Data Against Hate – Processing of Personal Data Revealing Racial or Ethnic Origin for the Purpose of Combating Hate Crime in the European Union

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Combating hate crime and preventing discrimination on the grounds of racial or ethnic origin is a commitment of the European Union, and has been the subject of significant legislative and policy action over the past decades. However, the judgments of the European Court of Human Rights and the policy review have made it clear that these measures have not achieved their objectives, and one of the main reasons for this is the problem of identifying the groups concerned. Data relating to racial or ethnic origin is a special category of personal data that enjoys special protection under the EU data protection regime, but it is also very complex to handle. This data set expresses the identity of the data subject and is therefore partly subjective and difficult to measure. In addition, the volume, quality and source of the data required for each purpose is challenging, while the legal framework for the process is also different: general data processing issues are governed by the GDPR, while law enforcement cases are governed by the Criminal Justice Directive. Although regional human rights organisations clearly support for the collection of racial or ethnic data for its political benefits, EU case law is fragmented. But could legislation or enforcement be the main cause of this worrying situation? Are legal or social science tools the key to more effective data management? The paper attempts to answer these questions by describing the elements of the system and by presenting the practicalities. The analysis also leads to the necessary intervention points and a system of possible measures.

Keywords: hate crime, racial or ethnic origin, institutional discrimination, affirmative actions, processing of personal data, European Union, General Data Protection Directive, Law Enforcement Directive

1. Introduction

It is beyond doubt today that groups that differ from the majority in terms of their origin, language, culture, religion or physical characteristics, and which typically have their own identity, are an integral part of complex and open societies. However, belonging to such a community implies much more for all concerned than simply a specific and patterned biological or cultural difference: it also implies specific social attachment structures and a complex set of relationships, with both negative and positive feedbacks. However, recognising this and strengthening relationships has not always been easy, and providing the necessary and effective support remains a challenge today.

Minority groups include a particularly high proportion of people from racial or ethnic commu-

nities, and have therefore played a prominent role in social and political processes for centuries. Unfortunately, historical experience has shown that in most cases this has meant vulnerability. On the European continent, around 100 million people currently belong to one of more than 400 minority communities. Within this group, almost 10 % of the total population of the European Union – 40 million citizens – belong to a national or ethnic minority or to one of the 60 regional language groups used alongside the official languages.[1] The communities vary in number, cultural traditions, social status and economic opportunities. In addition to the Flemish, Catalans, Hungarians, Welsh and Lapps, who have considerable socio-political influence in their own countries, smaller groups such as the Occitans, Frisians, Sami, Rusyns or the large number of Muslim and Roma communities living throughout the continent are carriers of cultural values in their own right, but are also vulnerable groups in view of their specific situation, and states must have a meaningful concept for shaping their destiny.

In the light of the objectives and organisational characteristics of the European Union, the preservation of the cultural identity of minority communities and the range of state action in this area are the responsibility and well-guarded prerogative of the Member States. However, in view of the principles of non-discrimination and equality declared in the Treaties, in particular Articles 2 and 10 of the Treaty on European Union (TEU), Articles 19 and 67(3) of the Treaty on the Functioning of the European Union (TFEU) and Articles 20 and 21 of the Charter of Fundamental Rights of the European Union (Charter), the Union has taken important steps over the last two decades to address the social situation of racial or ethnic communities. A series of legislative and policy measures have sought to reduce the processes of discrimination which, in addition to the obligations arising from the EU's founding treaties, Member States have already undertaken to combat by joining regional human rights organisations, in particular the Council of Europe and the Organisation for Security and Cooperation in Europe.[2]

The current EU system of legal protection for members of racial or ethnic minorities consists of three pillars: the anti-discrimination directives of the 2000s, the hate crime framework that has been in place since 2008, and a mixed policy toolbox of implicitly reinforcing measures to make these work. However, the effectiveness of this structure is questionable, according to recent expert research.[3]

However, a series of bi-annual surveys carried out by Eurobarometer, the most authoritative regular measurement platforms that deal with the subject, and large-scale surveys by the European Union Agency for Fundamental Rights (FRA) consistently show that "persistent and widespread discrimination, intolerance and hatred in the European Union threaten to marginalise and alienate many people belonging to minorities who otherwise feel a strong attachment to their country of residence and trust in its institutions."[4] The latest EU-MIDIS II survey, which provides a comprehensive overview of the issue, found that 39% of Muslim respondents and 41% of Roma respondents felt that they had been discriminated against because of their origin in the five years prior to the survey.[5] Subjective perceptions of threat were even higher, at almost 60% for both communities in the EU

[1] https://www.fuen.org/en/article/Autochthonous-minorities-in-Europe (4 May 2023).

[2] J. Wouters & M. Ovádek, *The European Union and Human Rights: Analysis, Cases, and Materials,* Oxford University Press, Oxford, 2021.

[3] *E.g.* https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0139&from=EN (4 May 2023). K. Liu & C. O'Cinneide, *The ongoing evolution of the case-law of the Court of Justice of the European Union on Directives 2000/43/EC and 2000/78/EC, A legal analysis of the situation in EU Member States,* European Union, 2019.

[4] K. Szajbély & T. Török, *Az Európai Unió második felmérése a kisebbségekről és a hátrányos megkülönböztetésről – tények és tanulságok,* Közjogi Szemle, 2018/1. p. 17.

[5] https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-midis-ii-main-results_en.pdf (4 May 2023).

