatives to justice and the future of law enforcement

8. The European Commission should present a proposal for reallocation of Law Enforcement Budgets to other social needs

Recognising systemic lack of accountability, funds should be diverted away from law enforcement cooperation at EU level and toward other social needs in a democratic process

9. The European Union should open a democratic forum for European residents to discuss the role of law enforcement in European society, and alternatives to justice.

The European Commission should open a consultative process with European residents to explore the Future of Europe's law enforcement.

1.0 Introduction

“

**Human dignity is inviolable. It must be respected and protected.
Everyone has the right to life.**

”

- Articles 1 and 2 of the Charter of Fundamental Rights of the European Union

The call for justice, characterised by the hashtag “#Justicefor” has resonated across Europe, as more and more people have lost their lives during police interventions. The response to the Black Lives Matter movement in Europe highlighted that violent and fatal police brutality is a serious phenomenon in Europe too. Protest, resistance and dedicated organising have shed a light on the near absence of accountability and political response from the European Union institutions and Member States in the face of racism by European law enforcement. And yet, European law enforcement has a long history of police violence and racial profiling. Despite the continued lack of accountability and justice, many European NGOs and activists continue to fight for justice and change for victims, families, and communities across Europe.

The change we need should be achieved through the lens of racial justice. To take an approach rooted in racial justice necessitates going beyond the conventional non-discrimination doctrine, which merely seeks to address harmful conduct in individual cases, and toward addressing the persistent, structural political issue of racism and injustice in law enforcement. Beyond ‘non-discrimination’, racial justice requires the questioning of the existing systems sustaining inequality. It is about bringing accountability to communities impacted by structural racism. Racial justice demands a political commitment to institutional change.

Law enforcement, in the scope of this report, includes the activity of national and international state entities. Within its remit, the report includes police, immigration control and some aspects of public health enforcement within the remit of law enforcement. Further, we write in a growing context of criminalisation of social phenomena, acknowledging the growing mandate and scope of law enforcement across Europe, such that law enforcement is increasingly mandated to intervene in other public contexts, such as public health and education.

This paper provides an analysis of the existing policy response to discrimination in law enforcement from a racial justice perspective. It explores how far the policy response effectively addresses **racialised police violence, brutality and misconduct, and the extent to which such an approach can engender meaningful accountability for victims, their families and racialised communities more broadly.** It outlines the question of the EU’s competence in law enforcement and what struggles activists face when dealing

with police brutality. With these challenges in mind, the report speaks to a wide gap in institutional responsibility and recognition of this deep-seated issue. In the absence of meaningful accountability or efforts by the State to adequately ensure our safety, it asks,

“who protects us from the police?”

With this question in mind, we call for a fundamental shift in the EU’s policy response. The report urges a meaningful attempt to achieve justice and accountability for victims of violence, brutality and racism at the hands of law enforcement in Europe, but also a fundamental reckoning with the general role of law enforcement in European society. Searching for both immediate mechanisms to ensure safety and protection for Europe’s racialised communities, as well as a longer-term vision for justice that is not centred on punishment for social harms, the report points to alternative ways protection and justice can be secured.

The report is structured as follows: **Section II** highlights the problem of racism in law enforcement in Europe, without providing an exhaustive summary of the available evidence. Case studies from various anti-racist movements document some manifestations. Section III outlines existing EU legislation, policy and structures relevant to issues of racism and police brutality in European law enforcement. **Section III** then explores the main gaps and shortcomings, analysing the extent to which this meaningfully addresses these phenomena. **Section IV** then sets out an alternative way to address the structural issue of racism in law enforcement, outlining key recommendations for EU policymakers to ensure full protection, justice and accountability for racialised communities.

2.0 Racism in Law Enforcement in Europe: Case Studies

Racism in law enforcement is a sustained, structural issue in Europe today. Ranging from persistent racial and ethnic profiling, systematic over-representation in law enforcement databases,⁶ and in the worst cases, violence, brutality and in some cases even fatalities in police custody, racism is, unfortunately, an enduring European reality, and it still gravely impacts the experiences of racialised minorities and their perceptions of law enforcement.⁷ This section does not purport to provide an exhaustive summary of this evidence, which has been developed elsewhere.⁸ Civil societies have been the decisive actors documenting and contesting the various manifestations of racism in European law enforcement. They have shown the various forms of the harmful treatment inflicted on racialised minorities (profiling, violence, deaths in custody), how this has affected various racialised communities, and also how changing social and political dynamics have impacted the experiences of racialised communities. The following case studies from civil society demonstrate key features of racism in European law enforcement:

Bystander films Czech Police kneeling on Romani man's neck



On 19th June 2021, police in Teplice, Czech Republic, responded to a call about two men brawling in the street. By the time officers arrived at the scene, there was just one man, Romani community member Stanislav Tomáš, lying prone on the ground with apparent injuries. In a bystander video taken of the arrest that was posted to social media, more than one officer placed their weight on different parts of Mr Tomáš's body while handcuffing him, and during the last several minutes of the footage, when the man was no longer responsive, the knee of one officer was on the man's neck area. The first police report on the incident said Mr Tomáš had then died in an ambulance called to the scene.

Journalists at Romea.cz downloaded the video for safekeeping and then republished it to their YouTube channel on 20th June, with an article quoting several Romani activists

6. European Network Against Racism (2019). Data Driven Policing – The hardwiring of discriminatory policing practices across Europe, available at: <https://www.enar-eu.org/IMG/pdf/data-driven-profiling-web-final.pdf>

7. EU Fundamental Rights Agency (2018). Second European Union Minorities and Discrimination Survey: Being Black in the EU. Available at: <https://fra.europa.eu/en/publication/2018/being-black-eu>

8. Open Society Justice Initiative (2009) Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory, available at: <https://www.justiceinitiative.org/publications/ethnic-profiling-european-union-pervasive-ineffective-and-discriminatory>; Equinet (2019). Equality bodies countering ethnic profiling, available at: <https://equineteurope.org/2019/equality-bodies-countering-ethnic-profiling-lessons-learned-2/>; ENAR (2020) Policing Racialised Groups: Disproportionate police brutality, violence and racial profiling. https://www.enar-eu.org/IMG/pdf/policing_racialised_groups_-_briefing_ojeaku_without_cover_10_revised_22062020.pdf

comparing the footage to the murder of George Floyd in the USA. The English-language translation of that article, published on the morning of 21st June, brought the footage to the attention of the international media.

Local activists from the Konexe organisation, which brings together non-Romani and Romani people to improve inter-ethnic relations, brought candles and flowers to the scene of the incident, transforming it into a pilgrimage site for the Romani community and their allies. Police rushed to interpret preliminary autopsy results as exonerating them, and the Czech authorities were then criticised by the Council of Europe (the seat of the European Court of Human Rights), human rights activists, and the Czech Government's own Council on Romani Minority Affairs. Mr Tomáš's family is now being represented by the European Roma Rights Centre, which has filed a complaint against the police.

Ever since, Romea.cz has been reporting in-depth on the investigation of this death in police custody, on the response to it by different civil society actors and officials, as well as on the pressure that Mr Tomáš's family faces from unscrupulous actors.

This case study was provided by Gwendolyn Albert of Romea.cz for this report.



Oury Jalloh's death in custody of the Dessau Police

In 2005, Oury Jalloh, a Sierra Leonean asylum-seeker in Germany, burnt to death whilst in a Dessau police cell. These grave and suspicious circumstances have, to this day, evaded justice, with numerous attempts at obfuscation surrounding his death by law enforcement officials in Germany. Police claimed that the man, whose feet and hands had been tied, had set fire to himself. Despite repeated attempts over 15 years, the family and community of Oury Jalloh have still not received recognition of unlawful conduct or justice for the man's death.

The *Initiative in Gedenken an Oury Jalloh e.V.*⁹ has long campaigned for justice and accountability for the death of Oury Jalloh, denouncing the structurally racist procedures surrounding his death, but also the legal proceedings that followed.

In 2019-2020, new developments emerged from the case as two independent legal advisers were commissioned to re-investigate the circumstances surround Oury Jalloh's death.

The independent legal advisers published their findings Friday on proceedings surrounding the death of asylum-seeker Oury Jalloh, who burned to death in a cell in police custody in the eastern German city of Dessau in 2005. In the course of the investigation, evidence emerged that there had been two further deaths in custody in the same police station in Dessau. The investigators failed to comment on the decision to end proceedings due to lack of evidence

9. <https://initiativeouryjalloh.wordpress.com/>

in 2017; however, it did conclude that, from when he was arrested to his actual death, every measure undertaken by the Dessau police officers was either “illegal” or “flawed”.



