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# European handbook on equality data

## 2016 revision

Justice
and Consumers

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Directorate-General for Justice and Consumers
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# European handbook on equality data

## 2016 revision

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# Contents

# List of abbreviations and acronyms

| | |
|---|---|
| AITHS | All Ireland Traveller Health Study |
| ANED | Academic Network of European Disability Experts |
| AT | Austria |
| BE | Belgium |
| BG | Bulgaria |
| BME | Black and minority |
| CCIF | *Collectif contre l'Islamophobie en France* (Collective Against Islamophobia in France) |
| CEDAW | United Nations Convention on the Elimination of all forms of Discrimination Against Women |
| CERD | International Convention on the Elimination of all forms of Racial Discrimination |
| CES | Conference of European Statisticians |
| CH | Switzerland |
| CIS | *Centro de Investigaciones Sociológicas* (Sociological Research Centre) (Spain) |
| CNIL | *Commission Nationale de l'Informatique et des Libertés* (National Commission on Informatics and Liberty) (France) |
| CRC | UN Convention on the Rights of the Child |
| CSEW | Crime Survey for England and Wales (UK) |
| CSO | Central Statistical Office (Hungary) |
| CSO | Central Statistics Office (Ireland) |
| CY | Cyprus |
| CZ | Czech Republic |
| DE | Germany |
| DWP | Department for Work and Pensions (UK) |
| ECHR | European Convention on Human Rights |
| ECRI | European Commission against Racism and Intolerance |
| EDF | European Disability Forum |
| EE | Estonia |
| EEOC | Equal Employment Opportunity Commission (US) |
| EFTA | European Free Trade Association |
| EHSIS | European Health and Social Integration Survey |
| EL | Greece |
| ELSA | English Longitudinal Study of Ageing |
| EQLS | European Quality of Life Survey |
| Equinet | European Network of Equality Bodies |
| ES | Spain |
| ESA | Employment and Support Allowance (UK) |
| ESS | European Social Survey |
| ESS | European Statistical System |
| EUMC | European Monitoring Centre on Racism and Xenophobia |
| EUROSTAT | Statistical office of the European Communities |
| EU-MIDIS | European Union Migration and Discrimination Survey |
| EU-SILC | European Union Statistics on Income and Living Conditions |
| EVS | European Values Study |
| FR | France |
| FRA | European Union Agency for Fundamental Rights |
| FYR Macedonia | Former Yugoslav Republic of Macedonia |
| GDP | Gross domestic product |
| HCSO | Hungarian Central Statistical Office |

| | |
|---|---|
| HRS | US Health and Retirement Study |
| HU | Hungary |
| ICCPR | United Nations Covenant on Civil and Political Rights |
| ICESCR | United Nations Covenant on Economic, Social and Cultural Rights |
| ICF | International Classification of Functioning Disability and Health |
| IHS | Integrated Household Survey (UK) |
| ILFR | Institute for Labour and Family Research (Slovakia) (*Inštitút pre výskum práce a rodiny*) |
| ILGA | International Lesbian, Gay, Bisexual, Trans and Intersex Association |
| ILO | International Labour Organization |
| Ined | *Institut national d'études démographiques* (French Institute for Demographic Studies) |
| Insee | *Institut national de la statistique et des etudes économiques* (National Institute of Statistics and Economic Studies) |
| Istat | Italian National Institute of Statistics |
| LFS | Labour Force Survey |
| LGBT | Lesbian, gay, bisexual, transgender |
| LGBTI | Lesbian, gay, bisexual, transgender and intersex |
| LV | Latvia |
| MEHM | Minimum European Health Module |
| MT | Malta |
| OHCHR | United Nations Office of the High Commissioner for Human Rights |
| ONS | Office of National Statistics (UK) |
| PETs | Privacy enhancing technologies |
| PIN | Personal identification number |
| PL | Poland |
| QNHS | Quarterly National Household Survey (Ireland) |
| RO | Romania |
| SHARE | Survey of Health, Ageing and Retirement in Europe |
| SI | Slovenia |
| SK | Slovakia |
| TR | Turkey |
| UNCERD | United Nations Committee on the Elimination of Racial Discrimination |
| UNCRPD | United Nations Convention on the Rights of Persons with Disabilities |
| UNECE | United Nations Economic Commission for Europe |
| UNDP | United Nations Development Programme |
| WHO | World Health Organization |

# Foreword

Equality represents one of the most fundamental values upon which the European Union is founded. Every citizen across the EU has the right to equal treatment, regardless of their gender, background, age or choice of partner.

At the EU level, this right is safeguarded by the Equality Employment Directive (2000/78/EC) and the Race Equality Directive (2000/43/EC). While the former protects EU citizens from discrimination on the grounds of religion and belief, disability, age and sexual orientation in employment, the latter offers protection from discrimination based on race and ethnicity in many other areas of life.

Despite the fact that these Directives have played a crucial role in the fight against discrimination, many citizens still experience exclusion across the EU. Discrimination deeply affects the well-being of individuals, groups, businesses, and the social fabric as a whole. The fight against discrimination is undoubtedly one of the greatest challenges we face today.

Yet the lack of solid data relating to equality and discrimination limits our understanding on both the extent to which discrimination affects our everyday life and how best to tackle it. Only through independent and sound information outlining the reality of EU citizens can we truly go forward in the quest for an equal society across Europe.

The 2007 European Handbook on equality data provided a first overview of how best to collect and analyse data on issues relating to equal treatment in the European Union context. Since then, however, new issues concerning equality data collection have emerged and these are addressed in this new edition.

I hope that the revised Handbook will be a useful tool for policymakers, citizens, statisticians and all equality practitioners to further collect valuable data, which will broaden the approach to combating discrimination and make it more effective.

Tiina Astola
Director-General for Justice and Consumers

# Executive summary

## Background

The European Handbook on Equality Data was published in 2007 as part of the action taken to support EU Member States to implement EU anti-discrimination legislation and to achieve progress towards equality. The objectives of this 2016 revision of the European handbook on equality data remain the same as in the version published in 2007:

i. to analyse why and what kind of data should be gathered in relation to equality and discrimination (this data is called 'equality data' in this Handbook), and
ii. to show how that data can be collected, and to issue recommendations in that regard.

The Handbook targets a wide audience, in particular all those who are interested and involved in how to build an evidence-based approach to promoting equality of treatment and combating discrimination on the basis of racial or ethnic origin, religion, belief, disability, age, gender identity or sexual orientation. This includes decision-makers, civil servants, members of equality groups, and those working for equality bodies and non-governmental organisations (NGOs). Like the 2007 Handbook, this revised version also aims to provide useful insights to those who are, or should be, involved in the collection of data, including statisticians, researchers and employers.

The research project of which updating the 2007 Handbook is part showed that there have been quite a number of relevant developments since the 2007 Handbook was published which merit being addressed in a revised version. These developments relate to the fields of equality data legislation, protection of personal data, sources and comparability of data, issues of definition, classification and categorisation, data quality, dissemination and use of equality data, use of data in the justice system, equality data generated and used by NGOs and in qualitative research and, last but not least, diversity monitoring.

This executive summary presents the main findings, trends and conclusions in each of these fields. It concludes with an overview of the recommendations that are based on the findings of the research on which this revised Handbook is based.

## Main findings, trends and conclusions

### *Equality data legislation*

Legal obligations to collect equality data remain limited in almost all EU Member States to duties of equality bodies to monitor (in)equality and to publish reports on the prevalence of discrimination. However, Ireland and the United Kingdom require all public bodies to promote equal opportunities on all protected discrimination grounds and this is seen to require data collection to demonstrate compliance. Moreover, in a large number of Member States there now exists a duty for employers to collect data on the number of employees with disabilities for the purpose of demonstrating compliance with legally imposed quotas.

### *Collection and processing of personal data*

Protection in relation to the collection and processing of personal data is ensured in all Member States, but also includes exceptions for the specific situations provided for by the EU Data Protection Directive. The United Kingdom also explicitly permits the collection of personal data in relation to equal opportunities policies. The general conclusion in relation to the protection of personal data is that legislation regulates but does not prohibit the collection and processing of equality data. European and national law do however pose limitations that must be respected in all data collection activities.

### *Data sources, comparability of data and issues of definitions*

Across the EU and the Member States data are not often collected specifically for equality related purposes, but rather for general administrative, societal or statistical purposes. It is increasingly acknowledged that such data can be used to demonstrate inequality or discrimination and for the promotion of equality and protection against discrimination. Such data include population and household censuses and data collected for the EU-wide surveys, such as the European Union Statistics on Income and Living Conditions (EU-SILC).

The only comparable data collected across the EU Member States are those from the EU-wide surveys. Over the last decade, the EU Agency for Fundamental Rights (FRA) and the European Commission have been conducting surveys specifically on equality and non-discrimination themes on a regular basis. These surveys provide important EU-wide data sets on equality and non-discrimination topics. Data sets found at the national level remain very much influenced by national contexts, as nationally specific data collection methods, sources and definitions are used. These data sets therefore provide information that is as such not comparable between EU Member States. The overall lack of consistency and coherence of definitions, classifications and categorisations used for equality data collection at EU and Member State level do indeed severely affect the comparability and compatibility of data across the EU and between and within Member States.

### *Quality of data – costs*

The quality of data hinges on methodological issues, such as those relating to definition and classification, the accuracy and robustness of data collected, the sensitivity of questions in the area of equality and non-discrimination, and under-reporting. However, it also depends on the costs of various data collection methods. By using data for various purposes, as in the EU-wide surveys, data can be collected more cost-effectively.

### *Dissemination and use of data*

Data is an essential ingredient of public policy making to underpin and to demonstrate (in-)equalities. Presentation of inequality data in an easily comprehensible, visualised and explained format is seen as part and parcel of that action, with a view to building understanding and acceptance of equality and non-discrimination policies. The internet has become an increasingly important medium for the presentation and enhancement of the accessibility of equality data.

### *Using data to measure outcomes of equality policies*

Policy makers have an interest in assessment of the effects of equality policies. Various actors develop indicators which set targets for the outcomes of equality and non-discrimination policies. These indicators need to be populated with evidence, including statistical data. A promising practice is the development by the FRA of such indicators, among others for the purposes of ensuring the rights of people with disabilities.

In addition, the EU2020 strategy set targets, including for employment, education, social inclusion and poverty reduction. Data collected and published by Eurostat are being used to assess the achievement of these targets for the equality groups, for example people with disabilities.

### *Justice system and complaints data*

Victimisation, justice system and complaints data form a rich source of data in itself, in addition forming an important basis for qualitative research. Such data can show, among other things, trends in the awareness of victims of their rights as well as changes in typical discrimination cases and how the cases are dealt with. Research in recent years, including by the FRA, shows substantial under-reporting of discrimination experiences, demonstrating that victimisation, justice system and complaints data are not representative in quantitative terms.

### *Equality data generated and used by NGOs and in qualitative research*

NGOs in many EU Member States apply situation testing to evidence discrimination and use the results of situation testing for awareness-raising purposes. Discrimination testing has been further developed to become a more common practice in many European countries, with gradually growing jurisprudence recognising the admissibility of testing as evidence in courts.

Equality data are increasingly used to produce and to underpin results in research in the field of equality and non-discrimination, especially to establish the impact of measures and policies to promote equality and to combat discrimination. A best practice example of this is the work undertaken by the FRA which combines data collection (e.g. through surveys) with qualitative research and develops indicators to measure the extent and nature of equality and discrimination.

### *Diversity monitoring*

Diversity monitoring has proved to have been positive in supporting assessment of the impact of equal opportunities policies, as well as identification of discriminatory practices and barriers to equal treatment. Practical experience in countries where such monitoring is applied shows that its effectiveness requires the cooperation of all stakeholders and needs to be based on their firm commitment to ensuring equal opportunities for all. The growing experience of using diversity monitoring within businesses and other organisations is improving understanding of the need to address the full spectrum of equality characteristics within data collection systems. This includes designing innovative ways of gathering data on the experience of groups that may be hard to reach through a routine survey of all employees or service-users. This is particularly relevant for people affected by stigma and/or those in small minority groups, who may be reluctant to disclose personal data as a result.

### *Recommendations*

The 2007 European Handbook on Equality Data aimed to help EU Member States to develop their data collection practices. The handbook included eight recommendations with a view to providing guidance as to how national data collection can be developed in a meaningful and systematic way.

Assessment of the progress made on these recommendations shows that much has been achieved, but also that a number of issues impacting on data collection still need to be addressed further. These issues include the need to utilize multiple sources, promotion of coherent definitions and ways of categorisation, improving of the quality of data collection designs and ensuring sufficient funding for equality data collection.

In view of that, this revised Handbook includes a set of seven new recommendations, which are summarised here:

1. EU Member States should tap into the existing data sources, which helps to avoid costly duplication of data collection efforts.
2. To enhance comparability and compatibility of data from various sources, differences in definitions, classifications and categorisation need to be identified and addressed, both at EU and national level.
3. Data collected across the 28 EU Member States through the EU-wide surveys, such as the Labour Force Survey (LFS), EU-SILC, Eurobarometer and other EU-wide surveys, should include more equality and non-discrimination specific data.
4. Each EU Member State should conduct a mapping exercise in order to investigate the following: what information is currently collected by means of national data collection activities; whether the group of variables surveyed through these activities should be expanded so as to increase the range of equality data so obtained; and how to make effective and efficient use of this information/ these sources in the future.
5. Further encouragement and guidance is needed at EU Member State level in improving the collection of equality data, such as by explaining how data can be collected and can positively impact equality and non-discrimination policies, through organising seminars and designing awareness campaigns.
6. EU-level and national stakeholders, such as equality bodies, research institutes and NGOs, who are willing and competent to collect equality data, should be supported with the resources to do so, in particular in relation to data on discrimination experience and complaints data.
7. All stakeholders can enhance the acceptance of data collection for equality and non-discrimination purposes by ensuring and explaining that data protection laws are fully complied with.

# 1 The case for equality data

## 1.1 Introduction

Equality is one of the values upon which the European Union is founded, as recognised in Article 2 of the Treaty on European Union.[1] The Charter of Fundamental Rights of the European Union provides for equality before the law and prohibits discrimination on the grounds of, inter alia, sex, race, ethnic or social origin, religion or belief, disability, age and sexual orientation.[2] The adoption in 2000 of two EU Directives on equal treatment, namely the Racial Equality Directive and the Employment Equality Directive,[3] significantly raised the level of protection against discrimination across EU countries. All EU Member States have adopted national legislation to implement the Directives and many have gone beyond the requirements laid down in the Directives in order to provide more wide-ranging protection from discrimination. All EU Member States are parties to the main human rights conventions, concluded under the auspices of the United Nations and the Council of Europe, each of which prohibit discrimination. The EU itself is party to the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and is to become a party to the European Convention on Human Rights (ECHR).

Despite this solid legislative backdrop, the available evidence suggests that discrimination continues at alarming levels. Each year, millions of people living in Europe experience discrimination and millions more live in fear of being so treated. Eurobarometer surveys have found that, on a yearly basis, every fifth European experiences discrimination, which translates to more than 100 million people each year.[4] Denial of equal opportunities comes at a high price for those concerned and for society at large, as discrimination prejudices the rights and opportunities of individuals, leads to a waste of human capital and causes social disintegration.

### *1.1.1 Legislative actions necessary, but not enough*

The persistence of discrimination despite international, European and national legal instruments shows that legal measures alone cannot achieve equality. Legislative frameworks and underlying political commitment are necessary, but insufficient, elements of an overall approach to combating discrimination.

A range of other measures is therefore needed. Indeed, close to two thirds of the people in the EU consider that new measures to raise the level of protection against discrimination should be introduced.[5] Combating discrimination requires vigorous enforcement of anti-discrimination law, active identification and analysis of discriminatory patterns in all areas of life, monitoring of the progress made in the elimination of discrimination, adoption of awareness-raising programmes and, if the circumstances warrant it, adoption of positive action measures to remedy the situation of those individuals and groups which suffer from disadvantages caused by discrimination. All of these core anti-discrimination activities have one thing in common: they require, or at any rate benefit from, the existence of empirical evidence of discrimination. Statistical and other information renders discrimination visible, making it possible to target it more effectively by means of informed action. Equality data is also crucial for mapping and targeting any gaps that may exist between groups, for example in the fields of education and health services, irrespective of the root cause of those gaps.

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[1] Treaty on European Union (consolidated version).

[2] Articles 20 and 21 of the Charter.

[3] Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive'). A proposal for a third directive (so called 'horizontal directive'), which would complement the existing EU legislation on equal treatment, was issued by the European Commission in 2008.

[4] Some 21% of the respondents to the Special Eurobarometer 437 of 2015 said that they had felt discriminated against or harassed in the previous 12 months [European Commission, *Special Eurobarometer 437*, 2015]. In the 2012 Eurobarometer 17% of respondents reported having experienced discrimination, whereas the figure in 2009 was 16%.

[5] European Commission, *Special Eurobarometer 437 on discrimination in the EU in 2015*, 2015.

The importance of building a knowledge base on discrimination has been recognised for some time, with increasing international and national pressure towards the development of national data collection mechanisms. Experts and expert bodies have described the collection of equality data as 'fundamental', 'absolutely necessary', 'critically important', 'a pivotal tool' and 'a basic prerequisite'.[6] Europeans are also generally favourably disposed towards collecting equality data, with approximately two thirds expressing support for providing personal details on an anonymous basis, if that could help to combat discrimination.[7]

### *1.1.2 Where is Europe in terms of data collection?*

In the field of gender equality it has for a long time been generally accepted that a commitment to equality requires measuring of progress made towards equality.[8] All EU Member States have taken some measures in order to produce equality data also with respect to grounds of ethnic origin, religion, age, disability, sexual orientation and/or gender identity, but only a few countries have developed a systematic or institutionalised framework for doing this. The concern over lack of data collection has been raised by the European Commission.[9]

A review of national data collection practices, conducted in conjunction with the revision of this handbook, found the following issues:

- insufficient comparability, both across and even within the Member States;
- lack of a coherent, systematic, long-term approach to equality data collection;
- the data are often collected on the basis of proxies or irrelevant or outdated categories and definitions;
- those who are generally willing and competent to collect equality data, such as equality bodies and research institutes, often do not have the necessary resources;
- misunderstanding of the data protection legislation causes less data to be collected than is actually possible;
- the data which do exist are often not used to their full potential.

The current lack of data collection can to a large extent be attributed to an 'awareness gap', meaning that there is a lack of awareness about how equality data can be collected and what benefits this can bring. There are also misgivings and misunderstandings in relation to what data collection entails in practice and what impact privacy and data protection laws have on data collection. In addition, the idea of collecting personal data in this connection (which is required by some but not all forms of data collection) has been subject to reluctance in some countries. The issues at hand can also sometimes be rather complex, requiring expertise in multiple areas of law and social science. These factors at least partly explain the current lack of action in this area.

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[6] Jansen, B., 'Address by the European Commission', in Mannila, S. (ed.), *Data to promote equality*, Helsinki: Edita, 2005; Goldston, J., 'Race and ethnic data: A missing resource in the fight against discrimination' in Krizsán, A., *Ethnic monitoring and data protection*, Budapest: CEU Press, 2001; Blank, R. M., Dabady M. and Citro, C. F., (eds.) *Measuring racial discrimination*, National Research Council, Panel on Methods for Assessing Discrimination, Committee on National Statistics, Division of Behavioral and Social Sciences and Education, Washington, DC: The National Academies Press, 2004; Wrench, J., 'The measurement of discrimination: Problems of comparability and the role of research', in Mannila, S. (ed.), *Data to promote equality*, Helsinki: Edita, 2005; Committee on the Elimination of Discrimination Against Women (1989), General Recommendation No. 9. *Statistical data concerning the situation of women*, HRI/GEN/1/Rev. 6.

[7] European Commission, *Special Eurobarometer 437 on Discrimination in the EU 2015*, 2015.

[8] See e.g. the Gender Equality Index, developed by the European Institute for gender Equality (EIGE).

[9] European Commission, *Joint report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive'*), COM (2014) 2 final, pp. 5-6.

### *1.1.3 About this handbook*

The European Commission published the original European Handbook on Equality Data in 2007. That handbook was part of the Commission's action to help EU Member States eliminate discrimination prohibited by the Racial Equality Directive and the Employment Equality Directive. This is an updated version of the Handbook. It addresses the same topics as the original Handbook, and features updated examples and information, with a special focus on issues where progress has been slow since the publication of the original Handbook.

The handbook deals with the grounds of discrimination covered by the aforementioned Directives, namely racial and ethnic origin, religion and belief, age, disability and sexual orientation. It also examines the ground of gender identity, which is treated as a form of sex discrimination in some EU countries, as a form of discrimination in its own right in some others, while the legal situation remains unclear in yet other countries.[10] This handbook does not deal with sex discrimination except as a cross-cutting issue from the point of view of multiple discrimination.

#### Target audience

This handbook is targeted particularly at those who need to be involved in the promotion and planning of data collection and/or in the use of equality data. This group includes decision-makers, civil servants, members of equality groups and those working for equality bodies and NGOs. It is also hoped that the handbook can provide useful insights for those who are, or may need to be, involved in the production of the data, including statisticians and researchers. Given the relatively wide audience, the handbook has been written in such a way that reading it does not require prior knowledge of statistical science or anti-discrimination law.

#### Contents

The handbook discusses why and how equality data should be compiled. It also describes the extent to which equality data is currently collected. While it also discusses how use can be made of equality data, its primary objective – given the still pressing need to improve data collection – is to encourage EU Member States to collect and compile the necessary data in the first place.

In summary, the first section of the handbook provides a general introduction to the topic and discusses issues such as why equality data is needed and how statistical and other information can be used in the fight against discrimination. It also provides insight into the legal aspects of data collection, especially data protection law. Section 2 includes a discussion of data collection techniques, providing an overview of the different sources of data and how the data can be used in the national context.

The subsequent sections discuss in more detail the different sources of data, namely population censuses, surveys, administrative registers, victimisation and complaints data, discrimination testing and qualitative research, as well as diversity monitoring, illustrating them in the light of best practices from different countries. The focus is on 'tried and tested' data collection mechanisms which are used in the EU Member States.

The handbook seeks to provide decision-makers and other stakeholders with the means to assess and improve the national compilation of equality data. While it does make a number of recommendations, directed mainly at decision-makers at the national level, its purpose is not to propose the adoption of a uniform and standardised model of data collection across Europe. This follows from the recognition of

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[10] See e.g. European Union Agency for Fundamental Rights (FRA), *Protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU – Comparative Legal Analysis*, Update 2015.

the fact that the EU Member States are heterogeneous in many respects, including in their statistical infrastructures.

The purpose of this handbook is to drive action and to furnish the various stakeholders with adequate background information needed to take that action. The intention is not to provide an account of how discrimination manifests itself in contemporary Europe, although some research findings are presented for the purpose of illustrating what can be achieved with a particular research method. Moreover, the aim of the handbook is not to provide legal advice, a comprehensive academic account of discrimination as a phenomenon or a comprehensive introduction to statistical science.

## 1.2 What is equality data?

### *1.2.1 Key terms*

Terms such as 'equality data' may be given different meanings in different contexts, so the key terms are defined in the following paragraphs for the purposes of this handbook only.

*Data* refers to any piece of information, whether in numerical or in some other form. The function of data is that they reveal something about some aspect of reality and can therefore be used for analysis, reasoning or decision-making. The data may relate to an identified or identifiable person, in which case they are called *personal data*. The individual to whom the data relate is called the *data subject*. Where personal data relate to matters such as racial or ethnic origin, religion or belief, disability or sexual orientation they are considered *sensitive data*, although it should be noted that the EU data protection legislation does not talk about sensitive data but about 'special categories of personal data'.[11] Any operation performed on personal data, including collection, recording, use, dissemination and destruction, is referred to as *processing* in line with the terminology adopted in EU data protection law.

The notion of *equality data* is used in this handbook in reference to any piece of information that is useful for the purposes of describing and analysing the state of equality. The information may be quantitative or qualitative in nature. The main focus is on equality statistics, by which are meant aggregate data that reflect inequalities or their causes or effects in society. Sometimes data that are collected primarily for reasons other than equality-related purposes can be used for producing equality data.

The notion of *equality groups* is used as a collective name for groups which have an interest in promoting equality and/or which have experienced discrimination or inequality on the grounds of racial or ethnic origin, religion or belief, age, disability, sexual orientation or gender identity.

### *1.2.2 Equality and discrimination*

It is essential to have a solid understanding of *equality* and *discrimination* in order to understand what in fact should be measured.

There are three primary sources of equal treatment law in Europe: international and European human rights law, EU law and national law.

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[11] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

## International and European human rights law

The right to equality before the law and protection against discrimination for all constitutes a universal right recognised in a wide range of internationally agreed human rights instruments, such as the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of all forms of Racial Discrimination (CERD), the International Convention on the Rights of Persons with Disabilities (CRPD) and the United Nations Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR), as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), to which almost all EU Member States are parties. Most EU Member States have signed and some have also ratified Protocol No. 12 (on non-discrimination) to the European Convention.

Non-discrimination is both a right itself and a constitutive element of all human rights in that the enjoyment of all rights must be guaranteed on a non-discriminatory basis. Some of the instruments, such as the UN Convention on the Protection of Civil and Political Rights, provide for a prohibition of discrimination that covers several grounds of discrimination, while others, such as the UN Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child (CRC), focus on a single ground.

Many of these conventions, including the ECHR, ICCPR and CERD, place an obligation on states parties not just to refrain from discrimination, but also to take positive steps to give effect to the right not to be discriminated against. States are required to take effective measures to secure compliance with the principle of non-discrimination also by some private actors, *inter alia* in the areas of employment, education and the provision of services.[12] Under the well-established jurisprudence of the European Court of Human Rights, states parties are obliged to thoroughly and effectively investigate allegations of discrimination.[13] Effective investigation of discrimination may, depending on the circumstances of the case, require data collection.[14] An investigation must furthermore be carried out with due diligence and expedition.[15]

## EU law

Equality and non-discrimination are firmly entrenched in EU law. Article 2 of the Treaty on European Union solemnly declares that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Article 10 of the Treaty on the Functioning of the European Union stipulates that in defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Equality and non-discrimination are also recognised in the Charter of Fundamental Rights of the European Union, which has the same legal value as the two treaties. Article 21 of the Charter provides as follows:

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[12] For more details, see e.g. Makkonen, T., *Equal in law, unequal in fact: racial and ethnic discrimination and the legal response thereto in Europe*, Brill, 2012.

[13] See e.g. ECtHR, *D.H. and others v. The Czech Republic*, Application no. 57325/00 (Judgment 13 November 2007), ECtHR, *Bekos and Koutropoulos* v. *Greece*, Application no. 15250/02 (Judgment 13 December 2005) and ECtHR, *Nachova and others v. Bulgaria*, Applications nos. 43577/98 and 43579/98 (Judgment 6 July 2005).

[14] See e.g. European Committee on Social Rights, *ERRC v Greece*, Complaint No 15/2003, decision on merits on 8 December 2004. In *D.H. and others v. The Czech Republic*, the European Court of Human Rights submitted that when it comes to assessing the impact of a measure or practice on an individual or group, statistics which appear on critical examination to be reliable and significant will be sufficient to constitute the prima facie evidence the applicant is required to produce, ECtHR, *D.H. and others v. The Czech Republic*, Application no. 57325/00 (Judgment 13 November 2007), para 188.

[15] See the following decisions of the UN CERD Committee: *L.K. v. The Netherlands*, Communication No 4/1991; *Ms M.B v Denmark*, Communication No 20/2000 (15/03/2002); and *Ziad Ben Ahmed Habassi v. Denmark*, Communication No 10/1997.

> Any discrimination based on any ground such as 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 or sexual orientation shall be prohibited.

While these legal documents have had a profound effect on the development of EU law, and continue to have such an effect, it has been the EU equal treatment Directives that have had the most notable impact on the non-discrimination laws of the Member States.

The level of protection from discrimination was significantly raised throughout the EU by the adoption in 2000 of the Racial Equality Directive and the Employment Equality Directive. The purpose of these Directives, as expressed in Article 1 of the respective instruments, is to lay down a general framework for combating discrimination, with a view to putting into effect in the Member States the principle of equal treatment. Equal treatment is defined in the Directives as the absence of direct and indirect discrimination. In addition, harassment and an instruction to discriminate constitute acts of discrimination.

The key to understanding the Directives is to understand the concepts of direct and indirect discrimination as they are defined in the Directives. Direct discrimination is defined as follows:

> Direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The prohibition of direct discrimination, in the way it is defined in the Directives, thus places emphasis on consistency of treatment.[16]

Indirect discrimination is defined in the Directives as follows:

> Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin, or those having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation, at a particular disadvantage compared with other persons, unless:
> 1. that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving this aim are appropriate and necessary, or
> 2. with regard to people with a particular disability, the employer or any person or organisation is obliged to take appropriate measures to provide reasonable accommodation in order to eliminate disadvantages entailed by such provision, criterion or practice.

The concept of indirect discrimination is not so much about formal consistency of treatment as it is about substantive outcomes.[17] Indeed, the concept recognises that consistent application of neutral-looking criteria may sometimes have discriminatory effects.

Discrimination is understood to include *discrimination due to association* with a discrimination ground, as confirmed by the Court of Justice. Discrimination is often also considered to include *discrimination due to assumptions*, for example if a person is discriminated against on the basis of an assumption about her sexual orientation. Thus the Directive not only protects people who belong to a particular ethnic or other group, it also protects people associated with such a group or assumed to belong to that group.[18] For example, in the case of *CHEZ Razpredelenie Bulgaria AD* (C-83/14) the Court found that a person who had suffered discrimination because she lived in a predominantly Roma neighbourhood was entitled

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[16] Fredman, S., *Discrimination law*, Oxford: Oxford University Press, 2002, p. 92 ff.

[17] See e.g. Fredman, S., *Discrimination law* Oxford: Oxford University Press, 2002, p. 106 ff.

[18] Case C-83/14. See also Case C-303/06, *Coleman v. Attridge*, judgment of 17 July 2008.

to protection under the Racial Equality Directive, even though she neither identified herself nor was perceived as being Roma.

The Directives recognise that in some circumstances it is justified to allow exceptions to the above rules. Differential treatment may therefore be justified where a particular characteristic, e.g. age or ethnic origin, constitutes a genuine and determining occupational requirement. For example, age could constitute a legitimate occupational requirement where a man over 60 years old is needed to play the part of a grandfather in a TV series. A difference in treatment on the grounds of age (but not on any other ground) may not constitute discrimination either if the difference is justified by some other legitimate aim, such as employment policy, provided that the means of achieving that aim are appropriate and necessary.[19]

The implementation of positive action measures, the objective of which is to promote full equality in practice, may also sometimes call for distinctions to be made. For these purposes, the Directives allow, but do not require, Member States to maintain or adopt specific measures to prevent or compensate for disadvantages linked to the equality grounds covered by the two Directives.

A significant property of the two Directives is that they are geared towards ensuring that individuals who consider themselves discriminated against enjoy effective access to justice. With a view to this, the Directives seek to remove many of the obstacles previously associated with bringing legal action in cases of discrimination. They do this, inter alia, by:

- Sharing the burden of proof. This means that after a complainant has been able to establish facts from which it may be presumed that there has been discrimination, it is for the respondent to prove that the law has not been breached. The sharing of the burden of proof does not apply to criminal procedures.[20]
- Recognising the role of statistics as evidence. The Directives expressly allow – but do not require – the Member States to maintain or introduce rules that allow discrimination to be established by 'any means including on the basis of statistical evidence'.[21]
- Requiring the Member States to set up specialised bodies the competences of which shall include the provision of independent assistance to victims of racial or ethnic discrimination.[22]

On 23 October 2007 the Commission adopted its Legislative Work Programme for 2008, in which it announced its intention to propose a new legislative framework. On 2 July 2008 the Commission adopted a proposal for a new directive aiming to implement the principle of equal treatment irrespective of religion or belief, disability, age or sexual orientation outside the labour market. The future of the proposal is currently still under discussion.[23]

## National anti-discrimination law

All EU Member States have transposed the Directives into their legal systems and their laws must fulfil the obligations arising from international law as well. Indeed, the international and EU instruments have had a major impact on the Member States' domestic laws. However, the international and European standards define only the minimum level of protection against discrimination, and many Member States have gone beyond the requirements laid down in them by extending the protection to grounds of discrimination and/or areas of life that are not covered by these instruments. The scope of the domestic equality legislation should therefore be taken into account when planning the collection of equality data. When doing this

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[19] Article 6 of the Employment Equality Directive.

[20] Article 8 of Racial Equality Directive; Article 10 of Employment Equality Directive.

[21] See the identical recital (15) of Employment Equality Directive and Racial Equality Directive.

[22] Article 13 of the Racial Equality Directive.

[23] European Commission, Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation. COM(2008) 426 final, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008PC0426&from=en (last accessed 26 September 2016).

it should be noted that domestic anti-discrimination provisions may be found in several types of law, including constitutional law, civil law (particularly employment law) and criminal law.

## 1.3 The need for equality data

### *1.3.1 What data are needed and why?*

Equality statistics can serve a wide range of purposes which are absolutely essential in the fight against discrimination. Governments themselves have on several occasions recognised the need to compile such statistics[24] and there have been several instances of the European Commission emphasising the need for equality data.[25] The need for data has been identified also e.g. by the European Court of Auditors, which in its report on *EU policy initiatives and financial support for Roma integration* calls for collection of data on ethnicity.[26]

(I) Data are needed for the purposes of policy development and implementation. Decisions can only be as good as the information on which they are based, which means that decision-makers need as much information as they can get in order to arrive at the right decisions. Equality considerations are relevant for all policy areas, including employment, education, healthcare, provision of goods and services and criminal justice. Data are indispensable in identifying and overcoming inequalities in these fields of life and can help to identify the best course of action to take, which can range from the adoption and amendment of laws and local law enforcement interventions to positive action measures and the launching of information campaigns. It will be hard to arrive at the right decisions if they are to be made in the dark or reached through trial and error. Making the right analyses and decisions right at the start of the decision-making process helps to better secure the rights of the individuals and groups concerned, and is cost-effective. Ideally, in a knowledge-based society, information emanating from statistical and other research feeds into every stage of the decision-making process.

(II) Statistical data are often needed or useful in the judicial assessment of whether discrimination has taken place. Empirical evidence can play a decisive role in the proof of both direct and indirect discrimination. The EU Equality Directives explicitly recognise that national rules may allow for, in particular, indirect discrimination to be established on the basis of statistical evidence. It is not just complainants who need statistical evidence but respondents as well, as statistics can be used both to establish or to rebut a *prima facie* case of discrimination and to challenge the evidence presented by the other party. Larger companies may, for example, collect data on their workforce with a view to showing that their practices and policies are non-discriminatory.

Sometimes, general statistical data, such as data emanating from the census or from labour force surveys, provide the necessary factual evidence, but on other occasions the data need to be tailored to the specifics of the case and be derived from workplace monitoring data or specifically collected, for instance by means of discrimination testing. In some countries statutory equality bodies have been given powers to conduct formal investigations, which may call for on-site fact-finding and collection of data to detect possible discrimination.

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[24] See, for instance, the following instruments: Copenhagen Declaration on Social Development and Programme of Action of the World Summit for Social Development of 19 April 1995, A/CONF.166/9; Durban Declaration and Plan of Action; Vienna Declaration and Programme of Action of 12 July 1993, A/CONF.157/23; World Programme of Action concerning Disabled Persons; Standard Rules on the Equalisation of Opportunities for Persons with Disabilities.

[25] European Commission, *Joint report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive'), COM (2014) 2 final*, pp. 5-6.

[26] European Court of Auditors, *EU policy initiatives and financial support for Roma integration: significant progress made over the last decade, but additional efforts needed on the ground*, European Union, 2016.

**Examples**

The European Court of Human Rights has in its practice consistently shown that it is prepared to accept and take into consideration various types of evidence. More specifically, the Court has pointed out that when it comes to assessing the impact of a measure or practice on an individual or group, statistics which appear on critical examination to be reliable and significant will be sufficient to constitute the prima facie evidence the applicant is required to produce.[27]

Statistical evidence has been used for example in Bulgaria to demonstrate discrimination in education on the grounds of ethnic origin and disability. In these cases evidence has been collected by NGOs in the course of their annual activities and through research and field work. In several cases discrimination testing methodology was used, for example to demonstrate segregation and to challenge the lack of resources within the municipal schools to equally accommodate the children with disabilities. Statistical data has been deemed admissible and used in elaborating the merits of these cases by the courts.[28]

(III) Equality data are indispensable in the monitoring of the realisation of human rights and fundamental freedoms across the equality grounds. National specialised bodies, such as ombudsmen and equality bodies, and international monitoring bodies, such as the UN treaty bodies and the Council of Europe's European Commission against Racism and Intolerance (ECRI), as well as some other institutions, such as the EU Fundamental Rights Agency, need quantitative and qualitative information in order to perform their functions properly.

In this context it is important to remember that Article 13 of the EU Racial Equality Directive requires that the national bodies for the promotion of equality, which all EU Member States are required have, are to 'conduct independent surveys concerning discrimination' for the purposes of analysing the problems involved and studying possible solutions.[29] The Directive does not specify what kind of surveys these bodies are to conduct, but it does place a clear legal obligation to engage in the collection of equality data.

The UN treaty bodies have frequently asked the States parties to collect the necessary equality data. It should be kept in mind that all EU Member States are parties to the main human rights conventions and are thus under a direct legal obligation to produce periodic country reports on the human rights situation in their countries and to include in these reports quantitative and qualitative information, including in relation to discrimination. The UN guidelines on state reports emphasise that the reports should provide relevant statistical data, disaggregated by sex, age and population groups. According to the guidelines, this data should cover the following:[30]

- demographic indicators, such as population size, age-composition and life expectancy;
- social, economic and cultural indicators, such as share of household consumption expenditures on food, housing, health and education, proportion of population below the national poverty line, net enrolment ratio in primary and secondary education, unemployment rate;
- indicators on the political system, such as proportion of population eligible to vote;
- indicators on crime and the administration of justice, such as incidence of violent death and life-threatening crimes reported per 100,000 people.