Member States concerned. A worrying trend is the consistently low proportion of people who ask for help from a public authority in cases of discrimination, harassment or hate crime: again according to EU-MIDIS II data, 12% of Muslim respondents and 6% of Roma respondents asked for help from a public authority or institution.[6]

This extreme latency is confirmed by other FRA research on hate crime victims.[7] Victims generally do not know where to turn for help or are not confident that taking action will be beneficial. In addition, fear and shame are often a barrier to seeking help. The pandemic has exacerbated this trend: according to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) 2020-2021 survey, there were 7,000 reported hate crimes on the European continent, 87% of which were racist and xenophobic.[8] At the same time, the latency of hate crime has increased over this period: while minority groups are twice as likely to be victims of hate crime as members of the majority society, academic research shows that only 10% of their cases are reported to the authorities. [9]

In addition to the surveys, the anomalies in the application of the law by the state in dealing with hate crimes and discrimination situations have also been highlighted, in particular in the thematic decisions of the European Court of Human Rights, such as Angelova and Iliev v. Bulgaria, Balázs v. Hungary, Fedorchenko and Lozenko v. Ukraine, Šečić v. Croatia and Stoica v. Romania.[10]

The relative failure of a decades-long process and the new challenges, the results of the 2019 European Parliament elections, but especially the planning of the 2021-27 budget, have prompted the EU institutions to reconsider whether the measures taken so far are sufficient. In this context, it is important to examine how Member States are implementing legislation and policies to promote equality and non-discrimination and to combat hate crime effectively, and how progress in this area can be better monitored and measured. In 2018, the High Level Group on non-discrimination, equality and diversity agreed to set up a sub-group on equality data (composed of experts from 13 Member States). With the support of the FRA, they developed a set of non-binding guidelines on how to progressively improve the collection and use of equality data to help them monitor the implementation of relevant legislation, policies and measures they are developing in this area. At the root of the problem, the EU monitoring bodies and the relevant expert documents identified uncertainty about the targeting of measures and the lack of identifiability of the groups concerned.[11]

As this situation violates the EU's fundamental principles of legal certainty, the principle of the legitimate use of EU funds and transparency, an intensive professional dialogue has developed in recent years on how and to what extent racial or ethnic data should be used, but this has mainly focused on the technical legal use of the data.[12]

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[6] https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-minorities-survey-muslims-selected-findings_en.pdf (4 May 2023).

[7] *E.g.* FRA, *Fundamental Rights Report 2017, 2020, 2021*; FRA, *Antisemitism – Overview of data available in the European Union 2016–2020*; FRA, *Compendium of practices – Hate Crime.*

[8] Based on OSCE ODIHR Hate Crime Database, Data from years 2020-2021, https://hatecrime.osce.org/hate-crime-data (4 May 2023).

[9] P. Bárd, *Prerequisites for the effective fight against hate crimes,* Hungarian Journal of Legal Studies, Vol. 61, No. 3, 2021.

[10] https://gyuloletellen.hu/sites/default/files/gyem_ejebjoggyak.pdf (4 May 2023).

[11] *E.g.* European Commission, *A Union of equality: EU anti-racism action plan 2020-2025*, COM(2020) 565 final; European Commission, *A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime*. COM(2021) 777 final; https://fra.europa.eu/en/publication/2021/hate-crime-reporting (4 May 2023); S. van der Aa, R. Hofmann & J. Claessen, *A Comparative Perspective on the Protection of Hate Crime Victims in the European Union,* Erasmus Law Review, 2021/3.

[12] *E.g.* T. Huddleston, *Equality data indicators: Methodological approach Overview per EU Member State,* Publications Office of the European Union, Luxembourg, 2017.; L. Farkas, *The meaning of racial or ethnic origin in EU law: between stereotypes and identities*, Publications Office of the European Union, Luxembourg, 2017; High Level Group on Non-discrimination, Equality and

Racial and ethnic hate crimes are message crimes because they are also intended to intimidate a community by targeting an individual. For this reason, they have a dual characteristic: the offender has deliberately chosen the target of the crime because of a protected characteristic, and during committing an ordinary crime, immediately before or after the crime, the offender has expressed hostility towards the protected characteristics of the targeted person, group or property. The critical issue is the objective ascertainability of group membership and the possible range of data to support it.

In the following pages I will examine the data management issues involved in the detection and prosecution of hate crime, then present the data management framework that supports the fight against discriminatory situations that are key to the general prevention of hate crime, and finally discuss the need for personal and generalised data in social policy processes to prevent both phenomena, particularly in the development of affirmative action measures. In addition to regulation, I will try to highlight the structural problems of data management resulting from the absence of legislation or even from anomalies in the application of the law.

2. Barriers to coordinated action: diversity of conceptual regimes and multiple layers of regulation

The collection and publication of data on racial or ethnic origin is encouraged by all relevant international conventions and their monitoring bodies, such as the UN Committee on the Elimination of All Forms of Racial Discrimination in its policy statements[13] and thematic consultations[14], the OSCE in its technical guidelines and guidelines[15] and the ET in its thematic comments and country reports[16]. These documents regularly draw attention to the importance of professionally sound and democratically implemented data collection and, where the nature of the document allows, tailor their recommendations to the specific circumstances of the State concerned.

However, data on racial or ethnic origin are of a highly complex nature, making them difficult to understand and manage. The very conceptual definition of race, ethnicity and descent is a challenge, as is the question of the freedom to assume or choose an identity. Identity is an intellectual and emotional complex that is largely determined historically, culturally and sociologically, and in most life situations does not require a legal definition. However, where it does become legally relevant, it comes into the intersection of several fundamental rights and state objectives. From a data protection perspective, the individual or community rights of the data subject and the interests

Diversity, *Guidance note on the collection and use of equality data based on racial or ethnic origin*, Publications Office of the European Union, Luxembourg, 2021; A. L. Pap & E. Kovács Szitkay, *Registering and Profiling Race and Ethnicity in Science and Law Enforcement: a Constitutional Law Approach,* in Law and Forensic Science: A Global Challenge – Acts of the 2nd International Conference, Diritto Piú, Rome, 2022.

[13] *E.g.* General recommendation No. 35. Combating racist hate speech (2013); General recommendation No. 36. Preventing and combating racial profiling by law enforcement officials (2020).

[14] *E.g.* Racial Discrimination in Today's World: Racial profiling, ethnic cleansing and current global issues and challenges (SR.2600, 2017); Racist hate speech (R.2196, 2012), Thematic discussion on „special measures / affirmative action" (SR.2081, 2008).

[15] *E.g.* The Tallinn Guidelines on National Minorities and the Media in the Digital Age (2019); Hate Crime Data Collection and Monitoring: A Practical Guide (2014); The Ljubljana Guidelines on Integration of Diverse Societies (2012).