Activism in France and the ‘Loi relative à la sécurité globale’

France nearly introduced a bill, known as the Loi relative à la sécurité globale’, proposing to ban sharing images of police officers.¹⁰ The law would ban “disseminating by any means or medium whatsoever, with the aim of harming their physical or psychological integrity, the image of the face or any other identifying element of an officer of the national police or member of the national gendarmerie when engaged in a police operation” with a one-year prison sentence and fines up to 45.000 euro.¹¹ Human rights NGOs and activists called the bill a danger to democracy and a way to hide police misconduct.¹²

Filming the police is generally the only way to prove police brutality happened. Michel Zecler, a Black music producer beaten by the police in 2020, stated, “I was lucky enough to have videos that protect me”.¹³ Many NGOs and activists took to the streets, and the French government was met with large protests across the country protesting against the law proposal.¹⁴

Several organisations in France have contested the introduction of the security bill, the ‘Loi sécurité globale’. In particular, anti-racism organisations in France are concerned about the growing autonomy of local police, and the increased capacity to use technologies for surveillance, including the use of drones during protests.

For example, the community organisation, GHETT’UP, has increased its efforts toward police violence and racial profiling in response. In November 2020, GHETT’UP mobilised 500 young people to contact their locally elected representatives, to protest the security bill ‘Loi sécurité globale’. GHETT’UP hosted a public discussion between members of their communities and law enforcement representatives.

After numerous demonstrations and activist pressure, the French government dropped the draft.¹⁵ Despite that this iteration of the bill was rejected, it becomes increasingly important to address the intersection between police brutality, racial profiling, and the increased deployment of surveillance technologies by police.

Ines Seddiki and Safia Oulmane of Ghatt’up contributed to this case study.

10. THE LOCAL, The new French law that restricts photos and videos of police officers, available at <https://www.thelocal.fr/20201109/france-proposes-bill-to-ban-photos-and-videos-that-identify-police-officers/>.

11. POLITICO, French crackdown on filming the police causes outrage, available at <https://www.politico.eu/article/france-ban-photos-police-violence-freedom-privacy-protests/>.

12. DEUTSCHE WELLE, France: Thousands protest against bill to curb filming of police, available at <https://www.dw.com/en/france-thousands-protest-against-bill-to-curb-filming-of-police/a-55688011>.

13. ASSOCIATED PRESS NEWS, Paris police suspended over beating of a black man, available at <https://apnews.com/article/par-is-arrests-police-brutality-emmanuel-macron-5e8efe6e6958ece269341943e8006086>.

14. POLITICO, French crackdown on filming the police causes outrage, available at <https://www.politico.eu/article/france-ban-photos-police-violence-freedom-privacy-protests/>.

15. ALJAZEERA, French government drops draft law curbing filming of police, available at <https://www.aljazeera.com/news/2020/11/30/french-government-drops-draft-law-curbing-filming-of-police>.

Irish Police kill George Nkencho outside his home



In December 2020, Irish police shot and killed 27-year-old George Nkencho outside his home.

Reports claim that he had assaulted people at a nearby shop, and threatened others with a knife. There were also claims that George was known to have mental issues, and an inquest into his death is still underway.¹⁶

The tragic death of George Nkencho brought into sharp focus the relationship between the police and racialised communities in Ireland. Shortly before George's death, a study conducted amongst diversity officers in the police found that many of those who assist with investigating hate crime themselves express racist views.¹⁷ Another report by the Policing Authority—the Irish police oversight body—noted with concern that the police threaten people from a migrant background with deportation, which makes it harder for the community to trust the police.¹⁸ This is worrying for a country where racialised communities experience racially motivated violence.

The EU's Agency for Fundamental Rights counts Ireland amongst the top three countries in the EU where Black people in particular experienced racially motivated violence.¹⁹ For the very first time ever, Irish politicians have promised to pass hate crime legislation.²⁰ Only time will tell if it makes a difference in the lives of racialised people, especially in the context where the police have expressed lowly opinions of certain minority communities who bear the brunt of racially motivated violence.

This case study was provided by Equinox Steering Group member Bulelani Mfaco, one of the spokespersons for the Movement of Asylum Seekers in Ireland (MASI).

16. Aengus Cox, 'Inquest hears George Nkencho shot multiple times' (RTE, 22 June 2021) < <https://www.rte.ie/news/2021/0621/1229468-george-nkencho-inquest/> > accessed 27 August 2021.; Ali Bracken, 'Inquest opens into death of George Nkencho killed in garda shooting' (The Independent, 20 June 2021) <https://www.independent.ie/irish-news/crime/inquest-opens-in-to-death-of-george-nkencho-killed-in-garda-shooting-40558922.html> accessed 27 August 2021.

17. Conor Gallagher, 'Gardaí have negative view of Travellers, survey finds' (The Irish Times, 20 August 2020) < <https://www.irish-times.com/news/crime-and-law/garda%C3%AD-have-negative-view-of-travellers-survey-finds-1.4334274?mode=amp> > accessed 27 August 2021

18. Sarah Burns, 'Migrants' confidence in An Garda Síochána to keep them safe is 'low', report says' (The Irish Times, 20 April 2021) < <https://www.irishtimes.com/news/crime-and-law/migrants-confidence-in-an-garda-s%C3%ADoch%C3%A1na-to-keep-them-safe-is-low-report-says-1.4542969?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fnews%2Fcrime-and-law%2Fmigrants-confidence-in-an-garda-s%25C3%25ADoch%25C3%25A1na-to-keep-them-safe-is-low-report-says-1.4542969> > accessed 27 August 2021

19. European Union Agency for Fundamental Rights, 'Being Black in the EU: Second European Union Minorities and Discrimination Survey' < https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-being-black-in-the-eu-summary_en.pdf > accessed 27 August 2021

20. Conor Lally, 'New hate crime laws to cover gender expression and identity' (The Irish Times, 16 April 2021) < <https://www.irishtimes.com/news/crime-and-law/new-hate-crime-laws-to-cover-gender-expression-and-identity-1.4538795?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fnews%2Fcrime-and-law%2Fnew-hate-crime-laws-to-cover-gender-expression-and-identity-1.4538795> > accessed 27 August 2021.



Interactions between sex workers and law enforcement

Police surveillance, as well as gender and racial profiling, are daily realities for many sex workers, especially for migrant, trans, and street-based sex workers as well as sex workers of colour. As highlighted in the recent research by the European Sex Workers' Rights Alliance (ESWA) *Undeserving Victims? A community report on migrant sex worker victims of crime in Europe*²¹ sex workers mostly interact with police during identity checks and residency checks indicating high levels of surveillance and profiling impacting the community.

The targeting of sex workers occurs within and outside their workplaces, as illustrated by several cases collected in the report. As a result, many migrant sex workers are afraid to leave their homes and workplaces. Such police harassment usually leads to a complete loss of trust towards law enforcement.

Undeserving victims, in interviews with community members, highlights several cases of abuse at the hands of the police. This includes instances of sexist, transphobic and racist verbal abuse, the confiscation of condoms necessary for safety at work, and, in some cases, sexual violence.

Police raids, in the context of anti-trafficking measures, often result in sex workers being evicted from their homes or workplaces onto the streets where their exposure to violence may be even greater. Nine out of 10 countries do not penalise selling sexual services, but criminalise, to different degrees, soliciting, brothel-keeping and/or the purchase of sexual services. Non-sex work laws, such as traffic regulations, regulations related to public morality and public order, or petty offenses are also evidenced to be routinely used against sex workers.

This case study was provided by the European Sex Workers' Rights Alliance and is an adapted excerpt from their report *Undeserving Victims? A community report on migrant sex worker victims of crime in Europe*.