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[27] ECtHR, *D.H. and others v. The Czech Republic*, Application no. 57325/00 (Judgment 13 November 2007, para 188. See also and ECtHR, *Nachova and others v. Bulgaria*, Applications nos. 43577/98 and 43579/98 (Judgment 6 July 2005), para 147.

[28] See e.g. Case No. 9427/2003 Sofia District Court, 28th Civil Jury and Case No. 11630/2004, 41st jury of Sofia district court. See also http://www.cil.bg/userfiles/annual_reports/CIL_Annual_Report_BG_2007.pdf (last accessed 8 July 2016).

[29] Article 13 and recital 24 of the Racial Equality Directive.

[30] *Compilation of guidelines on the form and content of reports to be submitted by States parties to the international human rights treaties* – Report of the Secretary-General, HRI/GEN/2/Rev.6, 3 June 2009.

(IV) Data are needed by organisations, such as businesses, government agencies and trade unions, which want to ensure that their hiring, firing and other policies and practices comply with the equal treatment laws. They can do this by monitoring the composition of their workforce by equality grounds. In an ideal situation, the resulting aggregate internal data can be compared to external benchmark data showing the composition of the general population in order to detect any under-representation. In a similar vein, an organisation that provides services to the public may want to monitor its service delivery to ensure that its practices are non-discriminatory. For instance, a housing agency may want to monitor its service delivery to ensure that it provides equal housing on equal terms for all groups. For all this to be possible, the organisations in question need to collect the necessary internal data, in addition to which they would benefit from the existence of suitable external benchmark data, such as census data.

(V) Qualitative and quantitative data can be a major asset for awareness-raising and communication activities. Scientific evidence on the extent and nature of discrimination can serve as a compelling, factual baseline for national discussion about discrimination, benefiting governments and NGOs alike as they use this information for the purposes of evidence-based advocacy, awareness-raising and education. Indeed, there is evidence suggesting that that this kind of information is frequently used for these purposes and is perceived to be an effective tool in this respect.[31] Data on population groups and their socio-economic situation and other characteristics is also an indispensable asset for the media.

(VI) Equality data are needed because they are an indispensable resource for researchers seeking to improve our understanding of discrimination as a phenomenon. Research, again, is a prerequisite for developing and implementing more effective policies to fight discrimination. Discrimination is a complex and often subtle social phenomenon which can be rendered visible only by means of rigorous research efforts. In many ways, researchers and statisticians are the eyes and the ears of society.

In addition to these rather practical functions, the compilation of equality statistics can be seen to have more symbolic functions. The mere existence of a data collection system sends a message to actual and potential perpetrators, actual and potential victims and to society in general, signalling that society disapproves of discrimination, takes it seriously and is willing to take the steps necessary to fight it. This can have a preventive effect.

It should also be noted that combating discrimination requires broad-based action and this is facilitated by data collection, as data render discrimination visible and help to make inequality a societal concern instead of being a concern just for its victims.

The following table provides a summary of the different uses of data:

**Table 1 Different uses of data**

| Type of action | Body | Typical data needs |
|---|---|---|
| Policy-making | Political and administrative bodies at the national, European and international levels | – baseline data, such as demographic data and socio-economic data (census, register or survey data);<br>– data on material and experienced inequalities (e.g. census or register data, data from official surveys, data from victim surveys and self-report surveys);<br>– data which allow assessment of current policies[1] |

1 The equality impact assessment is a particularly valuable tool in this respect. It is a way of systematically and thoroughly assessing the effects which a proposed policy is likely to have (prospective impact assessment) or that an already implemented policy has had (retrospective impact assessment) on members of an equality group.

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[31] Reuter, N., Makkonen, T. and Oosi, O., *Study on data collection to measure the extent and impact of discrimination in Europe*. Final Report 7 December 2004. Available at: http://ec.europa.eu/social/BlobServlet?docId=1687&langId=en (last accessed 5 July 2016).

| Type of action | Body | Typical data needs |
|---|---|---|
| Monitoring human rights and fundamental freedoms | Bodies such as the UN CERD Committee, UN Human Rights Committee, FRA, ECRI and national equality and human rights bodies | – data on discrimination experiences (e.g. victim survey data; data from discrimination testing; qualitative data);<br>– baseline data, such as demographic data and socio-economic data (census or register data, data from official surveys) |
| Judicial proceedings | Complainants, respondents, courts | – context-specific data, such as data on hiring and firing practices of a specific organisation (internal data; data from discrimination testing experiments; qualitative data);<br>– baseline data broken down by the equality grounds (census or register data, data from official surveys) |
| Workplace and service delivery monitoring | Private and public organisations | – monitoring data on the composition of the workforce or recipients of services (internal data; qualitative data);<br>– benchmark data (census or register data, data from major surveys, data from comparable organisations) |
| Awareness-raising and educational activities, communication and media | National and international public and private bodies, NGOs, equality groups, the media | – easily understandable and accessible, compelling information (e.g. victim surveys; discrimination testing; self-report surveys) |
| Research | The scientific community | – the data needs are vast, as, basically, any set of data can be useful in this context; there is a need for both qualitative and quantitative information |

## 1.4 The applicable legal framework

### *1.4.1 Introduction*

In the EU Member States, the collection and other processing as well as use of equality data is generally regulated by a combination of anti-discrimination and data protection legislation.

Many countries have legislation which imposes obligations to collect equality data at least to some extent. Such obligations also stem from international and EU law. Article 13 of the Racial Equality Directive requires that Member States have bodies for the promotion of equal treatment, the competences of which must include 'conducting independent surveys concerning discrimination'. The preamble to the Directive explains that these bodies should have the competence to analyse the problems involved and to study possible solutions.[32]

Article 31 of the International Convention on the Rights of Persons with Disabilities also deals with equality data and provides as follows:

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:
   a comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;
   b. comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.

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[32] Recital 24 of the Directive.

2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.
3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.

Obligations to collect data that are of a more general nature may also be relevant in the context of equality data. For example, the EU Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, provides that Member States should communicate to the Commission relevant statistical data related to the application of national procedures on victims of crime, including at least the number and type of the reported crimes and, as far as such data are known and are available, the number and age and gender of the victims.[33]

Turning to national law, generally speaking two types of specific obligations to collect equality data are found: (1) duties of equality bodies to monitor (in)equality and to publish research/reports on the prevalence of discrimination, and (2) duties of employers to collect data on the number of employees with disabilities, for the purpose of demonstrating compliance with legally imposed quotas. Both types of duties to collect data exist in a large number of Member States, although the obligation of employers to collect disability data is not always explicit but sometimes constitutes an implicit consequence of the obligation to fulfil the quota.

Collection of sensitive data brings up important issues in relation to data protection in particular. Insofar as the EU Member States develop their data collection practices, this is likely to bring new players into the field. While national statistical agencies can be expected to have a comprehensive understanding of data protection issues, this is not necessarily the case with other organisations, especially private sector actors which are often also subject to less stringent control mechanisms. For these reasons it is of essence to review how the international and EU privacy and data protection laws impact on the collection and other processing of personal data.

### *1.4.2 Right to privacy*

All Member States of the European Union have ratified the European Convention on Human Rights (ECHR).

Article 8 of the European Convention provides for the protection of privacy:

> Article 8 – Right to respect for private and family life
> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The right to respect for private life encompasses the *right to respect for information relating to private life*.[34] Therefore the processing of personal data, including sensitive data, falls within the ambit of Article 8. This article provides protection from infringements of privacy irrespective of whether they emanate from actions of public or private organisations.

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[33] Article 28 and recital 64 of the Directive.

[34] European Commission on Human Rights, *X* v. *UK* 30 DR 239 1982. European Court of Human Rights (ECtHR), *Amann* v *Switzerland* (16 February 2000)*;* ECtHR, *MS* v. *Sweden* (27 August 1997)*; S. and Marper v. the United Kingdom* (4 December 2008), paragraph 67.

Collection or other processing of personal data without the knowledge or consent of the data subject, especially if the data are capable of being used in ways that are harmful to the data subject, may amount to an interference with the rights provided in Article 8. In addition, subsequent use or disclosure of voluntarily submitted personal data may engage Article 8 if the data are used for purposes other than those of which the data subject was informed or if the data are disclosed to unauthorised third parties or stored in a way that fails to guarantee security of the data.

The right to respect for private life is notabsolute: interference therein may be justified under Article 8(2) of the ECHR. If it is not to contravene Article 8, any interference must (i) be in accordance with the law, (ii) pursue a legitimate aim and (iii) be necessary in a democratic society in order to achieve that aim. These requirements are to be interpreted narrowly.[35] While the first two requirements should not be difficult to meet in the context of compiling equality statistics, the third requirement, i.e. whether the activity can be considered 'necessary in a democratic society', is critical. Under the case law of the European Court of Human Rights, for the answer to be in the affirmative, there must be a pressing social need justifying the interference, in addition to which the interference must be proportionate to the aim pursued.[36] Article 8 therefore requires strict balancing in determining which data collection operations are 'necessary', one element of which is the principle of proportionality which requires that the data collection methods employed should always be those which pose the least threat to privacy.

Other international treaties, the ICCPR in particular, provide for the right to privacy. Article 17 of the ICCPR prohibits 'arbitrary and unlawful interferences' in privacy. In this context the UN Human Rights Committee, the supervisory body for the Convention, has opined that 'the competent public authorities should only be able to call for such information relating to an individual's private life the knowledge of which is essential in the interests of society as understood under the Covenant'.[37] While it should be uncontroversial that the collection of personal data for the purposes of guaranteeing equal treatment is 'in the interests of the society as understood under the Covenant' – given for instance the fact that the very same Committee has called for the contracting states to collect the data – it is clear that each data collection operation must also meet the test of being essential for those interests.

The principles mentioned only relate to personal information, that is information concerning an identified or identifiable individual, and therefore these Articles are not engaged by data that have been rendered anonymous.

### *1.4.3 Data protection*

The EU Data Protection Directive,[38] adopted in 1995, has been highly influential in shaping national data protection laws within the EU. It followed the 1981 Council of Europe ETS Convention No 108 on personal data[39] and developed the principles laid down therein. The Directive regulates the processing of personal data. It will be replaced by the General Data Protection Regulation,[40] which entered into force on 24 May 2016 and which will apply from 25 May 2018.[41] The Regulation, in turn, builds on the principles laid down in the Directive. It is directly applicable in all Member States, unlike the Directive which had to

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[35] See e.g. ECtHR, *Rotaru* v. *Romania* (4 May 2000), paragraph 47.

[36] ECtHR, *Smith and Grady* v. *United Kingdom* (2000), 29 EHRR 493; *Chassagnou* v. *France* (2000), 29 EHRR 615.

[37] UN Human Rights Committee, *General Comment 16*. HRI/GEN/1/rev.1 (1994).

[38] European Parliament and Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Official Journal L 281 of 23 November 1995.

[39] Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS Convention No 108).

[40] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

[41] A directive that relates to the use of data by criminal law enforcement authorities has also been adopted and will have to be transposed into national laws by 6 May 2018, but it will not be discussed here as the General Data Protection Regulation is more relevant in the present context.

be transposed into national legislation. Therefore, once the Regulation becomes applicable, the role of national data protection legislation diminishes in areas where the Regulation applies.

EU data protection law is discussed here on the basis of the Regulation, but most of what is said in relation to it applies also with respect to the Directive. Most importantly, neither the Directive nor the Regulation preclude the collection of equality data; they rather lay down principles that must be respected in all data collection. As the Regulation points out, the right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights.[42]

The Regulation defines 'personal data' as *any information* relating to an identified or identifiable natural person ('data subject').[43] Personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of genetic data, biometric data, data concerning health or data concerning a natural person's sex life or sexual orientation are considered sensitive data or, in the language of the Regulation, 'special categories of data'. 'Processing' is defined broadly and means any operation or set of operations which are performed on personal data, starting from the collection of the data and ending with their destruction.

The General Data Protection Regulation sets out a number of requirements which must be met when personal data are processed. Article 5, which lays down six qualitative data protection principles, is of fundamental importance and close attention must be paid to it in the planning and carrying out of any data collection. The six principles are the following:

1. Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency').

Firstly, all data processing must be carried out in accordance with the law. In order for processing to be lawful, personal data should be processed on the basis of the consent of the data subject concerned or some other legitimate basis, laid down by law, either in the Regulation or in other Union or Member State law.[44] Key conditions for lawfulness of data processing are set out in the same Regulation, namely in Article 6, in addition to which particular requirements are set out in Article 9 for sensitive data.

Secondly, all personal data must be processed fairly. The principle of fair processing governs primarily the relationship between the controller and the data subject. Controllers should inform data subjects before processing their data, at least about the purpose of processing and about the identity and address of the controller, unless specifically allowed by the law to do otherwise.[45] The principle of transparency requires that any information addressed to the public or to the data subject be concise, easily accessible and easy to understand, and that clear and plain language and, additionally, where appropriate, visualisation be used.[46]

2. Personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes ('purpose limitation').

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[42] Recital 4 of the Regulation.

[43] Article 4 of the Regulation. According to recital 26 of the Regulation, 'To determine whether a natural person is identifiable, account should be taken of all the means reasonably likely to be used, such as singling out, either by the controller or by another person to identify the natural person directly or indirectly.'

[44] Recital 40 of the Regulation.

[45] FRA, Council of Europe – European Court of Human Rights, *Handbook on European data protection law* (2014), p. 73; See also Bygrave, L. A. *Data protection law: Approaching its rationale, logic and limits*, The Hague: Kluwer, 2002, p. 58.

[46] Recital 58 of the Regulation.

The purpose limitation principle may be seen as a cluster of several principles:

- the purposes for which data are collected shall be specified;
- these purposes must be explicit, i.e. fully and clearly expressed;
- the purposes must be legitimate; and
- the purposes for which data are further processed shall not be incompatible with the purposes for which the data were first collected.

Further processing of data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes is explicitly allowed, provided that proper safeguards are in place in accordance with Article 89(1). Importantly, this means that statistical analysis of data which have been gathered for other, such as administrative, purposes is generally permissible. The opposite is not allowed: it is prohibited to use data which have been gathered solely for statistical purposes for decisions or measures in respect of particular individual(s). Such data, e.g. individual-level census data or survey data, cannot therefore be used for administrative, judicial, fiscal or any other such purposes.

3. Personal data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation').

The data minimisation principle specifies that *only those personal data may be collected that are necessary* to achieve the purposes of the data collection operation. In so far as doing so does not put the objectives of a particular operation in jeopardy or risk infringing the other data protection principles, the person or organisation in charge of the operation should opt for secondary rather than primary data collection,[47] anonymous rather than nominal surveys, sampling rather than full-scale surveys and for voluntary rather than compulsory surveys.[48]

4. Personal data shall be accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy').

All reasonable steps should be taken to ensure that the data are not factually misleading. This is particularly so where the data are used to make decisions with respect to specific individuals. While it is difficult to give guidelines as to when the data can be assumed to be accurate, it can be said that data which have been obtained directly from the data subject can in general be assumed to be accurate.

5. Personal data shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed (storage limitation).

The fifth principle is a logical corollary to the third. Both are directed at ensuring minimal personal data processing, the third principle covering the stage of data collection and the fifth covering the subsequent stages. Personal data are to be destroyed or rendered anonymous once they are no longer required for the purposes for which they have been kept. Where the design of a scientific or statistical project so requires, the necessary identification data may be retained, provided that specific, 'appropriate' domestic safeguards are in place.

6. Personal data shall be processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').

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[47] For an explanation of these terms, see Section 2.1. of this handbook.

[48] See also Council of Europe Recommendation No. R(97) 18 on the protection of personal data collected and processed for statistical purposes and the explanatory memorandum, p. 62.

The principles of integrity and confidentiality underline the fundamental importance of ensuring security of the personal data.

As laid down in the first principle of Article 5, all data processing must be lawful. Article 6 provides that processing shall be lawful only if and to the extent that at least one of the following applies:

- the data subject has given his or her consent to the processing;
- processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- processing is necessary for compliance with a legal obligation to which the controller is subject;
- the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; or
- processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

At least one of the above conditions must be met when an operation involves the processing of personal data. However, if the operation also involves the processing of sensitive data, as is often the case with the production of equality statistics, the more stringent conditions laid down in Article 9 must be met as well. Article 9 has been formulated in such a way that the first paragraph contains an in-principle prohibition on processing sensitive data, rather broad exceptions to which are then enumerated in the second paragraph:

> **Article 9 Processing of special categories of personal data**
> 1. Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.
>
> 2. Paragraph 1 shall not apply if one of the following applies:
> (a) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject;
> (b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union or Member State law or a collective agreement pursuant to Member State law providing for appropriate safeguards for the fundamental rights and the interests of the data subject;
> (c) processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;
> (d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects;
> (e) processing relates to personal data which are manifestly made public by the data subject;
> (f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity;
> (g) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;

> (h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 3;
> (i) processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of healthcare and of medicinal products or medical devices, on the basis of Union or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy;
> (j) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

It is sufficient for a data processing operation to satisfy one of the conditions enumerated in paragraph 2. Subparagraphs b, f and j on the processing of sensitive data in the contexts of employment law and legal proceedings as well as for statistical purposes are important for the compilation and use of equality data. However, it is subparagraph a on the consent of the data subject which is likely to become the most frequently used basis for processing sensitive data. Conditions for consent are laid down in Article 7 of the Regulation. The Regulation leaves it to each Member State to decide whether it considers that the granting of consent constitutes a sufficient condition for justifying the processing of sensitive data.[49]

The General Data Protection Regulation lays down a number of other important provisions as well, for example in relation to the rights of the data subject (Chapter III) and independent supervisory authorities (Chapter VI). There are data protection commissioners or other supervisory authorities in all Member States of the European Union.[50]

Further guidance on data protection issues is provided, for instance, by the Council of Europe Recommendation No. R(97) 18 concerning the protection of personal data collected and processed for statistical purposes.

### *1.4.4 Statistical ethics*

Statisticians have obligations to the data subjects, customers, funders and society at large. These stakeholders often have diverging or even conflicting interests. Statistical agencies operate in a very challenging environment as many of the topics on which they produce information are highly politicised and different groups have vested interests in the outcomes of their work. Increased demand for information and the availability of easy-to-use information technology have attracted new players to the information industry. While competition may increase cost-efficiency this may come at a cost to the reliability of the information, the appropriateness of data collection methods, the security of data and, in extreme cases, also the impartiality of the work carried out. While the law regulates many of these aspects, the applicable legal standards tend to be generally formulated with little or no case law to offer help in clarifying their exact meaning in practice. These background factors underline the significance of ethical guidelines in the area of statistics. Ethical guidelines complement legal standards, clarify their meaning in practice and help statisticians and researchers to maintain high standards of scientific integrity and quality.

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[49] The Regulation provides a margin of manoeuvre for Member States to specify its rules, including for the processing of special categories of personal data ('sensitive data'). To that extent, the Regulation does not exclude Member State law that sets out the circumstances for specific processing situations, including determining more precisely the conditions under which the processing of personal data is lawful. Recital 10 of the Regulation.

[50] For a list of these authorities, see: http://ec.europa.eu/justice/data-protection/article-29/structure/data-protection-authorities/index_en.htm (accessed 28 June 2016).

Several guidelines containing a set of principles which aim to secure the quality of statistics have been promulgated at the international level. In 2010 the International Statistical Institute (ISI) adopted the Declaration on Professional Ethics. The Declaration proclaims shared professional values, which are respect (e.g. for privacy), professionalism, truthfulness and integrity. It also enumerates a number of ethical principles, one of which is protection of the interests of the subjects. In this context the Declaration proclaims that, 'statisticians are obligated to protect subjects, individually and collectively, insofar as possible, against potentially harmful effects of participating. This responsibility is not absolved by consent or by the legal requirement to participate.'

In 2013 the UN Economic and Social Council, on the recommendation of the Statistical Commission, adopted a set of 10 fundamental principles for official statistics.[51] These principles provide, inter alia, that:

- To retain trust in official statistics, the statistical agencies need to decide according to strictly professional considerations, including scientific principles and professional ethics, on the methods and procedures for the collection, processing, storage and presentation of statistical data.
- Data for statistical purposes may be drawn from all types of sources, be they statistical surveys or administrative records. Statistical agencies are to choose the source with regard to quality, timeliness, costs and the burden on respondents.
- Individual data collected by statistical agencies for statistical compilation, whether they refer to natural or legal persons, are to be strictly confidential and used exclusively for statistical purposes.
- The use by statistical agencies in each country of international concepts, classifications and methods promotes the consistency and efficiency of statistical systems at all official levels.

It should also be noted that a wide range of other ethical guidelines have been formulated. They usually have a rather more limited scope of application, in that they are applicable in a particular branch of science.

## 1.5 Key issues

### *Equality data legislation*

- Hardly any specific equality data collection legislation has emerged in the EU Member States. The collection, processing and use of equality data is generally regulated by a combination of anti-discrimination and data protection legislation.
- Legal obligations to collect data remain limited in almost all EU Member States to duties of equality bodies to monitor (in)equality and to publish research/reports on the prevalence of discrimination. Exceptions are the United Kingdom and Ireland, which require all public bodies to promote equal opportunities on all protected discrimination grounds, which is interpreted to require data collection on all discrimination grounds to demonstrate compliance.
- Another exception relates to the field of employment: a specific duty now exists in a large number of EU Member States for employers to collect data on the number of employees with disabilities for the purpose of demonstrating compliance with legally imposed quotas. A wider obligation exists in Austria where employers have to provide comparative overviews of labour conditions according to the discrimination grounds.

### *Protection against collection of sensitive data*

- The prohibition against collecting and processing sensitive data, covering several grounds of discrimination with the exception of age, is regulated in the EU Member States by legislation transposing the EU Data Protection Directive (95/46/EC). Exceptions to this prohibition are based on the specific situations where the Directive allows collection and processing of sensitive data. The United Kingdom Data Protection Act

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[51] UN Economic and Social Council, E/RES/2013/21.

1998 provides a wider exception by explicitly permitting collection of sensitive data in relation to equal opportunities policies.

# 2. Planning and organising the collection of equality data

## 2.1 Introduction to the sources of data

There are different types of data sources, based on different data collection mechanisms, that can be used to compile equality statistics. A distinction must be made between the sources of data and the methods by which the data can be analysed. A single data set can be analysed by means of a number of methods. For example, justice system data can be a source for both quantitative yearly statistics on reported crime as well as a source for qualitative analysis of such crime. A study can either rely on pre-existing data (in which case so-called *secondary data collection* is engaged in) or on data that has been specifically collected for that particular study (*primary data collection*).

Data can be collected by the following means in particular:

- Surveys. Survey data can be collected by means of questionnaires and interviews for the purposes of compiling statistics and/or for conducting qualitative and quantitative research. A census is a survey that covers the entire given population, whereas a sample survey covers only a part of the population.
- Administrative processes. Data are collected in the course of many of the functions carried out by the administration. Whenever a person, for instance, applies for social benefits, registers with an employment office, enrols in an educational institution, notifies the authorities of a change of address, or files a crime report with the police, the related data are usually collected and stored in the files kept by the authority concerned. These files can be analysed by means of statistical methods to reveal irregularities that are possibly due to discrimination.
- Observation. Observation can, in theory, provide data that are of high validity, but such data are often difficult to obtain in practice. Discrimination is a widespread but often subtle phenomenon that is usually not practised openly, which makes its direct observation an impracticable method for gathering data about it, except in two situations:
  - Discrimination can be observed through controlled experiments, such as discrimination testing.
  - Enforcement agencies or researchers, for example, can conduct on-site investigations to observe, for instance, the ethnic composition of a workplace or a school, in order to reveal possible over- or under-representation.[52]

The usefulness, for the purposes of contributing to the building of a national knowledge base on discrimination, of the different ways (different sources, different methods of analysis) in which equality data can be produced can be assessed across four factors:

- Reliability. A measure of discrimination is reliable to the extent to which the measuring procedure yields the same results in repeated trials. No measure is absolutely reliable; reliability is therefore always a matter of degree.
- Validity. A measure of discrimination is valid to the extent that it really measures discrimination and nothing else. There are no perfectly valid measures, but some measures are more valid than others.
- Scope. Some procedures are of wider applicability than others, with respect to: measuring various types of discrimination (direct and indirect discrimination; harassment); discrimination in various areas of life; and across the different grounds of discrimination.
- Cost-effectiveness. A useful procedure must in practice also be viable in terms of its financial implications.

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[52] For some examples of this see Makkonen, T., *Measuring discrimination: Data collection and EU equality law*. Network of Independent Experts in the non-discrimination field, Luxembourg: Office for Official Publications of the European Communities, 2007.

The main sources of equality data are introduced and assessed below, in part in the light of the above-mentioned criteria. Sections 3-8 of the handbook will elaborate upon the practical aspects involved in the collection of data through these mechanisms

### 2.1.1 *Official surveys, censuses and administrative registers*

Official statistics are, by definition, produced by government agencies, and form an integral part of society's infrastructure.[53] These statistics typically provide population-wide information in relation to such core areas of interest as employment, education, income, standard of living, health and wealth. There are three main sources of official statistics:

– population census (henceforth referred to as census);[54]
– administrative registers,[55] (for instance employment exchange service data that can be used to compile employment statistics); and
– official surveys, usually sample surveys.

A series of equality statistics can be compiled on the basis of these official data sources insofar as the pertinent variables relating to the equality grounds are collected alongside the other data. Currently, the collection and/or use of such data is not very common in Europe. Integrating equality concerns into official statistical programmes would carry many benefits. As the data are collected, processed and published by a government agency, many problems, such as the otherwise ever-present need to secure sufficient funding, are solved. The use of periodically repeated data collection instruments allows for the steady development of longitudinal data, enabling trend analysis. Moreover, the fact that equality data are collected and released by a government agency can enhance the public's confidence in the results so obtained and in general help to convey the message that inequality amounts to a major social concern.

Socio-economic statistics can typically function as kind-of indicators: they pinpoint differences in outcomes but do not explain them. As such they don't directly measure discrimination. To make the most of these data sources they need to be subjected to more robust statistical analyses, something that may often not be possible in the course of the day-to-day operations carried out by national statistical agencies. A range of methods is available for analysing the data. These include, in particular, various types of multivariate analyses which seek to measure the impact of discrimination by controlling a range of variables which can be assumed to affect the outcomes. For instance, numerous studies based on wage regression analyses have made important findings in relation to wage inequalities.[56] It is therefore important that official data sets can be used for studies employing scientifically ambitious research methods in the context of specialised studies carried out by the national statistical agency or some other institution or researcher. To facilitate this, mechanisms should be in place by which members of the scientific community can gain access to raw data gathered by national statistical agencies.

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[53] Official statistics can be defined as 'all statistics compiled by state authorities for public use'. They are 'public goods': their production is the responsibility of the public sector and they are funded by tax revenues.

[54] The concept of 'census' is used in this handbook in its original meaning, i.e. as referring to a particular type of data collection. Population censuses are, as a rule, conducted together with housing censuses, but the latter are not dealt with in this handbook.

[55] For the purposes of this handbook the following terminology has been adopted: 'administrative records' refer to any data collected by the public authorities primarily for some other purpose than the production of statistics; 'administrative registers' refer to that subset of administrative records which contains personal data.

[56] See e.g. Baldwin, M. L. and Johnson, W. G. 'The employment effects of wage discrimination against black men' in *Industrial and labor relations review*, Vol. 49, No 2 (January 1996), p. 302-316; Steen, T. P. 'Religion and earnings: evidence from the NLS Youth Cohort' in *International journal of social economics,* Vol. 23 No 1 (1996), pp 47-58; Black, D. A. et al, 'The earnings effect of sexual orientation' in *Industrial and labor relations review*, Vol. 56(3) (2003), pp. 449-469.

### 2.1.2 Complaints data

Another type of baseline data on discrimination is provided by what may be called 'complaints data'. Complaints data are generated as a by-product of the work carried out by those bodies which, in one way or another, handle discrimination complaints. Complaints data typically include information on the numbers and types of complaints filed with a particular body within a particular timeframe, typically a year. Other data may also be available, such as aggregate profiles of offenders/respondents and complainants, broken down by variables such as age and gender.

The primary source of complaints data is the justice system.[57] Such sources of data include tribunals, regular and specialised courts and specialised bodies such as equality bodies and ombudsmen. In those countries where discrimination is a criminal offence, complaints data can also be compiled on the basis of police crime report registers and prosecution registers. Data may also be available on offences which have a discriminatory motive which constitutes an aggravating factor. Importantly, EU Member States are under an obligation to communicate to the Commission all available data showing how victims have accessed the rights set out in the Directive establishing minimum standards on the rights, support and protection of victims of crime.[58] That data can include data recorded by the judicial authorities and by law enforcement agencies.[59]

Data on complaints, in the broad sense of the notion, may also be available through the work of bodies other than public authorities. Many, typically non-profit non-governmental organisations, provide direct services to victims of discrimination. Some organisations have set up telephone hotlines or other means by which they provide advice and assistance to victims of discrimination. These organisations usually keep records of the cases which are reported to them and of the course of action taken. The advantage of such organisations is that they are often locally-based and are easily accessible, meaning that there is a low threshold for contacting them.

As useful as statistics on complaints are for some purposes, particularly for highlighting the nature of reported discrimination, they constitute poor indicators of actual levels of discrimination. Cases which are reported to the police or taken to the courts constitute but a small fraction of all discrimination – exactly how small is difficult to estimate unless some other data are available, such as victim survey data.[60] It is also sometimes falsely believed that a low number of complaints indicates low levels of discrimination. Experience suggests that a low number of cases may also be associated with the existence of obstacles in access to justice, reflecting, for example, difficulties in obtaining necessary evidence or a belief on the part of the victims that the justice system does not provide for a meaningful remedy.

### 2.1.3 Research

Several types of research methods are available for the purposes of studying inequalities. These include the following.

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[57] Justice system files are another form of administrative register data. However, since complaints data differ in content from the other types of official data and as under the present classification system some of the complaints data emanate from activities other than those of public bodies, 'complaints data' was made a category of its own instead of incorporating it under 'administrative data'.

[58] Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, Article 28.

[59] Recital 64 of the Directive.

[60] One study, which was conducted by the former European Monitoring Centre on Racism and Xenophobia (EUMC) and which covered 12 European countries, found that, on average, only 14% of those who reported having experienced ethnic discrimination had reported the incidents to the competent authorities. Significant differences were found between countries in the propensity to report, being as 'high' as 37% in the UK and as low as 1% in Spain. EUMC, *Migrants' experiences of racism and xenophobia in 12 EU Member States*. Pilot Study, May 2006.

*Victim surveys.* Victim surveys[61] refer to studies, the purpose of which is, as the name suggests, gathering information on the experiences of people at particular risk of discrimination. Victim surveys provide a good overview of the extent, nature and effects of discrimination, as experienced by the people concerned. Surveys can provide detailed information, such as information relating to the experienced obstacles in access to justice and the effects, psychological and other, of discrimination. While victim surveys can be instrumental in assessing the dark figure of discrimination, it should be emphasised that victim surveys can measure only the subjective experiences of the respondents: the actual prevalence of discrimination may be higher than indicated by the responses, as the respondents may not always be aware of having been discriminated against; on the other hand, the prevalence of discrimination may be lower than indicated by the responses, as individuals may sometimes erroneously attribute a negative event to discrimination even if discrimination played no part in it. In any case, results from victim surveys can provide highly important insights into the operation of discrimination.

*Self-report surveys.*[62] Self-report surveys focus on the attitudes, opinions and/or behaviour of respondents. These surveys are usually directed at the general public or a specific group, such as employers. In the context of measuring discrimination, attitude surveys are typically used to map out the prevalence and type of prejudices and stereotypes within a specific population. These surveys can target the population at large at a local or national level or a more specific group, such as a specific occupational group. Attitude surveys, when conducted at regular intervals, give information on changes in attitudes and can thus function as an early warning system. While there is no straightforward correspondence between negative attitudes and discriminatory behaviour at an individual level, increased social acceptability of prejudices signals a danger of increasing levels of discrimination in society in general, which provides a sufficient rationale for conducting such surveys. Surveys can also set out to inquire about behaviour and practices which are questionable from the point of view of equal treatment. While people may be reluctant to report such behaviours (the same applies to negative attitudes), they are more likely to do so if their responses remain fully confidential, which can be achieved by means of using appropriate modes of data collection.

*Discrimination testing.* Testing is a form of social experiment in a real-life situation. In discrimination testing, two or more individuals are matched for all relevant characteristics except for the one which is expected to lead to discrimination, e.g. disability or ethnic origin. The testers apply, for instance, for a job or an apartment, usually on numerous different occasions, and the outcomes and the treatment they receive are closely monitored. The method was originally developed as a tool for checking compliance with the law and may be used as a means of evaluating the effectiveness of anti-discrimination legislation.[63]

The discrimination testing method has been applied in many different contexts, such as access to employment, housing and other kinds of goods and services. Despite its robust nature in exposing discrimination, it does have its limitations: some of these are inherent, such as that it cannot be used to study discrimination beyond a certain stage – for example, it can be used to study the first stages in access to employment but not necessarily the subsequent stages, and it cannot be used at all to study differences in wages, progression or redundancy.

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[61] The notion of the 'survey' refers to studies which gather information on the experiences, habits, opinions, attitudes and/or social and economic situation of a group of people. Victim surveys and self-report surveys constitute perhaps the most important survey types from the point of view of collecting data in relation to discrimination.

[62] Sometimes these surveys are called 'self-report offending surveys', 'self-report perpetrator surveys' or 'self-report delinquency surveys' because victim surveys are also, in a sense, self-report surveys. The kinds of self-report surveys described here, however, do not only deal with criminal behaviour, which is why the more general label of 'self-report surveys' is preferred in this handbook.

[63] Larja, L. et al, *Discrimination in the Finnish Labor Market – An overview and a field experiment on recruitment (Publications of the Ministry of Employment and the Economy 16/2012);* Fix, M. and Turner, M. 'Testing for discrimination: The case for a National Report Card' *Civil rights journal*, Fall 1999; Colectivo IOE, *Labour market discrimination against migrant workers in Spain*, International Migration Papers 9, Geneva: International Labour Office, 1995.

There has also been some debate over the ethical acceptability of the method, but the conclusion appears warranted that there are no major problems in this respect, especially insofar as minimal inconvenience is caused to those involved in the study.[64]

*Other types of research*. A considerable number of other research methods are available for the purposes of studying inequalities. These include several qualitative research strategies, such as in-depth interviews, themed interviews and case studies. Qualitative analyses can provide important insights into and unique perspectives on the victims, perpetrators and circumstances of discriminatory events, the historical and social contexts of these events and, more particularly, the motives and other reasons behind the events. Qualitative research is an essential companion to quantitative research; it brings the analysis from the macro-level to the micro-level and helps to see the people behind the numbers. Qualitative research methods are an essential part of any research programme which aims to study discrimination, but they are even more important in studying such types and forms of discrimination which are difficult to study by means of more quantitatively oriented research.

Overall, the different forms of research constitute indispensable tools for examining the causes, extent and effects of discrimination with any precision. They have all been used for several decades, meaning that the related methodologies are already well-developed and refined, and they have been applied with respect to all grounds of discrimination focused upon in this handbook. Furthermore, they have been used to study discrimination in many areas of life. Victim surveys and discrimination testing, in particular, have been found to constitute effective means for measuring the prevalence of discrimination, while qualitative research methods have proved to provide important insights into the causes, nature and effects of discrimination. However, research projects are all too often 'one-off' exercises, meaning that the use of these methods needs to be systematised in order to obtain information that is up-to-date and capable of showing trends.

### *2.1.4 Diversity monitoring*

Diversity monitoring refers to the process by which an organisation observes the impact of its policies and practices on the equality groups. A distinction can be made between quantitative and qualitative monitoring. Quantitative monitoring refers to situations where an organisation collects data on the make-up of its workforce e.g. in terms of age and/or ethnic origin, in order to identify any imbalances in the composition of the workforce, whereas qualitative monitoring refers to less systematic forms of feedback. Workforce monitoring, especially if required by law (so that the data are systematically collected) and insofar as the resultant aggregate data are transmitted to a competent body (such as an enforcement agency), can provide data that describe not only existing imbalances within individual workplaces but also inequalities within society in general.

### *2.1.5 Data sources and the equality grounds*

Many, if not all, of the above-described data sources can, at least in theory, be used for the purposes of compiling equality statistics with respect to all of the equality grounds considered in this handbook, namely racial and ethnic origin, religion and belief, age, disability, sexual orientation and gender identity. For example, attitude surveys targeting the general population can pose questions which are useful for analysing attitudes and opinions towards all equality groups. It is also possible to conduct discrimination testing to observe discrimination against the members of any of these groups, and no difficulties should be involved in obtaining at least some complaints data with respect to all groups.

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[64] For a discussion of this topic, see e.g. Larja, L. et al, *Discrimination in the Finnish Labor Market – An overview and a field experiment on recruitment (Publications of the Ministry of Employment and the Economy 16/2012)* and the sources referred to therein.