[16] *E.g.* ACFC Thematic Commentary No. 4 (2016) The Framework Convention: a key tool to managing diversity through minority rights The Scope of Application of the Framework Convention for the Protection of National Minorities ACFC/56DOC(2016)001; ACFC Thematic Commentary No. 2 (2008) The effective participation of persons belonging to national minorities in cultural, social and economic life and int he public affairs ACFC/31DOC(2008)001.

of the state are in conflict:

a) In the case of hate crime prosecution and anti-discrimination measures, the state's aim is to protect a legal institution, i.e. to use state (criminal) power to act against the disruption of social order. Regardless of whether the victim has declared his or her identity or whether the other party has simply assumed it, the victim thus suffers a legal disadvantage that the State must remedy in addition to the guarantees contained in the legislation: the source of the data is irrelevant, the objective is factuality.

b) The system of affirmative actions is a structure interpreted as a response to an economic, social or political situation that has been structurally applied or repressed in the past. The beneficiaries may be the group and its members, but the measures are definite: since their aim is to compensate for a disadvantage, they can only be applied until the disadvantage is removed and only to the extent that they do not violate the fundamental rights of others. In this case, the person concerned can only exercise the rights on the basis of a declaration of his or her identity, i.e. he or she can decide to make a declaration or not.

c) The use of sensitive data for political purposes often conflicts with the principles and possibilities of data protection. In the case of research aimed at revealing the situation of the group as a whole or at informing a general decision, the State should be allowed to have access to objective information. In this case, it is suggested that substitute data be obtained, while stressing the primacy of voluntary identification.

It can be seen that information on racial or ethnic origin, like Schrödinger's cat, is a relativistic factor: it can only be interpreted if it is observed and evaluated in the context of the given legal relationship. They can therefore only be interpreted in their totality and in a results-oriented manner. This is a great responsibility and difficulty in the application of the law. Indeed, specific personal data relating to racial or ethnic origin may be manifest and relevant, manifest and irrelevant, specific and relevant, and specific and irrelevant. This requires a complex analysis of the situation, looking at the intention of the data subject or the intention of the intruder, the context and situation, the individual or group concerned, the purpose of the use, the scientific facts supporting the use, and other sources available to the controller.

3. Intersection of sectoral and data protection rules in the European Union

3.1. General rules

From the perspective of European law, the situation is complex. On the one hand, the fight against hate crime (through criminal law and cooperation in criminal matters), equal treatment (through anti-discrimination legislation) and equal opportunities (through affirmative action) are three intertwined policy areas that require distinctly different legal instruments. On the other hand, there is a synergy – or the legislator's intention to create synergies – between several areas of law, which, however, for both doctrinal and practical reasons, require the processing of personal data of different scope, quality and quantity. Moreover, these different technical needs must or should be channelled into a single EU data protection framework, which should in any case be uniformly applicable in all Member States.

The current EU data protection regime is the result of the data protection reform process initiated by the Lisbon Treaty, replacing the previous complex set of rules. The General Data Protection Directive (GDPR)[17], which entered into force in 2016 but has only been applicable since 2018, and the parallel Law Enforcement Directive (LED)[18], which regulates activities excluded from its scope – law enforcement, defence, national security – in parallel, promised a renewal of the collection and quality of sensitive personal data, which it has only partially fulfilled.

Article 16(1) of the TFEU guarantees the right to the protection of personal data and, like the above, creates the possibility of adopting secondary sources of law. According to Article 8(1) to (3) of the Charter on the protection of personal data, "Everyone has the right to the protection of personal data relating to him. Such data may be processed only fairly and in good faith, for specified purposes, on the basis of the data subject's consent or for some other legitimate ground provided for by law. Everyone has the right to know the data collected about him or her and the right to have it corrected. Compliance with these rules must be subject to control by an independent authority."[19] At the same time, Article 21, which regulates the prohibition of discrimination, already contains a taxonomy of central and substitute concepts, such as race, colour, ethnic or social origin, language, religion or belief, membership of a national minority, property status.

The GDPR sets out a strict three-part framework for sensitive data.

The first element is that the processing of personal data revealing racial or ethnic origin is prohibited under Article 9(1). Recital (51) further explains this hard and fast rule, stating that "Personal data which are, by their nature, particularly sensitive in relation to fundamental rights and freedoms merit specific protection as the context of their processing could create significant risks to the fundamental rights and freedoms. Those personal data should include personal data revealing racial or ethnic origin (…)". The second element is the set of exceptions: the GDPR allows for ten exceptions to the above rule, which are listed in a taxonomy. However, these are not just flexible exceptions for practical situations, but a complex system of safeguards, backed up by guarantees and requiring further legislation. Article 9(2), Recitals 51 to 53 and 71 set out the cornerstones and instruments of this system in a complementary manner. Thus, notwithstanding the prohibition, personal data concerning racial or ethnic origin may exceptionally be processed: (a) with the explicit consent of the data subject; (b) for the fulfilment of obligations arising from legal requirements relating to employment or social security; (c) for the purposes of the vital interests of the data subject; (d) for the purposes of the legitimate activities of an association or a non-profit organisation; (e) manifestly made public by the data subject (f) for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity; (g) substantial public interest; (h) assessment of the working capacity of the employee, health or social care system, medical diagnosis (i) public interest in the field of public health, and (j) archiving, historical research, statistical purposes in the public interest. The third element is the additional built-in guarantee. Recital (51) also clarifies the obligation to comply with the GDPR general system of guarantees. "In addition to

[17] 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 (General Data Protection Regulation), OJ L 119.

[18] Directive (EU) 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L 119.

[19] R. G. Hanek & L. Farkas, *The potential of the Charter in fighting hate: Enforcing international human rights standards through victims' rights,* Robert Schuman Centre for Advanced Studies Centre for Judicial Cooperation, European University Institute, RSCAS 2020/75.

the specific provisions applicable to such processing, the general principles and other rules of this Regulation shall apply, in particular as regards the conditions for lawful processing. Exceptions to the general prohibition on processing such special categories of personal data should be explicitly provided for, including where the data subject gives his or her unambiguous consent or with regard to certain specific processing needs, in particular where the processing is carried out in the context of their legitimate activities by associations or foundations whose purpose is to enable the exercise of fundamental freedoms."