21. European Sex Workers' Alliance (ESWA) *Undeserving Victims? A community report on migrant sex worker victims of crime in Europe*, available at: <http://www.sexworkeurope.org/sites/default/files/userfiles/files/Undeserving%20victims%20-%20DIGITAL.pdf>



Policing the Pandemic: police violence and discrimination

Under the COVID-19 pandemic, Member States applied criminal justice practices and sanctions under the guise of public health and security measures, demonstrating an expansion of the mandate of law enforcement. Activists and racial justice organisations from all over Europe reported numerous abuses against racialised communities under the guise of COVID-19 enforcement measures. Furthering the disproportionate impact of COVID-19 on racialised communities, such measures saw an increase in surveillance, monitoring and, in some cases, even violence against racialised communities. Responding to the enhanced police powers and reports of abuses, UN human rights chief Michelle Bachelet stated:

*"There have been numerous reports from different regions that police and other security forces have been using excessive, and at times lethal, force to make people abide by lockdowns and curfews. Such violations have often been committed against people belonging to the poorest and most vulnerable segments of the population, and at times lethal, force to make people abide by lockdowns and curfews."*²²

The European Roma Rights Centre (ERRC) reported a new spike of police violence against Roma people across Europe since the pandemic.²³ In Slovakia, for example, the police and the military placed five Roma settlements under mandatory quarantine. Amnesty International reports that these measures were implemented in the context of ongoing allegations of discriminatory use of force by law enforcement against Roma.²⁴ In Spain, ample footage of police using violence while enforcing the COVID-19 laws emerged. For example, a young North-African man was stopped on the streets, and after a verbal altercation, the officers violently hit the man with a baton.²⁵ In Nice, France, neighbourhoods inhabited predominantly by racialised people were subjected to a more extended curfew than the rest of the city.²⁶ Belgium reported an increase in victims of police violence as a result of the strict measures. A young Sudanese migrant was brutally beaten, and his phone was broken after a police officer stopped the man for allegedly not respecting the measures. He was filmed by bystanders crying on the side of the streets.²⁷ In April 2020, Adil, a 19-year-old man of Moroccan descent, was killed while being pursued by police. In January this year, Ibrahima, a 23-year-old Black man, died after filming the police conducting an ID check on him.²⁸

22. United Nations Human Rights: Office of the High Commissioner, COVID-19: Exceptional measures should not be cover for human rights abuses and violations, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25828>

23. ALJAZEERA, Police are using the Covid-19 pandemic as an excuse to abuse Roma, available at <https://www.aljazeera.com/opinions/2020/5/14/police-are-using-the-covid-19-pandemic-as-an-excuse-to-abuse-roma>.

24. AMNESTY INTERNATIONAL, Policing the pandemic, human rights violations in the enforcement of covid-19 measures in Europe, available at <https://www.amnesty.org/download/Documents/EUR0125112020ENGLISH.PDF>.

25. Id.

26. Id.

27. THE BRUSSELS TIMES, Brussels prosecution demands one year prison for police officer who beat up refugee, available at <https://www.brusselstimes.com/news/belgium-all-news/justice-belgium/115427/prosecution-demands-one-year-prison-for-police-officer-who-beat-up-refugee/>.

28. HLN, Familie overleden Ibrahima (23) eist de waarheid, maar roept op tot kalmte, <https://myprivacy.dpgmedia.be/consent?siteKey=Uqxf9TXhjmAG4pbQ&callbackUrl=https%3A%2F%2Fwww.hln.be%2Fprivacy-gate%2Faccept-tcf2%3FredirectUri%3D%252Fbrussel%252Ffamilie-overleden-ibrahima-23-eist-de-waarheid-maar-roept-op-tot-kalmte~a0eedac2%252F>



Racism by law enforcement at Europe's borders

The EU emphasises it has no competence in policing and law enforcement, yet established and funded certain agencies strongly related to law enforcement, such as Frontex, Europol, CEPOL, and Eurojust. Several of these agencies' policies consistently contribute to harming racialised people at Europe's borders.

Of all EU agencies involved with law enforcement, Frontex has faced the most notable allegations of brutality and human rights abuses towards migrants.

Several studies report horrific treatment of migrants, some of whom are beaten²⁹, medically sedated³⁰, and even killed by EU border police.³¹ The increased militarisation of Frontex has only exacerbated these concerns for the safety and human rights of people on the move. The revised mandate of Frontex³² provides the legal basis for these discussions: for the first time, Frontex personnel could be allowed to carry weapons.

*"In Greece, refugees report abuse by coast guard officers. Hungarian prison doctors systematically administer sedatives to keep refugee camp inmates calm. Moroccan soldiers mistreat migrants camping out on the border with Spain."*³³

In particular, awareness is growing as to the connection between the EU, Frontex, and private security and technology companies. As highlighted recently in the Frontex Files and the report *Lobbying Fortress Europe*,³⁴ the increased budget and mandate of Frontex has also seen 'privileged access for industry' with serious accusations of lobbying between security companies, technology companies and Frontex. Despite the violations of international refugee law, human rights violations and violence against racialised people at EU borders, there is sustained commitment by EU policymakers to expand Frontex's mandate and access to legal and technological tools.

Further, as the EU has working arrangements with non-EU countries, these appalling consequences even happen on the non-EU territory.

29. BORDER VIOLENCE MONITORING NETWORK, (2020) Illegal push-backs and border violence reports, available at: https://www.borderviolence.eu/wp-content/uploads/2020_July_Report.pdf.

30. EUROACTIV, EU border force Frontex accused of allowing abuse of migrants, available at: <https://www.euractiv.com/section/global-europe/news/eu-border-force-frontex-accused-of-allowing-abuse-of-migrants/>.

31. CIVIL SOCIETY FUTURES, Push-back and the violence of Frontex, available at: <https://civilsocietyfutures.org/push-back-violence-frontex/>.

32. Regulation (EU) 2019/1896 on the European Border and Coast Guard and Repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1896&from=EN>

33. Maximilian POPP, (2021) Europe's Deadly Borders: An Inside Look at EU's Shameful Immigration Policy. Available at: <https://www.spiegel.de/international/europe/europe-tightens-borders-and-fails-to-protect-people-a-989502.html>

34. Corporate Europe Observatory, (2021) Lobbying Fortress Europe: The making of a border-industrial complex Available at: <https://corporateeurope.org/en/lobbying-fortress-europe>.

The impact of Spain's state of alarm on racialised people

The report “The COVID-19 Health crisis: racism and xenophobia during the state of alarm in Spain”³⁵ was developed by a global initiative to make visible the impact of confinement measures on racial-ethnic groups already vulnerable to structural and institutional racism in Spain.

The Implementation Team of the IDPAD in Spain, in collaboration with Rights International Spain, collected information on the manifestations of racism and xenophobia occurring between the 15th of March and the 2nd of May 2020, as cases of police brutality, racial profiling and harassment from law enforcement bodies in the whole territory were reported informally.

The investigation includes more than 70 incidents of racism and institutionally discriminatory practices, 45% of which refer to violations affecting a particular group. Madrid is the region with the highest number of complaints reported (40%), followed by Catalonia (21%) and the Basque Country (8%). Those who identify as Black and/or Afro-descendants suffered the largest number of violations (32%), followed by Arab Muslims (30%), Roma (25%) and Latin-American (8%).

Racial profiling

In a context of strong police presence, there have been numerous complaints about the use of racial profiling. Data collected by SOS Racismo Madrid documented 13 instances of police racially profiling people who were on their way to buy basic goods between 15 March and 7 April. This control provoked fear amongst those affected, leading them to self-isolate further and preventing them from going out to provide themselves with basic goods.

Police brutality

About 70% of the respondents of the online survey reported racial profiling before being subject to police brutality. There are also numerous cases of police officers acting violently against people with mental health issues. One of these cases, which appeared in the media, occurred in Bilbao. The Ertzaintza (Basque police force) violently arrested a young north African man—who suffers from mental health issues—while he was shopping with his mother, who tried to explain to the officers her son's condition. Both were thrown to the floor, humiliated and finally arrested.

Domestic work and care

Approximately 600.000 people are undertaking domestic and care work, and the vast

35. Rights International Spain (2020). The COVID-19 Health crisis: racism and xenophobia during the state of alarm in Spain, available: <http://rightsinternationalspain.org/uploads/publicacion/1feee36ba56ffc10aa328d7a342f7f8affdfab3d.pdf>

majority are migrant women. About 30% of domestic workers are in irregular administrative situations and thus have no employment contract. According to SEDOAC [Active Domestic Service], these women were more likely to be racially profiled, identified and fined because they could not provide a contract to prove the need to go to and from their workplace. Police harassment of migrant women domestic workers increased and prevented them to attend their working place. Many of them lost their informal jobs, their incomes and became more vulnerable as a result of police harassment.