However, the situation is much more complicated with respect to those data sources the use of which – for the purposes of equality statistics – requires the individuals concerned to disclose information about their ethnic or racial origin, religion or belief, disability, sexual orientation and/or gender identity. This is the case especially with census data, administrative data and monitoring data. Carrying out victim surveys based on random sampling, while not generally requiring respondents to disclose sensitive data, is in practice dependent on the existence of some data file (a so-called sampling frame) which contains contact details for people belonging to these groups, meaning that the data must have been collected at some earlier point in time.[65]

The argument can well be made that under international human rights law no-one can, as a matter of principle, be obliged to disclose sensitive information. Most data collection operations should therefore be based on voluntary cooperation of the individuals concerned, which together with the fact that many people feel uncomfortable about disclosing sensitive information means that sometimes it may not be possible to obtain a fully representative set of data even if a data collection operation is embarked on. It should, however, not be presumed that people would in general be unfavourably disposed towards disclosure of sensitive data, especially where this is linked with the purpose of securing equality of treatment. Indeed, Europeans are generally favourably disposed towards collecting equality data, with approximately two thirds expressing support for providing personal details on an anonymous basis, if that could help to combat discrimination.[66] There are plenty of examples from the EU Member States of collection of data on racial or ethnic origin, religion and belief, age, disability, sexual orientation and gender identity, through censuses, administrative registers and/or surveys. Some of these examples are highlighted in this report. Practical experience from many countries has also shown that, while many people may initially hold reservations about the collection of sensitive data, acceptance tends to grow as time goes by and people start to realise the benefits involved.

Much depends on national sensitivities, and the sensitivities of the equality groups, and these sensitivities change. As the sensitivities involved are different in different countries, this handbook has not tried to pre-empt the choices which need to be made at the national level, by excluding in advance the applicability of any one of the methods with respect to any of the discrimination grounds. However, it is likely that solutions adopted in the different Member States will be different, with some states going further than others. The use of various kinds of qualitative research approaches is recommended where quantitative data based on sensitive information cannot be obtained. It is also acknowledged that pioneering work still needs to be carried out to adapt some of the methods of data collection and analysis, as discussed in this handbook, so as to better suit the studying of discrimination based on particular grounds.

## 2.2 Definitions, classifications and categorisation

### *2.2.1 Introduction*

Human beings differ from each other across a range of attributes such as age, sex, ethnic origin, culture, language, religion, sexual orientation, health and disability. People use these attributes as a basis of social organisation and to categorise themselves and others into groups. The resulting groups are internally heterogeneous, divided as they necessarily are across the other attributes.

A key issue is that concepts relating to socially relevant distinctions, such as ‘ethnicity’, ‘disability’ and ‘gender’, while they refer to real-world phenomena, are social constructs and therefore do not have a single, self-evident meaning. While these concepts are used in everyday speech in a taken-for-granted manner, their exact meanings are seldom elaborated let alone spelled out. Sometimes legally relevant

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[65] In the absence of a proper sampling frame, techniques other than random sampling techniques can be used, although this means that the results may not be representative of the whole target group.

[66] European Commission, *Special Eurobarometer 437 on Discrimination in the EU in 2015*, 2015.

definitions have been laid down in law or elaborated by judicial bodies, but usually such definitions are applicable only in a particular context.

All of this can undermine any collection of data around these issues. If people understand the key concepts differently and use different criteria by which they categorise themselves and others into groups, then this can have a direct impact on the reliability and validity of the data.

It is therefore necessary to examine three issues:

- Definitions. What is meant by terms such as ‘disability’?
- Classifications. How should data be grouped so that the compiled statistics produce a structured and understandable picture of reality? Of which subgroups is a single category, such as ‘people with disabilities’, composed?
- Categorisation. By what criteria should a person be assigned to one of the available categories? Should this take place on the basis of self-identification by the person concerned, on the basis of some objective criteria or on the basis, for example, of recognition by other members of the group?

### *2.2.2 Definitions*

It is, in theory, possible to formulate a definition of a particular concept, such as ‘ethnic origin’ or ‘disability’ and, indeed, definitions are often developed for the purposes of administration or law. The resulting concepts are conventions, results of a process of negotiation and there can be multiple – equally valid – definitions of a single concept that apply in different circumstances.

The EU Equality Directives do not define ‘racial origin’, ‘ethnic origin’, ‘disability’, ‘religion’, ‘belief’, ‘age’, ‘sexual orientation’ or ‘gender identity’, although the Court of Justice of the European Union has generated important case-law with regard to the interpretation of the concept of disability in particular.[67] There are no generally accepted definitions of these concepts in the field of international law either. Some countries have adopted domestically applicable definitions of some of these concepts, for instance for the purposes of determining eligibility for certain benefits or for the purposes of determining the scope of people who are protected by anti-discrimination laws. These definitions, especially when they are applicable in the field of anti-discrimination law, should be taken into account in any data collection.

There are some interrelated principles that apply to the adoption of definitions. First of all, definitions should be based on the recognition of factual diversity within the population, meaning that states’ freedom of appreciation is limited in this respect and that a definition cannot hinge on political considerations. This principle was embodied in a 1935 decision of the Permanent Court of International Justice, where the Court famously stated that the existence of ethnic minorities is a matter of fact, not of law.[68] The same principle has been reiterated by the UN Human Rights Committee, which has asserted that ‘[t]he existence of an ethnic, religious or linguistic minority in a given State party does not depend upon a decision by that State party but requires to be established by *objective criteria*.’[69] Secondly, the terms involved are not to be narrowly construed. This has been explicitly pointed out by the UN Human Rights Committee in relation to religion and culture (culture being closely associated with ethnicity), but the underlying logic arguably applies to the other grounds as well and is supported by the general principles of interpretation

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[67] See e.g. European Court of Justice, *HK Danmark* (joined cases C-335/11 and C-337/11).

[68] Permanent Court of International Justice, *Minority schools in Albania*, Ser. A/B, No 64, 17, 1935.

[69] United Nations, *Compilation of general comments and general recommendations adopted by human rights treaty bodies*, General Comment 23, HRI/GEN/1/Rev.7 (12 May 2004) paragraph 5.2., emphasis added.

of international human rights law.[70] Thirdly, the definition must not be such that it excludes certain groups without an acceptable justification, as this may lead to unlawful discrimination.[71]

### *2.2.3 Classifications*

While there are no general, internationally accepted definitions of the key concepts, some classification standards have been worked out at the international level, mainly because this is necessary for the purposes of enhancing international comparability of statistics. These classification standards are recommendations in nature and, as such, not legally binding upon states, but they should be used whenever possible. They are the result of a negotiation process, reflect social and political circumstances and are subject to change over time. The standards endorsed by the Conference of European Statisticians (CES), which carry a considerable amount of authority in Europe, are discussed in Section 3.2 of this handbook.

The following basic principles should guide the development and use of classifications:

- The same, or mutually compatible, classifications should be employed across different data collection exercises to facilitate cross-referencing and comparability between different data sources. For example, categories used in victim surveys or in workplace monitoring should be the same as the categories used in the national population census, as this ensures that census data can be used as a benchmark against which the results of other data collection activities can be compared.
- Categories should be kept stable from one data collection exercise to the next, in so far as possible, to facilitate the development of a time-series; any modifications which are made to an existing classification system should take into account the need to keep the categories 'backwards compatible', if possible.
- Categories should reflect people's self-perceptions, as this is often a precondition for securing the cooperation of the individuals concerned. It is advisable to conduct pilot tests to assess the acceptability and usefulness of the proposed categorisations.
- The available categories should be clear, well-defined and mutually exclusive, so as not to be susceptible to misunderstandings or divergent interpretations.
- Detailed classification systems should be used, as the more detailed the classification system, the more detailed the information that can be derived, as smaller divisions can then be taken into account. The use of broad categories hides internal diversity, which means that it is not advisable simply to compare people with disabilities with those without, or ethnic minorities as a single group against the ethnic majority. In addition, all data should be disaggregated at least by gender and age in order to take into account multiple discrimination or 'confounding variables'. Those developing categorisation systems should, however, be cognisant of the possible existence of a trade-off between having an easily manageable number of variables, which may be a desirable option in terms of both time and cost, and with having a greater number of variables which enables more robust and refined analysis.

### *2.2.4 Categorisation*

There are a number of practices which are used in order to place people in the most appropriate category:

- Self-categorisation (self-identification) by the person concerned. Under this approach, the person concerned identifies their ethnic origin, religion, possible disabilities, age, sexual orientation and/or gender identity. One variant of this approach is what is sometimes called auto-hetero perception,

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[70] United Nations, *Compilation of general comments and general recommendations adopted by human rights treaty bodies,* General recommendation on Article 18, HRI/GEN/1/rev. 1, 29 July 1994. While the exact content of the general principles of interpretation of international human rights law is subject to some debate, it is generally accepted that as a matter of principle rights are to be construed broadly and exceptions thereto narrowly, meaning also that the terms in which a right has been construed shall in general be interpreted broadly rather than narrowly.

[71] Cf. CERD Committee, Fifty-fifth session (1999). *General recommendation XXIV concerning Article 1 of the Convention*, paragraphs 2 and 3.

whereby the person concerned indicate their estimation of which groups other people are likely to associate them with.

- Third-party categorisation. Under this approach another person, such as a representative of the employer, a police officer or some other authority, does the categorisation:
  - on the basis of a visual observation of the person concerned (applicable mainly with respect to racial or ethnic origin);
  - on the basis of some other cue which is related to the apparent status of the person concerned (such as name or place of birth for ethnic origin);
  - on the basis of knowledge in possession of another person. This applies mainly in the context of a census or some other official survey where a family member provides information on behalf of a person who is not available at that time.
- Mutual recognition by members of the group. This approach is sometimes used to identify members of distinct ethnic groups, such as members of indigenous peoples.

Third-party categorisation has in the past been used in some circumstances, particularly in police work and workforce monitoring, where the posing of sensitive questions has not been deemed appropriate or practical. The use of the self-categorisation method has gained popularity over the years and now appears to be by far the most common basis for categorisation. It is also more in line with the relevant principles of international human rights law:

- It is arguably in line with the underlying values of human rights, the first of which is human dignity, and the requirements of the right to respect for information relating to private life.
- It meets the requirements posed by data protection principles requiring that all data collection must be fair and the collected data accurate and relevant.
- The UN CERD Committee has explicitly opined in the context of ethnicity that ‘identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned’.[72] The same principle has also been endorsed by the European Commission against Racism and Intolerance (ECRI)[73] and the Conference of European Statisticians and has explicitly been embraced by some national jurisdictions.[74]

Even though there are thus good reasons to endorse the use of self-categorisation and even though it is in principle preferable to use the same categorisation method across the different data collection activities (considering that census data and survey data are usually based on self-categorisation), it should be pointed out that there may be some situations where the use of some other method than self-categorisation may need to be considered. This is particularly the case where the use of the self-categorisation approach leads to incomplete or inaccurate data.[75]

Another factor which should be taken into account is that under international law no-one can, as a rule, be obliged to disclose their religion or ethnic origin. The Framework Convention for the Protection of National Minorities recognises in Article 3(1) that ‘[e]very person belonging to a national minority shall have the

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[72] United Nations, *Compilation of general comments and general recommendations adopted by human rights treaty bodies,* General recommendation VIII, HRI/GEN/1/Rev.7, 12 May 2004.

[73] Gachet, I. ‘The issue of ethnic data collection from the perspective of some Council of Europe activities’ in Krizsán, A. and Székely, I. (eds.), *Ethnic monitoring and data protection: The European context*, Budapest: Central European University Press, 2001, p. 54.

[74] This is the case e.g. in Hungary. Krizsán, A. ‘Ethnic monitoring and data protection: The case of Hungary’ in Krizsán, A. (ed.), *Ethnic monitoring and data protection*, Budapest: CPS Books, 2001, p. 159.

[75] In some situations, for instance in the context of employment or the justice system, many individuals may be reluctant to disclose e.g. their ethnic origin and choose to identify themselves as members of the majority instead or choose the ‘would rather not say’ option. This results in the data being incomplete and/or inaccurate, which is why the use of other methods may need to be considered. It should also be noted that intentional discrimination is based not on how the person concerned sees themselves (self-identification), but on how others perceive them. This is another reason why the use of third-party classification, in the case of ethnic origin, may sometimes be effective in identifying individuals who are at a particular risk of being discriminated against, and why the use of this method should not be completely ruled out.

right to choose to be treated or not to be treated as such'.[76] This has been interpreted as implying that everyone shall be entitled to request not to be treated as belonging to a minority[77] and that no-one may be obliged to disclose their affiliation to a minority.[78] The UN Human Rights Committee has confirmed that no-one can be compelled to reveal their thoughts or adherence to a religion or belief.[79] It is likely that the same principle also applies with respect to other sensitive information, in relation to sexual orientation in particular.

## 2.3 Ensuring the quality of data

Collection of data in relation to discrimination is beset with the methodological challenges relating to data collection in general as well as particular problems associated with measuring a phenomenon that can be both subtle and complex and constitutes socially-unacceptable behaviour. These issues include sampling problems, lack of generally accepted and applied definitions, difficulties associated with asking sensitive questions and possible over- and under-reporting.[80] Advances made in statistical science over the years have helped to overcome or minimise the effect of many of these challenges, although more work on the methodological front is still needed.

This section provides an overview of some of the most important aspects involved in collecting data through surveys in particular. Its purpose is to give, for those who are not specialists in the area of statistics, the information needed to follow the subsequent sections. A number of comprehensive textbooks on statistics and data collection are available, providing for a fuller account of these issues and readers should turn to them for more in-depth advice if necessary.

### *2.3.1 Sampling*

Because of the costs involved most surveys cannot cover each and every member of the target population (i.e. the group under study), but are based on surveys of samples instead. Broadly put, the purpose of sample surveys is to achieve, in a cost-effective way, end results that apply, through generalisation, to the whole target population. The generalisability of the results requires the use of the correct sampling frame for the data collection, the notion of 'sampling frame' referring to those members of the target population who can be reached. After the construction of the sampling frame a number of techniques can be applied to select those individuals or households, represented in the sampling frame, which will be surveyed.[81]

General sample-based population surveys, even large-scale ones, tend to be too small for the results to be representative of particular subpopulations, such as the equality groups. In some cases, so-called boosters may be added to the sample in order to increase the number of individuals who belong to the specific target group. Members of the equality groups – particular ethnic groups, religious groups, people with disabilities or LGBT groups[82] – are, however, often hard to identify for the purposes of booster samples or surveys which are targeted specifically at them, as there are often no comprehensive files with their

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[76] The OSCE Copenhagen document of 1990 provides for a related right in Article 32: 'To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice.'

[77] See Opinion of the Advisory Committee on the Framework Convention on Cyprus, 6 April 2001, ACFC/OP/I(2002)004, paragraph 18.

[78] See Opinion of the Advisory Committee on the Framework Convention on Azerbaijan, 22 May 2003, ACFC/OP/I(2004)001, paragraph 21 and Opinion on Ukraine, 1 March 2002, ACFC/OP/I(2002)010, paragraph 22.

[79] United Nations, *Compilation of general comments and general recommendations adopted by human rights treaty bodies,* General Comment 22, paragraph 3 HRI/GEN/1/rev. 1, 29 July 1994.

[80] Cf. Pepper, J. V. and Petrie, C. V. 'Overview' in National Research Council, *Measurement issues in criminal justice research: Workshop summary*. Committee on Law and Justice and Committee on National Statistics, Division of Behavioral and Social Sciences and Education, Washington, DC: The National Academies Press, 2003. See also Bulmer, M. (ed.), *Censuses, surveys and privacy*, London: McMillan, 1979.

[81] These methods include random sampling, cluster sampling, stratified sampling, systematic random sampling and probabilities proportional to size-sampling. Statistics Finland: *Quality guidelines for official statistics*. Available at www.stat.fi/tk/tt/laatuatilastoissa/cont_en.html (last accessed 28 June 2016).

[82] The term 'LGBT groups' is shorthand for lesbian, gay, bisexual and transgender groups.

contact information which could be used as the sampling frame.[83] Other methods for selecting members of the equality groups for surveys may therefore need to be devised. Methods often used include reaching people through associations or other organisations that represent or provide services to them.[84]

Other ways exist to address the challenge of statistical significance in sample surveys. For example, some categories can be grouped together in order to achieve representativity. Another way would be to aggregate data from successive surveys, if the surveys are conducted within a small enough timeframe.

While the use of these methods necessarily has a negative effect on the generalisability or precision of the results, this is the price that sometimes must be paid because optimum research protocols cannot be used.

### *2.3.2 Data collection methods*

There is a wide range of different types of surveys and ways in which they can be classified. First of all, we can distinguish between specialised surveys and multi-subject surveys. Specialised surveys focus on a single subject area, allowing for a deeper probing of that area, whereas multi-subject surveys cover several subject areas in a single survey and can therefore be cost-effective. Some surveys are one-off, whereas others are repeated and hence surveys can be:

- cross-sectional surveys: this concept refers to studies where data is collected only once;
- longitudinal surveys: these collect data from the same target group over a period of time and can therefore measure changes in the sample population.
  - panel surveys are a special type of longitudinal survey. In panel surveys the same individuals – the panel – are followed over a specific period of time;
- multi-phase surveys: these entail collecting statistical information in succeeding phases with one phase serving as a precursor to the next. The initial phase can be used to screen respondents with particular characteristics, such as people with disabilities, who are then surveyed in the subsequent phases.[85]

Surveys also differ in terms of the way they are implemented. There are two factors which are particularly important in this context:

1 The mode of administration of data collections.
  There are two basic administration modes:
  a. Interviewer-administration, where interviewers read out the questions and mark down the responses. These surveys can be:
    - telephone surveys; or
    - face-to-face surveys.
  b. Self-administration, where respondents answer by themselves. An example of this would be postal surveys.
2 The technology applied in data acquisition. There are two basic alternatives for this: the responses are either marked on paper questionnaires or using electronic media.[86]

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[83] Pepper, J. V. and Petrie, C. V. 'Overview' in National Research Council, *Measurement issues in criminal justice research: Workshop summary*. Committee on Law and Justice and Committee on National Statistics, Division of Behavioral and Social Sciences and Education, Washington, DC: The National Academies Press, 2003.

[84] For numerous examples of methods that researchers have used to identify respondents belonging to ethnic minorities, see the country reports in Krizsán, A. (ed.), *Ethnic monitoring and data protection: The European context*, Budapest, CPS books, 2001. For example, the contribution of Zoon and Wagman discusses the methods used to reach Roma respondents in Spain.

[85] United Nations, *Designing household survey samples: Practical guidelines*, New York, 2005. Also available at: http://unstats.un.org/unsd/demographic/sources/surveys/Handbook23June05.pdf, pp. 1-2, and Statistics Finland, *Quality guidelines for official statistics*. Available at: http://www.stat.fi/meta/qg_2ed_en.pdf (last accessed 5 July 2016).

[86] Statistics Finland, *Quality guidelines for official statistics*. Available at: http://www.stat.fi/meta/qg_2ed_en.pdf (last accessed 5 July 2016).

The following table illustrates these survey types:

**Table 2 Survey types by mode of administration and data capture instrument (Statistics Finland)**[87]

| Mode of administration | Data capture instrument | |
|---|---|---|
| | **Paper questionnaire** | **Electronic questionnaire** |
| **Self-completion** | Self-administered questionnaire (e.g. postal questionnaires), diaries | Internet questionnaire, computer-assisted self-interviewing (CASI) |
| **Interview** | Interviewer-administered questionnaire | Computer-assisted personal interview (CAPI), computer-assisted telephone interview (CATI) |

The selection of the method has an impact on the costs involved, the time it takes to obtain the data, response rates and the reliability of the responses in general. On average, interviewer-administered surveys tend to yield higher response rates than postal surveys, but also tend be more expensive to carry out.

### *2.3.3 Sources of error*

Errors in surveys are conventionally divided into sampling and non-sampling errors. Non-sampling errors can be subdivided into:

- errors arising from difficulties in the execution of the sample, for example, by failure to conduct interviews with all members of the selected sample; and
- errors caused by other factors, such as respondents misinterpreting a question or deliberately lying.[88]

A crucial factor in achieving reasonable response rates is ensuring the survey design takes into account the specific needs and characteristics of the target population. In the case of ethnic minorities this may require, for example, having the questionnaires in several languages and/or using interviewers who speak the language of the respondents. Sometimes interviewers belonging to the same ethnic group as the respondents are used, which may help to build trust to report sensitive issues.[89] If the target groups include substantial numbers of people who do not own telephones or who are challenged in terms of literacy, it may be preferable to use face-to-face interviews instead of telephone interviews or postal surveys. Surveys which target people with diverse disabilities may need to use a combination of data collection techniques.

Discrimination belongs to that class of behaviours which people may be reluctant to admit having engaged in, even in surveys. This is particularly the case where interviewers are used and where the responses will therefore not remain fully secret. Traditionally administered face-to-face interviews may hence not be an ideal option for collecting data on prejudices or discriminatory behaviour. This ‘interviewer effect’ may, however, be alleviated by the use of electronic questionnaires (CAPI or CATI) where the respondents themselves type in the answers. There is strong evidence that self-administration produces fuller reporting of sensitive behaviours.[90] Computerised self-administration surveys in particular can be very effective,

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[87] Statistics Finland, *Quality guidelines for official statistics*. Available at: http://www.stat.fi/meta/qg_2ed_en.pdf (last accessed 5 July 2016).

[88] Bradburn, N. M. ‘Response effects’ in Rossi, P. et al (eds.), *Handbook of survey research*, New York: Academic Press, 1983, pp. 289 ff.

[89] In Ireland, Pavee Point, which is a national non-governmental organisation, has helped the Central Statistics Office to find Roma and Traveller enumerators.

[90] Pepper, J. V. and Petrie, C. V., National Research Council, *Measurement issues in criminal justice research: Workshop summary*. Committee on Law and Justice and Committee on National Statistics, Division of Behavioral and Social Sciences and Education, Washington, DC: The National Academies Press, 2003. Kuran, T. and McCaffery, E. J. ‘Expanding discrimination research: Beyond ethnicity and to the web’ in *Social science quarterly*, Vol. 85, No 3, September 2004.

as they combine the privacy of self-administration with the power of computer administration and have greatly expanded the situations in which self-administration can be used.[91]

People may also face difficulties in reporting their experiences of discrimination. For instance, they may not be aware that they have been discriminated against, they may suspect it but nevertheless be uncertain about it, they may falsely attribute an event to discrimination even though discrimination played no part in it, they may have forgotten about discrimination they have experienced and they may not be certain what exactly is meant by discrimination in the first place. It is therefore very important to be aware of the factors that may affect the way respondents interpret and answer the questions. Some of the factors that are relevant in this respect are the following:

- Context of the survey. The 'packaging' of the survey, i.e. the apparent topic of the survey, the survey's sponsorship, the organisation responsible for collecting the data, the letterhead used on advance letters and similar details may affect how individuals perceive the intent of the survey and the information which is being sought, and potentially affects the way respondents interpret the questions.[92]
- Questionnaire design. The accuracy and validity of the data depend on the questions and the way they are posed, including:
  - Question order and format. The context provided by earlier questions sets, in part, the context in which the respondents interpret the questions. This means that the order of the questions has to be carefully considered.[93]
  - Framing of question items. The wording of the question and the nature of the answer categories can affect responses.[94]

Because these and many other aspects involved in designing surveys can have a major impact on the quality of the results, it is advisable to run pre-tests before engaging in actual data collection.

## 2.4 Dissemination and use of equality data

Equality data collection is not an end in itself, but a means to achieving equality and non-discrimination. The dissemination and clear explanation of equality data is a necessary precondition of equality-friendly public opinion. This section assesses the general trends and highlights the best practices concerning the dissemination and use of equality data by statistical institutions, public administrations/ministries, equality bodies, research institutes and NGOs.

Data on (in)equalities is widely available through statistical, scientific research and NGO-led data collection efforts across the EU. In the overwhelming majority of the Member States, census data is collected by national statistical institutes, complemented by administrative, register-based, complaints and other data collection. The majority of ministries and public authorities view data on (in)equalities as an essential ingredient of public policy-making and therefore see the need to share with or grant access to such data to the public. Easily comprehensible, visualised or explained data is, however, more difficult to come by,

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[91] Tourangeau, R. and McNeeley, M. E. 'Measuring crime and crime victimization: Methodological issues' in National Research Council, Pepper, J. V. and Petrie, C. V. *Measurement issues in criminal justice research: Workshop summary*. Committee on Law and Justice and Committee on National Statistics, Division of Behavioral and Social Sciences and Education, Washington, DC: The National Academies Press, 2003.

[92] Tourangeau, R. and McNeeley, M. E. 'Measuring crime and crime victimization: Methodological issues' in National Research Council, Pepper, J. V. and Petrie, C. V. *Measurement issues in criminal justice research: Workshop summary*. Committee on Law and Justice and Committee on National Statistics, Division of Behavioral and Social Sciences and Education, Washington, DC: The National Academies Press, 2003.

[93] Tourangeau, R. and McNeeley, M. E. 'Measuring crime and crime victimization: Methodological issues' in National Research Council, Pepper, J. V. and Petrie, C. V. *Measurement issues in criminal justice research: Workshop summary*. Committee on Law and Justice and Committee on National Statistics, Division of Behavioral and Social Sciences and Education, Washington, DC: The National Academies Press, 2003.

[94] Sheatsley, P. B., 'Questionnaire construction and item writing' in Rossi, P. et al (eds.), *Handbook of survey research*, New York: Academic Press, 1983.

even though in general national statistical institutions have a duty to publish – as well as to disseminate – their data. Naming equality data as such is the basis not only of collection, but also of dissemination.[95]

### 2.4.1 Dissemination at the European level

As noted in the first edition of the European Handbook on Equality Data, 'It is a generally accepted principle of statistical sciences that the possibility of misuse of statistical information is not in itself a convincing argument against the collection and dissemination of data, although action should be taken to guard against predictable misuse of data'.[96] European statisticians view data collection from the perspective of producing outcomes through, among other things, dissemination.[97]

The Eurostat website maintains an entry on 'Statistics explained', which carries user-friendly evaluations of findings published online. In 2012 the Eurostat prepared statistics on active ageing and solidarity between generations, with data for age-related inequalities in Europe.[98] The EU Agency for Fundamental Rights (FRA) publishes reports on various themes, including on equality and non-discrimination on its website with short introductions on why and how it conducts research. Surveys conducted by the FRA have focused on, inter alia, experiences and perception of discrimination and hate crime against groups such as European Muslims, Jews, Roma and women in the EU Member States, as well as an EU LGBTI survey, a survey on gender-based violence against women, a racism and social marginalisation survey, Roma pilot survey and EU-MIDIS, the EU Minorities and Discrimination survey.[99] Both institutions disseminate information in shorter news formats. Their data are used at the national level. For example, one of the most important sources of information for assessing the national situation of LGBT people, in particular transgender people, has been the FRA survey of 2013, which allows the results to be broken down by country.

European NGOs focusing on certain grounds of discrimination undertake their own surveys, complement the explanation of statistical findings and highlight their relevance to citizens' everyday lives. For instance, the European Youth Forum published the results of a survey on multiple discrimination among European youth.[100] The European Disability Forum (EDF) runs an online survey, canvassing the impact of the economic crisis on the rights of people living with disabilities.[101] The European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA Europe)[102] and AGE Platform Europe explain data on hate crimes and inequalities.[103] Equinet, the European Network of Equality Bodies,

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[95] The Danish report for this Project notes that Statistics Denmark (*Danmarks Statistik*) (DST) has by law the obligation, 'to collect, process and publish statistics on social conditions'. As the collection by DST is register-based, many types of equality data are in fact collected and quite a few of these are accessible and free of charge on DST's online database, Statistikbanken. As there is no equality data collection as such (the exception being in the gender field), there is no dissemination as such either. The webpage *Ligestillingsvurdering* (equality assessment), organised by the Ministry of Education (*Undervisnings Ministeriet*) for instance, contains information on how to use data and statistics in gender equality assessment – but only for gender. Available at: http://ligestillingsvurdering.dk/data-statistik (last accessed 11 January 2016).

[96] See the Declaration of Professional Ethics adopted by the International Statistical Institute in August 1985, the first principle in particular.

[97] According to the UN Economic Commission for Europe definition, the population census is defined as the operation that produces at regular intervals the official counting (or benchmark) of the population in the territory of a country and in its smallest geographical sub-territories together with information on a selected number of demographic and social characteristics of the total population. This operation includes the process of collecting (through enumeration or register-based information) and aggregating individual information and the *evaluation, dissemination and analysis of demographic, economic and social data*. Conference on European Statisticians, *Recommendations for the 2010 Censuses of Population and Housing*, paragraph 17.

[98] Eurostat, *Active ageing and solidarity between generations – A statistical portrait of the European Union 2012*. Available at: http://ec.europa.eu/eurostat/documents/3217494/5740649/KS-EP-11-001-EN.PDF/1f0b25f8-3c86-4f40-9376-c737b54c5fcf (last accessed 27 September 2016).

[99] See also section 3.3.1 For an overview of FRA surveys see http://fra.europa.eu/en/research/surveys.

[100] See http://www.youthforum.org/assets/2014/11/Survey-on-Youth-and-Multiple-Discrimination.pdf (last accessed 27 September 2016).

[101] See http://www.edf-feph.org/answer-crisis-survey-0 (last accessed 22 November 2016).

[102] See http://ilga.org/what-we-do/ilga-riwi-global-attitudes-survey-lgbti-logo/ (last accessed 22 November 2016).

[103] See http://www.age-platform.eu/campaign/age-friendly-environments (last accessed 22 November 2016).

also disseminates equality data through its internet platform dedicated to reports by national equality bodies, as well as its own reports.[104]

Regional collaboration may enhance policy impact and boost dissemination. For instance, in Estonia the Estonian Institute for Population Studies at Tallinn University participated in the international SHARE project (Survey of Health, Ageing and Retirement in Europe).[105] Another good example of collaboration is the contribution of the Institute of Social Studies at the University of Tartu as a representative team to the collection of data within the framework of the European Social Survey.[106] Given that both data sets allow analysis of relative situations among the minority groups covered and these data sets are publicly available as raw data files, it is very important that both teams make considerable efforts to present these data and the results of analysis based on these data to a wider audience.

### *2.4.2 Dissemination at the national level*

At the domestic level, national statistical offices are the main collectors of equality data – regardless of whether they in fact use this term – and their mission includes the compilation and publication of data, which is linked to or aimed at assisting the planning, implementation and monitoring of public policy. In the overwhelming majority of cases, dissemination is one of the statutory activities they should undertake. Data from statistical offices are available to the general public as well as to researchers. However, in several countries across the EU this availability is dependent on the payment of fees. For instance, in Austria, data collected by the national statistical office are accessible via its website for anyone interested. Specific analyses of data can be requested, with payment of a fee if applicable. Data not relating to identifiable individuals and not published by Statistik Austria can be passed on under certain circumstances, for example anonymised micro-data for scientific purposes. In Italy, in order to have access to the 'metadata' of each survey, it is necessary to register with the statistical office's website and explain the purpose of the research.

Statistical offices can publish their own data, explain it and break it down to regional level, as well as collaborate with public administrations in pooling data and assessing trends. Hungary provides a good practice example of the former, while Finland is a good example of the latter approach.

**Example 1**

In Hungary, the Central Statistical Office (CSO) publishes ground-specific assessments of census data, including 'Data on belonging to a national minority', 'People living with disabilities' and 'The situation and social benefits of people living with disabilities', as well as 'Religion and religious communities'.[107] Data stemming from the census is provided as a basis for the preparation of social, economic and political decisions, as well as shaping different policies at both national and local level. In order to prepare local equal opportunities programmes, data drawn from the databases of the CSO and the National Regional Development and Spatial Planning Information System can be used.[108]

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[104] See http://www.equineteurope.org/ (last accessed 4 October 2016).

[105] See: http://www.share-estonia.ee./. The institute is very active in finding the financing for fieldwork and in its methodological guidance. It has a multidisciplinary and cross-national panel database of micro-data on health, socio-economic status and social and family networks of approximately 110,000 individuals (more than 220,000 interviews) from 20 European countries (+Israel) aged 50 or older. The data are available to the entire research community free of charge. SHARE is harmonised with the US Health and Retirement Study (HRS) and the English Longitudinal Study of Ageing (ELSA) and has become a role model for several ageing surveys worldwide. Available at: http://www.share-project.org/.

[106] See: www.yti.ut.ee/en/ess-in-estonia: like the Estonian Institute for Population Studies, this institute is very effective at securing funding for fieldwork and ensuring that it is of high quality.

[107] www.ksh.hu/nepszamlalas/tables_regional_00?lang=en (last accessed 22 November 2016).

[108] Governmental Decree 321/2011. (XII. 27.) on rules for the preparation of the local opportunities programme and equal opportunities mentors and Decree 2/2012. (VI. 5.) of the Ministry of Human Resources on detailed rules for the preparation of the local opportunities programme.

**Example 2**

Finland is an example of a country that has taken a rather systematic approach towards collection of equality data and its dissemination. A key role is played by the Discrimination Monitoring Group, which consists of representatives of key ministries and other authorities such as the Non-discrimination Ombudsman, statistical and research institutions, NGOs and equality groups. The Discrimination Monitoring Group was established by the Ministry of Justice. The Monitoring Group coordinates and steers the work in the area of the collection and dissemination of equality data. The key forum for equality data is the website, www.yhdenvertaisuus.fi, which contains basic information on equality legislation, various tools and also reports on equality data.

In general, equality data are published by public administration bodies, particularly social security agencies, ministries and agencies dealing with employment and, to a lesser extent with education, as well as administrative units charged with promoting integration (of foreigners). In certain instances, data may only be available upon request, subject to administrative discretion. For instance, in Cyprus, the Ministry of Education collects data on violence in schools.[109] The data concerns all types of motives for violence, including but not restricted to homophobia and racism. The data are not in the public domain but can potentially be made available on request, at the discretion of the Ministry.

### *2.4.3 Enhancing the impact of equality data through dissemination*

The dissemination of data by government institutions may serve the purposes of changing or justifying policies. In the UK, relevant government departments release data by ethnic origin where relevant, for example data on the educational attainment of different ethnic groups released by the Department for Education. Data are sometimes also produced where the effects of a policy or legislation may have a disparate impact on some ethnic groups, for example the Department for Work and Pensions on the 'benefit cap'.[110] In the UK, data are most frequently published where the government is seeking to fulfil the public sector equality duty. These data are sometimes used to inform policy and to monitor policy outcomes. For example, the improving performance of ethnic minority pupils in schools has generated a debate about the reasons for that improvement. In Belgium, the federal Minister of Equal Opportunities indicated in a policy note her intention to use socio-economic monitoring as a benchmark to assess the number of people with a migration background working for the Federal Government.[111] The Flemish Government monitors the number of people with a migration background, people with disabilities and people aged over 45 among its personnel. These data allow the Flemish Government to evaluate the target figures set for minority groups among its staff.[112]

Dissemination in a timely manner is crucial. For instance, in Latvia, in most cases the publication period for official statistics is one year, however, institutions which ensure the collection of equality data provide more frequent publication and on a larger scale than the information included in the official statistics. Access to this information is free. For example, the State Employment Agency publishes data on a monthly basis on unemployed people with disabilities.

All data available in the public domain can be pooled in order to provide more far-reaching analysis. However, data pooling and open data initiatives may sometimes be considered to jeopardise the right to privacy and are not promoted in all Member States. As the Irish example shows, targeted issue or field-

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[109] For more details, see www.moec.gov.cy/paratiritirio_via/ (in Greek, last accessed 22 November 2016).

[110] According to research from the Department for Work and Pensions (DWP), the benefit cap is disproportionately likely to impact on ethnic minorities, with 40% of those affected being black and minority ethnic (BME) people. This compares to BME people making up just 14% of the UK population, 16% of Jobseekers' Allowance claimants, 16% of lone parents claiming income support and 9% of those on Employment and Support Allowance (ESA).

[111] Belgian Chamber of Representatives, *Algemene beleidsnota Gelijke Kansen* [General Policy Note on Equal Opportunities], 2014.

[112] Vlaamse Overheid [Flemish Government], *Streefcijfers voor kansengroepen* Target figures for disadvantaged groups], 2016. Retrieved January 2016 from: https://overheid.vlaanderen.be/streefcijfers-voor-kansengroepen.

specific publication and dissemination may be more effective than the simple provision of access to raw data.

**Example**

In Ireland, the Higher Education Authority and the National Access Policy Office publish regular reports on diverse aspects of access to higher education and the barriers experienced by different groups. These make good use of administrative data and other statistical sources to argue the case for ongoing support to be given to the provision of lifelong learning initiatives across social groups.[113] In addition, the Government Reform Unit of the Department of Public Expenditure and Reform manages Ireland's open data portal which makes available 1,320 data sets from 88 publishers. These include a great deal of information related to equality issues collected by government departments, local authorities, universities, the Central Statistics Office and others.[114] The site aims to promote innovation and transparency through the publication of Irish public sector data in open, free and reusable formats.

Governments may enhance the use of research by aligning the target group and methodology with the kind of institution conducting the research. For instance, in the Netherlands, ministries regularly commission governmental data collection institutions, Statistics Netherlands, independent research institutes, NGOs or universities to conduct research on the impact of or experiences with specific types of discrimination in specific contexts for specific groups and situations for specific policy reasons.[115] Reports, including the findings and equality data, are then presented to Parliament by the responsible minister. The collected equality data are published in national annual or bi-annual overviews.[116] The purpose of such publications is to understand discrimination and use it as a starting point for further policy measures/equality planning at local and national level.

Best practice examples which exist relate to the grounds of sex and are yet to be tested for applicability to other grounds. For instance, it remains to be seen whether practical tools such as the 'Knowledge Net Gender Mainstreaming', which provides fast access to databases, knowledge and experiences on the implementation of gender mainstreaming within the German federal government, is transferrable.[117]

Equality bodies publish annual reports about their activities and, in the majority of the Member States, participate in disseminating research results – particularly of research they commission. Data on complaints, decisions and judgments – be they on hate crimes or discrimination – are generally not readily available from the police, the prosecutor or the courts. Collaboration between these bodies enables them to enhance the use of the available data. For instance, in France, within the framework of partnership agreements between the Defender of Rights and public prosecutors, it is envisaged that, where practicable, public prosecutors will forward their decisions to the Defender of Rights when one of its fields of expertise is concerned.