Moreover, in addition to the three criteria above, the controller must comply with the basic principles of data processing[20] (Article 5), have an adequate legal basis[21] (Article 6) and explicitly provide for a derogation from the general prohibition.

Because of its specific scope, the LED imposes an even stricter restriction than the above. In addition to all the safeguards recognised in the GDPR, it narrows the scope for exceptions: processing of personal data revealing racial or ethnic origin is only allowed, subject to appropriate safeguards for the rights and freedoms of the data subject, if it is strictly necessary and (a) permitted by EU or Member State law; (b) necessary to protect the vital interests of the data subject or of another natural person; or (c) such processing relates to data which have been explicitly made public by the data subject. The Directive also specifically emphasises that the consent of the data subject should not in itself constitute a legal basis for the processing of such special categories of personal data by competent authorities (Recital 37). It is important to emphasise that although the LED is "only" a Directive, Member States are not allowed to derogate from the above mandatory rules in any meaningful way.

The GDPR established the European Data Protection Board (EDPB), which helps to ensure that data protection law is applied consistently across the EU and works to ensure effective cooperation between data protection authorities. As well as issuing guidance on the interpretation of the GDPR's basic concepts, it can also issue binding decisions in cross-border data processing disputes, ensuring that EU law is applied consistently to avoid the same case being treated differently in different jurisdictions.

3.2. Direct action against hate crime and anti-discrimination measures

Situation of discriminations, which can be seen as a precursor to hate crime,[22] lie at the intersection of the rights of the state, the victim and the victimised, and it is therefore worth understanding the nature of the legislation before analysing data protection.

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[20] These are: the principles of legality, fairness and transparency, purpose limitation, data minimisation, accuracy, limited storage, integrity and confidentiality and accountability.

[21] These are: (a) the data subject has given his or her consent to the processing of his or her personal data for one or more specific purposes; (b) processing is necessary for the performance of a contract to which the data subject is a party or for the purposes of taking steps at the request of the data subject prior to entering into a contract; (c) processing is necessary for compliance with a legal obligation to which the controller is subject; (d) processing is necessary for the protection of the vital interests of the data subject or of another natural person; (e) 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; (f) 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 the protection of personal data, in particular where the data subject is a child.

[22] See in detail Gordon W. Allport's gradient theory of prejudice in the book *The Nature of Prejudice*. G. W. Allport, *The Nature of Prejudice,* Addison-Wesley Pub. Co., Reading, 1954.

Although both the TEU and the TFEU provide for the implementation of the principle of equal treatment, the two areas of intervention under discussion are traditionally linked to national legislation, and for decades the objectives of the Communities have been to play a coordinating role and to introduce targeted action plans. However, the reforms introduced by the Amsterdam Treaty have also created a dynamic for human rights-based action on equal treatment.

The 2008 Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law[23] established a framework for an effective, proportionate and dissuasive criminal law response to hate speech and hate crime at EU level. It required Member States to criminalise hate speech and provided for Member States to include racist and xenophobic motivation as an aggravating circumstance for offences other than hate speech. The Framework Decision was complemented by the Victims' Rights Directive of 2012[24], which aims, inter alia, to provide justice, protection and support to victims of hate crime and hate speech. The necessary legislative process has been fully completed in the Member States, but the Commission has repeatedly drawn attention over the past decade to the very uneven quality of national legislation and to cumbersome and problematic implementation. [25] Partly in response to these concerns, a High Level Group on Racism, Xenophobia and Other Forms of Intolerance was set up in 2016 to directly support Member States' efforts to effectively implement the Framework Decision. In order to enrich the explicit legal instruments against hate speech and hate crimes, the Commission has also taken the initiative to include these two offences in the list of offences with an EU dimension in 2021.[26]

The European Community's anti-discrimination measures are older and more fragmented than the above: they date back to 2000, when Article 13 of the Treaty of Amsterdam, which brought about a change in the approach to human rights, empowered the Community to take appropriate action to combat discrimination based on racial or ethnic origin, religion or belief, disability, age or sexual orientation, in addition to discrimination based on sex. On this basis the Racial Equality Directive (RED)[27] was adopted in 2000, followed by the Employment Equality Directive (EED)[28]. While the former prohibits racial discrimination in a range of areas of life (employment, education, social protection, social advantages, healthcare, access to goods and services, housing), the latter, with a different regulatory logic, focuses on employment and prohibits discrimination on the grounds of religion or belief, age, disability and sexual orientation. The complex, so-called horizontal directive is still not in force for political reasons, so the general principle of equal treatment is implicitly part of comprehensive strategies.[29] From a data protection perspective, the regulations do not contain a specific provision, so they should be treated according to the LED in hate crime situations and

[23] Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328.

[24] Directive (EU) 2012/29 of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315.

[25] On 1 December 2014, the Commission was given responsibility for monitoring the transposition of Framework Decisions by Member States. E.g.: (COM(2014) 27 final).

[26] Communication from the Commission tot he European Parliament and the Council: A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime. COM(2021) 777 final.

[27] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180.

[28] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303.

[29] *E.g.* A Union of equality: EU anti-racism action plan 2020-2025 [COM(2020) 565 final]; A Union of Equality: EU Roma strategic framework for equality, inclusion and participation and its accompanying proposal for a revised Council recommendation on national Roma strategic frameworks for equality, inclusion and participation [SWD(2020) 530 final]; The European Pillar of Social Rights Action Plan [COM(2021) 102 final].