Street vending

According to the Union of Street Vendors of Madrid, the vast majority of people working in the street vending sector are in an irregular administrative situation and many of them stated that, during the lockdown, they stopped carrying out activities for fear of police violence and racial profiling. Moreover, their living conditions worsened since many of them live in substandard and overcrowded housing, and have, on top of that, suffered harassment from landlords when they have been unable to pay the rent due to lack of income.

This case study was provided by Esther Mamadou Blanco, Equinox Steering Group Member and member of the IDPAD Coalition in Spain.

3.0 EU policy: Racism, discrimination and Law Enforcement

This section provides an overview of current EU policy relating to racism, discrimination and law enforcement. We outline the main aspects and priorities of EU policy in related areas, before providing analysis in section IV.

3.1 EU Law and Policy on racism: At a glance

The European Union lists 297 official areas governing its legal and policy priorities.³⁶ Of these areas, many of them apply to the growing issue of racism in law enforcement.

Key EU policy areas relating to law enforcement, racism and brutality.

Policy areas related to the domain of law enforcement:

- *Borders and security;*
- *Police cooperation;*
- *External border control;*
- *Preventing and fighting terrorism;*
- *Combating organised crime; and*
- *Criminal justice.*

EU policies relating to racism such as:

- *Justice and fundamental rights;*
- *Combatting discrimination;*
- *International anti-discrimination action; and*
- *EU Charter of Fundamental Rights.*

Yet, of these nearly 300 policy areas, there is not one policy file specifically addressing racism in European law enforcement. The EU situates its work on racism and xenophobia within the broader policy domain of “combatting discrimination”.³⁷ While the EU has competencies in many areas that relate to law enforcement racism, the absence of a specific policy area highlights that it has not yet been considered a priority for EU policymakers.

36. EUROPEAN COMMISSION, Policies, available at https://ec.europa.eu/info/policies_en.

37. EUROPEAN COMMISSION, Combatting Discrimination: Racism and Xenophobia, available at https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combatting-discrimination/racism-and-xenophobia_en.

The EU has already taken several important measures in the fight against racism and discrimination. Most relevant is the *Council Directive 2000/43/EC implementing the principle*

of equal treatment between persons irrespective of racial or ethnic origin, otherwise known as the “Race Directive”. This Directive, a notable legislative milestone for the European Union, prohibits direct or indirect discrimination on the grounds of racial or ethnic origin. The law makes it illegal for private and public entities to discriminate in many areas, but it does not apply to law enforcement.³⁸

The majority of EU policy relating to racism and xenophobia focuses on hate crimes and speech, seeking to criminalise interpersonal violence between people in Europe with a racist motivation or aggregating factor. Hate crimes and speech are criminalised in the EU Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

European Union institutions have taken some initial steps to recognise racism in EU law enforcement, in particular, documenting the extent of “unlawful” profiling, and the first steps to recognise structural racism in law enforcement in Europe in the EU’s Anti-Racism Action Plan 2020-2025.

3.2 EU Anti-Racism Action Plan 2020-2025

Inspired and necessitated by the worldwide **Black Lives Matter** movement, also within Europe, the European Union finally acknowledged racism in law enforcement within the remit of the **EU Anti-Racism Action Plan**, released on the 18th of September 2020.³⁹ The Anti-Racism Action Plan has the ambition to lay out a five-year plan to address problems with racial discrimination in all fields of society within the European Union.⁴⁰

Racism in law enforcement in the EU Anti-Racism Action Plan 2020-2025

The main points raised concerning racism and law enforcement are:

- There is a necessary interdependence between efficient policing and respect for fundamental rights;

38. As per Article 3(1) of the Race Directive 2000/43/EC the scope of the prohibition of discrimination on the grounds of racial or ethnic origin is limited to employment; vocational guidance and training; working conditions; social protection; social advantages; education and access to and supply of goods and services available to the public, such as housing.

39. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Union of Equality: Anti-Racism Action Plan 2020-2025, 18 September 2020, 1-27.

40. EUROPEAN COMMISSION, EU Anti-racism Action Plan 2020-2025, available at https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-anti-racism-action-plan-2020-2025_en.

- Racism and discrimination within law enforcement authorities is a persistent, structural issue within the European Union;
- There are multiple negative externalities, apart from the maltreatment of victims, associated with racism and discrimination in law enforcement, such as a loss of trust in police and under-reporting of crimes, and specifically hate crimes; and
- Profiling, even though it is a common technique within law enforcement authorities, is illegal when it results in discrimination based on 'specific categories of personal data', such as racial or ethnic origin.

Actions proposed by the European Union institutions to tackle these issues include:

- With the report on the application of the Racial Equality Directive in 2021, the European Commission will look at any possible legislative gaps in the area of racism, especially related to law enforcement;
- Consequently, by 2022, the Commission might propose new legislation in this domain;
- The FRA should establish and publish 'good practices' promoting **'fair policing'**;
- The FRA should collect more information on '*police attitudes towards minorities*';
- CEPOL should make training packages on '*human rights, ethnics and racism*';
- CEPOL should attract more attention to **'fair and inclusive policing'** among the older generations of police and law enforcement officers;
- In 2021, both the 'Working Group on hate crime recording, data collection and encouraging reporting'⁴¹ and the FRA need to establish principles on '*encouraging hate crime reporting*'⁴²; and
- The 'High Level Group on combating racism, xenophobia and other forms of intolerance' will assist the Member States in:
 1. Preventing discriminatory attitudes within law enforcement;
 2. Developing the necessary skills for investigation and prosecution against hate crimes; and
 3. Ensuring fair and adequate treatment for victims.

3.3 Racism and “Unlawful Profiling”

The practice of profiling is generally used by police and law enforcement authorities as one of many techniques purported to prevent or investigate criminal or administrative offenses.⁴³ However, there are multiple inherent risks embedded in profiling. In particular, problems arise when profiling is based solely on certain arbitrary factors such as skin colour, race or

41. FRA (European Union Agency for Fundamental Rights), Working Group on hate crime recording, data collection and encouraging reporting, available at <https://fra.europa.eu/en/project/2017/working-group-hate-crime-recording-data-collection-and-encouraging-reporting>.

42. EUROPEAN COMMISSION, EU High Level Group on combating racism, xenophobia and other forms of intolerance, available at https://knowledge4policy.ec.europa.eu/organisation/eu-high-level-group-combating-racism-xenophobia-other-forms-intolerance_en#:~:text=item_id%3D51025-,The%20High%20Level%20Group%20on%20combating%20racism%2C%20xenophobia%20and%20other,hate%20crime%20and%20hate%20speech.

43. FRA, Handbook – Preventing Unlawful Profiling Today and in the Future: a Guide, 2018, 1-138.

ethnic background. In most areas, EU policy refers to '**ethnic profiling**' as opposed to racial profiling, mainly used in civil society and by racial justice activists. According to the Open Society Justice Initiative, ethnic profiling can be described as *"the use of generalisations grounded in ethnicity, race, national origin, or religion—rather than objective evidence or individual behaviour—as the basis for making law enforcement and/or investigative decisions about who has been or may be involved in criminal activity"*.⁴⁴

The practice of ethnic profiling is a systemic issue within law enforcement authorities of the EU Member States and has first been acknowledged within the European institutions⁴⁵ by the FRA. They refer to this practice as '**unlawful profiling**' as opposed to ethnic profiling. According to them, profiling can become unlawful in two ways⁴⁶:

- Either because the profiling is based on so-called '**protected grounds**', which include: sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, and sexual orientation;
- Or because the process of **data collection** by law enforcement authorities inevitably involved in profiling does not have a sufficient legal basis.

According to the FRA, the main problem with these types of profiling is their **unlawfulness or illegality**:

- Profiling based on the protected grounds is discriminatory and therefore contrary to *EU anti-discrimination laws*;
- The collection of personal data through profiling is contrary to *EU data protection laws*, if there is no legal basis, no legitimate aim, and if it does not satisfy the conditions of necessity and proportionality.

On the one hand, it is positive that an EU agency sheds light on profiling based on discriminatory grounds, including race, colour, ethnic origin. Given the lack of attention this issue has received from the EU, it is important that the FRA raises awareness about this. On the other hand, the reference to unlawful profiling creates a grey area as to the extent to which it is acceptable to use any reference to race or ethnicity in profiling.