In the majority of the Member States research institutes and academics are commissioned by the public administration and equality bodies to study inequalities and publish their results. For instance, in Slovakia, the publicly funded Institute for Labour and Family Research (ILFR) conducts sociological research in the field of social and family policy, social protection, the labour market and employment policy. Results of these studies and surveys are used primarily in the preparation of laws, concepts, strategies, action plans

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[113] www.hea.ie/sites/default/files/final_key_facts_figures_2013_14.pdf, (last accessed 11 January 2016).

[114] https://data.gov.ie/data, (last accessed 11 January 2016).

[115] Example: Andriessen I., Fernee H. and Wittebrood K., *Ervaren discriminatie in Nederland* [Experience of discrimination in the Netherlands], NISR, The Hague, January 2014. www.scp.nl/Publicaties/Alle_publicaties/Publicaties_2014/Ervaren_discriminatie_in_Nederland (last accessed 25 February 2016).

[116] Dinsbach, W., Silversmith, J., Schaap, E. and Schriemer, R., *Kerncijfers 2012-2014* [Core statistics 2012-2014], LBA/SAN, Leeuwarden/Nijmegen/Amsterdam 21 March 2015, available at www.art1.nl/artikel/10777-Forse_stijging_aantal_discriminatieklachten (last accessed 25 February 2016).

[117] Gender Mainstreaming für die Bundesverwaltung.

and programmes within the competence of the Ministry of Labour. These publications concern various equality groups, such as children, LGBT people, homeless people, women, elderly people and people with disabilities,[118] and specific equality issues, such as multiple discrimination, sexual harassment or equality of opportunities. In a few instances, the ILFR collaborates with city administrations, student unions, etc. In Denmark, the results of discrimination experience analysed through the national and local integration barometers are available to the public and are considered particularly useful in the local context.[119]

### *2.4.4 Publishing, explaining and advocating with equality data*

It is important to ensure that equality data are effectively communicated and disseminated by being rendered accessible to the public and target groups. As the UK report for this project notes: 'Producing large Excel spreadsheets or data in more sophisticated software makes it difficult for non-specialists to access much less understand such data. For this reason the Office of National Statistics (ONS) and others have sought to increase the number of outputs, including via charts and, for a few years, even a YouTube channel.'[120] One good practice example is the Nomisweb, a service provided by ONS, seeking to facilitate access to and understanding of labour market statistics from official sources.[121] While there is a limit to how simply data can be presented, the website supported by the ONS allows individuals to produce relatively simply 'queries', with the tables accessible in a web-based format and for relatively easy download.[122] Various examples exist of better 'visualisation' including from the *Guardian* newspaper datablog and the *Financial times*. One example from the government is a visualisation of the variation in different areas of the UK in terms of how long people can expect to live before their health limits day-to-day activities.[123]

Publicity can be useful in other ways as well. In France, since the end of the 1990s, the anti-racist association SOS Racisme has organised highly publicised discrimination testing at the entrances of nightclubs, but also in the fields of employment and housing. Recognised as admissible evidence by the Court of Cassation in June 2002, discrimination testing was enshrined in the Law of 31 March 2006 on Equal Opportunities.

Publicity through the media and campaigns dedicated to equality, utilising data, are not widespread, but some examples could be identified. In Germany, the Federal Anti-Discrimination Agency has a theme for each year, which focuses their agenda and attracts public attention.[124] The grave impact of the economic crisis in Spain in recent years and its devastating consequences in terms of increasing unemployment, poverty and social exclusion has elevated the issue of social and economic inequalities to the level of public debate. Consequently, and especially since 2010, there is an increasing amount of research and reports which have had an impact in the media, especially highlighting increasing youth unemployment and the situation of groups such as migrants.

In general, those NGOs that receive complaints publish reports on the issues raised in the complaints. The dissemination of information relating to hate crimes is perhaps the most common. Advocacy based on equality data is more characteristic of NGOs working on the grounds of disability and sexual orientation, including transgender. For instance, in Italy, the platform www.condicio.it collects and disseminates to the

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[118] Among many other studies e.g. Ondrušová, D., *Štruktúra zamestnancov v chránených dielňach, na chránených pracoviskách a na otvorenom trhu práce* [The structure of employees in sheltered workshops, sheltered workplaces and in the open labour market], Bratislava: ILFR, 2014. Available at: www.ceit.sk/IVPR/images/IVPR/vyskum/2014/Ondrusova/2169_ondrusova.pdf.

[119] Jørgensen, M. B., *Decentralising immigrant integration: Denmark's mainstreaming initiatives in employment, education and social affairs*. Bruxelles: Migration Policy Institute Europe, 2014.

[120] Transcript of ethnic group video: www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-for-local-authorities-in-england-and-wales/video-summary-ethnicity.html.

[121] www.nomisweb.co.uk (last accessed 7 July 2016).

[122] www.nomisweb.co.uk/.

[123] www.neighbourhood.statistics.gov.uk/HTMLDocs/dvc172/index.html.

[124] Themenjahre der Antidiskriminierungsstelle des Bundes, http://www.antidiskriminierungsstelle.de/DE/ThemenUndForschung/Projekte/Themenjahre/Themenjahre_node.html (last accessed 13 March 2016).

general public the most relevant research in the field of disability. The National Observatory on Gender Identity collects and disseminates information on several issues related to gender identity but does not directly collect equality data.[125] The Malta Gay Rights Movement has collected, processed and analysed data on LGBT people.[126] The Collective Against Islamophobia in France (CCIF) collects its own data on the basis of complaints received, with the aim of providing a fuller picture than the police by recording discrimination in the workplace or in access to services.[127] An intranet platform, designed as a fully-fledged integrated records management system, makes it possible to record incidents and compile the data collected in order to produce a quantitative analysis.

In Slovenia, the role of NGOs has traditionally been stronger in the LGBT and ethnic/racial discrimination sphere and has included projects such as Spletno Oko (monitoring of hate speech on the internet) and Media Watch (monitoring of hate speech and other forms of discrimination in the media), as well as Roza Alarm (Pink Alarm).

In the UK, the role of NGOs is typically focused on interpreting, analysing and disseminating equality data, especially for their advocacy work. Some analyse these data in ways that the government's own analysis does not always do. For example, the Runnymede Trust recently used the government's own data to show that the 2015 Summer Budget would increase racial inequalities.[128] Other examples of NGO action include the Child Poverty Action Group and the Joseph Rowntree Foundation,[129] the Equality and Diversity Forum and many others.

## 2.5 Key issues

### *Sources and comparability of data*

– Across the EU Member States data are very rarely collected specifically for equality-related purposes. Data are mostly collected for general administrative, societal and/or statistical purposes and can then be used to demonstrate (in-)equality or discrimination. Some equality data are therefore already available and their value is being increasingly recognised.
– The data collected across the Member States which may serve to promote equality and protect against discrimination and may therefore be identified as equality data can be loosely grouped into the following categories:
  - population and household censuses;
  - administrative population registers generally based on ID numbers;
  - data collected for the EU-wide surveys (EU-SILC, LFS and ESS) (not all EU Member States);
  - complaints data (mainly from equality bodies and NGOs but sometimes also from courts), sometimes but not always broken down by discrimination ground;
  - ad hoc surveys and other studies, conducted by research institutions, equality bodies and NGOs.
– There is currently a lack of comparability of data across the 28 EU Member States. Data sets found on the national level are very much influenced by definitions, national contexts, data collection methods and sources and can therefore only provide partially comparable information.
– The only comparable data collected across the Member States is collected through the EU-wide surveys. The EU Agency for Fundamental Rights (FRA) and the European Commission have conducted surveys specifically on equality and non-discrimination themes on a regular basis during the last decade. These surveys have provided important EU-wide data sets on equality and non-discrimination topics.

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[125] www.onig.it/drupal/?q=node/50 (last accessed 16 January 2016).
[126] www.maltagayrights.org/publications.php (last accessed 15 January 2016).
[127] www.islamophobie.net/sites/default/files/CCIF-Annual-Report-2015.pdf.
[128] www.runnymedetrust.org/projects-and-publications/employment-3/budget-2015-impact-on-bme-families.html.
[129] www.jrf.org.uk/data/poverty-rate-ethnicity.

### *Definitions, classifications and categorisation*

- There are no universally accepted definitions of the key concepts included in equality and non-discrimination ('racial origin', 'ethnic origin', 'religion', 'belief', 'disability', 'age', 'sexual orientation' and 'gender identity') in international law EU law or the national law of the EU Member States.
- Due to international case law and authoritative interpretations of UN human rights bodies, some guiding principles to establish definitions have been given: recognition of factual diversity, not hinging on political considerations; terms are not to be narrowly construed; groups must not be excluded without an acceptable justification, as this might lead to unlawful discrimination.
- While there are no universally accepted definitions of these concepts, some standards for classification (grouping of data as a structured and understandable picture of reality) have been developed at international level to enhance comparability of statistics.
- There are different methods of categorisation (assignment to a category representing a group): self-identification, third-party identification and mutual recognition by members of a group. Self-identification has grown to become the most practised and accepted type of categorisation, in line with human rights principles such as respect for human dignity and respect for private life. However, this method may lead to incomplete or incorrect data and cannot therefore be used for all data collection purposes.
- The overall lack of consistency and coherence in approach to definitions, classifications and categorisations used for equality data collection at EU level, as well as at EU Member State level, continues to affect the comparability and compatibility of equality data across the EU and between and within EU Member States.

### *Ensuring quality of data*

- Apart from challenges relating to definitions, classification and categorisation, the quality of data hinges on issues such as the cost of various data collection methods as well as aspects relating to the accuracy and robustness of the data collected, due for example to the sensitivity of questions in this area, under-reporting and other methodological issues.
- By using data for various purposes, as in the EU-wide surveys, data can be collected more cost-effectively. By reviewing the context and results of earlier data surveys, methodological challenges can be and are responded to.

### *Dissemination and use of equality data*

- Although not always collected specifically for use to underpin and demonstrate(in)equalities, data are widely available through statistical, scientific research and NGO-led data collection efforts across the EU.
- Despite the challenges relating to the comparability and compatibility of data, data on (in)equalities are seen both at the European and at the national level, as an essential ingredient of public policy making.
- Presentation of inequality data in an easily comprehensible, visualised and explained format is seen as part and parcel of that policy making with a view to building understanding and acceptance of equality and non-discrimination policies. The internet has become an important medium for such presentation, increasing understanding and accessibility of equality data.

# 3 Official statistics

## 3.1 Introduction

All EU Member States collect the necessary data in order to obtain vital demographic and socio-economic information on their populations. There are three principal sources of information which can be used for the compilation of official statistics: censuses, administrative registers and sample surveys. This section looks at the ways in which these information sources can be put to use in the collection of equality data.

So far most EU Member States have taken insufficient, or no, advantage of the opportunity to compile equality statistics in the course of the production of official statistics. Furthermore, while there have been several international initiatives with the aim of providing guidelines and methodological advice on what kind of equality data should be collected and how, there are, as yet, few internationally-agreed principles in this regard.

Equality data collected in the course of official statistics can potentially serve the following five primary functions:

- The data can provide the necessary contextual data on the equality groups. Demographic data relating to such characteristics of the groups as size, gender structure and geographical distribution provide the basic background data needed in the course of various activities, such as policy planning, research and workplace monitoring.
- The data can be used to construct and populate equality indicators. All socio-economic statistics can be broken down by the equality grounds, provided that data are also collected on the variables of age, disability, ethnic origin, religion and/or sexual orientation.
- The data can provide the kind of comprehensive data source needed in order to investigate inequalities by means of regression analyses and other research methods.
- The data can directly measure discrimination experiences among members of the equality groups. This is possible where a particular data collection mechanism, such as a large-scale national survey, contains an equality module which directly addresses people's experiences in this regard.
- Data from censuses and administrative records can be used to provide the sampling frame for the purposes of specialised surveys.

As each country is unique in terms of its data collection infrastructure, it is up to each one to consider whether and how best to mainstream equality considerations into its data collection programmes. However, surveys organised within the framework of the European Statistical System (ESS) ought to respect a certain number of comparability criteria, notably concerning the definitions and classifications used in these surveys.

### *3.1.1 Equality indicators*

The data collected in the course of the production of official statistics regularly reflect nation-wide processes and, particularly, the outcomes of these processes. As such, they can be used to develop a set of indicators which measure the state of the nation. Perhaps the internationally best-known indicator is GDP (gross domestic product), which is used to measure the economic status of a country. Indicators can usually measure the target phenomena only indirectly, making the development of good indicators somewhat challenging.

A considerable amount of effort has recently been put into developing rights-based indicators. The United Nations Office of the High Commissioner for Human Rights (OHCHR) has developed and published a guide on human rights indicators, the aim of which is to develop quantitative and qualitative indicators to measure progress in the implementation of international human rights norms and principles, including non-discrimination.[130] The European Union Agency for Fundamental Rights (FRA) has also engaged in the development of indicators linked *inter alia* to fundamental freedoms.[131] FRA has also started to develop and populate (statistical) indicators to assess the implementation of various articles of the UNCRPD, in particular Article 19 on independent living by people with disabilities and Article 29 on participation in political and public life on an equal footing with persons without disabilities.[132] Any development of equality indicators at the national level should take into account the theoretical work conducted by these agencies.

The theoretical framework developed by the OHCHR, upon which also the FRA builds its indicator work, is based on structural, process and outcome indicators. These indicators measure the commitment of the duty-bearer to the relevant human rights standards (structural indicators), the efforts that were undertaken to make that commitment a reality (process indicators) and the results of those efforts over time (outcome indicators). The OHCHR's Guide provides the following advice in relation to non-discrimination and equality indicators:

> To capture the norm of non-discrimination and equality in the selection of structural, process and outcome indicators, a starting point is to seek disaggregated data by prohibited grounds of discrimination, such as sex, disability, ethnicity, religion, language, social or regional affiliation. For instance, primary education should be available free of charge for all. If the indicator on the proportion of children enrolled in primary schools is broken down by ethnic group or minority for a country, it may reveal disparities between the different population groups and perhaps also discrimination faced by some groups or minorities in accessing education and enjoying their right to education in that country. The situation could then be subjected to a further qualitative analysis to arrive at a more definite assessment of discrimination. In certain instances, indicators like "proportion of employees (e.g., migrant workers) who report discrimination and abuse at work" or especially "proportion of employers choosing the candidate of the majority ethnic group between two applicants with exactly the same profile and qualification except for their ethnic background" allow a more direct assessment of discrimination faced by certain population groups in a society.[133]

Indicator development work has also been pursued in other contexts that are relevant in the equality field, one of them being the Europe 2020 strategy. Europe 2020 is a new strategy for the EU to develop as a smarter, knowledge-based, greener economy, delivering high levels of employment, productivity and social cohesion. Monitoring achievements through statistics is an integral part of the strategy. The headline indicators measure the progress made by the EU and the Member States towards achieving the headline targets of the strategy.

Five headline targets have been set for the EU to achieve by the end of 2020. These cover employment; research and development; climate/energy; education; and social inclusion and poverty reduction. Those related to employment, education and poverty risk are particularly relevant to the situation of people covered by the different discrimination grounds. For example, Eurostat reports regularly on the situation of people with and without disabilities.[134]

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[130] Office of the High Commissioner, *Human rights indicators: A guide to measurement and implementation*, United Nations, 2012.

[131] See e.g. FRA, *Opinion of the European Union Agency for Fundamental Rights on the development of an integrated tool of objective fundamental rights indicators able to measure compliance with the shared values listed in Article 2 TEU based on existing sources of information*. Available at: http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-opinion-rule-of-law-art-2-02-2016_en.pdf (last accessed 6 July 2016).

[132] FRA, *The right to political participation of people with disabilities: human rights indicators*, Vienna 2014, accessible via http://fra.europa.eu/en/publication/2014/right-political-participation-persons-disabilities-human-rights-indicators.

[133] Office of the High Commissioner, *Human rights indicators: A Guide to measurement and implementation*, United Nations, 2012, pp. 39, 40.

[134] Eurostat: http://ec.europa.eu/eurostat/data/database; and Academic Network of European Disability experts (ANED): www.disability-europe.net/.

## 3.2 Population census

The UN guide on population censuses defines a population census as 'the total process of collecting, compiling, evaluating, analysing and publishing or otherwise disseminating demographic, economic and social data pertaining, at a specified time, to all persons in a country or in a well-delimited part of a country.'[135] Several countries, including many EU countries, no longer take traditional censuses understood as a process of universal enumeration based on field operations carried out at a specific moment, but use administrative registers and/or surveys instead of, or in addition to, the traditional method in order to compile census-like statistics.[136] In effect, censuses are nowadays sometimes defined more in terms of outcomes rather than a particular type of process. For the sake of clarity and practicality, the concept of 'census' is used in this handbook in the latter, 'original', sense.

The essential features of a population census are individual enumeration, universality, simultaneity, defined periodicity and small-area data.[137] The UN recommends that censuses be taken at least every 10 years;[138] some countries prefer to take censuses on a more frequent basis, for instance every five years, in order to keep track of rapid changes in the population.[139] Censuses, due to their universal coverage, are unique in providing data that is (i) comprehensive and thereby unaffected by sampling error, and (ii) geographically detailed. For the majority of the world's countries, censuses are still the main source of baseline social and demographic statistics.

A census ordinarily provides information on the size, composition and spatial distribution of the population in addition to socio-economic and demographic characteristics. The scope of information yielded by a census is, quite obviously, determined by the scope of topics covered in it.[140] The number of topics which can be included in a census is in practice somewhat limited because the use of long questionnaires has financial implications and increases the response burden. While the determination of the census topics is largely a matter for national authorities, the UN Statistics Division has provided internationally influential guidelines and recommendations in this respect (the 'World Census Recommendations') and there has also been coordination at the European level, mainly through the work of the UN Economic Commission for Europe (UNECE) and the Statistical office of the European Communities (EUROSTAT), which have jointly prepared the census guidelines adopted by the Conference of European Statisticians (the 'CES recommendations'). The UN and CES recommendations are largely mutually consistent, with the CES recommendations reflecting some issues which are particularly topical in Europe. The two sets of recommendations have been given mainly for the purposes of facilitating coordination and the international comparability of data. The CES recommendations will be used as the general framework for the European Union census programme for the 2020 Population and Housing censuses, and will form the primary basis of the current discussion.

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[135] United Nations, *Principles and recommendations for population and housing censuses*. Revision 1. Statistical Papers Series M No 67/Rev.1, New York, 1997. Also available at: http://unstats.un.org/unsd/publication/SeriesM/SeriesM_67rev1E.pdf, p. 3. A definition which emphasises outcomes rather than the process has recently been endorsed by the UNECE. According to this definition, the population census is 'the operation that produces at regular intervals the official counting (or benchmark) of the population in the territory of a country and in its smallest geographical sub-territories together with information on a selected number of demographic and social characteristics of the total population'. This operation includes the process of collecting (through a field enumeration or the use of registered-based information), processing and aggregating individual information, and the evaluation, dissemination, measuring the precision, and analysis of demographic, economic and social data. Conference on European Statisticians, *Recommendations for the 2020 censuses of population and housing*, paragraph 20.

[136] It is expected that the census methodology used by the 43 countries of the UNECE region for the 2020 round of censuses will be as follows: traditional census 53%, register-based census 16%, register-based + full enumeration 7%, register-based + surveys 19%, traditional census + yearly updates 2% and rolling census 2%.

[137] Conference on European Statisticians, *Recommendations for the 2020 censuses of population and housing*, New York and Geneva, 2015, Paragraph 26.

[138] United Nations, *Principles and recommendations for population and housing censuses*. Revision 1. Statistical Papers Series M No 67/Rev.1, New York, 1997, p. 3. Also available at: http://unstats.un.org/unsd/publication/SeriesM/SeriesM_67rev1E.pdf.

[139] During the 2000 census round, more than 190 countries and areas conducted censuses.

[140] A 'topic' refers to the subjects regarding which information is to be sought for each individual.

| CORE TOPICS (examples) | NON-CORE TOPICS (examples) |
|---|---|
| – Location of place of usual residence<br>– Place of birth<br>– Sex<br>– Age<br>– Marital status (both legal and de facto status; categories may take into account same-sex couples)<br>– Educational attainment<br>– Labour force status<br>– Occupation<br>– Status in employment<br>– Industry (branch of economic activity)<br>– Country and place of birth<br>– Country of citizenship | – Religion<br>– Language<br>– Ethnicity<br>– Household income<br>– Country of birth of parents<br>– Disability status |

The CES recommendations provide essential guidance for European countries in determining which topics to include in the census. The suggested topics are divided into two classes: 'core topics', the inclusion of which is 'highly recommended', and 'non-core topics', which are optional.

While the CES recommendation treats the equality grounds, with the exception of age, as non-core topics, each country should carefully consider their inclusion, given the data needs discussed in this handbook. Indeed, the majority of EU countries already collect at least some data in relation to the equality grounds, with the exception of sexual orientation. During the 2010 population census round, half of the EU Member States conducted a traditional census, with the other countries either relying on register data or on a combination of register and other data.[141] Data from the previous census round showed that in traditional censuses data are always collected in relation to age. In addition, the majority of countries collect data in relation to ethnic origin, religion and disability. Data in relation to sexual orientation are typically not collected.[142]

When a country considers introducing a new question in relation to an equality ground, or modifying an existing question, the planning process should be based on the guidance provided in the CES recommendations and on a meaningful dialogue between the statistical agency concerned and the following two key stakeholder groups:

- Users of the data. The census needs to be responsive to the needs of the users of equality data: the question formulation, the definitions used and the planned tabulations should meet their needs as fully as possible. For example, if the national anti-discrimination law provides definitions of the equality grounds (ethnic origin, religion, disability, sexual orientation), it should be considered what impact these should have on the definitions used in the census.
- Equality groups. Insofar as sensitive topics are included in the census, it is of paramount importance that the pertinent questions, instructions, answer categories and tabulations are acceptable to those belonging to the groups concerned. To begin with, the very inclusion of a topic itself must be agreeable to these groups: if there is widespread resistance to the inclusion of a specific topic, it should be rejected. In addition, the questions must be carefully formulated so as to be agreeable to these groups and they must not be ambiguous or offensive.[143]

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[141] Source of data: http://www1.unece.org/stat/platform/display/censuses/2010+Population+Census+Round (last accessed 27 September 2016).

[142] Makkonen, T., *Measuring discrimination: Data collection and EU equality law*. Network of Independent Experts in the non-discrimination field, Luxembourg: Office for Official Publications of the European Communities, 2007. The questions and available categories varied from country to country.

[143] The requirement that census questions must be inoffensive and free of ambiguity applies naturally with respect to the whole census questionnaire. Representatives of the equality groups should therefore have the opportunity to preview the whole questionnaire.

Experience shows that question formulation should be thoroughly tested. As we are dealing with issues which often involve subjective appreciation to a great degree, even subtle differences in, for instance, the question formulation can have a major impact on results.[144]

## Age

Age, together with sex, is one of the most important variables collected in a census. It is also straightforward to measure by means of collecting information on date of birth. Collecting information on the date of birth allows the tabulation of data in two ways: by year of birth and by completed years of age. From the point of view of the EU equal treatment Directives, it is important to focus on the situation of different age groups, particularly the young and the elderly. Tabulations concerning topics such as educational attainment and economic activity status should thus, whenever feasible, be broken down by age and sex.

## Racial and ethnic origin

Roughly two thirds of countries worldwide which conduct censuses ask one or more questions about racial origin or ethnicity (broadly conceived).[145] Countries have a number of reasons for collecting such data, as the data are relevant for such purposes as understanding the ethnic composition of the population, integration of immigrants and their descendants, management of inter-ethnic relations, promotion of equal opportunities and development of minority rights policies which seek to ensure that ethnic minorities enjoy an effective right to maintain and develop their cultural, linguistic and religious identities.

This diversity of purposes is accompanied by a diversity of ways in which the ethnicity questions are posed. The pertinent questions may be framed in terms of, inter alia, ethnicity, race, ancestry, descent and nationality (meaning the country or area of origin, not formal citizenship). In some countries where direct ethnicity questions are not posed, information is sought through the inclusion of such closely related topics as religion and language and/or place of birth. Furthermore, the answer categories reflect similar conceptual diversity: it is not infrequent that the answer categories to an ethnicity question are based on a racial classification. There is also variety in the response formats: some countries use response formats which give only a fixed set of response options, whereas others use a format which simply allows the respondent to write in the answer, while yet others provide a list of examples together with an 'other – please specify' option. More than two thirds of those European countries which pose an ethnicity question favour the last approach.[146] It should be noted, however, that the framing of the questions and answer categories has a direct impact on the validity and relevance of the results that will be obtained. For example, the use of proxies such as country of birth, citizenship or language instead of racial or ethnic origin will inevitably lead to incomplete data, as these proxies cannot comprehensively reflect ethnic diversity.

The following guidelines should be taken into account in countries where there are plans to collect data on ethnicity in order to monitor the realisation of equal opportunities:

- The ethnicity question should preferably be posed in terms of 'ethnic origin'. This concept is in line with the terminology used in the pertinent EU Directive and – due to its reference to the past – is likely to be a somewhat more objective and stable concept than 'ethnicity' or 'ethnic identity'. As a general rule, the use of the concept of 'race' is not encouraged, as the use of this term in the context of

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[144] Simon, P., *Comparative study on the collection of data to measure the extent and impact of discrimination within the United States, Canada, Australia, Great Britain and the Netherlands*. Medis Project, 2004.

[145] Morning, A., *Ethnic classification in global perspective: A cross-national survey of the 2000 census round*. 10 August 2005. Available at: http://unstats.un.org/unsd/demographic/sconcerns/popchar/Morning.pdf (last accessed 1 July 2016); see also the website of the UN Statistics Division on 'Ethnocultural characteristics', at http://unstats.un.org/unsd/demographic/sconcerns/popchar/ (last accessed 1 July 2016).

[146] Morning, A., *Ethnic classification in global perspective: A cross-national survey of the 2000 census round*, 10 August 2005. Available at: http://unstats.un.org/unsd/demographic/sconcerns/popchar/Morning.pdf (last accessed 1 July 2016); see also the website of the UN Statistics Division on 'Ethnocultural characteristics', at http://unstats.un.org/unsd/demographic/sconcerns/popchar/ (last accessed 1 July 2016).

official statistics may be taken as an indication of official recognition of racial theories, even if no such acceptance is intended.[147] Likewise, the use of the term 'nationality' in place of ethnicity should be avoided, as also recommended in the CES guidelines.[148] Separate questions on religion and language can be asked so as to provide the necessary additional information, useful for example in order to plan and carry out minority rights policies.

- Given the subjective nature of the assessment, it is recommended that information on ethnic origin be based on free self-declaration by the individual concerned.[149] The CES recommendations point out that the answer format should be open-ended and that respondents should be free to indicate more than one ethnic affiliation or a combination of affiliations.[150] Respondents should also be allowed to indicate 'none' or 'not declared' when asked about their ethnic origin.[151] Cooperation should, however, be encouraged by informing them of the fact that the data are collected to support programmes which promote equal opportunities. In some countries, for example Hungary and Romania, members of the Roma community have been active in encouraging responding to the census and its questions on ethnicity.

As there is substantial variation between countries in their ethnic composition, the CES recommendations do not include a recommendation for an internationally comparable ethnic classification.[152] This on the other hand means that national practices vary to a great extent, as the following examples demonstrate.

**Examples**

In the UK information on race or ethnicity is widely collected. There was some debate about the ethnic data prior to when they were first collected in the 1991 census. Very few people refuse to answer the census ethnic group question. However, there is some controversy about the ethnic categories used in the census and significant changes in categories were made between the 1991, 2001 and 2011 censuses.

In France, census data detailing those who are French-born, French by naturalisation and foreigners have been collected since 1881 and data on previous citizenship have been collected since 1962. The Insee officially introduced the category of 'immigrant' in the 1999 census. According to the Committee on the Elimination of Racial Discrimination (UNCERD), 'the purpose of gathering statistical data is to make it possible for States parties to identify and obtain a better understanding of the ethnic groups in their territory and the kind of discrimination they are or may be subject to'. The Committee therefore recommended that France 'take a census of its population based on anonymous and purely voluntary ethnic and racial self-identification by individuals'.[153]

## Religion

As with ethnic origin, questions about religion can serve different purposes.[154] This is reflected in the associated questions which may ask about:

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[147] It should, however, be recognised that 'race' and 'ethnicity' are not synonyms, as some people classify themselves in terms of racial but not ethnic origin (and vice versa), and as people may be discriminated against on the basis of their skin colour or some other attribute commonly associated with a particular 'race' but not necessarily with any ethnic group.

[148] Conference on European Statisticians, *Recommendations for the 2020 censuses of population and housing*, paragraph 706.

[149] CES recommendations, paragraph 707. See also the recommendations enumerated in Equality Data Initiative, *Ethnic origin and disability data collection in Europe: measuring inequality – combating discrimination*, Open Society Foundations, 2014. Available at: https://www.opensocietyfoundations.org/sites/default/files/ethnic-origin-and-disability-data-collection-europe-20141126.pdf (last accessed 5 July 2016).

[150] CES recommendations, paragraphs 707 and 708. From the point of view of facilitating analysis, one feasible solution is to introduce categories that in themselves recognise multiple ('mixed') origins.

[151] CES recommendations, paragraph 707.

[152] CES recommendations, paragraph 710.

[153] CERD/C/FRA/CO/17-19, 23 September 2010 http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD/C/FRA/CO/17-19&Lang=En.

[154] It should be noted that the EU Employment Equality Directive prohibits discrimination not just on the grounds of 'religion' but also on the grounds of 'belief'.

a. formal membership of a church or a religious community;
b. identification with a certain religion, religious community or denomination;
c. religious belief whether practised or not;
d. religion in which a person was brought up; or
e. religious attendance or observance.

The preferable approach depends in particular on the information needs of the country in question. However, in order to be of maximum utility for the purposes of assessing equal opportunities, the most appropriate approach would be one that is inclusive and free from ambiguity and able to produce stable results over time.

Irrespective of the approach used, the data should be based on free self-declaration by each individual.[155] The respondents should be allowed to declare 'none', in addition to which it should be considered whether responding should be made voluntary.[156]

The CES recommendations point out that classifications should be comprehensive.[157] For the purposes of facilitating the consistency and comparability of the data, the CES recommendations endorse the following high-level classification:[158]

1.0 Christianity
  1.1 Catholic
  1.2 Orthodox
  1.3 Protestant (including Anglican, Baptist, Brethren, Calvinist, Evangelical, Lutheran, Methodist, Pentecostal, Pietist, Presbyterian, Reformed and other Protestant groups)
  1.4 Jehovah's Witnesses
  1.5 Oriental Christian
  1.6 Other Christian
2.0 Islam
  2.1 Alawit (Nusayris)
  2.2 Ismaili (Seveners)
  2.3 Ithna'ashari (Twelvers)
  2.4 Shia
  2.5 Sufi
  2.6 Sunni
  2.7 Zaydi (Fivers)
3.0 Judaism
4.0 Buddhism
5.0 Hinduism
6.0 Sikhism
7.0 Other religious groups
8.0 No religion

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[155] CES recommendations, paragraph 718.

[156] CES recommendations, paragraphs 717 and 718. In some countries the law prohibits obligatory questions that concern religion and belief. For example in Spain, under Article 12.6 of the Spanish Constitution, no-one may be compelled to testify about their ideology, religion or belief and, when there is a wish to collect this data, the consent of the individual should be sought. This consent must be provided in writing and the individual must be notified of their right not to reveal this information.

[157] CES recommendations, paragraph 720.

[158] CES recommendations, paragraph 721.

### Disability

An increasing number of countries are including a disability-related question in their censuses. Just as is the case with ethnicity, countries have multiple reasons for collecting such information: (i) the data can be used to provide services and develop programmes, such as those which address needs in relation to housing, transportation, assistive technology, vocational or educational rehabilitation and so on; (ii) the data can be used to estimate prevalence rates and trends; (iii) the data can be used to assess the realisation of equal opportunities.

A variety of approaches have been used in framing the disability question in censuses. This is because disability is a complex social phenomenon and varies in terms of intensity and time.[159] Two general models for understanding and conceptualising disability can be distinguished:

- the medical model, which focuses on the individually-based functional limitations and explains the difficulties faced by disabled people as arising from these limitations; and
- the social model, which views disability as arising from the interaction of an individual (with their specific physical or psychological qualities, including impairments) and the surrounding environment, and which emphasises that people with disabilities are primarily challenged by the barriers in society which do not take into account their specific individual needs.

In many contemporary jurisdictions the approach to disability recognises both models: disability is often defined in law by using the medical model but, for instance, the requirement to take reasonable accommodation measures in workplaces, as required by the EU Employment Equality Directive, reflects an acknowledgment of the social model.

The CES recommendations propose the adoption of a particular type of approach based on the International Classification of Functioning Disability and Health (ICF) issued by the World Health Organization (WHO). The CES approach is based on the concept of 'disability status', whereby people with disabilities are defined as those who are at greater risk than the general population of experiencing restrictions in performing specific tasks or participating in activities.[160] This group includes people who experience limitations in basic functioning, such as walking, seeing, hearing or cognition, even if such limitations are ameliorated by the use of assistive devices, a supportive environment or plentiful resources. While this way of conceptualising disability may not be seen as fully embracing the social model of disability, the CES recommendations make the case that it best serves the purpose of assessing equality of opportunity.[161] The recommendation to use this approach for measurement purposes should not be taken as an endorsement of the medical approach more generally.

### Sexual orientation

While data on sexual orientation has traditionally not been collected through censuses, the situation appears to be changing, mainly because in an increasing number of countries same-sex couples can register their relationship or be legally married. In certain countries, such as Belgium, Croatia, Ireland and Italy, information on same-sex partners living together is already collected in the national census.

Censuses ordinarily enquire about marital status and the relationships between household members, and the pertinent questions can relatively easily be rephrased to take into account same-sex couples. Although a question directly addressing the respondent's sexual orientation would yield data which would be more representative of the target group and thus rather more useful, it does not appear likely that

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[159] Mbogoni, M. and Me, A. *Revising the United Nations census recommendations on disability*. Paper prepared for the first meeting of the Washington Group on Disability Statistics. Washington, 18-20 February 2002.

[160] Conference on European Statisticians, *Recommendations for the 2020 censuses of population and housing*, paragraph 733. Available at: http://www.unece.org/fileadmin/DAM/stats/publications/2015/ECE_CES_41_WEB.pdf (last accessed 1 July 2016).

[161] CES recommendations, paragraph 455.

many countries are ready to include such a topic in the near future.

The CES recommendations propose that the following response categories be used, where countries so desire, to collect information on marital and non-marital partners:

1.0 Husband or wife
2.0 Same-sex registered (marital) couple
3.0 Opposite-sex cohabiting partner
4.0 Same-sex cohabiting partner.[162]

The CES recommendations also suggest ways in which same-sex couples can be taken into account when designing questions about relationships between household members.

> **Examples**
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> The Hungarian Central Statistical Office (HCSO), primarily during the national census, collects data for each individual on age, ethnic origin, mother tongue, language used in the family and with friends (in order to map belonging to a particular national minority), type of disability, the activities relating to which disability constitutes a barrier in everyday life and when the disability began (in order to map disability), as well as belonging to a particular religious community. The last national census took place in 2011.[163] The methodology used is self-identification. Pursuant to Article 3 (2) of the Population Census Act, providing data relating to health status, disability, religion (belonging to a particular religious community), mother tongue and ethnic origin (belonging to a national minority) is voluntary.
>
> In Ireland, the 2011 census collected information on same-sex couples. There were 4,042 same-sex couples living together, 2,321 male couples and 1,721 female.[164]
>
> In Estonia, a compulsory population census collects data inter alia on ethnic origin, native language, religion, health problems, place of birth, place of birth of parents, year of arrival in Estonia, etc. (Article 22 of the Official Statistics Act). Data on religious belief is the only information provided by respondents on a voluntary basis in the course of the census (Article 23).

## 3.3 Household surveys

A census can serve many useful purposes but it is not suitable for investigating a wide range of subjects with appreciable detail.[165] In effect, all countries conduct more specific surveys which allow particular subjects to be covered in greater detail than censuses. Household surveys provide for a flexible method of data collection and have become a key source of data on social phenomena in the last 60-70 years.[166]

Household surveys can be one-off or periodic as part of a regular survey programme. These surveys are usually sample surveys, i.e. surveys where part of the population is selected from whom data are collected and then inferences are made about the whole population. There are three broad options for collecting equality data through surveys:

- The identification part of a general survey such as the Labour Force Survey poses questions which allow the identification of individuals who belong to the equality groups. This allows the breaking down and analysis of the survey results by each group. The usefulness of this approach is limited by the

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[162] CES recommendations, paragraph 503.
[163] For more details, see Section 3.9 of this report.
[164] Central Statistical Office, *This Ireland. Highlights from Census 2011, Part 1*, Stationery Office, Dublin, March 2012.
[165] United Nations, *Designing household survey samples: Practical guidelines*, New York, 2005, pp. 4-5.
[166] United Nations, *Designing household survey samples: Practical guidelines*, New York, 2005, p. 1.

fact that most surveys target the general population and are based on respondent numbers which are too small to provide a representative sample of the members of some equality groups. This limitation may in some circumstances be overcome, for example by including a booster sample targeted at one or more equality groups.

- A special module on equality issues can be attached to a household survey focused on another topic. Some countries have, for instance, included a special module on disability in an ongoing survey, often a health survey. Again, the same challenges relating to the representativeness of the data may be encountered.
- Specialised surveys targeting a specific equality group can be conducted. A case in point is the All Ireland Traveller Health Study (AITHS) which focused on Traveller health status and health needs, and was conducted by the School of Public Health and Population Science, University College Dublin, working in collaboration with the Health Service Executive and Travellers and Traveller organisations.[167]

### *3.3.1 European surveys*

Each country runs a survey programme which is specific to it. Surveys cover many different and often specialised topics such as health, welfare, the labour force, agriculture and other socio-economic issues. The majority of surveys are household-based; however, in studying the equality groups, such as people with disabilities, it is also important to include the institutional population. Some surveys, such as the European Labour Force Survey (LFS) and the EU Statistics on Income and Living Conditions (EU-SILC), are based on EU legislation and have led to a situation where comparable data are collected in every EU country. In this context it should also be noted that there are initiatives which aim to harmonise the core variables used in surveys which have an EU dimension.[168]

In the following section the Labour Force Survey will be discussed with a view to illustrating the way in which equality considerations can be mainstreamed into a regular survey.

