

# Consultation Response

## Improving legal protection against racial discrimination in the EU

Equinox welcomes the consultation '[Addressing possible gaps in the Racial Equality Directive](#)' to identify gaps in current non-discrimination law with respect to racism, and explore measures to address them. The following outlines the perspective of the Equinox Initiative for Racial Justice.

### Gaps in EU law on racial discrimination

#### 1. Discrimination in the field of law enforcement

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. The majority 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.

#### 2. Discrimination in the context of migration management and border control

Discrimination on the grounds of nationality is highly linked to racism and racial discrimination. Nationality can constitute a proxy for race. Increasingly discrimination against third party nationals is a central feature of EU migration policy and practice. In particular, this builds on the increased resort to presumptions of untrustworthiness in migration and asylum policy.<sup>1</sup> Examples of racial discrimination at borders are increasing and are enabled by a lack of legal protection against discrimination on the grounds of nationality.

#### 3. Intersectional justice and discrimination

Despite a clear framework prohibiting discrimination on grounds of race in many areas of public life, discrimination against racialised women, migrants, LGBTI+ persons, disabled persons and working class people is a daily reality. In the report [Towards Gender Justice: Rethinking EU Gender Equality Policy from an Intersectional Perspective](#), Equinox highlighted the ongoing examples of intersectional discrimination in the EU, from discrimination against Muslim women in areas of education and employment, to the criminalisation and oppression experienced by migrant women and people in precarious work, including sex work. The EU framework largely centres criminalisation as a policy solution, as highlighted by numerous proposals to combat forms of racism or gendered violence through the means of criminal law.

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<sup>1</sup> For example, in the amended Asylum Procedures Regulation it is stated that the new procedures should apply in a number of scenarios, including when the applicant is of a nationality where proportion of cases international protection is granted is lower than 20%. This change proposes to introduce a presumption of untrustworthiness to asylum applicants solely on the basis of their nationality.

## Recommendations - protecting against structural racial discrimination

These recommendations outline how the EU can address gaps in the EU discrimination framework.

### **1. Introduce a new EU directive to prohibit discrimination in the field of law enforcement and extend legal protection to those discriminated against by law enforcement agents**

There is a particular need for a binding EU level legal prohibition on racial discrimination in law enforcement, as well as meaningful mechanisms to ensure accountability for victims and their families.<sup>2</sup>

### **2. Extend existing prohibitions on discrimination to nationality, and conduct a review of EU policies to address discrimination in the migration context**

Protection against discrimination should be extended to nationality; which is in many instances a proxy for race. Further, there must be a systemic review of EU policies in migration and border control to comply with international racial discrimination law and commitments in the EU Anti-Racism Action Plan.

### **3. Ensure equal legal protection for all grounds of discrimination, including legal provisions relating to intersectional discrimination**

In many cases not only is there little or no recourse to justice for those experiencing intersectional forms of discrimination, policies may have the effect of exacerbating the conditions excluding these groups from rights in the public sphere. The EU should present a new, up to date proposal for an EU Equal Treatment Directive to address intersectional discrimination, explicitly prohibiting discrimination in a combination of all grounds. This proposal should ensure a provision prohibiting discrimination on the grounds of sexual orientation and gender identity, class and migration status.

### **4. Reassess the role of criminalisation with respect to institutional and structural discrimination**

Pro-criminalisation approaches to discrimination largely overlook the role played by institutions ( such as law enforcement and immigration control) in perpetuating violence against marginalised communities, in particular racialised people, migrants, women, LGBTI communities, disabled people, and people in precarious work. EU institutions need to undertake a structural review of criminalisation as a policy option, recognise a systemic lack of accountability, and reassess with communities affected how resources and funding should be allocated. This must include a serious commitment to decriminalisation and investment of resources to address root causes of harm, violence and equality.

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<sup>2</sup> For further details of the need need to extend legal protection in the case of discrimination in the field of law enforcement, see Equinox (2021) 'Who Protects Us from the Police? Structural Racism in Law Enforcement in the European Union.' <https://www.equinox-eu.com/wp-content/uploads/2021/10/Equinox-Who-Protects-Us-from-the-Police.pdf>