the GDPR in discrimination situations. As the aim of the legislation is to protect European values and to enforce the criminal power of the state, the voluntary declaration of the origin of the person concerned would be overshadowed anyway, which is underlined by the LED with the mentioned exclusion clause. It is important to note that this is confirmed by the quantity and quality of the data requested: for the prosecuting authority, the perceptions of the perpetrator must be taken into account first and foremost, as this was the – also legally assessed – motive for committing the act. Previous public acknowledgement of racial or ethnic origin, or a personal statement in this regard, is irrelevant to the offence and therefore irrelevant from a data protection perspective. Processing is possible – after establishing the appropriate legal basis and purpose – in the case of the GDPR for the establishment, exercise or defence of legal claims, or on the basis of judicial activities and substantial public interest, under the LED, under EU or national criminal law. The EDPB's interpretation adds that there must be specific legal and technical safeguards to address specific risks and that processing should only be allowed if it is strictly necessary and proportionate under certain conditions.[30] The monitoring of the implementation of the Directive and the application of the Regulation[31], with the involvement of the supervisory authorities, paid particular attention to the review of the processing of sensitive data, in particular with regard to the quality of the relevant legislation and the existence of a system of safeguards. This did not reveal any structural or glaring errors and no anomalies in the application of the law in relation to the processing of data on racial or ethnic origin reported by the EDPB[32] or by the national supervisory authorities.[33]

3.3. Affirmative actions and policy objectives

Alongside repressive and reparative state intervention, preventive and social justice measures for equal treatment play a key role in democratic states.

Article 5 of the RED establishes as a fundamental principle that, with a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting special measures intended to eliminate or compensate for disadvantages linked to racial or ethnic origin. „Affirmative action can play an important role in adressing the lack of substantive equality within societies: formal equality alone does not necessarily meet the specific needs of certain groups of people. Measures can be taken to combat discrimination against persons belonging to racial or ethnic minorities. Union law does not prevent Member States from adopting specific measures to prevent or compensate for disadvantages linked to discrimination based on racial or ethnic origin, where a protection clause exists."[34]

The main data processing issue in this case is the voluntary nature of the data subject's declaration and the conflict of public interest. EU law and the majority of Member States have taken the view that the only cases where the data subject should be obliged to declare his or her identity are in order to obtain benefits from the budget or to receive assistances. However, the possibility of establishing the authenticity of identity, multiple identities and the possibility of changing identity may

[30] EDPB, *Recommendations 01/2021 on the adequacy referential under the Law Enforcement Directive (2021).*

[31] See also: P. Vogiatzoglou & T. Marquenie, *Assessment of the implementation of the Law Enforcement Directive,* European Parliament, Brussels, 2022.; European Commission, *Evaluation report on the implementation of the General Data Protection Regulation two years after its application, B9-0211/2021.*

[32] EDPB, *annual reports 2018-2021.*

[33] EDPB, *Overview on resources made available by Member States to the Data Protection Authorities and on enforcement actions by the Data Protection Authorities (2021), EDPB, First overview on the implementation of the GDPR and the roles and means of the national supervisory authorities (2019).*

[34] A Union of equality: EU anti-racism action plan 2020-2025 [COM(2020) 565 final] p. 25.

pose a problem of principle.

Article 3 of the Council of Europe's 1994 Framework Convention for the Protection of National Minorities states that "every person belonging to a national minority shall have the right freely to choose whether or not to be treated as a minority and shall not suffer any disadvantage as a result of that choice or of the exercise of the rights attaching to that choice". [35]

At the same time, the 1990 Copenhagen Final Act of the Conference on Security and Cooperation in Europe (CSCE) declares that „Belonging to a national minority shall be a matter of free choice for the individual and no disadvantage may result from the exercise of that choice (...). Persons belonging to national minorities shall have the right freely to express, preserve and develop their ethnic, cultural and religious identity. (...) No person belonging to a national minority shall be disadvantaged on the basis of whether or not he exercises these rights."[36] This is confirmed by the Organisation for Security and Co-operation in Europe's (OSCE) Ljubljana Guidelines on the Integration of Diverse Societies, published in November 2012, which states in Part II, point 6: "Identity is based on the principle of free and voluntary choice. Minority rights include the right of members of minority communities to choose whether or not to be treated as members of the communities. They must not suffer any disadvantage as a result of that choice - or refusal to choose. The freedom to make this choice shall not be restricted".[37]

One important issue to be adressed in relation to legislative decisions on affirmative action is the theoretical possibility and practical experience of generalised statistical data collection.

The main international advocates for the introduction and application of affirmative actions are the European Commission against Racism and Intolerance (ECRI) and the Advisory Committee for the Framework Convention on National Minorities (AC FCNM), which have defined the systematic collection of data on race or ethnicity as a fundamental element of the protection of minority rights since the beginning of their activities. At the same time, a new methodological proposal was formulated with a view to creating national databases that were as comprehensive and complete as possible: the concept of proxy data was born. This essentially sociological and statistical tool has been recognised in the legal context and its use in policy-making has begun. As early as 1998, for example, ECRI Recommendation No. 4 called for the collection of comprehensive and consistent statistical data in order to assess the effectiveness of policies aimed at ethnic minority groups. The document points out that, in addition to general population surveys, "targeted surveys asking about the experiences and perceptions of potential victims of racism and discrimination provide a new and valuable source of information (...) and the results of surveys can be used in a number of ways to highlight the problem and improve the situation".[38]

In its fourth thematic comment, the AC FCNM, reiterating the above, also cautioned States parties "not to rely solely on official statistics and data, which, for various reasons, may not fully reflect reality. The results should be regularly reassessed and analysed in a flexible manner, in close consultation with minority representatives. Authorities should also use information from other sources, including labour force and other surveys, as well as the results of available independent qualitative and quantitative research on access to rights for persons belonging to national minorities".[39] The

[35] COE, Framework Convention for the Protection of National Minorities (ETS No. 157.) (1994).

[36] CSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension (1990).

[37] OSCE, The Ljubljana Guidelines on Integration of Diverse Societies (2012).

[38] ECRI General Policy Recommendation N°4 on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims (1998) p. 3.