#### A. European Labour Force Survey (LFS)

The European Labour Force Survey is the main source of employment and unemployment statistics within the EU. It is a quarterly household sample survey which is intended to cover the whole resident population of a country. The LFS covers the Member States of the EU, Candidate Countries and EFTA countries (except for Liechtenstein). It covers people aged 15 years or over living in private households.

The survey reports data on the following proxies for discrimination:

- age (years);
- nationality /country of birth; and
- some countries (e.g. UK, see below) include supplementary variables (disability, second generation immigrants etc.)

While it is based on the EU regulations, it is the Member States which are responsible for the fieldwork. The relevant EU legislation defines the so-called EU list of variables which the Member States are to collect.[169] This list includes such variables as sex, year of birth, marital status, nationality, years of residence in the Member State, country of birth, labour status (during the reference week), occupation, hours worked, methods used to find work and highest level of education and income.

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[167] All Ireland Traveller Health Study Team, *All Ireland Traveller Health Study: Summary of findings*, September 2010. Available at: www.ucd.ie/t4cms/AITHS_SUMMARY.pdf (last accessed 4 July 2016).

[168] See especially the work done on the Core Social Variables, http://epp.eurostat.ec.europa.eu.

[169] Council Regulation (EC) No 577/98 of 9 March 1998 on the organisation of a labour force sample survey in the Community, OJ L 77, 14.3.1998., Article 4.

Special EU modules with questions regarding a particular area of interest may also be attached to particular LFS rounds. For example, the LFS ad hoc module 2014 on the labour market situation of migrants and their immediate descendants (2008: Labour market situation of migrants). The purpose of this module was to obtain data which allows comparison of labour market outcomes between migrants and other groups and an analysis of the factors which affect integration into and adaptation to the labour market.[170] A special module in 2011 covered the employment of disabled people (2002: Employment of disabled people). The LFS questionnaires may also contain additional questions not related to the EU list of variables. This opens up the opportunity to take advantage of this important data collection method for the purposes of compiling equality statistics at national level.

### B. European Union Statistics on Income and Living Conditions (EU-SILC)

The European Union Statistics on Income and Living Conditions[171] is an instrument aimed at collecting timely and comparable cross-sectional and longitudinal, multidimensional microdata on income, poverty, social exclusion and living conditions. It is anchored in the European Statistical System (ESS).

The EU-SILC is an annual survey carried out in the Member States of the EU and Iceland, Norway, Switzerland, Serbia and Turkey. The survey covers all individuals aged 16 and over living in private households. The cross-sectional and longitudinal data are produced annually.

The survey provides information on demographic variables (age, sex, etc.), employment, unemployment, education/training, poverty (financial and material), housing conditions, etc. The EU-SILC survey reports data on the following proxies for discrimination:

- age (years);
- country of birth and citizenship; and
- disability (limitations in activities).

Ad hoc modules are developed each year in order to complement the variables permanently collected in the EU-SILC core data with supplementary variables highlighting unexplored aspects of social inclusion. The different modules have included: Access to services (2016), Social and cultural participation (2015), Material deprivation (2014), Wellbeing (2013) and Housing conditions (2012).

### C. European Social Survey (ESS)

The European Social Survey is an academically driven cross-national survey. It measures the attitudes, beliefs and behaviour patterns of diverse populations.

It covers people aged 15 and over who are resident within private households in 24 countries (including 18 EU Member States). It has been organised every two years since 2001.

The survey reports data on the following proxies/grounds of discrimination:

- age;
- ‘sexuality’;
- ethnicity (‘colour or race’, ‘ethnic group’, ‘nationality’ and ‘language’);
- disability; and
- religion.

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[170] European Statistical System, *ESS agreement, Labour Force Survey (LFS) ad hoc module 2014 on the labour market situation of migrants and their immediate descendants*.

[171] Regulation (EC) No 1177/2003 of the European Parliament and of the Council of 16 June 2003 concerning Community statistics on income and living conditions (EU-SILC); 3.7.2003; Official Journal of the European Union L 165/1.

The different fields covered include demographic characteristics, employment, education, income (indicative) and attitudes.

## D. European Union Agency for Fundamental Rights (FRA) Surveys[172]

FRA is the EU agency tasked with providing independent, evidence-based assistance and expertise on fundamental rights to EU institutions and Member States. It has conducted several large-scale studies on discrimination.

In 2015 FRA published a report on anti-Semitism, which relates to manifestations of anti-Semitism in the EU Member States. The report compiles available data on anti-Semitic incidents collected by international, governmental and non-governmental sources, covering the period 1 January 2004 to 31 December 2014. 'Official data' includes data collected by law enforcement agencies, criminal justice systems and relevant state ministries, whereas 'unofficial data' covers data collected by civil society organisations.[173]

In 2012, FRA organised an EU-wide survey to discover the everyday issues affecting LGBT people. This survey collected comparable data from across the EU on LGBT people's experiences of hate crime and discrimination, as well as their level of awareness about their rights. Another survey of public bodies and service providers focused on the fundamental rights of LGBT people and on the drivers and obstacles for setting up, implementing and monitoring LGBT equality policies in ministries, schools, health institutions and police stations.[174]

In 2008, the FRA carried out a survey on migrant or minority backgrounds across the EU to measure the degree of discrimination (the EU-MIDIS survey). The interviews covered a number of topics, most importantly respondents' experiences of discrimination, victimisation and police stops. In addition to the main topics, the survey also collected a wide range of socio-demographic information on the respondents.[175]

The Racism and Social Marginalisation Survey set out to explore the relationship between young people's experiences of discrimination and social marginalisation, and their attitudes towards and actual use of violence.[176]

In 2012, in collaboration with UNDP, FRA surveyed Roma respondents in 11 Member States.[177]

## E. Eurobarometer surveys

Several Special Eurobarometer surveys[178] have covered different discrimination grounds.

The Special Eurobarometer on Discrimination in the EU in 2015 examined the following criteria linked to discrimination grounds:

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[172] FRA: http://fra.europa.eu/en/theme/racism-related-intolerances/surveys.

[173] FRA, Antisemitism: Overview of data available in the European Union 2004-2014, October 2015. Available at: http://fra.europa.eu/sites/default/files/fra_uploads/fra-2015-antisemitism-update_en.pdf (accessed 8 July 2016).

[174] See FRA, European Union lesbian, gay, bisexual and transgender survey: Main results (2014). Available at: http://fra.europa.eu/sites/default/files/fra-eu-lgbt-survey-main-results_tk3113640enc_1.pdf (last accessed 8 July 2016).

[175] FRA, *EU-MIDIS European Union minorities and discrimination survey. Main results report*, 2009. Available at: http://fra.europa.eu/sites/default/files/fra_uploads/663-FRA-2011_EU_MIDIS_EN.pdf (last accessed 8 July 2016).

[176] FRA, *Experience of discrimination, social marginalisation and violence: A comparative study of Muslim and non-Muslim youth in three EU Member States*, 2010. Available at: http://fra.europa.eu/sites/default/files/fra_uploads/1202-Pub-racism-marginalisation_en.pdf (last accessed 8 July 2016).

[177] FRA, *Poverty and employment: the situation of Roma in 11 EU Member States*, 2014. Available at: http://fra.europa.eu/sites/default/files/fra-2014-roma-survey-employment_en.pdf (last accessed 8 July 2016).

[178] Eurobarometer 83.4; May-June 2015; Basic Bilingual Questionnaire, TNS Opinion; Special Eurobarometer 393 'Discrimination in the EU in 2012'/ Wave EB77.4 – TNS Opinion & Social.

1. Ethnic origin
2. Gender
3. Sexual orientation (being gay, lesbian or bisexual)
4. Being over 55 years old
5. Being under 30 years old
6. Religion or beliefs
7. Disability
8. Gender identity (being transgender or transsexual)
9. For another reason
10. No
11. Don’t know

A similar Eurobarometer was organised in 2012 but with some differences, as the 2015 wave incorporated some improvements following the experience of previous waves.

The Eurobarometer surveys present:

- whether citizens think of themselves as belonging to a minority group and the diversity of their social circles;
- perceptions of discrimination covering attitudes to different groups and the perceived extent of discrimination in Europe in general and outside working life;
- a detailed analysis of discrimination on individual grounds;
- measurements of discrimination in Europe, whether directly experienced by Europeans or as third-party evidence;
- knowledge of one’s rights as a potential victim of discrimination;
- assessments of national efforts made to combat discrimination and the impact of the economic crisis on equality policies;
- views on equal opportunities in employment, including an examination of the effect of the economic crisis on the perceived extent of discrimination;
- the case of the Roma.

The Eurobarometer surveys enable us to develop indicators covering the different fields of the survey, notably:

1. Perceptions of discrimination in the EU
2. Experience of discrimination
3. Awareness of rights in case of discrimination
4. Equal opportunities in employment
5. Citizens’ views on diversity in the media
6. Citizens’ views on measures to foster diversity in the workplace
7. Perception of religious and ethnic discrimination in the workplace
8. Citizens’ views on information on diversity at school
9. Effectiveness of national measures and policies to fight discrimination
10. Data collection: willingness of citizens to provide personal details

This survey was carried out in the 27 Member States of the European Union in June 2012 and in the 28 Member States in 2015.

The Flash Eurobarometer 345 (Accessibility) focused on accessibility issues for disabled citizens living within the EU. This survey covered the following three areas: the profile of people with disabilities and the difficulties encountered with accessibility; the perception of improved accessibility of goods and services and benefits in removing barriers; and how to improve and guarantee accessibility.[179]

### F. The European Values Study (EVS)

The European Values Study[180] is a large-scale, cross-national and longitudinal survey research programme on basic human values. It provides insights into the ideas, beliefs, preferences, attitudes, values and opinions of citizens all over Europe. It focuses on how Europeans think about life, family, work, religion, politics and society.

The fourth wave in 2008 covered no less than 47 European countries/regions.

### G. The European Health and Social Integration Survey (EHSIS)

The European Health and Social Integration Survey was a population survey which aimed to provide statistical data on a harmonised basis and with a high degree of comparability between the EU Member States. It attempted to proxy the concept of disability used by the UNCRPD. It covered all EU Member States and 10 areas of life: mobility, transport, accessibility to buildings, education and training, employment, internet use, social contact and support, leisure pursuits, economic life, and attitudes and behaviour. For each of these areas, disadvantages or restrictions to social participation which people face in their everyday lives were investigated.[181]

In November 2013, Eurostat and representatives of the national statistical authorities agreed to discontinue this survey and instead to consider including a disability module in the future waves of the European Health Interview Survey (EHIS), see below.

### H. European Health Interview Survey (EHIS)

The European Health Interview Survey was developed between 2003 and 2006. It consists of four modules on health status, healthcare, health determinants, and background variables. The modules may be implemented at the national level either as one specific survey or as elements of existing surveys.

The EHIS aims to measure on a harmonised basis and with a high degree of comparability among Member States the health status, life style (health determinants) and healthcare services use of EU citizens.

The survey covers all people aged 15 years old or over living in private households but some countries have also included people living in institutions, such as homes for elderly people.

The first wave of the EHIS was implemented during the period 2006-2009 by 19 countries (AT, BE, BG, CY, CZ, DE, EE, EL, ES, FR, HU, LV, MT, PL, RO, SI, SK, CH and TR). The intention is for it to be run every five years. The second wave (EHIS 2) was held in 2013-2015 and covered EU Member States in accordance with Commission Regulation (EU) No 141/2013.[182]

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[179] http://ec.europa.eu/public_opinion/flash/fl_345_en.pdf.

[180] http://www.europeanvaluesstudy.eu/page/about-evs.html.

[181] For more information, see: http://ec.europa.eu/eurostat/statistics-explained/index.php/Disability_statistics_background_-_European_health_and_social_integration_survey.

[182] Commission Regulation (EU) No. 141/2013 of 19 February 2013 implementing Regulation (EC) No. 1338/2008 of the European Parliament and of the Council on Community statistics on public health and health and safety at work, as regards statistics based on the European Health Interview Survey (EHIS) Text with EEA relevance OJ L 47, 20.2.2013, pp. 20-48 Special edition in Croatian: Chapter 05 Volume 008, pp. 166-194.

The EHIS survey notably reports age, gender, country of birth, citizenship and disability (limitations to mobility, difficulties with personal care, etc.). Consequently, indicators for these groups may be established in different health-related fields.

### I. European Quality of Life Survey (EQLS)

The European Quality of Life Survey looks at a range of issues, such as employment, income, education, housing, family, health and work-life balance. It also looks at subjective topics, such as people's levels of happiness, how satisfied they are with their lives and how they perceive the quality of their societies.

The target population is all residents of the countries included, aged 18 or over. The EQLS was implemented in 2003, 2007 and 2011-12. The EQLS 2011-2012 covered the 28 EU Member States and six additional countries (Iceland, FYR Macedonia, Montenegro, Serbia, Turkey and Kosovo).[183]

### *3.3.2 National surveys*

This section provides a number of examples from national surveys on equality and discrimination, with a view to demonstrating how equality data can and has been collected by the EU Member States through national surveys. Many of these surveys experiment with new methods and concepts and can be replicated in the other countries.

### A. Surveys covering several discrimination grounds

The Crime Survey for England and Wales (CSEW)[184] is a face-to-face victimisation survey in which adults aged 16 and over resident in households in England and Wales are asked about their experiences of crime in the 12 months prior to the interview. In 2012/13 and 2014/15 the CSEW monitored five strands: race, religion, sexual orientation, disability and gender identity. There were an estimated 222,000 hate crimes on average per year for the five strands. The most commonly reported strand in these hate crime incidents was race. The second most common strand was disability. Respondents stated that 48% of hate crimes were reported to the police.

The first survey on discrimination by gender, sexual orientation and ethnic origin[185] was carried out in 2011 in Italy. It aimed to fill the data gap on the prevalence and characteristics of discrimination in Italy. The survey collected data on opinions and attitudes towards gender roles, homosexuality and immigration. In addition, it aimed to estimate the number of people who experienced discrimination in the school and work contexts (including job seekers). The results enable estimates to be made of the number of victims of discrimination at school and/or in the workplace.

The Irish Central Statistical Office runs the Quarterly National Household Survey (QNHS) Equality Module. This was first included in the QNHS in September 2004 and was repeated in 2010 and 2014. The primary focus of the QNHS Equality Module has been to produce baseline data on discrimination in Ireland. The interview questionnaire for the Equality Module focuses on self-perceived experience of discrimination by respondents over the previous two-year period. The survey covers the following perceived grounds of discrimination (gender, civil status, family status, age, race, religion, disability, sexual orientation, membership of the Traveller community, and other). The survey covers people aged 18 and over. The highest rates of discrimination were reported by people from non-white ethnic backgrounds (28%). The most common grounds identified by people who had experienced discrimination in the two years prior to the 2014 survey were age (24%) and race/skin colour/ethnic group/nationality (21%). However, 41% of

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[183] For more information please visit: http://www.eurofound.europa.eu/surveys/european-quality-of-life-surveys (last accessed 8 July 2016).

[184] Corcoran, H., Lader, D. and Smith, K., 'Hate crime, England and Wales, 2014 to 2015', *Statistical bulletin* 05/15, Home Office, 13 October 2015.

[185] www.istat.it/en/archive/137552.

people who reported that they felt they had been discriminated against believed that the ground for the discrimination was not one of the nine grounds in the equality legislation.[186]

In 2013 the Spanish Sociological Research Centre (*Centro de Investigaciones Sociológicas* – CIS) conducted a Spanish barometer on the perception of discrimination in relation to all discrimination grounds. The research was financed by the Ministry of Social Affairs.[187]

## B. Race/ethnic origin

A number of Member States have organised national surveys in order to collect information on discrimination. For example, Italy conducted the Survey on Discrimination by Gender, Sexual Orientation and Ethnic Origin, Spain organised the National Immigrant Survey and France the Trajectories and Origins Survey.

The French Trajectories and Origins Survey took place in 2008.[188] It was organised by the National Institute of Statistics and Economic Studies (Insee) and the French Institute for Demographic Studies (Ined). The purpose of the Survey was to further understanding of the extent to which geographical background is in itself a factor contributing to inequality or to limitations in access to the different resources of life in society (housing, language and education, work, public services and social benefits, contraception, health, nationality, social networks and relationships, etc.). The survey explores migratory paths, education, training and employment, living environment and housing, discrimination, community practices, etc. It also included a question on religion ('Do you have a religion?'). The scope of the survey covered people living in ordinary households. Second generation migrants reported discrimination experiences more often than first generation migrants. People from Sub-Saharan African countries had experienced the highest rate of discrimination. Muslims more often declared themselves to be victims of discrimination and stigmatisation. The econometric analysis indicates that even if different variables/characteristics are controlled for, origin remains a significant variable.

## C. Sexual orientation

In 2011 Italy organised the Survey on Discrimination by Gender, Sexual Orientation and Ethnic Origin'.[189] About one million people, aged 18-74, declared that they were homosexual or bisexual but a higher number said that during their lives they had fallen in love or had sexual relations with or felt sexual attraction to people of the same sex. About 61.3% of people between the ages of 18 and 74 in Italy believed that homosexuals are very or somewhat discriminated against; 80.3% of those who are transgender had this view. The majority of respondents (62.8%) agreed with the statement, 'It is right that a homosexual couple may have the same rights as a married couple'. The Istat survey shows that certain people have serious difficulty in accepting homosexuality: for example, 41.4% of people interviewed believed that a homosexual person should not work as a teacher, 28.1% as a doctor and 24.8% as a politician. But approximately 60% of the interviewed sample considered a relationship between two men or two women to be acceptable. LGBT people report discrimination when seeking accommodation (10.2%), in relationships with neighbours (14.3%), while accessing health services (10.2%) or in pubs, public offices or means of transport (12.4%).

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186 Central Statistical Office of Ireland: CSO statistical release, 31 August 2015, QNHS Equality, Quarter 3 2014. Available at: www.cso.ie/en/qnhs/releasesandpublications/qnhs-specialmodules/.

187 Centro de Investigaciones Sociológicas, *Percepción de la discriminación en españa* [Perception of discrimination in Spain], Estudio No 3000, 2013. http://www.cis.es/cis/export/sites/default/-Archivos/Marginales/3000_3019/3000/es3000mar.pdf Last accessed: 15 January 2016 and www.msssi.gob.es/ssi/igualdadOportunidades/noDiscriminacion/documentos/Perfiles_discriminacion.pdf.

188 Insee, Direction des statistiques démographiques et sociales (DSDS), *Trajectories and Origins in 2008 (survey on)*; and Safi, M. and Simon, P., *Les discriminations ethniques et raciales dans l'enquête Trajectoires et Origines: représentations, expériences subjectives et situations vécues*, économie et statistique N° 464-465-466, 2013.

189 Italian National Institute of Statistics: www.istat.it/it/archivio/62168.

The Integrated Household Survey (IHS) 2014 asked a question on the self-perceived sexual identity of adults in the UK.[190] There was a need to satisfy the increasing demand for data on sexual orientation and meet the requirements of the Equality Act 2010. The IHS April 2009-March 2010 included a question on sexual identity too. The Office for National Statistics (ONS) focused on one component of sexual orientation: sexual identity. This might be a restrictive approach but the ONS considered that this was the most relevant dimension to investigate given its relationship to experiences of disadvantage and discrimination.

In 2014, 1.6% of adults in the UK identified their sexual identity as lesbian, gay or bisexual. The likelihood of an adult identifying as lesbian, gay or bisexual decreased with age. Similar results are reported by the Special Eurobarometer on Discrimination, noted above. London had the highest percentage of adults identifying themselves as lesbian, gay or bisexual.

### D. Disability

In Cyprus, the Ministry of Transport and Works in collaboration with the Ministry of Labour, Welfare and Social Insurance carried out a survey in 2014 with 444 questionnaires on the accessibility of buildings housing public services, in order to identify buildings in need of accessibility improvements. Following this survey, the Ministry of Labour, Welfare and Social Insurance submitted to the Council of Ministers a proposal for the accessibility improvement of buildings leased by public services; the proposal was approved.

### E. Labour Force Survey and discrimination in the labour market

The Labour Force Survey is a broad European survey which has been described above. There is a common core for all Member States but some of them have introduced additional questions which might be useful for analysing discrimination in the labour market (employment gap, wage gap, etc.). The UK LFS Q1 2015 survey is summarised below.[191] The experience is interesting because it could be extended to all EU Member States. In fact, the LFS survey is organised in all Member States and follows a standardised and comparable methodology across the participating countries. The UK LFS Q1 2015 survey includes the following questions of interest in relation to labour discrimination:

- People with disabilities: two questions are of particular interest: ‘Does your condition or illness reduce your ability to carry out day-to-day activities?’ and ‘Does this health problem affect the kind/amount of paid work that you might do?’
- Religion: the survey asks: ‘What is your religious denomination? Catholic, Presbyterian, Church of Ireland, Methodist, other Protestant, other religion, no denomination and unwilling to answer’.[192]
- Ethnic origin: the survey includes the standard questions on nationality (‘What is your nationality?’) and place of birth (‘In which country were you born?’). It also includes some additional dimensions: 1) ‘How would you describe your national identity?’, 2) ‘What is your ethnic group?’ (‘I will read out the options 1. White, or 2. Mixed / Multiple ethnic groups, or 3. Asian / Asian British, or 4. Black / African / Caribbean / Black British, or 5. Chinese, or 6. Arab, or 7. Other ethnic group’. Please choose one option that best describes your ethnic group or background’).
- Sexual identification: the survey states ‘I will now read out a list of terms people sometimes use to describe how they think of themselves: Heterosexual or straight, gay or lesbian, bisexual, other’.

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[190] Office for National Statistics, ‘Sexual identity, smoking prevalence and perceived general health using data from the Integrated Household Survey’; *Statistical bulletin*: Integrated Household Survey (Experimental statistics): January to December 2014, 1 October 2015.

[191] Office for National Statistics: *Labour Force Survey: User guide*, Volume 2 – LFS Questionnaire 2015, Version 2 – August 2015.

[192] This question on religious denomination is asked for Northern Ireland only, see Office for National Statistics: *Labour Force Survey: User guide*, Volume 2 – LFS Questionnaire 2015, Version 2 – August 2015, page 207.

The question on disability covers two dimensions (limitations in day-to-day activities and work limitations). The question on religion would require a different list of religious denominations for replication in other countries but the results of this round could help to refine the different categories. Similarly, as noted above, the classification proposed for ethnic groups meets national circumstances and should be adapted at the EU level.

### *3.3.3 Other surveys*

In many countries national equality bodies and other specialized authorities commission research on discrimination, as the following examples demonstrate:

- Belgium: the Interfederal Centre for Equal Opportunities conducts a biannual Diversity Barometer. This gathers data on experiences of discrimination, social attitudes and participation related to the different equality grounds, covering labour market, housing and education. The Institute for the Equality of Women and Men has conducted an online survey on the situation of transgender people.
- Germany: in 2015 the Anti-Discrimination Agency conducted the largest ever survey on experience of discrimination, which was open to everyone aged over 14. The results are expected to be published in 2016.
- Luxembourg: the Centre for Equal Treatment conducts a survey on experiences of discrimination.
- Malta: the National Commission for the Promotion of Equality has conducted a study of LGBT people's experiences of discrimination.
- Sweden: the Public Health Agency includes a question on sexual orientation in its public health survey. This data informed the development of a government strategy on equal rights irrespective of sexual orientation, gender identity or expression.
- UK: the Northern Ireland Equality Commission has published Equality Awareness Surveys; this provides data on public attitudes towards LGBT people and perceived levels of discrimination.

## 3.4 Administrative registers

Administrative records are a potentially highly important source of information for compiling equality data. All countries maintain administrative records, but there is significant variation between countries in terms of the quantity and quality of the records. Examples of fairly typical administrative records include registers that deal with education, employment and taxes. Countries with well-developed register systems have reliable register information on, for instance, school attendance, educational attainment, labour market participation, income, wealth, housing, social security and social benefits and services. The most important administrative source of data is usually the population register, where one exists.[193] For instance, the Finnish Population Register contains individual-level information on, *inter alia*, name, address, municipality, marital status and some other family relations, citizenship, mother tongue, age, country of birth, nationality, membership of a religious community and occupation.[194] Countries with well-developed register systems can compile some or all census data on the basis of registers and therefore need not conduct censuses in the traditional sense.

Administrative data are by definition personal data, as they are used to make decisions with respect to individuals. While their primary purpose is therefore not statistical, and while the maintenance of these records is often decentralised, they can usually be accessed by national statistical agencies for the purposes of compiling statistics. Use of such data has many potential benefits:

- Where the records are based on continuous processes, as they usually are, they have the benefit of providing accurate and up-to-date information and provide a time-series which allows trend analysis.

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[193] European countries which have developed such systems include Denmark, Finland, Germany, the Netherlands, Norway and Sweden.

[194] www.vrk.fi (last accessed 8 July 2016).

- Registers provide data which are comprehensive in coverage and this has three immediate benefits: (i) there is no need to generalise; (ii) it is possible to produce statistics for small areas and sub-populations; (iii) registers can be used to select people for surveys.
- Registers provide a low-cost source of data.
- In some countries data from the different registers can be linked on an individual level, which allows the formation of a rich information source which can be subjected to robust analyses. Linking is possible in countries which have assigned every individual a unique personal identity number (PIN), as the PIN is attached to every individual record.

As useful as administrative registers can potentially be for the compilation of equality statistics, they tend to have one major limitation: registers often only have such information as is necessary for the purposes for which they are kept. These purposes are primarily legal and administrative, not statistical. As such, they may not have the information necessary to identify individuals who belong to the equality groups, with the exception of age. This is particularly the case with ethnic origin, as such information is seldom needed to make decisions in respect of particular individuals. In addition, data on religion tends to be non-existent or limited to formal membership of a church or other religious community – as this information may be needed for the purposes of collecting church taxes – which means that the information is not comprehensive in scope. While data on disabilities tend to be more generally available, these data usually come from registers which deal with particular services or benefits available for people with disabilities and therefore the data are likely to deal only with people with the more severe forms of disabilities.

To remedy these shortcomings, it should be investigated whether the necessary variables could, in the future, be added to the list of information collected, or whether it is possible to use proxy indicators to compile equality statistics. Another possibility would be to link administrative data with e.g. census data, insofar as the latter includes variables linked to the equality grounds.

Administrative registers may also be useful in the application of positive action, such as quota schemes for people with disabilities in the field of employment. Such registers exist, for example, in Austria, Germany and Malta. Similarly, social security institutions register beneficiaries receiving different benefits (e.g. disability pensions) for budgetary control. Some countries, such as Romania, have recently established a centralised data base on disability with a view to complying with the data collection requirement contained in Article 31 of the UN Convention on the Rights of Persons with Disabilities.

Concerning the situation of LGBTI people in Europe, it is common to find data sets on the number of people entering a legally-recognised same-sex partnership (whether marriage or another status) and records of the number of individuals granted permission to change the record of their sex as assigned at birth. It may be noted that statistics on the number of legally-recognised same-sex partnerships are published or made available in the following countries: Austria, Belgium, Croatia, Denmark, Finland, France, Germany, Hungary, Ireland, Malta, the Netherlands, Portugal, Slovenia, Sweden and the UK. With regard to statistics on the number of people permitted to change the record of their sex as assigned at birth, data are available for Belgium, Finland, France, Ireland, Lithuania, the Netherlands, Slovenia, Sweden and the UK. Generally, these data are drawn from civil status registers. In a number of countries (the Czech Republic, Cyprus, Spain, Malta, Estonia and Hungary) the data are collected but can be obtained only via a request to the relevant authority.

On the other hand, certain kinds of administrative registers with sensitive data may be illegal: in Sweden a major controversy arose because of a police register that contained information on some 4,700 Roma people, with a district court finding the register discriminatory.[195]

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[195] www.civilrightsdefenders.org/sv/news/we-sue-the-swedish-state-for-the-police-register-of-roma/.

Furthermore, registration can be interpreted as 'legal recognition' by some groups but stigmatising by others. For example, in Spain, the organisations working with Roma are active in collecting cases on discrimination[196] but they are negatively disposed towards collecting data through administrative registers and censuses, and in fact most of the Roma population in Spain are also against this approach.[197] LGBT organisations are increasingly active in advocating for the collection of data.[198]

The existence of registers concerning mainly ethnic origin and religion raises different issues. For example, registration may promote equality but it might also have a stigmatising impact (e.g. registers combining origin/ethnicity and crime, registers combining sexual orientation and health, etc.). Consequently, it is important to assess the direct and indirect impacts of any registration process.

**Examples**

In Belgium, a significant quantity of administrative data is gathered in the Crossroads Bank for Social Security, including age, nationality and sex changes (coming from the National Register). It also includes data on allocations pertaining to disability. Administrative data from the National Register and the Crossroads Bank for Social Security are cross-referenced to map labour market participation ((un)employment rate, (in)activity, mobility between employment status and employment in labour market sectors) of all people of working age registered in the National Register, according to ethnic origin and migration background. In December 2011 the Commission for the Protection of Privacy delivered official advice concerning the use of administrative data on origin and the labour market from the National Register and the Crossroads Bank for Social Security. The recommendation specifies that the data can only be used for purposes related to equal opportunities and diversity policy.[199] For data emanating from the National Register, the principle is that a request form must be filled in and submitted to the Commission for the Protection of Privacy.

In Germany, for the group of people with severe disabilities Social Security Code No. IX provides positive measures for accessing employment. The law outlines that private and public employers with more than 20 employees are obliged to employ at least 5% of people with a severe disability. If this is not done, compensation must be paid. In order to provide the legal means to collect data on disability in the employment sector, the law forms the basis for a register to be maintained by the employer to collect data on the number of people with severe disabilities working in the company. The law also obliges the employer to report these figures on an annual basis to the labour agency and the integration office responsible for handling matters relating to people with disabilities.

In Hungary, as of May 2013, on the basis of the Act on the promotion of employment and support for the unemployed,[200] data on the national minority affiliation of jobseekers must be registered by the National Employment Service on the basis of voluntary declaration. There is another register run by the National Employment Service, which contains data related to the national minority affiliation of those taking part in programmes financed by the European Social Fund on the basis of voluntary declaration, in order to facilitate individual monitoring and examination of the lawfulness of the use of financial resources.[201]

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[196] See Fundación Secretariado Gitano, *Discrimination and the Roma community annual report 2014*, 2014. www.gitanos.org/upload/74/09/Informe_de_Discriminacion.pdf (last accessed 15 January 2016).

[197] See, for instance, Bereményi, B. A., *Relaciones y experiencias de los gitanos de Badalona y los rom de Bogotá con la educación escolar* [Relationships and experiences of Roma from Badalona and Bogota with school education], doctoral thesis, 2007. http://es.calameo.com/books/0005729969da259aa7cf0 (last accessed: 10 February 2016).

[198] See FELGTB, *La discriminación de la diversidad sexual en el trabajo* [Discrimination against sexual diversity in work. Informative guide]. http://diversidadlgtb-trabajo.blogspot.com.es/2009/03/la-discriminacion-de-la-diversidad.html, (last accessed: 15 January 2016).

[199] Commission for the Protection of Privacy, 2006.

[200] Article 57/A. (2) k) of Act IV of 1991.

[201] Article 57/D. (2) ge) of Act IV of 1991.

## 3.5 Key issues

*Equality indicators*

- Various actors develop indicators which set targets for the outcomes of equality and non-discrimination policies. To assess the indicators these need to be populated with data, including statistical data. A promising practice is the development by the EU Agency for Fundamental Rights of such indicators, among others for the rights of people with disabilities in relation to independent living (Article 19 CRPD) and political participation on an equal footing with people without disabilities (Article 28 CRPD).
- The EU2020 strategy set targets, including in employment, education, social inclusion and poverty reduction. Data collected and published by Eurostat are being used to assess the achievement of these targets for people covered by the various discrimination grounds, for example people with disabilities.

*Population censuses, surveys and administrative registers*

- Population censuses and surveys are an important source of equality data. Inclusion of equality relevant questions/issues in census and survey questionnaires is developing, but encounters some complex issues related to including (new) questions (acceptance of including the topic by the group concerned, avoidance of ambiguity or offensiveness of questions, impact on formulation of results) as well as the costs related to the means of data collection.
- European surveys (LFS, EU-SILC, ESS, Eurobarometer, FRA surveys etc.) have EU-wide coverage and therefore generate data that are comparable and compatible across the EU Member States. The potential use of these data for development of equality and non-discrimination polices at both EU and national level is increasingly recognised and acknowledged.
- At national level there are examples of specific equality and non-discrimination surveys, demonstrating methods and concepts that can be replicated in other countries. Examples can be found in the Crime Survey for England and Wales, covering victimisation on the grounds of race, religion, sexual orientation, disability and gender identity, the National Immigrant Survey in Spain, the Trajectories and Origins Survey in France and the Survey on Discrimination by Gender, Sexual Orientation and Ethnic Origin in Italy.
- Countries with well-developed register systems can compile some or all census data on the basis of these administrative data and therefore have a more regular flow of up-to-date data and can avoid costs related to censuses. A case in point is Finland. Although the advantages of the development and use of register systems for equality and non-discrimination is acknowledged, this approach also tends to come with its own limitations and challenges.

# 4. Victimisation and complaints data

## 4.1 Introduction

Victimisation and complaints data (hereafter 'complaints data') is another form of baseline data on discrimination. The concept of complaints data is used in a broad sense in this handbook, in reference to (i) formal complaints filed with the police, courts of law, tribunals and other bodies with competence to investigate claims of discrimination and (ii) informal complaints filed for instance with specialist non-governmental organisations.

Complaints data represent the 'tip of the iceberg' level of information. As such they describe the volume and nature of that portion of discrimination where the individuals discriminated against have crossed the threshold for reporting their experiences. The reasons why the reporting threshold is high for many individuals has in some countries been investigated by means of victim surveys, with the following reasons often being given: victims might be uncertain whether discrimination actually took place; they may fear they don't have enough evidence to successfully pursue their cases; they may think that the legal system does not provide for a meaningful remedy; they may not want to be involved in complex and potentially costly legal proceedings which they are in addition unfamiliar with and cannot fully control; they may not want to make the mistreatment they have experienced public; or they may fear being branded 'troublemakers'.

It is likely that there are variations between countries and grounds of discrimination in terms of the reasons for the reluctance to take action. The EU Agency for Fundamental Rights has conducted research and demonstrated the occurrence of and reasons for substantial under-reporting in discrimination cases.[202]

While the statistics based on complaints data should therefore not be taken at face value, they do provide a valuable source of baseline information which can be very useful. Complaints data can, for instance, provide a point of comparison to the results of victim surveys and can form a rich source for qualitative research.

## 4.2 Justice system data

Courts, tribunals and other judicial bodies are important sources of complaints data. This is particularly the case with bodies such as ombudsmen and equality bodies which have been specifically set up for the purposes of handling complaints on discrimination. Data on the number and types of discrimination claims processed during a particular time period such as a calendar year, information on outcomes (how many cases were declared inadmissible, accepted or rejected, with breakdown by the type of discrimination), together with aggregate information on complainants and respondents, are among the kinds of statistical information regularly compiled on the basis of judicial processes. Data on the number of pending complaints and the average number of days taken to reach a decision allows measurement of performance in handling complaints.

Case-law materials are a valuable source of well-substantiated evidence on discrimination, making them an ideal target for qualitative research which can reveal important aspects about the contexts in which discrimination takes place and the motives, reasons and arguments put forward by the parties.[203]

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[202] See FRA (2012), *Access to Justice in cases of discrimination in the EU – steps to further equality,* Vienna 2012 http://fra.europa.eu/en/publication/2012/access-justice-cases-discrimination-eu-steps-further-equality (last accessed 1 September 2016).

[203] Databases that include relevant case law in an accessible format can be an essential asset in this context. For example, RELIGARE is a database of domestic case-law dealing with select issues of religious freedom and discrimination (e.g. employment and family law). It includes case-law from nine EU countries, resulting in a total of 267 cases. The database is freely accessible (http://religaredatabase.cnrs.fr). The judgments are available in full, and are also summarised in English and often include a commentary written by a legal expert.

Studying the case materials can also provide important insights into the functioning of the legal system, for instance in relation to what kind of evidence the courts tend to find persuasive.[204]

In some EU countries discrimination is an offence under national criminal law.[205] It is recommended that in these countries the numbers and nature of discriminatory offences known to the police be reported on a regular basis. In addition, aggregated information on the suspects (e.g. age and gender profiles) and other details of the reported incidents should be made available. The publication of a yearly thematic report on discrimination would assist in effective dissemination of the information and would help to alert the public to emerging problems. The interlinking of source data from police, prosecution and court files can provide a major advantage, as this allows the identification of the number of crime reports on discrimination which are handled at the different stages of the judicial process – information thereby obtained shows charging practices, conviction rates and sentencing patterns for these offences and may give hints as to what obstacles there may be when discrimination cases are processed at the different stages of the justice system.

However, it should be noted that sometimes police data may suffer not just from under-reporting – the fact that victims may not report events to the police – but also from under-recording, meaning that sometimes a police officer may refuse to record a complaint of discrimination or may fail to do so in an appropriate manner. This obviously reduces the reliability of the resulting statistics, emphasising the need for standardised recording procedures and their strict observance by all police officers.

Statistics on the numbers and kinds of crime reports filed with the police can nevertheless provide an important and relatively solid point of comparison – albeit depending on the quality of the recording practices – for data obtained from other sources, such as victim surveys. The following example provides a good illustration of this.