And yet, of all the 'protected grounds', unlawful profiling is most likely to happen based on race, colour, ethnic origin, religion and genetic features. Moreover, racial profiling seems to have tragic consequences on the victims. Therefore, it is necessary that the EU is more explicit in its condemnation of all forms of profiling relating to race or ethnicity.

44. OPEN SOCIETY JUSTICE INITIATIVE, *Ethnic Profiling in the European Union: Pervasive, Ineffective, and Discriminatory*, Open Society Institute, New York, 2009, 1-200.

45. The FRA is not an institution, it is an agency. There are only 7 official institutions, see art. 13.1 TEU.

46. FRA, *Handbook – Preventing Unlawful Profiling Today and in the Future: a Guide*, 2018, 1-138.

4.0 Racism in law enforcement: Analysis of the EU Framework

Whilst the EU institutions have made some attempts to recognise widespread racial discrimination and inequality in Europe, substantial barriers remain in the achievement of true equality and racial justice. The following analysis identifies three main shortcomings in the EU's approach to racism in law enforcement:



4.1 A lack of structural solutions to racism in law enforcement

There remains a systematic lack of engagement in EU policy with the vital issue of racism within law enforcement in Europe. Until recent years, EU Law and Policy relating to racism and discrimination has not substantively recognised structural issues of racist police brutality, misconduct and racial profiling.

This oversight manifests in a number of ways, including:

- (a)** a failure to recognise the full extent of structural racism in the EU law enforcement, including under the EU's Anti-Racism Action Plan and
- (b)** legal gaps in protection against racism, discrimination, and violence at the hands of law enforcement officers.

a) A failure to recognise structural racism in EU law enforcement

Though the EU Anti-Racism Action Plan 2020-2025 was a major step forward in its recognition of racism in law enforcement. For the most part, this recognition was necessitated and highly influenced by the vital work of anti-racist civil society, which has continuously called upon European Union institutions to address the widespread dangers experienced by racialised communities in Europe at the hands of the police.⁴⁷

However, a deeper analysis of the EU Anti-Racism Action Plan highlights numerous shortcomings and questions the extent to which the language of “structural racism” has been correctly used and understood.

Insufficient recognition of structural racism in policing

Firstly, the Anti-Racism Action Plan, whilst acknowledging the existence of structural racism in Europe, **does not go far enough to recognise the extent of structural racism in European law enforcement**, both at EU and Member State level. Echoing existing EU policy focus, much attention is placed on interpersonal forms of racism, such as hate crime. In this context, the relationship between law and communities is explored, in particular where it exacerbates the under-reporting of hate crimes. The action plan also recognises institutional racism insofar as it mentions discrimination because of profiling.

This is not nearly sufficient recognition of the racist violence, systematic over-policed and under-protection that racialised people in Europe have experienced at the hands of law enforcement. The action plan does not mention brutality, harassment, or death caused by European police forces, despite overwhelming evidence. Very little substance is advanced as to the extent of racism, discrimination and police violence at play in Europe, nor is any explicit recognition paid toward the consequences of this problem for the actual victims. No victims are noted or recognised. No inquiry is made as to the need for greater transparency, accountability or justice surrounding their deaths. In this way, the injustice and suffering inflicted by law enforcement authorities are minimised. The very essence of racism, understood in structural, material terms, is overlooked.



“

Racism is the State-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death.

”

- Ruth Wilson Gilmore

47. European Network Against Racism (ENAR), Open Letter to Commission President Ursula von der Leyen: The European Commission must prioritise addressing police violence and structural racism in the EU <https://www.enar-eu.org/Open-letter-The-European-Commission-must-prioritise-addressing-police-violence>

Oversight of the intersection between racism and migration

Secondly, no reference is made in the Anti-Racism Action Plan to the **structural racism at play at the intersection between law enforcement and migration**. The connection between borders, migration policies and structural racism is often overlooked by institutional actors. However, the increasing criminalisation of people on the move, and the expanding carceral and punitive infrastructure developed and deployed at EU and national level to enforce this, has resulted in wide-scale violence and instances of brutality against racialised people at Europe's borders.⁴⁸ Yet, these issues are not addressed in the EU's Anti-Racism Action Plan, despite being a concrete manifestation of structural racism. This, however, is more than an oversight, as these harms are perpetuated by EU policy itself, they are overlooked as key facets and drivers of structural racism and harm.

As highlighted by Platform for International Cooperation on Undocumented Migrants (PICUM), EU migration policy, and in particular the EU's Migration Pact, reifies and exacerbates discrimination experienced by racialised people.⁴⁹ Referencing the policy goals of preventing irregular migration, in essence, the type of migration that is left for people who cannot access regular pathways to Europe. In particular, regarding proposals on the pre-entry screening procedure, likely to exacerbate patterns of racial profiling, and the proposed return sponsorship, which increases the focus on the deportation of migrants of certain nationalities, the Migration Pact is a clear example of how EU policies play an active role in creating and sustaining racial difference. However, none of this is recognised in the Anti-Racism Action Plan, and migration is treated as largely unrelated to racism.

Reliance on reformist solutions to structural problems

The final flaw of the EU's response to racism in law enforcement within the action plan **is the proposal of reformist solutions to structural problems**. Acknowledging that racism in law enforcement is structural, whilst proposing minor, incremental and perfunctory reforms such as the promotion of "good practices", awareness-raising of "fair and inclusive policing" and police training. Not only do these proposals seem to vastly under-estimate the scope of the problem of structural racism in policing—no manner of training could change the structures of immunity, sanction and lack of political accountability for decades of police violence and deaths of racialised people, they also in many ways legitimise the structures of policing themselves.

48. BORDER VIOLENCE MONITORING NETWORK, (2020) Illegal push-backs and border violence reports, available at: https://www.borderviolence.eu/wp-content/uploads/2020_July_Report.pdf.

49. PICUM (2020) The EU's migration and anti-racism policies: are we ready for a racism-free Europe? Available at: <https://picum.org/migration-anti-racism-policies-are-we-ready-for-racism-free-europe/>

EU Anti-Racism Action Plan 2020-2025 – Proposed Solutions to Racism in law enforcement

The EU ARAP makes the following recommendations in response to racism in Europe's law enforcement:

- The FRA should establish and publish 'good practices' promoting **'fair policing'**;
- The FRA should collect more information on *'police attitudes towards minorities'*;
- CEPOL should make training packages on *'human rights, ethnics and racism'*;
- CEPOL should attract more attention to **'fair and inclusive policing'** among the older generations of police and law enforcement officers.

The actions proposed by the EU to tackle racial discrimination within law enforcement remain too vague. Further, and more fundamentally, they clearly amount to 'reformist reforms'—changes that will not address the structures of racialised over-policing and systemic violence. Except for the proposal to potentially legislate in this domain, the suggestions and recommendations are unambitious, and will not address the root of the problem of structural racism in policing.

More and more, racialised communities and racial justice activists have—in the face of an overwhelming lack of police accountability—justifiably rejected modes of reform that legitimise the very institutions that have harassed and harmed their communities without any semblance of justice. Proposals for change based on reforms such as training and awareness-raising politically legitimise such institutions before improvements have been made, and they often necessitate increased funding to those same institutions.

Increasing funding to institutionally racist institutions is not only counterproductive but also insensitive to the families of people who have lost their lives due to racism in law enforcement and are still yet to achieve justice.

“

Abolition is a political vision with the goal of eliminating imprisonment, policing, and surveillance and creating lasting alternatives to punishment and imprisonment.

- Critical Resistance

”

What does justice look like? Abolition and structural responses to racism in law enforcement



A growing response to ongoing systematised police violence and discrimination has increasingly been to ask, what would true justice look like? In particular, as law enforcement actors, in Europe and across the world continue to subject racialised communities to discrimination, profiling, and violence without meaningful accountability, many interested in racial justice have begun to question the efficacy of advocating for reforms that dedicate more resources, mandate and legitimacy to existing policing institutions. Movements organised around abolition (defined below) have explored the need to redefine justice in ways that divest from punitive institutions, instead of moving toward meaningful strategies of harm reduction and trans formative, community-based justice.

Abolitionist thinking acknowledges the inherent violence in policing, prison and immigration control systems, besides the inherent racial, class, and gendered assumptions of those systems. As such, in moments of heightened awareness of police violence, abolition has encouraged a shift away from ‘reformist reforms’ that require law enforcement to regulate their own structural and systemic problems. Reformist reforms include:

- increase funding to police;
- exacerbate the notion that police increase safety;
- increase the tools and technology available to police;
- and increase the scale of policing more generally.