[39] The Framework Convention: a key tool to managing diversity through minority rights, Thematic Commentary No. 4 the

UN Economic Commission for Europe's 2020 Guidelines also confirm the possibility of using proxy data: "Ethnic identity can be measured by a variety of indicators, including ethnic descent or origin, ethnic group membership, cultural affiliation, nationality, racial self-identification, skin colour, minority status, tribe, language, religion or various combinations of these concepts".[40]

While the concept is correct from the perspective of social sciences, there may be legality concerns under the GDPR and LED. Indeed, the data protection regime specifically regulates profiling, which is the process of using data from different sources to make predictions about people by drawing conclusions about an individual based on the characteristics of other statistically similar individuals. Under the GDPR, profiling is the automated processing of personal data for the purpose of evaluating personal characteristics, in particular for the purpose of analysing or making predictions about natural persons.[41] The use of the word 'evaluation' implies that profiling involves some kind of assessment or judgement about the individual. The scope of automated decision making is different and may overlap with or be partly derived from profiling. Automated decision making itself is the ability to make decisions using technological tools without human intervention. Automated decisions may be based on any data, such as data provided directly by the natural persons concerned, data observed about natural persons, derived or inferred data, such as a pre-existing profile of a natural person. Automated decisions may be made with or without profiling; profiling may be made without automated decisions. However, profiling and automated decision making are not necessarily separate activities. What starts as a simple automated decision making process may become a profiling-based process depending on how the data is used.

Controllers may process special categories of personal data only if they fulfil one of the conditions set out in Article 9(2) and one of the conditions set out in Article 6. This includes special categories of data derived or inferred from profiling. Indeed, profiling may generate special categories of data from data that are not special categories in themselves, but become special categories when combined with other data. However, since both the GDPR (Article 22) and the LED (Article 11) prohibit the processing of special categories of data relating to racial or ethnic origin through such processes, this type of data can be processed neither for the original purpose nor in a derived manner.

However, recitals 26 and 21 of the GDPR and the LED provide an exception to the general prohibition on data processing and profiling by stating that data protection principles do not apply to anonymous information relating to an unidentified or identifiable natural person and to personal data that has been rendered anonymous in such a way that the data subject is not or no longer identifiable. It therefore applies to the processing of such anonymous information, including for statistical or research purposes.

The source of proxy data may be, depending on its use, census data, administrative, institutional or organisational records, general or specific statistical surveys, specialist research (demographic, sociological, criminological, etc.), individual reports or even perceptual observation. The table below, based on research by Lilla Farkas, illustrates how, in addition to explicit data on racial or ethnic origin, some EU surveys use proxy data to provide a general racial or ethnic profile of par-

scope of application of the Framework Conventiopn for the Protection of National Minorities ACFC/56DOC(2016)001 section 2.18.

[40] United Nations Economic Commission for Europe (UNECE): Poverty Measurement Guide to Data Disaggregation. United Nations, New York, 2020. p. 33.

[41] Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679 (wp-251rev.01) pp. 7. and 15.

ticular communities.[42]

	RED monitoring[43]	ICERD monitoring[44]	EU Labour Force Survey [45]	EU Statistics on Income and Living Conditions [46]	EU Living Conditions [47]	European Social Survey [48]	European Health Interview-Survey [49]	EU – MIDIS II[50]	EU Population and Houses Census [51]	EU Anti-Gypsyism Survey [52]
racial origin	x	x			x	x		x	x	x
ethnic origin	x	x			x	x			x	x
skin colour		x			x					x
origin		x			x					x
nationality			x	x			x	x	x	x
place of birth			x	x			x		x	
parents' place of birth				x						
national minority					x	x			x	x
religion						x			x	x
language						x			x	x
place of residence, living environment					x	x	x			
experience of discrimination					x	x		x		

Table 1: Practical use of proxy data for racial or ethnic profiling of communities for professional research purposes

[42] L. Farkas, *The meaning of racial or ethnic origin in EU law: between stereotypes and identities*, Publications Office of the European Union, Luxembourg, 2017, p. 11.

[43] EU: Report from the Commission on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (2021) COM(2021) 139 final.

[44] UN CERD: General Guidelined Regarding the Form and Contents of Reports to be Submitted by State Parties under Article 9, Paragraph 1, of the Convention (2000).

[45] Eurostat: European Union Labour Force Survey (LFS) (1983-).

[46] Eurostat: European Union Statistics on Income and Living Conditions (EU-SILC) (2003-).

[47] Eurostat: Living conditions in Europe (2020).

[48] EU: European Social Survey (EU-ESS) (2001-).

[49] EU: European Health Interview Survey (EHIS) (2006-).

[50] EU: Second European Union Minorities and Discrimination Survey (EU-MIDIS II) (2019).

[51] 763/2008/EC regulation on population and housing censuses (2008).

[52] FRA: A persisting concern: anti-Gypsyism as a barrier to Roma inclusion (2019).

So-called "equality data", produced from proxy data, is an important element of the anti-discrimination and equal opportunities policy system.

According to the High Level Group on Non-discrimination, Equality and Diversity, Subgroup on Equality Data, "Equality data is a powerful tool to support the fight against discrimination and exclusion. This includes in particular the disbursement of resources linked to the EU Structural and Investment Funds, where the horizontal EU principles set out in Article 10 TFEU must be fully respected. However, this requires Member States to have systems in place to ensure compliance with their fundamental rights obligations, such as monitoring through the systematic collection of reliable and objective data".[53] The complex research and presentation on the use of the dataset was carried out in 2017 by Thomas Huddleston, research director at the Migration Policy Group, on behalf of the European Commission.[54] The author has reviewed the legislative and regulatory environment of all the Member States of the then 28-member European Union. His aim was to review the issue along three themes: whether the relevant laws and directives allow for the collection of equality data on all aspects of life; whether equality data are collected adequately and regularly; and whether equality data are used regularly by policy actors to promote equality. In its analysis, it assessed the situation in each of the five categories.

The five data dimensions of the survey represent the texture of the data collected on each protected characteristic:

- "regulation" assesses the quality of Member States' laws and implementing regulations that allow for and guarantee the processing of sensitive data and ensure it in different legal contexts;
- "credibility" is an indicator of the involvement of the communities concerned in the planning processes and the proportion of data that is directly and indirectly accessible;
- "reliability" is a technical characteristic, indicating in particular the elaboration of the set of definitions and methodologies, the consistency of the data, the range of data controllers and the comparability of the data at national and Member State level;
- "complexity" shows how many policy areas are covered by the protected characteristic as an indicator;
- "usefulness" shows the role it plays in local or national legislation, monitoring of enforcement practices and underpinning judicial action.