The victim survey data indicate a decline in the volume of discrimination, whereas police data show an increase in the numbers of reported incidents of discrimination. These two trends, while contradictory when taken at face value, are however reconcilable and simply suggest improved access to justice, increased knowledge among victims of their rights and/or an increased confidence in the justice system on the part of the members of the equality group concerned.

Police data can also form a basis for checking the reliability of victim surveys, as the latter regularly ask respondents to indicate whether they have reported the discrimination they have experienced to the police.[206]

**Examples**

Since 1992 the UK Home Office has published statistical information, the aim of which is to help those involved in the administration of justice to avoid discrimination on the grounds of race. The production of this information is a requirement under Section 95 of the 1991 Criminal Justice Act. These statistics and the so-called Section 95 reports which are based on them report on the representation of ethnic groups, including Black, Asian and minority ethnic groups, as victims, suspects, defendants and offenders within the criminal justice system. Data included in the report have been extracted from large administrative data systems generated by the courts, police forces and other agencies.

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[204] For an example of such a method, see National Research Council, *Measuring racial discrimination*. Panel on Methods for Assessing Discrimination, National Academies Press, Washington DC, 2004, p. 120.

[205] Chopin, I. and Germaine-Sahl, C., European Network of Legal Experts in the Non-Discrimination Field, *Developing anti-discrimination law in Europe*, European Commission, 2013. Available at: www.migpolgroup.com/wp_mpg/wp-content/uploads/2014/05/Developing-Anti-Discrimination-Law-in-Europe-EN-29042014-WEB.pdf (last accessed 5 July 2016).

[206] This is provided so that both the crime register and the survey in question are based on the same definitions of discrimination and so that both data sets provide reliable data.

Ethnic monitoring in criminal justice agencies has relied on a variety of recording methods and classification systems. There are two main ethnic group classifications used within the 2012 report: the 5+1 self-identified classification based on the 16+1 classification used in the 2001 Census and the 4+1 visual appearance classification used by the police when they visually identify someone as belonging to a particular ethnic group. Data are presented on self-identified ethnicity whenever available, as this classification is more directly comparable with population data and generally perceived as more reliable than officer-identified ethnicity. The report also includes data from the Crime Survey for England and Wales.

Some of the main findings of the Section 95 report for 2012 were:

- Adults from self-identified Mixed, Black and Asian ethnic groups were more at risk of being a victim of personal crime than adults from the White ethnic group.
- The statistics on stop and search showed that people who self-identified as belonging to the Black ethnic group were six times more likely, and those from Asian or Mixed ethnic group two times more likely, to be stopped and searched than White people.
- The conviction rate (the number of convictions divided by the number of people proceeded against) for indictable offences increased across all ethnic groups between 2009 and 2012, but was generally higher for the White ethnic group compared with any other ethnic group during this period.[207]

The Bulgarian national equality body, the Commission for Protection against Discrimination, collects and publishes information related to equality data. The Commission issues annual reports, which contain information for the cases reviewed by the Commission with a break-down for different protected grounds. The reports are presented to the Parliament. According to the 2014 report, the Commission reviewed 97 cases involving alleged discrimination on the basis of citizenship, personal status, origin and religion.

## 4.3 Other complaints data

Complaints data may also be generated in the course of the work carried out by organisations or bodies which are not part of the formal justice system but provide advice and/or other support to victims of discrimination. These organisations may be, for instance, community-based associations, human rights NGOs or anti-discrimination organisations specifically set up for the purposes of monitoring discrimination and providing assistance to its victims. Complaints about workplace discrimination may also be filed with trade unions or employers.

The data generated by these organisations can be an important source of data, and may be vital in the absence of official justice system data. Even where systematic official complaints data are available, these statistics provide important complementary information. The threshold for contacting these organisations is often lower than the threshold for contacting the authorities. Community-based voluntary organisations, or organisations which otherwise have direct links with equality groups, are often the first to become aware of changes in patterns of discrimination and of new problems affecting particular groups or areas. Organisations also regularly come to know of such events where an individual suspects that discrimination has taken place, but where, for one reason or another, they are not willing to take the matter to a court or report it to the authorities.

In interpreting this kind of data it must be kept in mind that the data reflect subjective experiences and do not as such paint a full picture of the extent and nature of discrimination. Yet this information is usually reliable enough to be helpful, for instance, in alerting the public to changes in the patterns of

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[207] Ministry of Justice, *Statistics on race and the criminal justice system: A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991*, November 2013. Available at: http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269399/Race-and-cjs-2012.pdf (last accessed 1 June 2016).

discrimination. When collected over time with consistent procedures and definitions, it also gives some indications of trends in the levels of experienced discrimination.

The information regularly recorded by these organisations includes the following data:

- particulars of the victimised person (e.g. age, gender);
- type of discrimination
  - area of life where discrimination took place;
  - ground of discrimination;
  - the nature of the discriminatory event (direct or indirect, harassment);
- mode of contact (telephone, post, email, visit);
- course of action advised and/or course of action taken.

The range of information collected obviously affects the scope of statistics which it is possible to compile on the basis of the data. As data collection is often not the primary purpose of these organisations, they may not be fully familiar with privacy and data protection issues, which is why they, just like all other organisations, should familiarise themselves with the relevant laws before engaging in data collection. It would also be helpful for these organisations to issue guidelines for their frontline staff in relation to confidentiality and other data protection issues. The use of a standardised reporting form, whether paper or electronic, can enhance the reliability, comparability and often also the security of the data.

**Example**

RADAR and other anti-discrimination agencies in the Netherlands

Every municipality in the Netherlands has a legal obligation to facilitate an independent agency, open to all residents, providing advice and support in cases of discrimination. These agencies give advice and other support to individuals who have experienced discrimination. They are also required to register complaints submitted to them. Municipalities are legally required to report to the national government annually. The national umbrella anti-discrimination expert centre Art 1 has drawn up a national report on these discrimination complaints since 2004 and continues to do so.

One of the agencies is RADAR, which operates in several municipalities, including Rotterdam. RADAR registers all complaints submitted to it and produces yearly reports which include trend analyses. Most complaints submitted to RADAR concern discrimination on the grounds of skin colour/ethnicity, religion/belief, gender, sexual orientation, age and disability/chronic illness. Discrimination typically takes place in working life, the living environment, public facilities, commercial services and hotels, restaurants and bars.[208]

## 4.4 Key issues

### *Victimisation, justice system and complaints data*

- Victimisation, justice system and complaints data represent the ‘tip of the iceberg’ kind of information, showing the number and nature of such cases of discrimination where the victim has taken action, such as reporting the case to a specialised equality body. Research in recent years, including by the EU Agency for Fundamental Rights, shows substantial under-reporting of discrimination experiences, demonstrating that victimisation, justice system and complaints data are not representative in quantitative terms.

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[208] http://radar.nl (last accessed 1 June 2016).

- Victimisation, justice system and complaints data can and do form a rich source for qualitative research, among other things showing trends in the growing awareness of victims of their rights, as well as in handling and concluding cases of discrimination cases. Reporting of discrimination in every-day life as is done by the national umbrella organisation of municipal anti-discrimination agencies in the Netherlands, illustrates the increasing willingness to report discrimination in every-day life and the growing awareness of victims of their rights.

# 5 Discrimination testing

## 5.1 What is discrimination testing

Discrimination testing is a form of social experiment in a real-life situation. The method was originally developed as a tool for checking compliance with the law and constitutes an unequivocal procedure for charting the effectiveness of equal opportunity legislation.[209] The method is already very well-developed and has been used since the late 1960s.[210]

In discrimination testing, two or more individuals are matched for all relevant characteristics other than the one that is expected to lead to discrimination, e.g. disability or ethnic origin.[211] The testers apply for a job, an apartment or some other good or service, usually on a large number of occasions, and the outcomes and the treatment they receive are closely monitored.[212] This kind of paired testing allows for good control over different causal variables, diminishing the possibility that differences in treatment are caused by variables which the researcher cannot observe:[213] the direct and unequivocal measurement leaves no room for other explanations.[214] Testers may or may not be aware of the purpose of the research setting.[215] Some research designs allow the use of fictitious testers. Situation testing has been used to study discrimination mainly in access to employment and access to services such as renter- and owner-occupied housing, hotels, restaurants and bars.[216]

Discrimination testing has been applied in order to study discrimination on a large variety of protected grounds, including sex, ethnic origin, disability, sexual orientation and age.[217] In Europe the method has been used at least in Belgium, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, the Netherlands, Romania, Slovakia, Spain, Sweden, Switzerland and the UK. Several institutional players, such as the International Labour Organization (ILO) and the Council of Europe Commissioner of Human Rights have endorsed it. However, it is not entirely clear whether the use of discrimination testing methodology is permitted in all countries in certain situations (e.g. when a study deals with financial institutions or insurance companies), and it is therefore recommended that legal advice is sought if any doubts arise in this respect.

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[209] Rorive, I., *Proving discrimination cases: The role of situation testing*, MPG and the Centre for Equal Rights, 2009. Colectivo IOE, *Labour market discrimination against migrant workers in Spain*, International Migration Papers 9, International Labour Office, Geneva, 1995. Situation testing as *proof of discrimination* has been used, in the EU, at least in Belgium, Hungary, Montenegro, the Netherlands, Slovakia and Sweden; see European network of legal experts in gender equality and non-discrimination, *A Comparative analysis of non-discrimination law in Europe*, European Commission, 2016, p. 92.

[210] Riach, P. A. and Rich, J. 'Field experiments of discrimination in the market place' in *The economic journal* 112, November 2002, p. F515. Bovenkerk, F., *Testing discrimination in natural experiments: A manual for international comparative research on discrimination on the grounds of "race" and ethnic origin*, International Labour Organization, Geneva, 1992.

[211] Fix, M. and Turner, M., 'Testing for discrimination. The case for a national report card' in *Civil rights journal*, 1999.

[212] Fix, M. and Turner, M., 'Testing for discrimination. The case for a national report card' in *Civil rights journal*, 1999.

[213] Fix, M. and Turner, M., 'Testing for discrimination. The case for a national report card' in *Civil rights journal*, 1999.

[214] Bovenkerk, F. 'The research methodology' in de Beijl, R. Z. (ed.), *Documenting discrimination against migrant workers in the labour market; A comparative study of four European countries*, International Labour Office, Geneva, 2000, p. 17.

[215] See Riach, P. A. and Rich, J. 'Deceptive field experiments of discrimination: Are they ethical?' in *Kyklos*, Vol. 57, 2004, pp. 457-470, for a discussion of the benefits of each of these models.

[216] Larja, L. et al, *Discrimination in the Finnish labour market: An overview and a field experiment on discrimination in recruitment*, Publications of the Ministry of Employment and the Economy, 2012; Foster, A. W. et al, *Measuring housing discrimination in a national study: Report of a workshop*, Washington DC: National Academy Press, 2002, p. 9; Riach, P. A. and Rich, J. 'Field experiments of discrimination in the market place' in *The economic journal* 112, November 2002, p. F515; Fix, M. and Turner, M. 'Testing for discrimination. The case for a national report card' in *Civil rights journal*, 1999; Bovenkerk, F., *Testing discrimination in natural experiments: A manual for international comparative research on discrimination on the grounds of "race" and ethnic origin*, International Labour Organization, Geneva, 1992, p. 13; Fibbi, R., Kaya, B. and Piguet, E. *Le passeport ou le diplôme?* Swiss Forum for Migration and Population Studies, Neuchâtel, 2003.

[217] See the examples mentioned in this handbook, and Riach, P. A. and Rich, J., 'Field experiments of discrimination in the market place' in *The economic journal* 112, November 2002, pp. 484, 485, 505 ff, 515, and *Developing anti-discrimination law in Europe* (December 2014), p. 103.

Discrimination testing is a valuable tool because it can be used to expose well-concealed covert discrimination which is hard to detect by any other means. Such covert direct discrimination often takes place for instance in the field of access to housing. Results of these kinds of field experiments can also often be extrapolated, i.e. one can draw conclusions on the basis of such experiments about the existence of discrimination in society.[218]

> **Example**
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> In 2013, a research programme in the private housing market was set up by Belgian universities, with the collaboration of the national equality body, the (then) Interfederal Centre for Equal Opportunities and the Federal Minister for Equal Opportunities, the three Regional Housing Ministers and the Gender Institute. The programme involved situation testing using 688 'test calls' and 1,769 'test emails'. The results of the testing were presented in 2014 through the publication of the Diversity Barometer on housing, and they reveal the prevalence of discrimination against people of foreign origin and recipients of social allowances, including people with disabilities. Although property owners and real estate agencies are aware of the prohibition of discrimination, the testing revealed that they use certain subtle strategies to avoid renting housing to these categories of people.[219]

## 5.2 Distinct purposes

Discrimination testing may serve three distinct purposes:

- Litigation. Testing can provide objective and definitive evidence of discrimination, which is otherwise often unavailable.[220] Such evidence is accepted in courts in many European jurisdictions, although in many countries lack of explicit legal provisions and of case-law still causes some uncertainty as regards the admissibility of evidence based on testing.[221] Litigation-oriented testing focuses specifically on the actions of one or more particular organisations, and those involved in such testing may either be:
  - Gathering evidence which may corroborate the experiences of a prospective complainant. Tests which are conducted in response to a particular set of information provided by a specific complainant are likely to be specifically tailored to those circumstances.[222] Although a discrimination test conducted after an alleged incident of discrimination took place cannot prove that prior incident, it can provide an indication that the unequal treatment at hand is systematic rather than occasional.[223]
  - Gathering evidence in order to bring a complaint if evidence of discrimination is found.
- Research. Research-oriented testing usually focuses on the actions of a larger number of organisations, possibly even a representative sample, and does not necessarily lead to legal action. When conducted for research purposes and in order to yield reliable measures of differential treatment, discrimination testing must adhere to high research standards. The potential burden for test subjects, such as employers and specific service providers, should however be taken into consideration, in particular in the case of a multiplication of discrimination tests within a specific field.[224]

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[218] National Research Council, *Measuring racial discrimination*. Panel on Methods for Assessing Discrimination, National Academies Press, Washington DC, 2004, p. 72.

[219] Centre interfédéral pour l'égalité des chances (Interfederal Centre for Equal Opportunities), *Baromètre de la diversité > Logement* [Diversity Barometer – housing], Brussels, October 2014, available at: http://unia.be/files/legacy/barometre_de_la_diversite_logement.pdf, pp. 136-245.

[220] Riach, P. A. and Rich, J., 'Deceptive field experiments of discrimination: Are they ethical?' in *Kyklos*, Vol. 57, 2004, p. 458.

[221] See Makkonen, T., *Measuring discrimination: Data collection and EU equality law*. Network of Independent Experts in the non-discrimination field, Office for Official Publications of the European Communities, Luxembourg, 2007.

[222] Pratt, S., *Discrimination against persons with disabilities. Testing guidance for practitioners,* Office of policy Development and Research, US Department of Housing and Urban Development, July 2005, p. 39.

[223] Bojarski, Ł., Chopin, I., Cohen, B., DO, U., Farkas, L. and Iordache, R., *Training manual on discrimination – Awareness-raising seminars in the areas of non-discrimination and equality targeted at civil society organisations*, Utrecht/Brussels, May 2012.

[224] See for instance, *Forskningsöversikt om rekrytering i arbetslivet* [Research overview of access to employment], Oxford Research 2012, p. 38.

– Awareness-raising. Discrimination testing can provide dramatic evidence of the existence of discrimination and the results of studies using testing as a methodology can attract considerable public attention.

**Examples**

Cross-country testing of labour market discrimination against migrants.[225]

Since the early 1990s, the ILO has sponsored discrimination testing studies in several countries, including Belgium, Germany, Italy, the Netherlands and Spain, in order to study discrimination faced by immigrants in access to employment. These country studies have been based on the methodological framework developed by Frank Bovenkerk[226] which, however, allowed national variations in implementation, meaning that the results are not strictly speaking comparable.

The test group representing the immigrant testers were youngish Moroccan men in the case of Belgium, Italy, the Netherlands and Spain, and youngish Turkish men in the case of Germany. These groups were chosen because they constituted sizable immigrant-origin groups in these countries and because there was evidence suggesting discrimination against them. The majority and minority testers were closely matched in terms of human capital. The treatment they received during the entire span of the recruitment and selection procedure (application by phone/possible personal interview/ outcome of the selection) was documented across a large number of test situations in order to rule out the possibility that differences were due to sheer chance. For instance, in Italy a total of 633 valid tests altogether were performed. The studies focused on semi-skilled occupations, in which it could be presumed that competition was high and where the employers were therefore more likely to be able to 'afford' to discriminate. Open vacancies were mainly found through newspaper advertisements – the services of employment agencies could not be used, since the use of these services tended to require the showing of official identity documents.

The net discrimination rate was quite consistent across the countries, ranging between 33% (Belgium) and 41% (Italy), although direct comparisons between countries should not be made.[227] This means that immigrant jobseekers were discriminated against in more than every third application procedure. As the testers had been matched across all employment-relevant criteria and used the same methods for gaining employment, these differences could not be explained by such factors as inadequate education or training, lack of access to networks and connections to employers and/or inadequate command of the host country's language.

In 2012, a Swedish radio programme conducted a discrimination test of a car rental service involving people of Roma origin as well as people of Swedish origin. The test revealed discrimination and the Roma testers filed a complaint with the Discrimination Ombudsman, the national equality body. The Ombudsman found that discrimination on the ground of ethnic origin had taken place, and the parties reached a settlement by which each of the three claimants was awarded compensation amounting to 30,000 SEK (approx. EUR 3,100).[228]

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[225] Bovenkerk, F. et al, *Discrimination against migrant workers and ethnic minorities in access to employment in the Netherlands*. International Migration Papers 4, International Labour Office, Geneva, 1995; Colectivo IOE, *Labour market discrimination against migrant workers in Spain*. International Migration Papers 9,International Labour Office, Geneva, 1995; Goldberg et al, *Labour market discrimination against foreign workers in Germany*. International Migration Papers 7, International Labour Office, Geneva, 1996; Arrijn, P. et al, *Discrimination in access to employment on grounds of foreign origin: the case of Belgium*. International Migration Papers 23, International Labour Office, Geneva, 1998; Allasino, E. et al, *Labour market discrimination against migrant workers in Italy*. International Migration Papers 67, International Labour Office, Geneva, 2004.

[226] Bovenkerk, F., *Testing discrimination in natural experiments: A manual for international comparative research on discrimination on the grounds of "race" and ethnic origin*,International Labour Organization, Geneva, 1992.

[227] The results from Germany are not included here, as the German testing procedure did not cover all stages of the recruitment process, unlike the other country studies.

[228] Settlement reached by the Discrimination Ombudsman in cases ANM 2013/829 and ANM 2013/830, see www.do.se/lag-och-ratt/diskrimineringsarenden/statoil-ab/.

## 5.3 Key issues

- NGOs in many EU Member States use the results of situation testing for awareness-raising purposes.
- Discrimination testing has been further developed to become a more common practice in many European countries, with slowly emerging jurisprudence recognising the admissibility of testing as evidence in courts.
- Explicit legislative provisions on discrimination testing are still very rare at the national level in Europe.

# 6 Qualitative research

## 6.1 Primary and secondary data collection

In the field of social sciences, a distinction is ordinarily made between quantitative and qualitative research. In broad terms, qualitative research can be seen as a vehicle for obtaining an in-depth understanding of human behaviour, the motives and reasons behind the behaviour and the context in which it takes place. Qualitative research often focuses on capturing the motives, actions and experiences of specific groups of people, and/or obtaining a deeper understanding of the social processes involved. Unlike quantitative research, qualitative research places less emphasis on statistical validity and its prerequisites such as use of representative samples. Hence smaller but focused samples are often used. When applied to the field of studying inequalities, qualitative approaches are well suited to giving a voice to those discriminated against, the perpetrators, those involved in the administration of justice and also to studying the cumulative and inter-generational aspects of discrimination.

Different kinds of data can be subjected to qualitative analysis. There are two alternative ways of obtaining the data:

- primary data collection, i.e. the collection of 'fresh' information, e.g. by means of:
  - structured, semi-structured and unstructured interviews;
  - focus groups; group interviews; or
  - participant observation; and
- secondary data collection,i.e. the use of pre-existing materials, typically various kinds of documentary evidence, such as:
  - court and police records;
  - media sources;
  - records from political processes; or
  - annual reports released by companies and other organisations.

Likewise, a number of techniques can be used for analysing the data. These include, for instance, discourse analysis and conversation analysis.

## 6.2 Research strategies used

Frequently-used qualitative research strategies include the following:

- Case studies. Case study methods involve an in-depth, longitudinal examination of a single instance or event. The quintessential characteristic of case studies is that they strive towards a comprehensive understanding of the case and do not seek to privilege any particular point of view.
- In-depth interviews. In conducting in-depth interviews, a researcher engages one or more subjects in an extensive, more or less structured conversation. The advantage of such interviews is that they often elicit information which is richly detailed. In-depth interviews are based on small samples, which means that the results may not be representative of the target group.
- Ethnography. Lesley Noaks and Emma Wincup define ethnography as follows: 'Ethnography is the study of groups of people in their natural setting, typically involving the researcher being present for extended periods of time in order to collect data systematically about their daily activities and the meanings they attach to them.'[229] While ethnography is typically associated with participant observation it frequently also involves in-depth interviews and documentary analysis.[230]
- Focus groups. Focus groups typically have between six and 12 participants. The interviewer has more of a role of facilitator or moderator who sets out the agenda of the meeting and prescribes time limits

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[229] Noaks, L. and Wincup, E., *Criminological research. Understanding qualitative methods*, Sage publications, London, 2004, p. 93.
[230] Noaks, L. and Wincup, E., *Criminological research. Understanding qualitative methods*, Sage publications, London, 2004, p. 91.

(usually one or two hours). Focus groups can also be convened online. Focus groups differ from group interviews in that the former allows more interaction between the members of the group.

**Example**

A study conducted in Ireland aimed to explore the impact of discrimination experienced as a consequence of being identified with a mental health problem. A qualitative design was used. Semi-structured interviews were undertaken by people who identified as having lived experience of mental health problems. Transcribed interview data were subject to thematic analysis with the aid of a software package.

People volunteered accounts of discrimination which clustered around employment, personal relationships, business and finance and healthcare. Common experiences included being discounted or discredited, being mocked or shunned and being inhibited or constrained by oneself and others. The researchers conclude that qualitative research of this type may serve to illustrate the complexity of discrimination and the processes whereby stigma is internalised and may shape behaviour. Such an understanding may assist health practitioners in reducing stigma and identifying and remediating the impact of discrimination.[231]

## 6.3 Key issues

- Equality data are increasingly used to produce and to underpin results in research in the field of equality and non-discrimination, especially to establish the impact of measures and policies to promote equality and to combat discrimination. A best practice example of this is the work undertaken by the EU Agency for Fundamental Rights which combines data collection (e.g. through surveys) with qualitative research and develops indicators to establish equality or discrimination.

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[231] Lakeman, R. et al, 'A qualitative study exploring experiences of discrimination associated with mental-health problems in Ireland', *Epidemiology and Psychiatric Sciences*, Cambridge University Press, 2012.

# 7 Diversity monitoring by organisations

## 7.1 Introduction

Diversity monitoring, in the contexts of employment and service delivery, refers to the process by which an organisation observes the impact of its policies and practices on the equality groups. There are two kinds of monitoring:

- Quantitative monitoring: this refers to numerical monitoring, a process by which an organisation collects, stores and analyses data about the composition of its workforce and/or the users of its services across the relevant equality grounds. Quantitative monitoring can be carried out by means of keeping administrative records or by carrying out comprehensive workforce surveys.
- Qualitative monitoring: this refers to other processes by which an organisation seeks to obtain feedback on the impact its policies and practices have on the equality groups. Qualitative monitoring can be carried out by means of focus groups, satisfaction surveys, random or targeted surveys, observation and basically any other technique, the primary aim of which is to obtain not quantitative but qualitative information.

The distinction between the two types of monitoring is not watertight, as quantitative monitoring often includes qualitative elements and vice versa. These two types of monitoring should not be seen as mutually exclusive as they can, and should, be used as complementary measures. The choice of appropriate action depends on many factors, such as the size of an organisation. In accordance with the emphasis placed by this handbook on statistical data, the following discussion on monitoring will focus primarily upon quantitative monitoring.

Monitoring is perhaps the most effective measure an organisation can take to ensure it is in compliance with the equality laws. It is usually undertaken as part of a broader commitment to equal treatment and may be accompanied by other measures, such as the adoption of equal treatment policies, staff training and reviews of employment and workplace policies and procedures. Monitoring can help to:

- highlight possible inequalities;
- investigate their underlying causes;
- remove any unfairness or disadvantage; and
- send a clear message to employees, applicants, customers and shareholders that the employer takes equal opportunities seriously.[232]

In employment, monitoring lets employers examine the make-up of their workforce in terms of the equality categories and compare this with benchmark data where these exist. It also allows them to analyse how their personnel practices and procedures affect different groups.

In service delivery, monitoring can reveal which groups are using the services and how satisfied they are with them. Organisations can then consider ways of reaching under-represented groups, and can make sure that the services meet the specific needs of each group and that the services are provided fairly.

> If our society is to be fair to lesbian, gay and bisexual people, it's important to know the facts. Data matters because injustice that goes unseen goes uncorrected.[233]

The purpose of monitoring is to allow an organisation to obtain an overall, statistically-valid picture of the way in which its policies and practices affect the equality groups. The primary, overarching purpose is

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[232] Stonewall, *Using monitoring data: Making the most of sexual orientation data collection*, 2012, p 6: http://www.stonewall.org.uk/sites/default/files/using_monitoring_data.pdf (last accessed 2 March 2016).

[233] Equality and Human Rights Commission, *Beyond tolerance: Making sexual orientation a public matter*, EHRC 2009, p. 5.

not to obtain information or to take measures with respect to a particular individual, but with respect to the workforce in general. However, this cannot be achieved without collecting individual-level data, which is why such data are needed. Depending on the way in which monitoring is carried out, the information gathering process can be adapted to serve individual-level purposes as well, such as obtaining the information needed in order to take reasonable accommodation measures with respect to employees and customers who have disabilities. Where this is the case, the data subject must be informed of all the purposes for which the data submitted by him or her will be used.

Research indicates that there is significant support for diversity monitoring where individuals understand the purpose of this exercise. In 2015, the Eurobarometer public opinion survey asked whether individuals would support providing personal details on an anonymous basis if it could help to combat discrimination in their country.[234] A clear majority were 'totally' or 'somewhat' in favour, although the level of support varied according to the characteristic. 72% were in support regarding data on ethnic origin, and 71% for data on religion or belief. The level of support was slightly lower for data on health situation (66%) and sexual orientation (63%).

## 7.2 Diversity monitoring in employment

While the two EU Directives do not provide for a direct legal duty for employers to monitor the diversity of their workforce, the uniformly worded Article 11(1) of the Racial Equality Directive and Article 13(1) of the Employment Equality Directive put workplace monitoring first in their list of exemplary measures, the adoption of which should be considered by the social partners. The two Directives provide that:

> Member States shall, in accordance with national traditions and practice, take adequate measures to promote the social dialogue between the two sides of industry with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices.

Many employers are convinced that aiming to have a diverse workforce also makes business sense.[235] Inclusive recruitment practices ensure that an employer has access to the widest possible pool of talent. Profiling as an equal opportunity employer is seen as socially desirable and in accordance with corporate social responsibility policies; and workplace monitoring can give such ambitions credibility and integrity. Employers who are, and are seen to be, proactive in promoting equal opportunities are likely to enhance their image in the eyes of their employees, clients, customers and job applicants.[236] This can bring important business benefits such as reduced staff turnover and increased interest in joining the organisation.[237]

Monitoring can also help employers to use their resources more effectively and help them to avoid potentially costly discrimination proceedings.[238]

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[234] European Commission, *Special Eurobarometer 437, Discrimination in the EU in 2015*, 2015, p. 96: http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2077 (last accessed 21 September 2016)

[235] European Commission, *Continuing the diversity journey: Business practices, beliefs and benefits*, European Commission, 2008, p. 19. See further examples of research on the business benefits from diversity at: http://ec.europa.eu/justice/discrimination/diversity/facts/index_en.htm (last accessed 21 September 2016).

[236] European Commission, *Continuing the diversity journey: Business practices, beliefs and benefits*, European Commission, 2008, p. 20.

[237] See e.g. European Commission, *Continuing the diversity journey: Business practices, beliefs and benefits*, European Commission, 2008and Johnson, R. W. and Neumark, D. *Age discrimination, job separations, and employment status of older workers: Evidence from self-reports*, National Bureau of Economic Research, June 1996.

[238] Equality and Human Rights Commission, *Good equality practice for employers: equality policies, equality training and monitoring. Equality Act 2010 guidance for employers*, Vol. 7, 2014, p. 15. Available at: www.equalityhumanrights.com/sites/default/files/good_equality_practice_for_employers_equality_policies_equality_training_and_monitoring.pdf (last accessed 23 May 2016).

In some countries public authorities encourage workforce monitoring through specific policies. For example, in Belgium public subsidies are conditional upon the employment of a certain percentage of persons of a particular age, which renders the collection of data and their communication necessary if an institution wants to be eligible for these subsidies.

### *7.2.1 Workforce monitoring*

Many, if not most, employers readily collect and store data about their employees, in particular information relating to their sex, address, length of service and other data as may be required to pay salaries and taxes and to manage the workforce in general. Workforce monitoring basically implies extending the scope of information collected to include information relating to one or more equality grounds. Anonymous workforce surveys provide an option where the national data protection laws limit or prohibit the collection of sensitive data in the context of employment. For example, research in Germany found that personnel statistics frequently included data on age, disability and gender and these could be used to analyse a range of human resources processes, such as recruitment, promotion or dismissal.[239]

Workforce diversity monitoring should ideally cover all aspects relating to employment, including promotion, pay and other conditions of work and termination of employment relationships. Because so-called glass ceilings often limit the opportunities of people who belong to equality groups, it is of major importance to monitor how individuals progress to the top levels of jobs.[240] Sometimes opportunities are also constrained by glass walls, meaning that members of a particular group end up concentrated in particular professions or types of work, and therefore monitoring should also allow an assessment of whether all groups are evenly spread throughout the different departments and functions of an organisation.

Obtaining information with regard to the representation of the different equality groups within the workforce can be useful in and of itself, especially when monitoring is carried out on an ongoing basis or repeated at regular intervals, as the development of longitudinal data allows the assessment of trends. However, when the internal data of an organisation can be compared with external benchmark data, i.e. data on the expected participation rates of these groups, the internal data become even more useful. There are two basic sources of such benchmark data:

- Official statistical data which reveal the extent to which the different equality groups are represented in the pool of qualified workforce within the catchment area, i.e. the area from which the employer in question draws its workforce.[241] This kind of information can only be provided by large-scale surveys, such as the population census or the Labour Force Survey, in so far as these collect data in relation to the equality grounds. In some cases, information from administrative registers or sample surveys can also provide the necessary data.
- Where the above-mentioned data do not exist, a useful point of comparison may be provided by data gathered by similar organisations, especially where a group of organisations has agreed to pool their data to provide a joint benchmark against which each can assess its performance.[242] Such data, however, have their limits, as the benchmark may reflect existing imbalances in the representation of one or more equality groups in a particular sector and as the effect of geographic and demographic

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[239] Merx, A., *Von Integration zu Vielfalt Kommunale Diversitätspolitik in der Praxis* [From integration to diversity – Municipal diversity policy in practice]), Fritz-Erler-Forum, Baden Württemberg, 2013 Available at: http://library.fes.de/pdf-files/bueros/stuttgart/10142.pdf (last accessed 17 May 2016).

[240] Dex, S. and Purdam, K., *Equal opportunities and recruitment. How census data can help employers to assess their practices,* York Publishing Services, York, 2005, p. 21.

[241] The geographical area from which the employer recruits new employees usually differs from one job to the next. Generally, the recruitment area tends to be local for entry-level or low-grade jobs and broader, even nation-wide, for higher-grade jobs.

[242] Equality and Human Rights Commission, *Good equality practice for employers: equality policies, equality training and monitoring. Equality Act 2010 guidance for employers*, Vol. 7, 2014, p. 17. Available at: www.equalityhumanrights.com/sites/default/files/good_equality_practice_for_employers_equality_policies_equality_training_and_monitoring.pdf (last accessed 23 May 2016).

factors may need to be taken into account. For example, an insurance company employs a large number of staff in its call centre handling telephone and online enquiries from customers. Applicants for these positions are typically from the local city and region, given that the salary level is not high and only secondary level educational qualifications are required. With this background information, the company can use data on the proportion of national or ethnic minorities living in the region (if this exists) as a benchmark and a target by which to assess whether current recruitment is representative.

Irrespective of the source of the benchmark data, it is crucial that the monitoring data and the benchmark data are based on the same concepts and classification schemes, as otherwise the two sets of data are not comparable.[243]

Where the comparison of internal and external data reveals under-representation, in a statistically significant sense,[244] then discrimination may be present and this possibility merits further investigation. While a finding of under-representation is a strong indicator of the existence of a problem, it does not in and of itself prove the existence of discrimination. The imbalance may have resulted from some other factor, which may or may not be legitimate in terms of the law. Therefore, the employer should investigate its policies and practices in the areas of hiring, promotion and retention in order to find out why the distribution of a group fell short of what could be expected. Such employers should, in particular, monitor their recruitment and selection processes to examine whether applicants belonging to the under-represented group(s) are not hired, for whatever reason, or whether they are not even applying for the jobs in the first place. Positive action measures may need to be implemented in order to remedy the imbalance.

### *7.2.2 Monitoring recruitment and selection*

Employers who want to examine whether their recruitment and selection practices are in accordance with the equality laws need to address the following questions:

- Do qualified individuals of all groups apply for advertised posts in proportion to their presence in the population?
- Given the characteristics of those who do apply, do members of each group have the same chance of being shortlisted?
- Given the applicants on the shortlist, do members of each group have the same chance of being offered the job?[245]

External benchmark data are required to answer the first question. Proportions of applicants from different equality groups need to be compared with their proportions in the qualified population in general. For this purpose, employers need 'to know the likely pools of suitably qualified applicants in the relevant spatial labour market'.[246] Again, statistical data from censuses, labour force surveys or other comparable official sources may provide the necessary comparative figures. 'Where the distributions of applicants,

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[243] For instance, it is clear that if the monitoring form used by an employer defines 'disability' only in terms of a physical impairment, while the relevant benchmark data (e.g. census data) are based on a more inclusive definition, the two do not provide a common basis of comparison. Categories for collecting data about applicants and workforces should thus follow those used for census and/or other applicable official data sources.

[244] There are various tests which an employer may run to examine whether the differences are real or whether they may be attributable to sheer chance. These include tests of statistical significance and the so-called four-fifths rule which is widely used in the US. See: EEOC, 'Uniform guidelines on employee selection procedures', Code of Federal Regulations, para 1607.4D, 1978.

[245] See Dex, S. and Purdam, K., *Equal opportunities and recruitment. How census data can help employers to assess their practices*, York Publishing Services, York, 2005, pp. 7-8.

[246] Dex, S. and Purdam, K., *Equal opportunities and recruitment. How census data can help employers to assess their practices*, York Publishing Services, York, 2005, p. 1.

offers or hiring outcomes by [particular] groups deviate… from their distribution in the relevant qualified populations, then discrimination may be present and this possibility needs further investigation'.[247]

Monitoring recruitment and selection does not become redundant even where suitable benchmark data are not available, or where they are of insufficient quality. This is because the monitoring data can, even by themselves, reveal irregularities in the process by which applicants are shortlisted, invited to interview and offered a job.

### *7.2.3 Acting on the results*

It is crucial that employers tie monitoring to concrete remedial action. The type of corrective action should directly address the source of the problem as identified by the analysis of monitoring data. Therefore, where it is established that people belonging to a particular group are not applying for open positions to the extent that their presence in the general working population would lead one to expect, then an employer should review its recruitment advertising and possibly its image within the target group. If this is of no help, the employer should consider, for instance, arranging specific recruitment events and campaigns targeted at the under-represented group.[248] It should also consider, where appropriate, offering pre-employment training to prepare potential job applicants for selection tests and interviews and develop links to local community groups.[249] Where the problem is not the disproportionate range of applicants, but statistical imbalances in being shortlisted and being offered the job, the employer in question should review its internal decision-making mechanisms and criteria. Adoption of positive action measures should be considered in order to remedy any existing imbalances.

### *7.2.4 Technical and practical considerations*

In principle, diversity monitoring within an organisation is not inherently problematic or technically challenging. There are two basic ways in which monitoring can be carried out:

- collection of personal data (data related to identifiable individuals) coupled with associated recordkeeping; and
- anonymous workforce surveys.

#### **Collection of personal data**

With the first approach, an employer can conduct an equality survey, for instance by asking each employee to fill in an equal opportunities form which asks whether the employee concerned belongs to one or more equality groups. Any employee being asked to provide data should be given a full explanation of the reasons for collecting the data, the importance of providing a response, how the data will be used and arrangements made for keeping the information secure and confidential. Once obtained, the information can be entered into the employee database to be used for analysis.

It is important that the employer is able to keep the records up-to-date. This can be achieved by asking all new employees to fill in the form – unless they have already provided the necessary information during the application process – and by making the necessary adjustments to the database when the employment relationship ends.[250] Keeping the records up-to-date may require re-surveying, especially in relation to disability, as disability status can change.

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247 Dex, S. and Purdam, K., *Equal opportunities and recruitment. How census data can help employers to assess their practices*, York Publishing Services, York, 2005, p. 8.

248 See e.g. Dex, S. and Purdam, K., *Equal opportunities and recruitment. How census data can help employers to assess their practices*, York Publishing Services, York, 2005, p. 22.