Instead, abolitionist thinking encourages grasping the problem at the root, exploring the origins of harm in societies, and exploring structural solutions. Rather than investing more resources and time in systems that are demonstrably causing harm, especially in disproportionate measure to racialised, working-class, gendered and otherwise marginalised people, abolitionist thinking explores how to re-build and reinvest in undeserved communities, exploring non-punitive means of achieving safety and justice.

b) Legal Gaps in Protection

One such solution referred to in the EU Anti-Racism Action Plan is the potential to legislate to fill gaps in EU discrimination law to ensure protection for racism in law enforcement. Such a suggestion has the potential to fill a glaring gap in the EU anti-discrimination and anti-racism framework. Despite a wide-ranging legal framework on racial discrimination, protection against racism in law enforcement is out of scope of the EU Race Directive 2000/43/EC, and the priority of EU policy under the rubric of “racism and xenophobia” is geared toward methods of combatting interpersonal racist violence (not committed by law enforcement officers) through the means of criminal law. As such, the EU’s approach has left

a major gap in terms of legal protection of racialised people when discriminated against by law enforcement officers and the criminal justice system. A meaningful solution inside the existing EU framework would be to build this legal infrastructure of accountability, particularly before any new investments are made in policing and law enforcement at EU level.

C) EU Competence in law enforcement and discrimination

Until now, a prominent justification given by EU institutions for the lack of action undertaken in racism and law enforcement is the claim of a lack of competence. However, despite this claim to lack of competence within law enforcement, the EU, over the past years, has sought to expand its mandate in law enforcement, particularly with the recently proposed Europol reform. Therefore, the question arises whether competence is an adequate reason to evade action in the area of racism and law enforcement. Below, an analysis of the rules governing EU competence is provided, as well as two alternative routes for the European Union to assert competence regarding racism in law enforcement.

The Union's competences are based on the **principle of conferral**, meaning the EU can only act within the limits of the competences the Member States have specifically conferred to it in the Treaties.⁵⁰ Based on this principle, the Union's competences can be categorised into three groups, namely *exclusive, shared and supportive* competences.⁵¹ The **principle of subsidiarity**⁵² entails that, in areas of shared competence the EU should only act insofar as *"the objectives of an action cannot be sufficiently achieved by the Member States, but can be better achieved at Union level, by reason of the scale of effects of the proposed action"*.

Within the category of shared competences, the sub-section under which law enforcement issues logically would fall is the **'area of freedom, security and justice'**.⁵³ However, in order to act in a specific field, the EU needs a specific legal basis apart from the articles laying down the general competences. When looking at the provisions governing *'the area of freedom, security and justice'*, it becomes apparent that there is no specific provision for law enforcement. Naturally, the establishment and the maintenance of national police forces is the responsibility of the Member States.

There are provisions attributing competence to the EU in matters of *'policies on border checks, asylum and immigration'*⁵⁴, *'judicial cooperation in civil matters'*⁵⁵, *'judicial cooperation in criminal matters'*⁵⁶ and *'police cooperation'*⁵⁷. As a result of this, multiple specialised EU agencies related to law enforcement have been set up, such as Europol, CEPOL, Eurojust and Frontex. However, these agencies have no competence in addressing issues with law enforcement and race in the Member States, at least not in a legally binding and comprehensive way.

50. Art. 4.1, 5.1 and 5.2 TEU; art. 7 TFEU.

51. Art. 2-6 TFEU.

52. Art. 5.3 TEU.

53. Art. 4.2(j) TFEU.

54. Art. 77-80 TFEU.

55. Art. 81 TFEU.

56. Art. 82-86 TFEU.

57. Art. 87-89 TFEU.

Nonetheless, the first article under the section of the area of freedom, security and justice entrust the EU with the duty to “endeavour to ensure a high level of security through measures to prevent and combat ... **racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities...**”.⁵⁸ According to this provision, the Union has the competence to take measures to combat racism and xenophobia as well as measures to coordinate the actions of law enforcement authorities.

It is not specified through which legal medium these measures should be adopted. Consequently, the EU has the freedom to choose which legal acts it would see fit to take action in this field, under the ordinary legislative procedure.⁵⁹ Thus, it could be argued that the European Union has the competence to take legal action and adopt measures concerning law enforcement and racism to tackle the systemic issues the different Member States are facing.

Moreover, legal action taken by the EU in the field of racism and law enforcement would fulfil the three conditions laid down by the principle of subsidiarity. *Firstly*, the ‘area of freedom, security and justice’ is a non-exclusive competence of the EU. *Next*, there is an urgent necessity to take action in this area. *Lastly*, given the widespread nature of systemic racism within the European Union, especially in what concerns law enforcement authorities, it is necessary to take harmonised measures to address it.

Alternatively, if the afore-mentioned grounds are not regarded as a sufficient basis for action to combat racism within law enforcement authorities, there is another possibility. The EU treaties have inserted a so-called ‘**flexibility clause**’, which allows the EU to adopt any act necessary to attain the objectives laid down by the treaties.⁶⁰ Thus, “*if action by the Union should prove necessary*” where “*the Treaties have not provided the Union with the necessary powers*”, there is this special legislative procedure available to the European institutions.

When analysing the text of the treaties, the following relevant objectives can be identified concerning racism and law enforcement:

- “The Union is founded on the values of ... These values are common to the Member States in a society in which **pluralism, non-discrimination, justice**, ... prevail.”⁶¹ “The Union shall **combat social exclusion and discrimination**, and shall **promote social justice and protection...**”⁶² “In defining and implementing its policies and activities, the Union shall take into account requirements linked to ... the **guarantee of adequate social protection, the fight against social exclusion**, ...”⁶³ “In defining and implementing its policies and activities, the Union shall aim **to combat discrimination based on ... racial or ethnic origin...**”⁶⁴

The above-mentioned objectives and grounds would provide adequate justification for the European Union to regulate racism in law enforcement per the flexibility clause, in order to tackle the problem of racism within national law enforcement authorities.

58. Art. 67 TFEU.

59. Art. 288, 289, 294 and 296 TFEU.

60. Art. 352 TFEU

61. Art. 2 TEU.

62. Art. 3.3 TEU.

63. Art. 9 TFEU.

64. Art. 10 TFEU.

Thus, although European Union invokes a lack of competence within racism and law enforcement, multiple legal constructions would allow the Union to legislate in this area, as demonstrated above.

Throughout its history, the competences of the European Union have been ever-expanding. Thus, the issue is not necessarily a lack of competence but a lack of political will to address the problem of racism within law enforcement across the European Union.

4.2 Ever-expanding Remit of EU Law Enforcement Infrastructure

Whilst EU institutions have repeatedly denied competence in areas of law enforcement as a justification for the lack of legal protections in the case of discrimination or other fundamental rights breaches by law enforcement, there has been a systematic up-scaling of capacity and infrastructure of law enforcement at EU level. This disconnect highlights that matters relating to law enforcement are indeed a major priority at European Union level. This is demonstrated in terms of (a) legal mandate, (b) budget and (c) resources and technologies, all of which have been drastically widened and increased in the last 10 years. However, if the European Union has acknowledged that there is a serious issue of structural racism in European law enforcement, this must be a basis to review and reverse policy decisions to expand existing EU law enforcement infrastructure.

a) Expanding Legal and Institutional Capacity

The EU emphasises it has no competence in policing and law enforcement, yet established and funded certain agencies strongly related to law enforcement, such as Frontex, Europol, CEPOL, and Eurojust. Several of these agencies' policies contribute to the increased surveillance and profiling of racialised people in Europe.

In December 2020, European Commission proposed an update of the Europol Regulation,⁶⁵ the instrument regulating the legal basis and mandate of the EU's policing and law enforcement cooperation agency. The proposal aims at increasing Europol's mandate to conduct data-driven profiling, including to exchange data with private companies, to transfer data outside of the EU, and for Europol to initiate investigations in one Member State (previously Europol's mandate was limited to cross-border activity).