The overall findings of the research painted a bleak picture of the activities of the then 28 Member States in relation to equality data, as shown in the table below.

[53] High Level Group on Non-discrimination, Equality and Diversity, Subgroup on Equality Data (SED), *Guidelines on improving the collection and use of equality data*, Publications Office of the European Union, Luxembourg, 2021, p. 6.

[54] T. Huddleston, *Equality data indicators: Methodological approach Overview per EU Member State,* Publications Office of the European Union, Luxembourg, 2017.

	regulation	credibility	reliability	complexity	usefulness	average of categories
age	17 %	60 %	75 %	80 %	29 %	52 %
disability	33 %	50 %	55 %	71 %	32 %	48 %
ethnic origin	**19 %**	**50 %**	**55 %**	**62 %**	**31 %**	**43 %**
racial origin	**18 %**	**17 %**	**22 %**	**32 %**	**14 %**	**21 %**
religion, belief	15 %	51 %	29 %	43 %	16 %	31 %
sexual orientation	13 %	31 %	22 %	30 %	17 %	22 %
gender identity	13 %	21 %	15 %	24 %	13 %	17 %

Table 2: Selected quality indicators of the equality data in the member states of the European Union in 2017

Although the general collection of equality data is allowed in all Member States, with certain exceptions, most have not been able to make effective use of this option. The effectiveness of equality data collection is directly and positively correlated with the development of anti-discrimination legislation, definitions and equality policies, as well as general public awareness of minority groups.

Professional definitions and specific data management processes are poorly regulated and underused beyond the monitoring of basic processes related to gender, age, disability and ethnic origin. This is both a cause and a consequence of the lack of consultation with the communities concerned and the limitation of self-determination. According to the study, data on "objectively" measurable characteristics, i.e. age, gender, are more complete, reliable and comprehensive, while the more "subjective" – and therefore difficult to define and identify – data on ethnicity, religion or other belief or disability are less part of the general survey and therefore, although more detailed in terms of actuality, are not systematically collected. Data on racial origin and sexual orientation or gender identity are scarce in most Member States. According to Huddleston, only Finland and the Netherlands have effective systems for collecting equality data to promote equality in practice, although Ireland and Portugal follow closely despite weaknesses in data regulation, reliability, complexity and use.[55]

The handling of personal data relating to racial or ethnic origin was a key focus of the research, so that it could be analysed separately. The table below shows, by Member State[56], the ratios of the five data qualities for the two priority characteristics, as well as the lowest and highest values for each of the protected characteristics in that Member State.[57]

[55] Ibid p. 5-6.

[56] The United Kingdom left the European Union on 31 January 2020, but the exit was followed by a transition period until 31 December 2020, as agreed by the parties. The 2017 survey still includes data for the country.

[57] Source of data: T. Huddleston 2017. pp. 25-52.

MS	racial origin	ethnic origin	lowest value	highest value
AT	4 %	48 %	race, identity	age
BE	15 %	65 %	race	age
BG	16 %	46 %	orientation, identity	age
CY	8 %	8 %	orientation, identity	age
CZ	9 %	37 %	race, identity	disability
DE	9 %	44 %	orientation, identity	disability
DK	4 %	40 %	race	age
EE	4 %	57 %	identity	ethnicity
ES	14 %	35 %	belief	disability
FI	81 %	84 %	race	age
FR	22 %	36 %	identity	age, disability
GR	28 %	28 %	orientation, identity	age
HR	15 %	53 %	orientation, identity, ethnicity	disability
HU	15 %	62 %	identity	age
IR	14 %	57 %	race	age
IT	23 %	26 %	race, belief	disability
L	18 %	33 %	identity	age
LT	7 %	26 %	identity	age
LV	0 %	0 %	race, ethnicity, orientation, identity	disability
M	9 %	8 %	orientation, identity	disability
NL	67 %	67 %	all	all
P	64 %	64 %	orientation, identity	disability
PL	7 %	32 %	orientation, identity	disability
RO	9 %	34 %	identity	age
S	5 %	31 %	race	disability
SK	0 %	15 %	race	age
SLO	3 %	23 %	race, identity	age
UK	99 %	99 %	identity	age, disability, race, ethnicity
avg.	**20 %**	**41 %**		

Table 3: Extent of collection and processing of reliable data on racial or ethnic origin in each EU Member States in 2017

The sectoral results confirm the general findings of the research.

- The measurement of race is particularly marginal in the 28 Member States surveyed, with only 4 countries having a total of over 30% and 14 having a quality of less than 10%. In 12 cases, this was the least well-documented area, with only gender identity (18 countries) showing a higher level of under-representation in the total.

- For ethnic origin, 20 countries had an overall score above 30%, most of them in the 50% range, and only 3 had the least documented protected characteristic.

- Age and disability were measured and analysed at a high level of quality in most countries: they were the most documented factors in 17 and 13 cases respectively.

As indicated above, the vast majority of European countries continue to prioritise the collection of objective-based, documented and directly accessible data, with well-developed definitions, methodologies and collection mechanisms in this area. In the case of subjective data, two segments, ethnicity and religion, which are socially valued and therefore politically positioned, have emerged strongly, particularly in Member States with a large number of indigenous nationalities for historical or sociological reasons, or with strong religious affiliation and social positioning of churches. In the case of racial origin, sexual orientation and gender identity, there is a lack of regulation, data are typically obtained from indirect sources through proxy data, the involvement of the communities concerned is not common, the definition and methodological set is poorly developed and the areas are only peripherally covered in some general surveys. This is probably due to the latency and, in most countries, the lack of broad policy constraints and opportunities in the case of sexual identities. In the case of race, the visibility of those affected and the need for social intervention are not in question. However, the Western and Southern European countries concerned show similarly poor results in this area, indicating both methodological shortcomings and social and political distance from the community situation.