249 Stavo-Debauge, J. and Scott, S., *Final report on England*, Medis Project, May 2004, p. 63.

250 The data could, for example, be removed from the employee register and rendered anonymous but it should not be removed altogether. This is because an employer may still need the data, e.g. in order to be able to defend itself against

The recruitment and selection process can be monitored by asking all applicants for vacancies to fill in the equal opportunities form. To alleviate any fears of misuse of the data in the selection process, the processing of this information should be separated from the processing of the applications proper and trusted to a designated person who is not involved in the selection process, with due confidentially requirements. Once information about shortlisting, appointments, salary and promotion become available, these can be entered into the employee database. The overall statistics on applicants and the workforce, broken down by different equality grounds, can then be compared with the respective figures concerning the composition of the relevant general population.

It should be recalled that, as a rule, no-one should be compelled to disclose sensitive personal information: disclosure of such information should be voluntary. Employers may also initially feel uncomfortable about asking questions about sensitive issues, and employees and job applicants may initially feel uncomfortable about answering those questions. However, missing data have a direct and harmful effect on the quality of the monitoring exercise, which is why employers need to consider ways in which they can encourage employees to submit the data. There are many ways by which participation can be promoted:

- employers should explain clearly the purpose of monitoring (promotion of equal treatment);
- employers should be able to guarantee the confidentiality of the data;
- employers should act upon their findings;
- the monitoring form should be carefully designed:
  - it should be concise so as not to pose a disproportionate burden;
  - the questions should be formulated in clear language; and
  - the form should be tested before use.

Experience shows that confidence in the monitoring system tends to grow once the system is in place and people become accustomed to it and are educated about it.

## Collection of anonymous data

With the second approach, the same kind of information may be sought, but this is done through anonymous surveys. Anonymous surveys can provide a snapshot in time of the diversity of the workforce, provided that the response rates are acceptable. Individuals who have reservations about collection of personal data should have no problems with cooperating in this kind of monitoring, as the data are not linked to specific individuals. Indeed, collecting sensitive information by means of carrying out anonymous surveys has been found to significantly increase response rates among the equality groups, especially among people with disabilities and LGBT people.

**Example**

The City of Paris conducted an anonymous and self-administered survey of its employees. The survey aimed to gather data on how factors such as gender, citizenship and migrant background affected employees' career paths. A questionnaire was sent to a sample of over 10,000 employees and it obtained a 47% response rate. It provided an opportunity for employees to share data on experiences of perceived discrimination in relation to career advancement.[251] The City of Vienna also collects data periodically on its employees with regard to gender, age and migration background.[252]

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possible later discrimination claims and in order to run analyses on the profiles of those employees who have left the organisation, as such an analysis may also reveal possible problems within the organisation.

[251] Eberhard, M. and Simon, P., Égalité professionnelle et perceptions des discriminations á la Ville de Paris, INED, 2014.

[252] Stadt Wien–MA 17, *3. Wiener Integrations & Diversitätsmonitor* [3rd Vienna Monitor on Integration and Diversity], 2014. Available at: http://www.wien.gv.at/menschen/integration/pdf/monitor-2014.pdf (last accessed 19 May 2016).

### Personal v. anonymous data

While monitoring based on anonymous surveys has its merits, it also has inherent limitations. As the data are not linked to specific individuals, they cannot be used to track progression or investigate underlying causes of identified patterns. Moreover, the data grow old as time passes, meaning that it is not possible to maintain an up-to-date picture of the composition of the workforce. This means that these surveys need to be repeated at regular intervals to obtain trend data, and this can pose something of a burden on both the employees and the employer. When considering the appropriate interval for such surveys, account should be taken of both the burden of being targeted for surveys and the need to obtain up-to-date information.

Whether anonymous monitoring has any benefits over non-anonymous monitoring in terms of response rates and anonymity depends on the size of the organisation and the level of information which is being sought. In a small or even medium-sized organisation, a detailed questionnaire may lead to a situation where particular responses can nevertheless be traced back to particular individuals, a fact which compromises the very idea of anonymous monitoring and may lead to a decrease in the willingness to cooperate. The usefulness of this method has thus to be assessed on a case-by-case basis.

Overall, collection of personal data has some advantages over collection of anonymous data, and the benefits associated with anonymity may not materialise where detailed information is needed or where the size of the company or other organisation is small. Anonymous monitoring may, however, be the only available option where national data protection laws do not allow the use of monitoring based on personal data or where there is considerable reluctance to cooperate in non-anonymous monitoring on the part of the employees. The two methods can also be used in combination: an employer may monitor the diversity of its workforce through collection of personal data and obtain additional information, such as information on experiences of harassment or other discrimination, through anonymous surveys. It may also be deemed best to use different types of monitoring with respect to the different equality grounds.

> **Example**
>
> The Flemish Government collects anonymous data on its employees. People with a disability are recorded via self-identification, but people with a migrant background and those over 45 years old are identified from administrative data.[253]

One way to deal with the problem of incomplete data is to use other-classification in addition to self-classification. Other-classification means that someone other than the data subject, such as a representative of the employer, does the classification in respect of the person concerned. This is used as a residuary method in monitoring (religious) community background in Northern Ireland.[254] In some countries the domestic data protection laws may, however, limit the applicability of this method.

## 7.3 Diversity monitoring in service delivery

The prohibition of discrimination under the Racial Equality Directive applies not just in relation to employment, but also in relation to, *inter alia*, education, social security, healthcare, social advantages and access to and supply of goods and services, including housing. Domestic law may go beyond the Directive and also prohibit discrimination in these areas on the basis of other grounds of discrimination, and this should be taken into account. Entities working in these areas may thus wish to monitor not just their personnel but also their service delivery to ensure that they are in compliance with the law. Monitoring

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[253] Vlaamse Overheid [Flemish Government], *Monitoring: hoe de kansengroepen tellen?* [Monitoring: how to count disadvantaged groups?], 2016.Available at: https://overheid.vlaanderen.be/monitoring-hoe-de-kansengroepen-tellen (last accessed 19 May 2016).

[254] Equality Commission for Northern Ireland, *A step-by-step guide to monitoring*, ECNI, 2011, Appendix 5.

has been found to provide useful information, particularly in the domains of housing, education and healthcare.

Organisations which monitor their service delivery can use the information they obtain to:

- assess their performance;
- identify barriers to good performance and actions for improving;
- review progress and adjust actions as appropriate;
- set targets for improving outcomes; and
- benchmark against other comparable entities.

Without monitoring, it is virtually impossible for an organisation to obtain information about these aspects of its activities in a systematic way. Monitoring can be used to tell which groups are using or receiving the services and whether a certain group is facing particular challenges. For instance, an agency providing housing services may want to draw up profiles of service use to verify that all groups have equal access to housing of equal quality and on equal terms. Schools may want to assess the impact of their policies on pupils, staff and parents from different equality groups. They may also want to monitor the way their policies function, with special emphasis on pupils' attainment levels. Likewise, higher education institutions may want to gather data on staff and student experiences.[255]

There are several methods by which information on service delivery can be collected. These include:

- Administrative record-keeping. Many entities (such as schools) with which individuals have an ongoing or long-standing contact, may consider adapting their data collection systems in a way which enables them to keep up-to-date registers of the recipients of their services by the equality categories.
- Surveys. Where the contact is one-off or otherwise of limited duration, or where the service provider does not wish to engage in record-keeping, much of the necessary information can be collected by means such as:
  - interviews;
  - focus groups; and
  - questionnaires, including customer satisfaction surveys.

  The choice of the method should correspond to the information needs of the organisation in question: interviews and focus groups can provide in-depth information, whilst a questionnaire survey allows quantitative information to be gathered from a large number of people.
- Discrimination testing. For example, this can take the form of submitting CVs to an advertised job vacancy where the qualifications and experience of the candidates are comparable, but there is an apparent difference in ethnic origin. Testing in this manner can disclose whether there are disparities in the likelihood of being invited to a job interview.
- 'Mystery shopping': mystery shopping is a process of evaluating the frontline service providers of a public or private organisation from the point of view of a customer or other recipient of services. It is a process through which professionals or lay people pose as customers to test the service they receive in the organisation, and has been used by a range of service providers, such as hotels, restaurants, airlines and even hospitals. It may involve observation, visits, telephone calls and so on. It is commonly used for checking the quality of service delivery in general but can also be used to assess equality of treatment.

Again, there are no 'one-size-fits-all' solutions as to how the relevant information should be collected. In practice, the best data collection method depends most of all on the type of entity in question, its information needs and data collection mechanisms, the needs and attitudes of the target groups and the national data

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[255] See further: Equality Challenge Unit, *Effective equality surveys: Exploring the staff and student experience in higher education institutions*, Equality Challenge Unit, 2011. Available at: www.ecu.ac.uk/publications/effective-equality-surveys/ (last accessed 21 September 2016).

protection law.[256] Each of the data collection methods has its inherent advantages and disadvantages. They are not mutually exclusive, meaning that a range of data collection methods may be taken advantage of by a single service provider.

The information which is obtained should be carefully analysed in order to assess whether the services are fairly and equally provided and whether members of the equality groups have experienced particular obstacles. A difference revealed by outcome statistics signals the existence of a possible problem, but is not in itself proof of discrimination. A more detailed investigation of the sources of difference is necessary in such a situation. An investigation should be followed by other action, such as removal of unfair barriers which have been identified in the course of monitoring; examination of decision-making policies and processes; and adoption of positive action policies, including for instance outreach activities and the setting of targets to be reached. External benchmark data can be useful in the analysis of the internal data and in the planning of remedies, for example where targets are being set.

## 7.4 Monitoring: an assessment

Equal opportunities for all groups, particularly in the field of working life, carry with them important benefits for the members of the equality groups, the business world and society at large.

Given that employment and service delivery are core areas from the point of view of equal treatment and that monitoring is arguably the most effective way by which the realisation of equal treatment can be promoted in these areas, and given that there are no major technical challenges involved as monitoring is successfully being carried out in several countries, it is recommended that all EU Member States consider ways in which to introduce monitoring to workplaces and service delivery.

A broad range of entities should be involved in the process of developing a national action plan on monitoring. These include, in particular, the pertinent government departments, social partners, the equality groups, national equality bodies, national statistical agencies and the national data protection authorities.

National discussion on monitoring should cover the following main topics:

- The scope of monitoring:
  - should monitoring be part of a broader duty to promote the realisation of equality, e.g. by means of requiring organisations to draw up an equality plan?
  - which entities should the monitoring duty cover (public sector and/or private sector, through contract compliance or through a direct duty)?
  - which equality groups should the monitoring cover?
  - should monitoring cover both employment and service delivery?
- How monitoring should be carried out in practice (qualitative v. quantitative monitoring; anonymous v. nominal monitoring; self-categorisation v. third-party categorisation). Should the monitoring mechanisms be the same with respect to all equality groups or would it be more feasible to introduce numerical monitoring in respect of some strands, such as gender and ethnic origin, and to have other kinds of feedback processes in respect of the other strands?
- The legal basis for monitoring. While businesses and other organisations increasingly agree in principle with the need to ensure that their policies and practices are in compliance with the equality laws, evidence from various countries shows that they still tend to consider monitoring to pose an extra burden and are not ready to engage in it unless prompted to do so. This means that there must be a sound legal or other basis for data collection, with the possibility of applying effective and

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[256] Those entities which already have mechanisms in place by which they collect information on the recipients of their services and of the services provided should consider whether they can adapt these mechanisms in such a way that enables the disaggregation of the data by the equality grounds. These entities typically include schools, employment agencies and organisations responsible for health and social care.

proportionate sanctions where an organisation refuses to meet its duties. However, it should be noted that it is possible for individual organisations to engage in monitoring, and thus to reap the ensuing benefits, even in the absence of legal requirements to that effect.
- The data protection regime. The impact of national data protection laws must be carefully analysed, as these may pose limits in terms of the kinds of monitoring which may be carried out. Amendment of laws which constitute an undue barrier may be considered in so far as this is in line with the applicable EU and international laws. The national data protection regime should be reviewed to ensure that adequate safeguards are in place to prevent any misuse or unauthorised processing of sensitive data.
- The existence of suitable benchmark data. Effective monitoring benefits from the existence of reliable data against which the monitoring data can be compared. In practice, only nation-wide data sets which contain socio-economic data broken down by the relevant equality categories and different geographical areas are useful for this purpose. This means that the relevant benchmark data need to be gathered by means of censuses, labour force surveys or other major surveys.
- Standardisation of concepts and categories. In order to facilitate the generation of comparable data series, sharing of information and measurement of performance over time, uniform concepts and categories need to be developed and used. It may also be useful to develop a standardised equality data collection form.
- The need to promote training on diversity monitoring.

A good practice would be to develop, in co-operation with all concerned stakeholders, guidelines on monitoring. A case in point is France, where the Defender of Rights jointly with the national data protection authority, CNIL, has published a handbook for private and public human resources managers entitled ‘Measuring to progress towards equal opportunity’. The guide is tailored towards employers and provides information on procedures to be followed to establish reliable indicators while respecting personal data regulation.

It should be noted that the effectiveness of all monitoring depends on the degree to which the groups and individuals concerned are willing to cooperate in such action. With a view to that, it is of essential importance to be clear about the aims of monitoring and to link monitoring to a broader equality and diversity strategy. Practical experience shows that the process is likely to command public confidence when the organisations involved are seen to be acting on the results of the data collection and when monitoring is part of a broader commitment to equal opportunities. Monitoring should be seen to be a means to an end, not an end in itself.

## 7.5 Case studies

### Case Study 1: Ireland, the Equal Access Survey in Higher Education

A review conducted by a High Level Group on University Equality Policies found that, although considerable funds were being invested in measures to increase participation in universities by under-represented groups, it was difficult to evaluate the impact of these programmes.

The collection of data across the various statutory areas of equality is fundamental to the success of an equality strategy. Without adequate information there can be no accountability and no real appreciation of results.[257]

Since 2007, the Equal Access Survey has been conducted annually by many higher education institutions in Ireland. It is a voluntary survey gathering data, ‘on the social, economic and ethnic background of new

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[257] Equality Review Team to the Higher Education Authority, *Report of the High Level Group on University Equality Policies*, Higher Education Authority, 2004, p. 21.

students who enter higher education for the first time.'[258] It includes gathering information on age, gender, normal country of domicile and disability. The survey achieves a relatively high rate of participation: in 2013/14, 74% of new entrants (i.e. students) completed the survey.[259] The data allow developments over time to be identified and yield a more detailed picture of the profile of those entering higher education. For example, there are significant differences in the background and needs of mature students (those over the age of 23). Of these, 4.1% had an African ethnic background, compared to 1.2% of non-mature students.[260] Amongst those students with a disability, psychological/emotional disabilities were more common amongst mature students (41%) compared to non-mature students (22%).[261] The data have been compared with the results of the census to identify areas of under-representation; although Irish Travellers were 1.2% of the population according to the 2011 Census, they were only 0.1% of new entrants to higher education in 2013/14.[262]

The data gathered are used to inform the allocation of resources to assist disadvantaged students and this assists higher education institutions in promoting equality of opportunity.[263]

### Case Study 2: UK, Stonewall Workplace Equality Index

Stonewall is an organisation which promotes LGBT equality. It runs a Diversity Champions programme which works with over 700 organisations to create 'inclusive and accepting' working environments.[264] It has promoted workplace monitoring as a key element to improving how organisations respond to LGBT employees and service-users. For example, guidance for employers on gathering data is found in its Sexual Orientation Employer Toolkit.[265]

For 12 years it has been publishing an annual Workplace Equality Index. More than 400 organisations took part in the 2016 index, which benchmarks organisations for LGBT equality; a list of the top 100 employers is published.[266] The employees of those organisations which participate in the Workplace Equality Index are invited to take part in an 'anonymous survey about their employers' attitudes towards workplace culture, diversity and inclusion'.[267] A total of 60,000 responses were received in the preparation of the 2016 Index, so this is a major source of regular data on employment practices. The 2016 survey included questions about transgender equality for the first time.

There are now examples emerging in other Member States of similar LGBT equality indexes which benchmark employer practices based on data gathered from employers and employees.[268]

## 7.6 Key issues

- Experiences with diversity monitoring in countries where monitoring is carried out have been positive in supporting assessment of the impact of equal opportunities policies, as well as identification of discriminatory practices and barriers to equal treatment.
- A broad range of stakeholders (public institutions, social partners (trade unions and employers' organisations), private companies, equality bodies, NGOs, organisations of equality groups) can and

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[258] Higher Education Authority, *Key facts & figures. Higher education 2013/14*. Available at: www.hea.ie/sites/default/files/final_key_facts_figures_2013_14.pdf (last accessed 23 May 2016).
[259] Higher Education Authority, *Key facts & figures. Higher education 2013/14*, p. 27.
[260] Higher Education Authority, *Key facts & figures. Higher education 2013/14*, p. 37.
[261] Higher Education Authority, *Key facts & figures. Higher education 2013/14*, p. 38.
[262] Higher Education Authority, *Key facts & figures. Higher education 2013/14*, p. 28.
[263] www.hea.ie/en/policy/national-access-office/access-data (last accessed 23 May 2016).
[264] www.stonewall.org.uk/get-involved/workplace/diversity-champions-programme (last accessed 23 May 2016).
[265] Dick, S. and Ashok, V., *Sexual orientation employer toolkit,* Stonewall. Available at: www.stonewall.org.uk/sites/default/files/employer_toolkit.pdf (last accessed 23 May 2016).
[266] www.stonewall.org.uk/get-involved/workplace/workplace-equality-index (last accessed 23 May 2016).
[267] www.stonewall.org.uk/get-involved/workplace/workplace-equality-index (last accessed 23 May 2016).
[268] E.g. GLEN Workplace Equality Index (Ireland); Parks – Liberi e Uguali LGBT Equality Index (Italy).

should be involved in developing and implementing diversity monitoring. Practical experience shows that the effectiveness of monitoring requires cooperation of all stakeholders and needs to be based on their firm commitment to ensuring equal opportunities for all.

- The growing experience of using diversity monitoring within businesses and organisations is improving understanding of the need to address the full spectrum of equality characteristics within data collection systems. This includes designing innovative ways of gathering data on the experience of groups that may be hard to reach through a routine survey of all employees or service-users. This is particularly relevant for people affected by stigma and/or those in small minority groups, who may be reluctant to disclose personal data as a result.

# 8 Conclusions and recommendations

## 8.1 Progress on the recommendations from the 2007 handbook

The 2007 European Handbook on Equality Data aimed to help EU Member States to develop their data collection practices. The handbook included eight recommendations directed mainly at national decision-makers in the Member States with a view to providing guidance as to how national data collection can be developed in a meaningful and systematic way.

The key elements in the eight recommendations are:

1. Monitor the state of equality and non-discrimination by building national knowledge bases on equality and discrimination by collecting data.
2. Data collection should utilise multiple sources.
3. Issues impacting on data collection, such as definitions, classifications, categorisation and protecting sensitive data, need to be addressed.
4. Current data collection designs (for example surveys and censuses) need to be improved to obtain the data required to compile equality statistics.
5. Complaints statistics should be developed as these form baseline data on discrimination.
6. Priorities for research and allocation of funding should be set in cooperation with representatives of the equality groups and the scientific community.
7. Workplace and service delivery equality and non-discrimination monitoring should be developed in dialogue with the social partners, representatives of the equality groups and other stakeholders.
8. EU Member States need national action plans to develop a knowledge base on equality and discrimination.

The next sections describe the current state of affairs and main developments in relation to the key elements of the eight recommendations in the years since the publication of the original handbook.

### *1. Building a national knowledge base on equality and discrimination by collecting data*

Data collection practices differ in relation to the different discrimination grounds. The national knowledge base on equality and discrimination therefore also differs depending on discrimination ground. A brief overview is given here of the extent to which data are collected by ground. Point 4 below describes the specifics by discrimination ground.

Sexual orientation and gender identity are clearly the grounds in relation to which the least data are being collected across the EU. Data on religion/belief are also rarely collected. There are, however, a few EU Member States where the census includes questions on religious affiliation. Racial and ethnic origin are particularly complex grounds with regard to the collection of equality data. Collection of data on racial or ethnic origin is currently not widespread in the EU, with collection of proxy data being more common.

The ground for which the duty to collect equality data across the EU is most widespread is *disability*. This is linked to regulations in the employment field, but is also a result of Article 31 of the UNCRPD, which requires data collection in relation to disability. The Member States which have ratified the UNCRPD report efforts to fulfil their duty under Article 31 of the Convention to collect 'appropriate information, including statistical and research data', but the reported activities are not comprehensive and systematic enough to result in information that will 'enable them to formulate and implement policies to give effect to the present Convention' as required by Article 31.

Most data sets across the Member States are disaggregated by *age*, and no specific equality data is collected with regard to this ground, with the exception of complaints statistics which demonstrate age discrimination and survey questions on age discrimination.
Overall, data are very rarely collected on *multiple grounds*. When such data are collected it is generally through complaints data from equality bodies or NGOs.

Some Member States are clearly moving towards the collection of more and better equality data, for example the United Kingdom, Ireland and Finland, as will be shown in points 2 and 8 onwards. Yet, the overall picture that arises is that equality data collection in the EU Member States is fragmented and that data collection through various sources is not well managed at national level. In order to form a 'national knowledge base' data sources need to be interlinked and data collection requires coordination and synchronisation at the national level.

## *2. Collecting data using multiple sources*

Across the Member States, data are rarely collected specifically for equality related purposes, but rather are collected for general administrative/societal/statistical purposes and then used, for instance, to demonstrate the existence of discrimination or to develop equality policies.

The data collected in the United Kingdom and Ireland by public bodies for the purpose of compliance with the equality duties imposed in these countries constitute the most obvious exceptions. In addition, in Finland there is a four-year programme to assess equality and discrimination indicators based on (1) all available data of relevance from statistics and research and (2) one study each year on a specific topic. The programme, managed by the Ministry of Justice and involving a large number of diverse stakeholders, is unique in the EU.

The data which are collected in practice across the Member States and which could be identified as equality data can be loosely grouped in the following categories:

- population and household censuses;
- administrative population registers generally based on ID numbers;
- data collected for the purpose of EU-wide databases (EU-SILC, LFS and in some but not all Member States, ESS);
- complaints data (at the EU level: European NGOs; at the national level: mainly equality bodies and NGOs but also from courts and/or the police), sometimes but not always broken down by discrimination ground;
- ad hoc surveys (directly targeting discrimination experiences or more generally covering living or work conditions etc. and including questions related to the discrimination grounds);
- diversity monitoring data, collected by public or private organisations with a view to monitoring their employment and/or service delivery.

The sources that are used are indeed multiple. However, the result is that issues remain relating to definitions, classifications and categorisation and processing data, which has consequences for the comparability of data, as will be seen below.

## *3. Issues impacting on data collection*

The collection, processing and use of equality data is generally regulated by a combination of anti-discrimination and data protection legislation. As a consequence, there is no coherent approach in relation to the definitions, classification and categorisation of data. A brief summary of issues relating to definitions and categorisation that affect data collection is provided in the following paragraphs.

Many EU Member States have adopted definitions of *disability* through anti-discrimination legislation or specific legislation on the rights of people with disabilities, based on the *social* model of disability contained in particular in the UNCRPD. However, for data collection purposes in most countries data are drawn from administrative registers of people in receipt of social (or other) benefits, based on definitions designed for the purpose of access to such benefits. These registers generally adopt a *medical* approach to disability and design definitions which are very different from those of anti-discrimination legislation.

With regard to data revealing *racial or ethnic origin*, the interpretation of the prohibition on collecting sensitive personal data – and of the exceptions to this principle – is particularly important for the definitions of data collected. Indeed, in countries where direct ethnic or racial data are not collected due to a restrictive interpretation of the data protection legislation, only proxy data are available. Thus, in general, data are collected on the basis of proxies such as nationality/citizenship, migration background, country of birth, language, etc.

When data are collected on *sexual orientation*, the categories are often the same or at least similar across the Member States, i.e. homosexual, heterosexual, bisexual or, sometimes 'other'. An exception is Belgium, where surveys sometimes propose open questions allowing the data subjects to identify their sexuality on a scale between the common categories of, for instance, heterosexual and homosexual. Similar scales are sometimes also used in Belgium when collecting data on gender identity.

Across the Member States there is an emerging practice of collecting data on gender which goes beyond 'male' and 'female', allowing data subjects to self-identify.

The lack of common definitions and categories across the EU Member States creates inconsistencies and leads to non-comparable data, in particular with regard to the grounds of disability and racial/ethnic origin, where the approaches adopted are the most diverse. Data collected on sexual orientation/gender identity are more often comparable, as the categories are generally the same or at least similar.

Another key issue which has an impact on data collection is data protection and the processing of sensitive data.

With the exception of the ground of age, all the grounds of discrimination covered by this handbook correspond to categories of sensitive data within the national legal frameworks regulating the protection of personal data in all Member States. These frameworks are to a very great extent based on the Data Protection Directive 95/46/EC, and contain a general prohibition on collecting and processing 'sensitive' data.

The exceptions to this general prohibition are also to a great extent based on the more or less specific situations listed in the Directive in which 'sensitive' data can exceptionally be collected.[269] Interestingly, in Spain, the legal framework is stricter for data regarding the data subject's 'ideology, religion or belief' than for the other 'sensitive' categories of data. Data on ideology, religion or belief can thus only be lawfully collected with the express and informed consent of the data subject, while the legislation provides additional situations in which other categories of sensitive data can be collected. The most relevant specific exception on the national level is contained in the United Kingdom Data Protection Act 1998, which explicitly permits the collection of sensitive data in connection with equal opportunities policy. An exception to the prohibition of collecting sensitive data which may be of less direct relevance for the collection of equality data can be found in Cyprus, where sensitive data may be collected where processing is necessary for the satisfaction of a lawful interest which is superior to the rights and fundamental freedoms of the subject of the data.

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[269] Articles 8(2) to 8(5) of the Data Protection Directive.

### 4. *Improving data collection design*

A significant majority of the Member States conduct censuses, while a small number of countries do not. The latter include Denmark, Finland and Sweden, where the population registers on the basis of personal identity numbers are well developed and, when relevant, are combined with ad hoc surveys.
All other data sets found on the national level are very much influenced by country-specific circumstances regarding definitions, data collection methods, data sources and other national contexts, and can therefore only provide partially comparable information.

The only data which are comparable across the 28 EU Member States are data collected through the EU-wide surveys. For example, data for the LFS are collected quarterly in all countries (and, in some countries, also on a monthly basis), while EU-SILC data are collected annually.[270] Data for the European Social Survey are collected biannually for the Member States which take part. The countries participating in this survey change from one module to another.

The EU Agency for Fundamental Rights and various EU level NGOs conduct EU-wide surveys targeting specific discrimination grounds. These are described below (see *5. Complaints statistics for analysing discrimination)*.

Current data collection practices with regard to the different discrimination grounds are as follows.

*Sexual orientation and gender identity* are clearly the grounds in relation to which the least data are collected across the EU. Although almost all types and sets of personal data are disaggregated by gender, this breakdown very rarely goes beyond the binary categories of 'male' and 'female', thus leaving very little room for data on trans people, intersex or gender identity beyond male/female. However, in a limited number of countries some relevant data are collected through e.g. registers of name changes, such as Finland, Germany, Spain and the UK. With regard to sexual orientation, data are almost exclusively collected through specifically targeted surveys, for instance surveying the discrimination experiences of LGBT people. In addition, in a few countries administrative data are collected through registers of same-sex registered partnerships or marriages, although such data are, of course, unable to provide information on the actual sexual orientations of a population.

Data on *religion/belief* are also rarely collected. Although in a few countries the census includes questions on religious affiliation or beliefs, these questions are never mandatory, in contrast to questions revealing, for instance, ethnic origin. In addition to census data, in a small number of countries official data are collected revealing people as belonging to or having membership of the (State) national church. This is the case, for instance, in Denmark, Germany and Sweden, where the national tax authorities need information on such membership for the purpose of levying church taxes. In Greece, the Ministry of Education is authorised to collect data on the religious beliefs of primary and secondary students, on the basis of voluntary self-identification. However, in practice the collection of these data takes place on an ad hoc basis and largely depends on the discretion of school head teachers.

Across the EU, data are not regularly collected directly on *racial and ethnic origi*n, but mostly through more or less relevant and useful proxies. Some proxy data of (indirect) relevance for racial/ethnic origin is collected and extensively used in all Member States, i.e. data on citizenship and/or country of birth, most often based on administrative population registers. In addition, direct racial/ethnic data based on self-identification is collected in some Member States through the census and/or ad hoc surveys. The Estonian census provides an illustrative example of the complexity of racial/ethnic data collection due

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[270] The EU-LFS and EU-SILC currently cover 33 (participating) countries, providing Eurostat with data from national surveys: the 28 EU Member States, three EFTA countries (Iceland, Norway and Switzerland), and two EU candidate countries, i.e. the Former Yugoslav Republic of Macedonia and Turkey. See http://ec.europa.eu/eurostat/web/lfs/overview and http://ec.europa.eu/eurostat/documents/203647/203704/SILC_IMPLEMENTATION_headezr.pdf/2356c6e1-60a8-4a94-84de-5300176607cc.

to the multitude of elements that can/need to be taken into account. The census contains mandatory questions on 'ethnic nationality' and mother tongue for which the data subject is required to self-identify. In addition, data on place/country of birth of the data subject and of his/her parents as well as citizenship are recorded on the basis of official registers. With regard to direct ethnic/racial data, the UK census refers to a list of 18 standard ethnicity categories, with some additional margin for data subjects to write in options.

As stated in point 1, although *disability* is the ground for which the duty to collect equality data is greatest across the EU, this (mandatory) data collection is generally exclusively limited to the employment field as it is directly linked to quotas relating to employees with disabilities.

*Age* does not fall within the definition of sensitive personal data in the sense of the other grounds, and is generally considered to be an objective ground. As noted above (point 1), most data sets across the Member States are disaggregated by age.

### *5. Complaints statistics and data collection concerning experiences and perceptions of discrimination*

An important development in the collection of data and analysis of discrimination are the surveys which have been conducted by the EU Agency for Fundamental Rights (FRA) since 2008. These (mostly online) surveys are, apart from the Eurobarometer surveys, the most important EU-wide surveys relating to discrimination experiences and complaints, providing data that are comparable across the EU Member States. By conducting these surveys FRA is gradually creating an EU knowledge base on equality and non-discrimination for the discrimination grounds covered.

In recent years various European-level NGOs have also started collecting and publishing data on discrimination experiences and complaints in their constituencies.

At the national level equality bodies generally collect data and publish research or reports, but due to the lack of sufficient human and financial resources, many equality bodies can only conduct rare ad hoc surveys rather than systematically collecting data which would be comparable over time.

At the national level courts, tribunals and other judicial bodies are also important sources of complaints data, but compiling (statistical) data which allow comparison across EU Member States remains a challenge. The same applies to data collected by NGOs.

### *6. Setting priorities for research and allocation of funding in cooperation with representatives of the equality groups and the scientific community*

Some of the most relevant and useful sources of equality data are targeted surveys based on self-identification and using inclusive definitions, but the lack of continuity of such surveys (which are generally ad hoc, one-off surveys conducted by NGOs or governmental bodies for specific purposes) leads to a lack of comparability over time and across EU Member States.

The broader study of which this updated handbook is part has revealed (again) that research and publishing on equality and (non-)discrimination is hampered by the lack of comprehensive, systematic and relevant statistical and qualitative data. This constitutes a barrier to addressing patterns of discrimination and developing and implementing effective policy action.

Data collection is costly. The findings of the broader study suggest that research on equality and non-discrimination will benefit from pooling data collection efforts and agreeing how to make these more comprehensive, systematic and relevant, allowing the data to be used for various kinds of research.

## 7. *Developing equality and non-discrimination monitoring of workplaces and service delivery*

In a large number of EU Member States employers have a duty to collect data on the number of employees with disabilities, for the purpose of demonstrating compliance with legally imposed quotas. The obligation on employers to collect disability data is not always explicit but sometimes constitutes an implicit consequence of the obligation to fulfil the quota. In Greece, however, although employers are under a duty to employ a certain percentage of people with disabilities and also, in theory, to collect data on the number of their employees who have disabilities, the lack of sanctions in cases of non-compliance means that such data are often not collected in practice.

In the UK the duty contained in the 2010 Equality Act for public bodies to promote equal opportunities on the grounds of gender, race, disability, religion or belief, sexual orientation and age has been interpreted to require data collection on all grounds to demonstrate compliance. Since 2014, a similar duty falls upon Irish publicly funded bodies to have regard to the need to eliminate discrimination, promote equality and protect human rights in relation both to staff and to those to whom services are provided. The duty establishes requirements for an equality and human rights assessment by each public body and an annual report on evidence of progress in furthering equality goals.

Similarly, in Austria, employers have a duty to provide a comparative overview of their employees' employment conditions, career options, duration and ending of employment, etc. by discrimination ground. Finally, an interesting example of an implicit obligation to collect equality data can be found in Belgium, where subsidies for public institutions are conditional on the employment of a specific percentage of people of a certain age or with a disability. This obligation renders the collection (and reporting) of data on age and disability necessary if an institution aspires to be eligible for these subsidies.

## 8. *EU Member States need national action plans to develop a knowledge base on equality and discrimination*

The broader study of which this update of the 2007 handbook is part has not revealed the existence of national action plans specifically intended to develop knowledge bases on equality and non-discrimination.

The exception to this is the four-year programme in Finland to assess equality and discrimination, and to a certain extent the duty of public bodies in Ireland and the UK to promote equality, which implies data collection for monitoring the implementation of this duty.

The key elements of the Finnish programme are:

- systematic compilation and use of existing data sets;
- gradual building of the national knowledge base by means of studies conducted each year;
- development of equality and non-discrimination indicators;
- assessment of the indicators, using the existing data sets.

Whereas in many EU Member States and at the EU level relevant data sets are available, the key issue may be the development of appropriate indicators. At the EU level the initiatives in the field of data collection and development of human rights indicators, including equality and non-discrimination indicators, as well as the efforts of EU level NGOs, can be seen as emerging elements of an EU-wide knowledge base.

## 8.2 New recommendations

1. EU Member States should tap into the existing data sources at EU (EU-wide surveys) and national level, taking advantage of already-existing data to analyse and report on equality and non-discrimination issues. This helps to avoid costly duplication of data collection efforts.

2. To enhance comparability and compatibility of data from various sources, differences in definitions, classifications and categorisation need to be identified and addressed, both at EU and national level. Comparability and compatibility of data can furthermore be enhanced at national level by promoting the exchange of information among countries relating to good practices in this area.

3. Data collected across the 28 EU Member States through the EU-wide surveys, such as LFS, EU-SILC, Eurobarometer and other EU-wide surveys, should be made more equality and non-discrimination specific, inter alia by the following means:
    a. in the context of European surveys such as LFS and EU-SILC, new variables linked to equality grounds, and/or new questions relevant for assessing equality and discrimination should be introduced;
    b. ad hoc European survey modules should be run at regular intervals, focusing on the different equality grounds;
    c. Eurobarometer surveys on discrimination should be carried out on a regular basis. The work undertaken by the FRA in the field of EU-wide surveys on discrimination can serve to inform the development of Eurobarometer surveys.

4. It is recommended that each EU Member State conducts a mapping exercise in order to investigate:
    a. what information is currently collected by means of national data collection activities, including population census, administrative registers, and surveys? Do these also address topics such as social inclusion and living conditions? Are complaints data available?
    b. whether the group of variables surveyed through these mechanisms could be expanded so as to cover one or more equality grounds, insofar as the results would still be representative of the group concerned and be based on reliable data.
    c. how to make full use of these important information resources in the future: governments should seek ways in which they can improve current data collection design so as to obtain the data needed to compile equality statistics. Targeted comprehensive surveys are necessary for small or under-sampled groups such as LGBTI people.

5. The Member States need further encouragement and guidance in improving the collection of equality data.
    a.. The EU and EU Member states can stimulate awareness of equality data by explaining how data can be collected and how knowledge of data can positively impact policies to promote equality and non-discrimination.
    b. The Commission should examine ways of supporting the Member States to develop their equality data collection practices. This could involve the organisation of seminars and publication of further guidance on equality data collection, as well as design of EU-wide public awareness-raising campaigns using available equality data. These actions could deal with topics such as how to use equality data in discrimination cases, and the design of remedies, sanctions and positive actions.
    c. The Commission should also examine the policy tools available to it with a view to raising the level and quality of equality data collection in the Member States.

6. EU-level and national stakeholders, such as equality bodies, research institutes and NGOs, who are willing and competent to collect equality data, should be supported with the resources to do so, in particular in relation to data on discrimination experience and complaints data.

7. All stakeholders can enhance the acceptance of data collection for equality and non-discrimination purposes by explaining that collection of sensitive data is protected.

# Annex 1. Recommendations from the 2007 handbook

### Recommendation No 1: the scope of action

All EU Member States should take action to monitor the state of the nation in terms of the realisation of equal treatment in practice. In view of this they should compile statistics, commission research and encourage other activities, the results of which will build to a national knowledge base on equality and discrimination. The scope and nature of this action should take the following into account:

- The wide demand for equality data. It should be acknowledged that equality data is needed by a wide range of stakeholders and for a wide range of purposes.
- The scope of domestic, EU and international law. These sources of law define discrimination, the areas of life in which discrimination is prohibited and the grounds on which discrimination is prohibited. It is recommended that the collection of equality data takes these parameters into account, although it may be necessary to go beyond the grounds of discrimination and the areas of life covered by law, for instance in order to assess whether further legal regulation is needed.
- The social context. It must be recognised that discrimination is a complex social phenomenon, the operation of which cannot be easily captured. It is therefore necessary for the equality data to uncover the (i) causes, (ii) forms, (iii) extent and (iv) effects of discrimination.

### Recommendation No 2: the need to use multiple approaches

It should be recognised that no single approach to data collection is able to meet all data needs. It is therefore of crucial importance that all EU Member States work towards building up a national knowledge base on equality and discrimination by taking advantage of multiple data sources and multiple methods of analysis.