In addition, the proposal also facilitates Europol's use of existing law enforcement datasets to train artificial intelligence and algorithms to be used by law enforcement. As highlighted by the European Network Against Racism and the Open Society Justice Initiative in 2019,⁶⁶ the

65. European Commission, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2016/794, as regards Europol's cooperation with private parties, the processing of personal data by Europol in support of criminal investigations, and Europol's role on research and innovation, COM/2020/796 final

66. European Network Against Racism: Data Driven Policing – The hardwiring of discriminatory policing practices across Europe (11.2019) <https://www.enar-eu.org/IMG/pdf/data-driven-profiling-web-final.pdf>

use of existing law enforcement data to train AI systems raises the vast risk of ‘hard-wiring discrimination’ into new policing tools. By building policing tools using data retrieved from ordinary policing, the data will reflect patterns of existing, not crime or harmful behaviour. As such, this data reflects patterns of racial profiling, discrimination, and systematised over-policing of racialised communities across Europe.

Increasing Europol’s mandate, but also rapidly encouraging the move into data-driven policing, is one clear example of the EU’s complicity in expanding existing patterns of racialised policing. As highlighted by European Digital Rights (EDRi), the revision of Europol’s mandate is likely to promote policing practices that ‘codify racialised assumptions and other systematic discrimination and violence’.⁶⁷ With the expansion, the Council of the European Union is not only wanting to increase Europol’s capacity but also proposing supplementary funding to Europol’s security research.

b) Budget

In order to assess the importance, financially, that the European Union attaches to law enforcement, it is useful to look at the budget annually dedicated to law enforcement and related activities in the EU.

Firstly, within the European Union, there are two main agencies with competence regarding law enforcement, namely CEPOL and Europol. Furthermore, there are some agencies conducting activities adjacent or connected to law enforcement, the main ones being Eurojust and Frontex. Their vast annual budgets in the past three years are outlined below.

SPENDINGS PER YEAR IN EURO	EUROPOL	CEPOL	EUROJUST	FRONTEX	TOTAL
Revenue 2019	143.094.062	12.627.258	38.841.265	330.107.000	524.669.585
Expenditure 2019	151.394.562	12.627.258	38.954.265	330.107.000	533.083.085
Revenue 2020	154.151.567	24.992.766	41.546.678	364.432.654	585.123.665
Expenditure 2020	158.067.123	30.602.017	41.700.000	364.432.654	594.801.794
Revenue 2021 (provisionary)	181.419.717	10.632.382	/	543.521.620	
Expenditure 2021 (provisionary)	181.419.717	30.044.194	/	543.521.620	

68

67. EDRi (2021). Recommendations on the revision of Europol’s mandate, available at: <https://edri.org/our-work/europol-inches-closer-to-increasing-its-powers-despite-lacking-accountability/>

68. Revenue refers to the actual funding these agencies receive, while expenditure relates to their actual expenses during the course of one year.

Of the four agencies, Frontex has by far the largest, yet ever increasing, budget at its disposal. The agency only had around 6 million euro at its disposal when it was established in 2005, while its budget for the financial period 2021-2027 will total around 500 million euro.⁶⁹

Europol's annual budget in 2002 was 32 million euro, which has now increased to 181 million. Taken together, these agencies collect a vast sum, even taken separately to the European Union's general security budget. The budget for law enforcement agencies is greater than the fund for European Aid to the most deprived, as well as more than funds dedicated to the Fund for Environment and Climate Action, the Rights Equality and Citizenship Program, (funding projects geared toward tackling racism and discrimination) and the Europe for Citizens Program combined. allocated to these law enforcement agencies are major.

YEAR	Law enforcement budget in EURO (million)	Fund for European Aid to the Most Deprived in EURO (million)	Fund for the Environment and Climate action in EURO (million)	Rights Equality and Citizenship Program (REC) in EURO (million)	Europe for Citizens Programme In EURO (million)
Revenue / Commitments 2019	524.7	503.5	359.1	62.4	24.9
Revenue / Commitments 2020	585.1	522.1	431.5	76.1	25.4

The amount of money spent on these agencies remains significant. The question remains why the European Union spends so much energy and resources on the functioning of these agencies, while there are several crucial problems associated with them. One major issue is the overall lack of transparency and accountability. These specialised agencies enjoy a high degree of independence regarding the other European institutions, paired with a lack of external and internal control mechanisms.⁷⁰

Furthermore, one could argue that these agencies, most notably Frontex, contribute to the systemic violence against racialised people. Given the abundance of claims of police brutality and violence against Frontex, greater accountability and oversight is necessary.

69. CORPORATE EUROPE OBSERVATORY (2021) Lobbying Fortress Europe: The making of a border-industrial complex, available at <https://corporateeurope.org/en/lobbying-fortress-europe>.

70. JOSOOR, Frontex: Protection or Abuse?, available at <https://www.josoor.net/post/frontex-protection-or-abuse#:~:text=The%20problem%20with%20Frontex%20is,has%20failing%20internal%20reporting%20mechanisms>.

C) Resources and Technology

For years, the use of emerging technologies by law enforcement has been pushed by EU institutions. The use of smart technology, AI and other automated decision-making technology in policing has also been encouraged in the Member States. Most recently, in the European Commission's proposal for an Artificial Intelligence Act (AIA), alongside the Europol regulation, it has become clear that the EU institutions are seeking to facilitate greater uptake of AI and data-driven tools by European law enforcement. European Digital Rights points out that the proposed regulation risks enabling surveillance and discrimination of already marginalised communities, in particular by introducing some loopholes to legal requirements when AI is used in the areas of law enforcement and migration.⁷¹

This has led to the increased resort to *technology-based policing* by EU Member States.⁷² Although technology is claimed to be a 'neutral' and objective means of conducting crime prevention, investigation and prosecution, evidence has highlighted the discriminatory and disproportionate impact on racialised communities.⁷³

For example, the use of person and place-based '*predictive policing*' to forecast who commits crimes and where they are likely to occur. Research into predictive policing has overwhelmingly found that the results do not necessarily correspond accurately to where crime happens but exacerbate over-policing of poor and racialised communities, reinforcing historical patterns of discriminatory policing. Where a specific crime—such as crime that stems from inequality and poverty—occurs and by whom it is committed will lead to over-policing racialised communities, which are perceived by law enforcement to be more susceptible to crime.⁷⁴

As highlighted by the organisation Fair Trials, such predictive policing tools and algorithmic risk assessments in the criminal justice system more generally, reproduce and reinforce discrimination on grounds including but not limited to race, socio-economic status, and nationality, as well as engage and infringe fundamental rights, including the right to a fair trial and the presumption of innocence, the right to private and family life, and data protection rights.⁷⁵ So far, the European Union institutions have paid insufficient attention to the systemic harms and fundamental rights violations implicated by these technologies, especially their impact on racialised, marginalised and over-surveilled communities.

71. European Digital Rights (EDRI) European Commission adoption consultation: Artificial Intelligence Act, available at: <https://edri.org/wp-content/uploads/2021/08/European-Digital-Rights-EDRI-submission-to-European-Commission-adoption-consultation-on-the-Artificial-Intelligence-Act-August-2021.pdf>

72. European Network Against Racism, Data-driven policing: the hardwiring of discriminatory policing practices across Europe, available at: <https://www.enar-eu.org/IMG/pdf/data-driven-profiling-web-final.pdf>.

73. Id.

74. EUROPEAN DIGITAL RIGHTS, Structural Racism, Digital Rights and Technology, available at: https://edri.org/wp-content/uploads/2020/09/Structural-Racism-Digital-Rights-and-Technology_Final.pdf.