3.4. The impact of subjective factors beyond the law

In the light of the above, while the legal framework for the proper handling of the relevant data is, at least in principle, a reasonable and predictable structure, i.e. well regulated, in practice it may be confronted with a number of sociological and methodological problems. Equally important is the human factor: insecurity, inattention or institutional discrimination on the part of law enforcers can (further) undermine the effectiveness of implementation. It is important to note that although the role of victims is paramount in the prosecution of hate crimes, for the purposes of our topic we can only speak of them as passive subjects. For this reason, I will not address the issues relating to them below.[58]

The most common challenge to the application of the law is "Murphy's law of discrimination". According to the construction formulated by András László Pap, but also clearly observable in everyday legal practice, "it is a peculiarly Eastern (Central) European phenomenon when the misinterpretation of data protection rules unjustifiably serves to protect offenders. If the perpetrators are motivated by explicitly exclusionary, discriminatory intentions, the concept of a minority group or membership of a minority group, or the identification of the persons concerned, does not usually

[58] Detailed analyses of their situation can be found in the literature, for example https://www.osce.org/files/f/documents/c/5/447028.pdf (4 May 2023). C. J. Lyons, *Stigma or Sympathy? Attributions of Fault to Hate Crime Victims and Offenders*, Social Psychology Quarterly, Vol. 69, No. 1, 2006, pp. 39-59.

cause them any problems of definition – the interpretation of racial, ethnic or national categories is a challenge only for the defence lawyers, the law enforcement authorities and, above all, the academics".[59]

Methodological procedures and professional protocols can help to address the situation professionally. A good example is the 2009 joint report of the Hungarian Minority Ombudsman and the Data Protection Ombudsman on ethnic data processing, in which they developed an objective perception criteria for discrimination and hate crimes. In the model, in the absence of specific data but in the presence of proxy data, i.e. at least two primary criteria[60] or one primary and at least one secondary criterion[61], the relevant legislation could be automatically applied.[62]

Less common than the above problem, but more serious because of its purposefulness, is the phenomenon of institutional discrimination. The result can be threefold: firstly, consistently prejudicial or discriminatory behaviour on the part of staff; secondly, an institutional mode of operation and institutional culture that does not take into account the situation of members of society with weak advocacy capacities; and thirdly, a situation of deprivation of resources in which the needy are excluded from even the minimum care facilities.[63] Tackling institutional discrimination involves both taking firm actions against individual cases, and promoting complex and structural changes in organisational culture and personal attitudes.

4. Summary

The European Union has made significant progress in the direct and indirect fight against hate crime since the start of the data protection and anti-discrimination reform launched by the Lisbon Treaty. As seen above, the stability of the data protection legal framework, despite its complexity, can support policy action. In the case of processing for criminal purposes, which is based – as a rule – on legal provisions and confirmatory measures requiring a declaration by the individual, the triple guarantee system, the continuous correspondence between the principles and the monitoring activities of Member States' authorities and law enforcement agencies also allow for effective implementation and necessary practical corrections. However, this requires a combination of two factors: professionals who can harmonise and interpret the legal framework and the social context, and building the trust of the communities concerned. The exceptionally high latency rates in this area and the failure of authorities to initiate proceedings are not due to obstacles to data protection, but to a lack of trust on the part of community members and the effects of institutional discrimination often experienced by the authorities involved.

The main challenge is the uncertainty and legal inefficiencies related to the complex data underlying the legal framework, namely equality data. These data, which are essential for affirmative action and policy-making, are generalised and used for scientific and statistical purposes, therefore

[59] A. L. Pap, *Genealogy in Law as a Technology for Categorizing, Contesting and Deconstructing Monoracialism,* Genealogy Vol. 7, No. 1, 2023.

[60] Skin colour, ethnic dress, other external features, common surname, first name, nickname, parents' names and origin, place of residence (segregated settlement or part of a settlement known to be inhabited by minorities), communication, language use, accent.

[61] Social situation, education, family model, employment status, type of employment, religious affiliation or behaviour, receipt of social benefits.

[62] http://www.kisebbsegiombudsman.hu/data/files/158627216.pdf (4 May 2023).

[63] A. L. Pap, *Hate crimes, underpolicing, institutional discrimination: Hungarian cases, ECHR reflections,* MTA Law Working Papers, 2017/13. pp. 20-23.

the GDPR and the LED protect and allow their processing on a large scale, with appropriate safeguards. The downside is the shortcomings in the application of the law, which affect both the direct policy objectives and the indirect objectives of hate crime prosecution. In the light of the SED's extensive expertise, the following critical areas of jurisprudence can be identified.[64]

1) Failures in enforcement are mainly due to misinterpretation of the data protection framework, lack of sufficient financial resources and lack of awareness of the importance of data collection.

2) Unfortunately, in addition to the above, deliberate abuse can also be observed: the systematic abuse of minority protection institutions creates a situation of ethno-corruption, and malicious or negligent abuse can also be observed.

3) Methodological problems occur in a wide range. Coordination, i.e. a harmonised approach to the collection and use of data, is a crucial factor, which should be ensured through the comparability of data between different data sources. This is partly due to internal imbalances, i.e. the imbalance in the collection of data according to different differentiation bases and the imbalance in the collection of data in different areas of life. The lack of involvement of stakeholders and their advocacy organisations creates an environment that makes it difficult or impossible to take an identity. Finally, the over-reliance on surrogate data significantly reduces the identifiability of target groups.

The European Union can help to remedy these shortcomings by intervening in two ways. In the case of technical and legal documents (in particular directives and action plans), methodological principles for the generalised collection of data on racial or ethnic origin should be laid down and a normative monitoring procedure for data management should be included. Based on the same principle, proposals and supporting documents could be used to ensure requirements for the collection and processing of equality data. Relevant technical opinions and decisions of the courts and the EDPB should be monitored and used in the Commission's law development activities to strengthen jurisprudence.

In addition, in line with the principle of subsidiarity, it is of paramount importance to ensure targeted intervention by Member State legislators to prevent abusive practices and to build a relationship of mutual trust with data subjects and their representative bodies in order to reduce delays and ensure access to credible data. The relevant legal practitioners should be provided with appropriate infrastructural and procedural tools, as well as education, training and adequate professional support to prepare them for the subjective challenges of intercultural communication.

[64] SED 2021, pp. 9-11.