Financial support should also be directed at innovative research that can lead to further methodological advances in the field of measuring discrimination.

### Recommendation No 3: the need for groundwork

Those commissioning and carrying out data collection operations should be prepared to address a number of fundamental issues that have a major impact on data collection. These issues include the following:

- In survey research, the impact of choices made with respect to such issues as data collection mode and the framing of the survey questions should be assessed before engaging in data collection.
- Particular attention should be paid to definitions, classifications and categorisation principles used. These should, where possible, follow common domestic and international practices.
- Those in charge of operations that involve processing of personal or sensitive data must ensure that the applicable data protection and privacy laws are fully complied with. The use of state-of-the-art Privacy Enhancing Technologies (PETs) is recommended, particularly whenever the processing of sensitive data is involved.
- Governments should review domestic data protection and privacy laws in order to:
  - ensure that the safeguards required by the European and international law are in place; and
  - ensure that domestic law does not pose any unnecessary obstacles (limitations not required by the European and international laws) for the collection of equality data.

### Recommendation No 4: the need to develop official statistics

The collection and compilation of official statistics presents a unique opportunity to collect data in relation to the equality grounds. The following actions are recommended to be taken at the EU level:

- In the context of European surveys such as LFS and EU-SILC, introduction of new variables linked to equality grounds, and/or introduction of new questions relevant for assessing equality and discrimination.
- Running periodic Eurobarometer surveys on discrimination.
- Promoting the exchange of information among countries concerning national surveys on discrimination.
- Promoting harmonisation of national administrative registers.

In addition, it is recommended that each EU Member State conducts a mapping exercise in order to investigate:

- What information is currently collected by means of national data collection activities, including population census, administrative registers and surveys?
- Whether the group of variables surveyed through these mechanisms could be expanded so as to cover one or more equality grounds, insofar as the results would still be representative of the group concerned and be based on reliable data.

In effect, to make full use of these important information resources in the future, governments should seek ways in which they can improve current data collection design so as to obtain the data needed to compile equality statistics.

### Recommendation No 5: the need to further develop complaint statistics

Organisations that receive reports of discrimination should develop systematic recording procedures and practices that allow them to ensure the completeness, reliability and usefulness of the data for both administrative and statistical purposes. All organisations should establish mechanisms for analysing and distributing in statistical form the information submitted to them, and should seek ways to allow researchers to use these data for analysing discrimination where appropriate and in full compliance with data protection law.

### Recommendation No 6: the need to support research

The fundamental importance of conducting research into equality and discrimination should be recognised by securing adequate funding for these purposes. There is a need for:

- (i) longitudinal research that would benefit from a steady source of financing, and (ii) ad hoc research where the funding may come from different sources at different times;
- quantitative and qualitative research.

Those funding and commissioning research should identify priorities in this area in cooperation with the representatives of the equality groups and the scientific community.

### Recommendation No 7: the need for workplace monitoring

All EU Member States are urged to enter into a dialogue with the social partners, representatives of the equality groups and other stakeholders on the need to introduce requirements for workplace and service delivery monitoring. There is also a need to arrange training on how monitoring can be conducted in practice.

## Recommendation No 8: the need for national cooperation

It is recommended that each EU Member State adopt a national plan of action setting out the measures that will be taken for the development of a national knowledge base on equality and discrimination. The preparation of the action plan should be based on the participation of all stakeholder groups. The plan of action should take into account the recommendations set out in this handbook.

# Annex 2. Glossary of terms

| | |
|---|---|
| Administrative data | Data collected in the course of the functions carried out by the administration. For example, whenever an individual applies for social benefits, registers at an employment office, enrols in an educational institution, notifies the authorities of a change of address or files a crime report with the police, the related data are usually collected and stored in the files kept by the authority concerned. These files can be analysed by means of statistical methods. |
| Categorisation | Criteria used to assign a person to one of the available categories. |
| Collection of equality data | Systematic gathering of information, particularly of personal data, for the purposes of analysing the state of equality. |
| Data | Any piece of information, whether in numerical or in some other form. The function of data is that they reveal something about some aspect of reality and can therefore be used for analysis, reasoning or decision-making. |
| Data subject | The person to whom the personal data relates. |
| Discrimination testing | A research method based on a controlled experiment. Also referred to as paired testing and situation testing. |
| Equality data | Any information that is useful for the purposes of analysing the state of equality, whether it is of a qualitative or quantitative nature. It includes, but is not limited to, all types of disaggregated data, meaning data which have been broken down by variables such as age or disability for the purposes of assessing the comparative situation of one or more groups at risk of discrimination. Equality data can be derived from different sources, such as public censuses, administrative registers, and surveys. |
| Equality group | A collective reference to groups which share particular characteristics and have an interest in promoting equality and/or which have experienced discrimination or inequality on the grounds of racial or ethnic origin, religion or belief, age, disability, sexual orientation or gender identity. |
| Methods of collecting equality data | Equality data can be collected using different methods. The main three types of processes are: surveys, administrative processes and observation. |
| Monitoring | Monitoring – in the present context diversity monitoring – refers to the process by which an organisation observes the impact of its policies and practices upon the equality groups, especially concerning employment (workforce monitoring, monitoring in recruitment and selection) and/or service delivery (e.g. through administrative record-keeping, surveys, observations, discrimination testing or mystery shopping). |
| Primary data collection | Data which have been collected for a specific purpose. Opposite of secondary data collection (see below). |

| | |
|---|---|
| Processing of data | Any operation performed on personal data, including collection, recording, disclosure and destruction. |
| Proxy | An entity or variable used to model or generate data assumed to resemble the data associated with another entity or variable that is typically more difficult to research. For example, in some countries religion and/or language are used as proxies for ethnic origin. |
| Reliability | A measure is reliable to the extent to which the measuring procedure yields the same results on repeated trials. No measure is absolutely reliable; reliability is therefore always a matter of degree. |
| Secondary data collection | Use of pre-existing data sets. |
| Self-identification | A process whereby the person concerned identifies their ethnic origin, religion, possible disabilities, age and/or sexual orientation. |
| Sensitive data | Personal data that concern e.g. ethnicity, religion or philosophical beliefs or sexual orientation. The EU data protection legislation does not use the term ‘sensitive data’, using the term ‘special categories of data’ instead. |
| Survey | A particular method for collecting data. Survey data can be collected by means of questionnaires and interviews for the purposes of compiling statistics and/or for conducting qualitative and quantitative research. Censuses, household surveys and victim surveys for instance. |

# Annex 3. Quantitative data from European surveys by discrimination ground

This annex demonstrates what kinds of equality data presently exist through European large-scale surveys. The information provided is not exhaustive but rather illustrates what data can already be derived from the major European surveys.

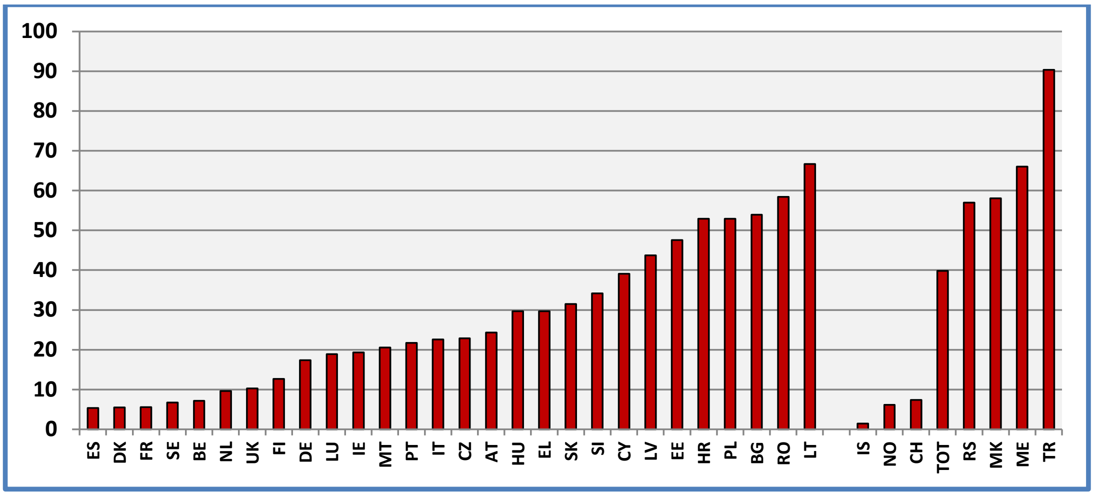
## 1. Racial and ethnic origin

As noted above, the LFS survey reports on country of birth and nationality, as well the derived household variables on country of birth and nationality of father and mother if the latter are living in the same household. Due to confidentiality concerns, a certain number of aggregations are done. The most usual are:[271]

- EU 28
- Europe outside EU 28
- North Africa and Near and Middle East
- East and South Asia
- Latin America
- North America and Australia / Oceania

The LFS survey enables us notably to compare employment, unemployment and education of people born in the country (or citizens of the country) and people born outside (non-citizens).

**Table 3: Percentage of population reporting nationality of a foreign country, 2015**



**Note:** Luxembourg: 45.9%, Population on 1 January
**Source:** Eurostat (Extracted on 29 March 2016)

In a similar way, the EU-SILC survey enables us to study the different dimensions of poverty, material deprivation and housing, etc. Furthermore, the ad hoc modules provide information on health status, access to financial services, social participation, attitudes (feelings concerning security, discrimination and fairness), trust in institutions (police and legal system) and life satisfaction (happiness/wellbeing).

However, it should be noted that sampling limitations may restrict our analysis by detailed nationality groupings. This is notably true in countries with a low number of people of a different nationality or born abroad.

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[271] Eurostat, *EU Labour Force Survey Database; User guide*, Version: December 2014.

The LFS and the EU-SILC surveys enable us to monitor achievements concerning the Europe 2020 targets (employment, education and poverty).

If we take citizenship or place of birth as a proxy for racial and ethnic origin, the LFS survey[272] reveals important gaps between nationals and foreign nationals. For example, at the EU level in 2014 and for the age group 20-64, the unemployment rate for nationals is 9.5% but the unemployment rate for foreign nationals is 16.1%. The criterion 'place of birth' presents similar results. Furthermore, if we look at only people with a nationality other than the EU 28, the unemployment rate is 20.1% (nationality of neither EU28-countries nor reporting country). In several Member States the gap is even greater. Similar gaps are found when considering employment rates, whether we use citizenship or place of birth.

Concerning early leavers from education and training,[273] the rate in 2014 was 23.4% among young people aged 18-24 reporting a foreign country citizenship and 10.3% among nationals. If we use the country of birth as criterion, the rates are respectively 20.3 % (foreign country) and 10.4%. As the target group here are people aged 18-24, we face serious sampling limitations in several Member States. One solution might be to enlarge the age group but this would not be coherent with the target defined by Europe 2020.

The EU-SILC survey provides interesting information concerning poverty. It reports important gaps between nationals and non-nationals (or those born in another country). For example, in the EU in 2014 and for people aged 18 and over, the rate of nationals at risk of poverty is 15.5% compared to 31.7% for foreign nationals. If we use the country of birth as the criterion, the rates are respectively 15.3% and 26.3% (foreign country). Furthermore, this rate for non-EU 28 citizens (nationality of neither EU28-countries nor reporting country) is 38% (30.5% for foreign born). In several Member States the gap is even greater. Similar gaps are found when considering those at risk of poverty or social exclusion, whether we use citizenship or place of birth. Again, due to sampling limitations, the figures for countries with a small share of foreign nationals might be considered as indicative.

Critics might argue that the above proxies (country of birth and nationality) are not relevant. Citizenship and place of birth do not take into account the situation of the second and third generations born in the EU who have acquired the nationality of their country of residence. In order to fill this gap, Eurostat organised an LFS ad hoc module on the 'Labour market situation of migrants and their immediate descendants' in 2008 and 2014. The data which were collected within this module included country of birth of the father and the mother to identify second generation migrants. In addition, information was collected on the main reason for migration, legal barriers on the labour market and qualifications and languages issues. If we analyse unemployment rates, the module reveals that native-born people with a foreign background (second generation immigrants) are generally the most disadvantaged group. Their situation is often worse compared to foreign-born people (first generation immigrants). Different barriers in the labour market are studied (lack of language skills; lack of recognition of qualifications; citizenship of residence permit; origin, religion or social background; no barrier; and other barriers). A very high percentage reports 'other barriers' which may include discrimination.

The aforementioned surveys provide limited information on discrimination experiences or on public attitudes concerning discrimination. Different Eurobarometer surveys were conducted, notably in 2012 and 2015,[274] in order to collect information in these fields. The survey examines the following grounds of discrimination: gender, ethnic origin, religion or beliefs, age (divided into two subcategories: aged over 55 and aged under 30), disability, sexual orientation and gender identity (being transsexual or transgender).

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[272] Eurostat database: *Unemployment rates by sex, age and nationality (%) [lfsa_urgan]*; extracted on 29 March 2016, http://ec.europa.eu/eurostat/data/database.

[273] Eurostat database: *Early leavers from education and training by sex and citizenship [edat_lfse_01]*; extracted on 29 March 2016.

[274] European Commission, *Special Eurobarometer 393, Discrimination in the EU in 2012. Report*; Special Eurobarometer 393 / Wave EB77.4 – TNS Opinion & Social, November 2012; and European Commission, *Eurobarometer on Discrimination 2015: General perceptions, opinions on policy measures and awareness of rights; Factsheet*, October 2015.

The Eurobarometer 2015[275] begins with a question on 'What is your nationality?' but adds: 'In the past 12 months have you personally felt discriminated against or harassed on one or more of the following grounds? Please tell me all that apply' (QC2):

- Ethnic origin
- Gender
- Sexual orientation (being gay, lesbian or bisexual)
- Being over 55 years old
- Being under 30 years old
- Religion or beliefs
- Disability
- Gender identity (being transgender or transsexual)
- For another reason
- No
- Don't know

Another question asks, 'Where you live, do you consider yourself to be part of any of the following? Please tell me all that apply' (SD2):

- An ethnic minority
- A religious minority
- A sexual minority (like being gay, lesbian, bisexual, transgender or transsexual)
- A minority in terms of disability
- Any other minority group
- None
- Refusal
- Don't know

At the EU level, about 3.4% of respondents declare they have been discriminated against or harassed on the ground of ethnic origin and 4.1% declare they consider themselves as being part of an ethnic minority. People who report either or both amount to 6.3%.

The Special Eurobarometer enables us to present estimations concerning, notably:

- whether people consider that discrimination based on ethnic origin is widespread or not;
- whether ethnic origin is a disadvantage for a job candidate;
- whether there is a need to promote diversity at work;
- whether diversity is reflected in the media;
- how a person feels about having a person from a different ethnic origin in the highest elected political position;
- how comfortable a person would feel if one of their colleagues at work belonged to a minority ethnic group (the minority groups envisaged include notably black persons, Asian persons and Roma persons);
- how comfortable a person would feel if one of their children was in a love relationship with a person from each of the following groups (includes black, Asian, etc.);
- whether a person agrees or disagrees that school lessons and materials should include information about diversity.

However, the sample of the Eurobarometer is relatively small and the data ought to be treated with care, especially at the national level.

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[275] Eurobarometer 83.4; May-June 2015; Basic Bilingual Questionnaire, TNS Opinion; ZA 6595 / ICPSR.

As noted, the Eurobarometer asks about citizenship. For comparison, about 2.3% of respondents report being non-citizens of their country of residence, which is an underestimation compared to population data (6.9% for all ages, see above). Furthermore, it should be noted that not all non-citizens of the country of residence consider themselves to be part of a minority group. In addition, some citizens of the country of residence consider themselves to be part of a minority group. Given the small size of the sample, the Eurobarometer survey does not enable a detailed analysis of the characteristics and barriers associated with 'ethnic origin/minority'.[276]

The European Social Survey (ESS) covers people aged 15 and over in 24 countries (18 EU Member States). It covers different grounds of discrimination: age, sexuality, racial and ethnic origin (different dimensions), disability and religion. Concerning proxies related to racial and ethnic origin, the survey considers citizenship, place of birth, place of birth of parents, etc. The survey covers different dimensions of discrimination but the sample and the number of Member States is limited.

The ESS asks (C16):[277] 'Would you describe yourself as being a member of a group that is discriminated against in this country?'

- Colour or race
- Nationality
- Religion
- Language
- Ethnic group
- Age
- Gender
- Sexuality
- Disability
- Other
- Don't know

Another question (C16) asks: 'Would you describe yourself as being a member of a group that is discriminated against in this country? If "Yes", On what grounds is your group discriminated against?' (C17): same list as before.

The ESS presents different dimensions of race/origin, in particular: citizen of another country (6.6%), born in another country (10.7%), mother or father born in another country (20.0%), belong to a minority ethnic group in country (5.6%). In addition, 1.2% declared they had been discriminated against on the ground of colour/race, 1.1% on nationality, 0.4% on language and 0.6% on ethnic group.[278] The figures include all the countries covered by the ESS.

The European Quality of Life Survey (EQLS) provides an interesting indicator measuring whether a person 'Feels left out of society'. This enables us to compare citizens of a country and people who have another citizenship.

Finally, the EVS survey is worth noting. Several surveys treat discrimination in different areas (work, school, social relations, political participation, trust in institutions, etc.) but the EVS covers a large number of countries.

Attitudes of the general public to a different culture, race, origin, etc. may also be an important indicator. Indicators ought not to focus exclusively on the discriminated group. Combating discrimination ought

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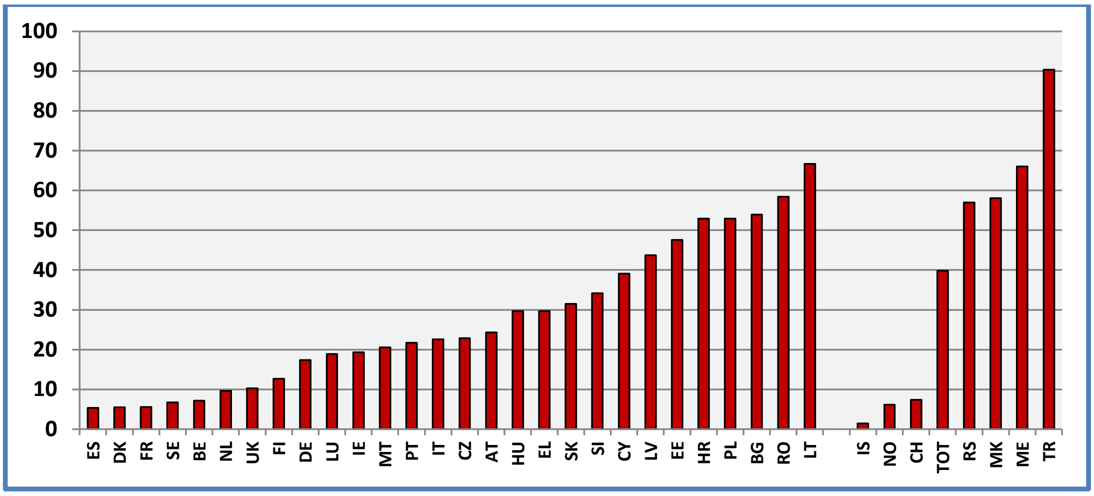
[276] Eurobarometer 83.4 (May-June 2015). Gesis Archive Version & Date 1.0.0 (2015-11-23).

[277] European Social Survey, *ESS Round 7 Source Questionnaire*. ESS ERIC, Headquarters, Centre for Comparative Social Surveys, City University London, 2014.

[278] European Social Survey: *ESS round 7, Edition 1.0* (ESS7e01), 28 October 2015.

to focus on the general public too. The capacity of the general public to accept people with different characteristics is an important equality indicator. The EVS survey asks people whether they 'don't like as neighbours: people of different race' (Q6B) (EVS 2008). The following graph reveals significant diversity among the countries covered by the survey.

**Figure 1: Percentage of people who 'don't like as neighbours: people of different race' (Q6B), EVS 2008**



**Source**: EVS 2008: GESIS Archive Version 3.0.0 (2011-11-20)

## 2. Sexual orientation

As noted above, the Special Eurobarometer on Discrimination 2015, 'General perceptions, opinions on policy measures and awareness of rights', constitutes an important source of quantitative data for discrimination on the ground of sexual orientation. The survey includes the following question: 'In the past 12 months have you personally felt discriminated against or harassed on one or more of the following grounds?' The following two grounds may be noted:

- sexual orientation (being gay, lesbian or bisexual); and
- gender identity (being transgender or transsexual).

The questionnaire guidelines note that, 'Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth. Transgender and transsexual are people whose gender identity differs from the sex they were assigned at birth'.

The survey finds that 1.6% of all people experienced discrimination on the ground of sexual orientation and 0.6% on gender identity. The question, 'Where you live, do you consider yourself to be part of any of the following? Please tell me all that apply', groups the previous two categories into one: 'A sexual minority (like being gay, lesbian, bisexual, transgender or transsexual)'. About 1.5% of all people identify themselves as being part of this group.[279]

If the above answers are combined into people who have felt discriminated against (sexual orientation and/or gender identity) and/or consider themselves to be part of a sexual minority, a proxy for the target group can be obtained. The following graph presents the figures. At the EU level, the LGBTI percentage amounts to 2.9% of all people aged 15 and over.

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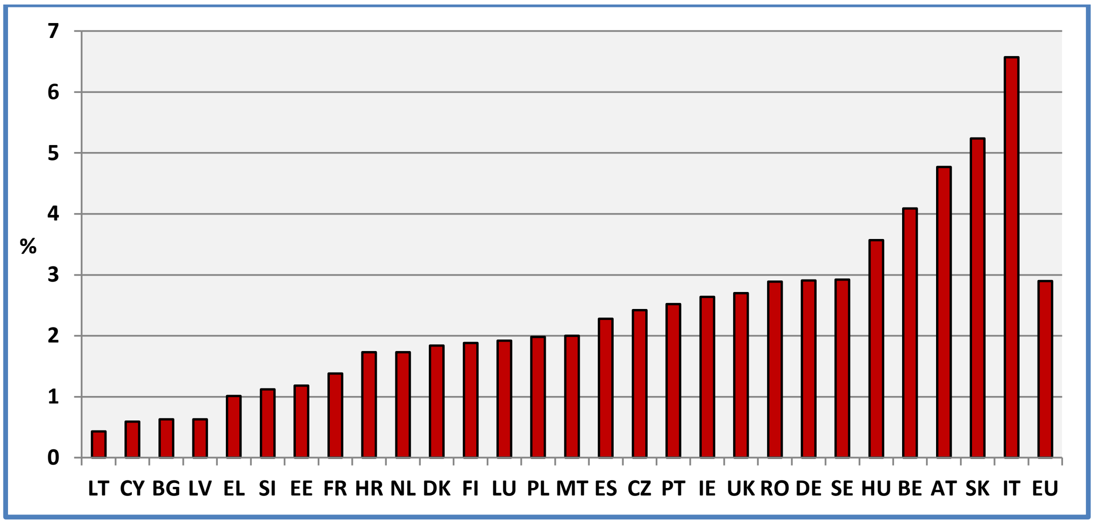
[279] Eurobarometer 83.4 (May-June 2015). Gesis Archive Version & Date 1.0.0 (2015-11-23).

**Figure 2: Percentage of people who felt discriminated against (sexual orientation and/or gender identity) and/or consider themselves to be part of a sexual minority**



**Source:** Eurobarometer 83.4

The Eurobarometer survey enables us to present some quantitative analyses concerning Europe 2020 but the data ought to be treated with care as the sample is relatively small. For example, the employment gap between LGBTI and people not experiencing discrimination on any ground is 4.3 percentage points for the age group 20-64 (defined by Europe 2020). This gap is 6.5 percentage points for people who have experienced discrimination on the ground of sexual orientation.

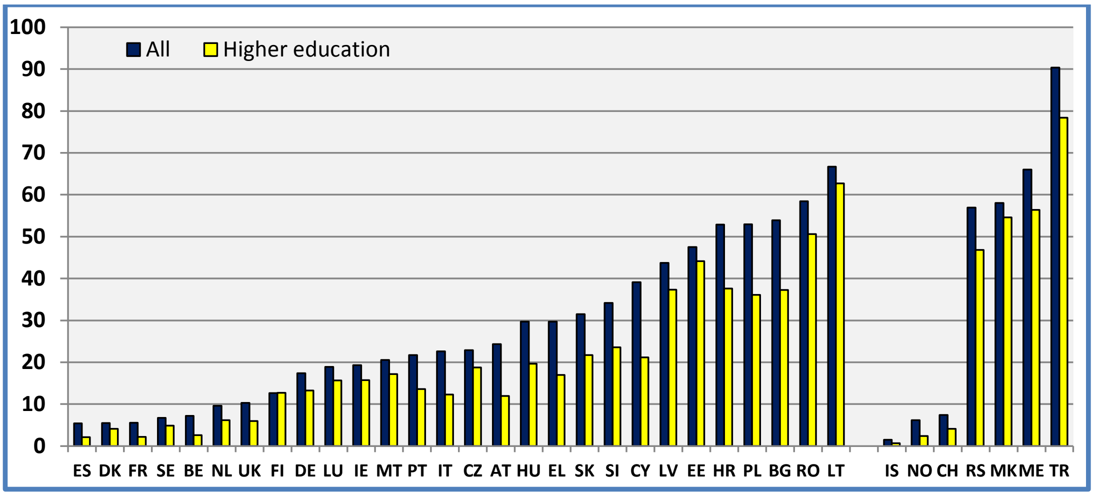
There is no difference between men and women and the rate decreases with age. The Special Eurobarometer on Discrimination 2015 indicates that the percentage of LGBTI (as defined above) is 4.3% in the age group 25-34 and 2.0% in the age group 65-74. There is a steady decline with age. The ESS 2014 provides a similar picture (declining) with age (see below).The Special Eurobarometer on Discrimination enables us to present quantitative indicators on attitudes and discrimination in different areas, notably, education and training, the labour market, social participation, feelings concerning diversity in the media and at school, political participation, security, trust in institutions, etc. However, due to sampling limitations the information by country may only be indicative. The different indicators described above concerning ethnic origin apply here too with reference to sexual orientation and gender identity (whether people consider that discrimination based on sexual orientation / gender identity is widespread, whether sexual orientation / gender identity is a disadvantage for a job candidate, whether there is a need to promote diversity at work in relation to sexual orientation / gender identity, whether diversity is reflected in the media in terms of sexual orientation / gender identity, etc). A supplementary question asks, 'Whether the respondent considers that e.g. gays and lesbians ought to have the same rights as heterosexual people'.

As noted above, the ESS asks: 'Would you describe yourself as being a member of a group that is discriminated against in this country?' The survey identifies sexuality as one ground. The definition is very restrictive and could not be considered as a reliable proxy of LGBTI.

The ESS focuses on similar themes as the Eurobarometer but it covers only a limited number of EU countries (13 Member States in 2014). However, it is conducted at regular intervals.

The EVS 2008 contains a question, 'Don't like as neighbours: homosexuals' (Q6L) among others. Another question is, 'Do you justify: homosexuality'(Q68H). The survey covered 44 countries. The percentage of persons who don't like homosexuals as neighbours was found to range from 5% to 90%. Inside the EU, it ranges between 5% and 67%. Education level is an important determinant.[280]

**Figure 3: Percentage of people who 'don't like as neighbours: homosexuals', EVS 2008, (Q6L)**



**Source:** EVS 2008, GESIS Archive Version 3.0.0 (2011-11-20)

## 3. People with disabilities

Eurostat and the Academic Network of European Disability Experts (ANED) have published a significant number of socio-economic indicators concerning people with disabilities.

The LFS ad hoc module 2011 (and 2002) on 'Employment of disabled people' focuses on labour market issues. This yields a wide range of indicators covering labour market issues and assistance related to work.

The EU-SILC survey contains a small module on health, including three questions on general health status. The questions on general health status represent the so-called Minimum European Health Module (MEHM) and are proposed to be used in any EU health survey or survey module, in order to link results among surveys. These three questions focus on self-perceived health, chronic (longstanding) illnesses or conditions and limitation of activities due to health problems. The EU-SILC survey and the related ad hoc modules provide detailed information on a wide range of poverty issues, health, housing, access to services, trust in institutions, wellbeing/happiness, etc.

The European Health and Social Integration Survey (EHSIS) also presents statistics on barriers in 10 areas. It notably covers mobility, transport and accessibility to buildings. This survey aims to test new approaches in order to come closer to the understanding of disability laid down in the UNCRPD.

In addition, several European surveys include a question on disability (limitation of activities), in particular, the European Quality of Life Survey (EQLS), the Survey of Health, Ageing and Retirement in Europe (SHARE), the European Social Survey (ESS), the European Health Interview Survey (EHIS) and the Special Eurobarometer surveys (especially, Flash Eurobarometer 345 on accessibility).

ANED, funded by the European Commission, aims to maintain a pan-European academic network in the disability field. The philosophy and aims focus on research which supports implementation of the UNCRPD and the European Disability Strategy 2010-2020 towards the goal of full participation and equal opportunities for all disabled people.

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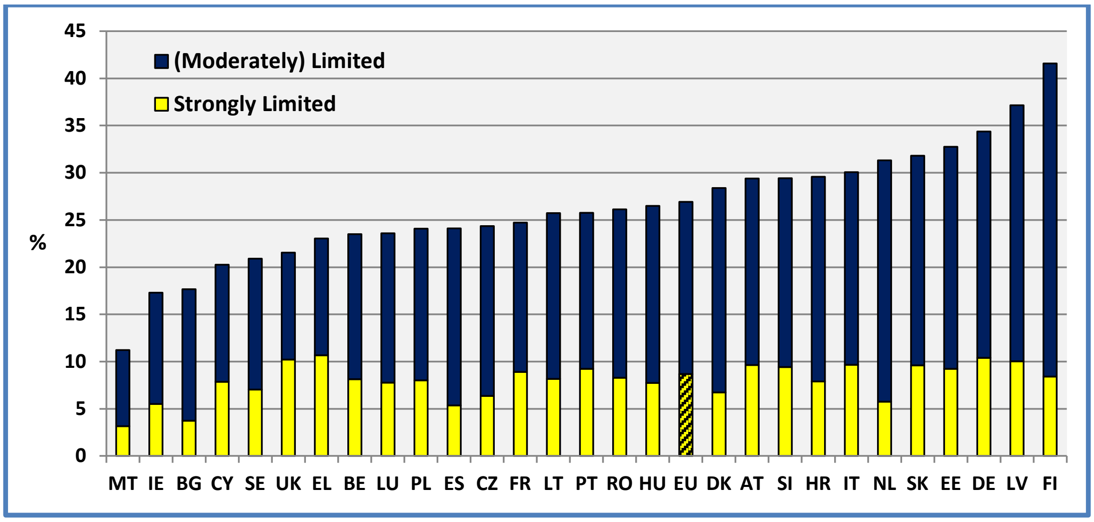
[280] EVS 2008, GESIS Archive Version 3.0.0 (2011-11-20).

In order to give an idea of the population studied, presented below are the percentages of people with disabilities, by degree and Member State.

**Figure 4: Percentage of people with disabilities, 2013, aged 16+**



**Source:** Data source: EU-SILC 2013 (in ANED)

Eurostat[281] and ANED[282] regularly publish indicators comparing people with and without disabilities in different areas (employment, education, poverty, housing, social participation, etc.). Provided below are those related to Europe 2020. In fact, ANED publishes an annual review of Europe 2020 indicators (in *European comparative data on Europe 2020 and people with disabilities*) and other specific reviews of special interest to people with disabilities.

At European level, the employment rate for people with disabilities is about 23 percentage points lower than for people without disabilities. In fact, in 2013 about 48.5% of people with disabilities were employed compared to 71.4% of people without disabilities. The Europe 2020 target for the EU 28 is 75%.

At the EU level, in 2013 21.5% of young disabled people were early school leavers compared to 9.4% for non-disabled young people. The EU average rate is 10.4%.

In 2013, at the European level, 30.0% of people with disabilities aged 16 and over lived in households which were at risk of poverty or social exclusion, compared to 21.5% of people without a disability in the same age group.

With regard to the Special Eurobarometer on Discrimination in 2015, the different indicators described above concerning ethnic origin apply here too with reference to disability (whether people consider that discrimination based on disability is widespread, whether disability is a disadvantage for a job candidate, whether there is a need to promote diversity at work in relation to disability, whether diversity is reflected in the media in terms of disability, etc).

Below is a summary graph with the main results of the Special Eurobarometer on Discrimination.

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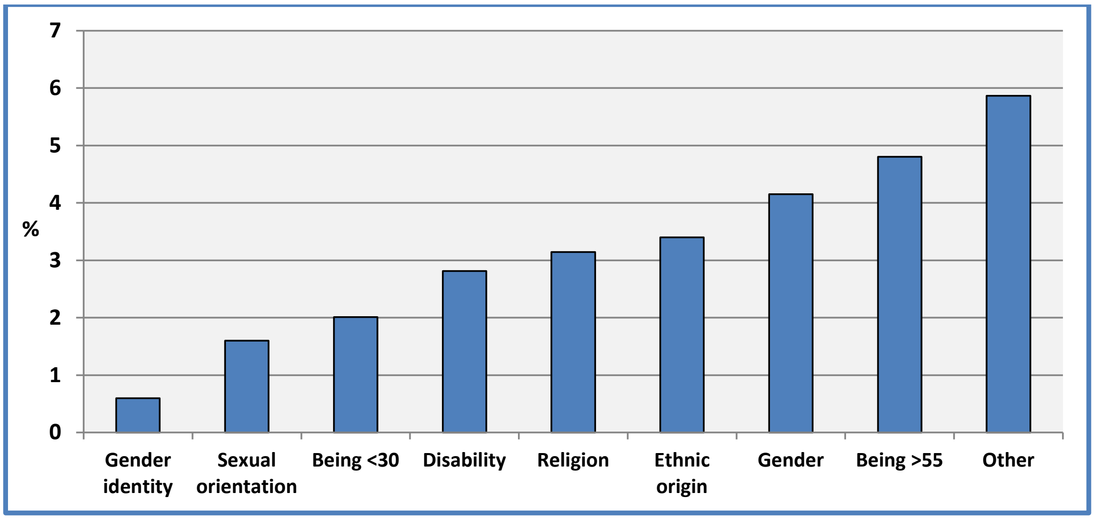
[281] http://ec.europa.eu/eurostat/data/database.
[282] http://www.disability-europe.net/.

**Figure 5: Percentage of people who experienced discrimination, by ground of discrimination, 2015**



**Note:** The question (QC2) is 'In the past 12 months have you personally felt discriminated against or harassed on one or more of the following grounds? Please tell me all that apply'.
**Source:** Eurobarometer 83.4

## 4. Religion

The number of European surveys covering 'religion' is limited. The ESS, Eurobarometer and the EVS may be noted.

The ESS asks (C9): 'Do you consider yourself as belonging to any particular religion or denomination?' The methodology notes that, 'Identification is meant, not official membership'. The survey distinguishes:

- Roman Catholic
- Protestant
- Eastern Orthodox
- Other Christian denomination
- Jewish
- Islamic
- Eastern religions
- Other non-Christian religions

Another question (C16) asks: 'Would you describe yourself as being a member of a group that is discriminated against in this country?' Religion is among the different grounds given (colour or race; nationality; religion; language; ethnic group; age; gender; sexuality; disability; other).

This enables us to estimate indicators for the different fields covered by the ESS (e.g. experiences of discrimination, trust in institutions, employment, health etc). However, given the small sample of the survey any in-depth analysis may be limited by a low number of observations (respondents). The different areas covered are employment, education, feelings concerning security, fairness, discrimination, trust in institutions and happiness/wellbeing.

As indicated above, Special Eurobarometer 437 on discrimination in the EU in 2015 examined the following grounds of discrimination:

1. Ethnic origin
2. Gender
3. Sexual orientation (being gay, lesbian or bisexual)
4. Being over 55 years old
5. Being under 30 years old
6. Religion or beliefs
7. Disability
8. Gender identity (being transgender or transsexual)
9. For another reason
10. No
11. Don’t know

The different indicators described above concerning ethnic origin apply here too with reference to religion (whether people consider that discrimination based on religion or beliefs is widespread, whether religion or beliefs is a disadvantage for a job candidate, whether there is a need to promote diversity at work in relation to religion or beliefs, whether diversity is reflected in the media in terms of religion or beliefs, etc). Certain questions distinguish Jewish, Muslim, Buddhist, Christian and Atheist.

Finally, the EVS asks: ‘Which religious denomination do you belong to?’ (Q23a). The standardised categories are:

1. Roman Catholic
2. Protestant
3. Free church/ Non-conformist/Evangelical
4. Jew
5. Muslim
6. Hindu
7. Buddhist
8. Orthodox
9. Other

This survey focuses in particular on attitudes (e.g. trust in institutions, relations with others, attitudes at work, values, etc.).

## 5. Age

Age is included in all surveys and generally cross-tabulations use age as a first criterion. For example, the Eurostat database presents all quantitative indicators by age group. Generally, the categories of ‘Being over 55 years old’ and ‘Being under 30 years old’ are used.

As noted above, the Special Eurobarometer on Discrimination and the ESS include an additional variable. The Special Eurobarometers on discrimination in the EU in 2012 and 2015 examined, among the different grounds of discrimination:

1. Being over 55 years old; and
2. Being under 30 years old.

The different indicators described above concerning ethnic origin apply here too with reference to age.

The ESS, as noted above, asks: ‘Would you describe yourself as being a member of a group that is discriminated against in this country?’ If the answer is positive, the next question is: ‘On what grounds is your group discriminated against?’ One possible ground is ‘age’.

Both chronological age and self-perception of being part of a group discriminated against on the grounds of age can be used. However, these two options cover different realities and the target group is not the same. It is debatable which criterion is the best for measuring discrimination. In any case, the second (self-perception) is better for the analysis of 'conscious' discrimination experiences.

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