75. Fair Trials, (2021) Automating Injustice: the use of artificial intelligence and automated decision-making systems in criminal justice in Europe, available at: https://www.fairtrials.org/sites/default/files/publication_pdf/Automating_Injustice.pdf

4.3 Failure to Protect and Support Human Rights Defenders

The final shortcoming in the EU's approach to structural racism in EU law enforcement is **the lack of protection and support for human rights defenders working toward accountability, justice and safety for communities affected by police violence**, in particular racial justice activists. Many activists face multiple obstacles battling for a better society, particularly when

combating police misconduct. Activists report a wide variety of reprisals across the EU. In many Member States, activists report brutal crackdowns of anti-police-brutality protests, the police giving free rein to such demonstrations, and police harassment. For example, protesters in France were met with tear gas and batons while protesting after a young Black man's death (see case study 3, Section 2.).⁷⁶

In Greece, for example, protesting is banned under the pretext of the COVID-19 global pandemic. At the same time, activists say this measure is a political instrument to shatter the rise of protests against police brutality.⁷⁷ Social media are extensively used for speaking up against police violence against racialised groups. Even though social media can play a crucial role in exposing the problem, some activists report increased backlash and abuse when conducting their activism online. In Romania, for example, activists complained about the amount of criminalisation of Roma people and anti-Roma slurs commented on a video showing a Roma man being heavily brutalised by the police.⁷⁸

Some activists say they rarely book progress and feel a lack of interest from politicians and the police. Police unions are pressuring local politicians to take stands against the activists, making change seemingly impossible. For example, police unions in France nearly pressured the government into passing a bill to ban documenting the police.⁷⁹

Further, there are some indications from EU institutions of the intention to conduct more oversight of grassroots civil society working on racial justice issues. For example, following the proposed revision of Europol's mandate, Statewatch revealed documents⁸⁰ where, in a recent Council conclusion prepared by the Portuguese Presidency of the Council, it was argued that Europol should exchange information with national authorities in order to closely monitor "extremism", including "left-wing and anarchist violent extremists" who "traditionally claim to fight 'state repression', 'militarism', 'colonialism' and 'fascism'". As such, the criminalisation of racialised communities tabernacled by Europol's revised mandate is likely to extend to the surveillance of racial justice movements.

76. BRITISH BROADCAST CORPORATION, French police clash with anti-racism activists in Paris, available at <https://www.bbc.com/news/world-europe-53036388>.

77. POLITICO, Police brutality on the rise in locked-down Greece, activists warn, available at <https://www.politico.eu/article/police-brutality-on-the-rise-in-locked-down-greece-activists-warn/>.

78. BALKAN IN SIGHT, Racism, police brutality and online hate: why Romania's Roma are no nearer their black lives matter moment, available at <https://balkaninsight.com/2021/03/31/racism-police-brutality-and-online-hate-why-romania-roma-are-no-nearer-their-black-lives-matter-moment/>.

79. POLITICO, French crackdown on filming the police causes outrage, available at <https://www.politico.eu/article/france-ban-photos-police-violence-freedom-privacy-protests/>.

80. Statewatch, (2021), Europol should step up data exchange on "civil unrest", Council Presidency proposes, <https://www.statewatch.org/news/2021/may/europol-should-step-up-data-exchange-on-civil-unrest-council-presidency-proposes/>

5.0 Recommendations:

Towards safety, accountability and justice

There must be a fundamental shift in the EU's policy response to racism in law enforcement. **EU institutions and Member States need to make a dedicated effort to ensure safety, accountability and justice for racialised communities in Europe.**

To do this, there must be due recognition of the scope of the problem. **Structural racism in policing, and in particular, regarding the deaths of racialised people at the hands of the police, remains entirely unacknowledged by European political leaders.** Only with this recognition can meaningful steps toward safety, accountability, and justice be taken.

The recommendations below outline what meaningful steps toward safety, accountability and justice in the face of structural racism in law enforcement might be. Besides immediate and concrete legal and policy mechanisms, **there must be a broader reflection on what justice looks like in Europe, not just for racialised communities, but for all.** The extent of structural racism in policing in Europe should be a springboard for a broader reflection on the role of police in our societies.

Do we have a long-term vision for justice that is not centred on more punishment? We think that, in the midst of this reckoning on racial justice, we should also look for alternative roads toward safety, equality and justice.

Equinox Initiative for Racial Justice makes the following recommendations to European Union institutions:

Address structural racism in law enforcement in EU Law and Policy

1. The European Commission to initiate EU Legislation on Racism in Law Enforcement

There is an urgent need for legislation in the domain of law enforcement and racial discrimination. Best practices, guidelines and reports are useful in tackling structural issues of racial discrimination within national law enforcement authorities, but they are not sufficient. Binding legislation is a much-needed mechanism to enforce changes in law enforcement practice across the European Union. There is a particular need for an EU level general legal prohibition on racial discrimination in law enforcement.

Specifically, there is a need for specific legislation prohibiting racial discrimination in all domains of law enforcement in the broad sense, including national and regional police forces, border control authorities and any other task forces related to law enforcement. On the other side, it would be useful to establish some accountability mechanisms guaranteeing the enforcement of the prohibition of racial discrimination in law enforcement, as well as meaningful accountability to victims and their families.

2. The European Commission to develop a specific policy in the field of racial discrimination and law enforcement

In order to give this subject the attention and resources it deserves, the EU should establish a new policy around racial discrimination and law enforcement. In doing so, it will be easier to raise awareness in civil society surrounding this topic, as well as to conduct research and develop activities around racism and law enforcement as an independent issue.

The EU could develop a holistic approach to racism and law enforcement that could be implemented in all other relevant policies. It would also be beneficial if all EU agencies dealing with law enforcement in the broad sense would develop their own policy surrounding the subject of racism and law enforcement, instead of turning a blind eye to this problem. In this way, each agency can adapt the general policy to the specific situations faced by them.

3. The European Union institutions to install an EU structure to monitor and oversee structural racism in law enforcement

Within their work surrounding 'unlawful profiling', EU institutions must develop a structure internal to the European Commission with the responsibility to monitor and address racial profiling and other instances of racism in law enforcement.

It is absolutely necessary that this includes capacity to oversee national level processes in the case of unlawful conduct, brutality and deaths caused at the hands of European police forces, and the extent and efficacy of formal accountability and victim support. This process must be connected to existing processes surrounding infringement procedures against EU Member States.

4. The European Commission to conduct a Systemic Review of Racism in Law Enforcement including documenting those that have died at the hands of the police, and the extent of formal accountability

The European Union must undertake a systematic review of racism in law enforcement, including consistently documenting cases of racism in law enforcement (including profiling, harassment, misconduct, violence and deaths at the hands of law enforcement officials), and the extent of formal accountability.

Within the conduct of this review, the European Commission must take an intersectional approach, and explore how communities experiencing multiple forms of exclusion and marginalisation are impacted by relations with the police. The review must include how EU policy in other areas, such as human trafficking, migration control, gender equality policy, affects relations with the police, and analyse the extent to which the impact of EU policies in these areas exacerbates negative, unsafe, or discriminatory interactions with the law enforcement officials.

5. The European Commission to develop a holistic framework to record instances of racism in law enforcement, disaggregated by race, gender, nationality, and other relevant factors

The European Commission must ensure that Member States collect data, register and research cases of racism in law enforcement, and present a holistic framework for data collection, such that data can be disaggregated by race, gender and other factors to measure the extent of problems such as racial profiling, deaths at the hands of law enforcement. The European Commission should collate this data at a European level, feeding into ongoing reviews on the issues of structural racism in law enforcement at EU level, evaluating progress in safety but also of formal accountability processes and victim support mechanisms.

Protect racialised communities and anti-racist human rights defenders

6. EU Member States and the European Union institutions must safeguard the rights of people to document police violence and misconduct

Member States should ensure they uphold the fundamental rights of all people during their encounters with law enforcement, implementing severe consequences for those that infringe on the fundamental rights in the course of their duty. The EU must clarify to its Member States the right of people to defend their fundamental rights, document and oversee the conduct of law enforcement to ensure its compliance with the law.

The European Commission and Parliament must exercise oversight of EU Member States, concerning the right to non-discrimination and freedom of assembly, including when used to highlight police misconduct.

7. The EU should ensure access to EU institutions for civil society and grassroots organisations

The complexity of the administrative requirements makes it impossible for small or grassroots organisations to enter a program for support or funding, effectively blocking racialised communities that support victims of racism in law enforcement and their families.

A democratic process on alternatives to justice and the future of law enforcement

8. The European Commission should present a proposal for reallocation of law enforcement budgets to other social needs

Recognising systemic lack of accountability, funds should be diverted away from law enforcement cooperation at EU level and toward other social needs in a democratic process. In particular, such funds could be re-diverted toward national and local level initiatives designed to further community level support mechanisms, and projects designed to tackle the root causes of harm in society.

Further, the EU must consider increasing existing funds dedicating to tackling racism and xenophobia, with specific programs designed to ensure victim support and formal accountability mechanisms for victims of racism and police violence.

9. The European Union should open a democratic forum for European residents to discuss the role of law enforcement in European society, and alternatives to justice.

The European Commission must expand its work exploring alternatives to carceral and punitive forms of justice, toward measures rooted in addressing social and economic inequality. As part of such efforts, the European Commission should open a consultative process with European residents to explore the Future of Europe's law enforcement.

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