

Towards More Effective Policing
Understanding and Preventing
Discriminatory Ethnic Profiling:
A Guide

HRE/ED/6/en/39

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Introduction

'Ethnic profiling' is not a new practice in the Member States of the European Union, but it appears to have become more prominent in reaction to the terrorist bombings in the United States of America (USA, 2001), Madrid (2004) and London (2005), as well as increased concerns over illegal immigration. In turn, concerns have been raised by intergovernmental organisations such as the United Nations (UN), the Council of Europe and the European Union (EU), as well as non-governmental organisations working in the area of human rights protection. In particular, it has been argued that ethnic profiling not only conflicts with law relating to discrimination, but also has damaging social effects. Nevertheless, the practice of 'ethnic profiling' in Europe is generally under-reported and little understood outside of the United Kingdom (UK). The UK has been addressing discriminatory ethnic profiling since the 1980s and, as a result, has built up a strong research basis as well as numerous policy responses to the issue. However, the recognition of discriminatory ethnic profiling practices has not been afforded as much attention in other EU Member States. As a reflection of this, the European literature overwhelmingly originates from the UK, entailing that a large number of examples used throughout this Guide have been extracted from the UK context. It must, however, be noted that the EU and the European Parliament in particular have identified the problem of profiling as a pressing issue in the areas of counter-terrorism, law enforcement, immigration, customs and border control.⁽¹⁾ With this in mind, this Guide sets out to introduce the enquiring reader to the subject of 'ethnic profiling' as a concept and a practice, and one which can be challenged with respect to its potential to discriminate and undermine fundamental rights.

This publication is primarily designed for officers at management level in law enforcement agencies. It is intended to improve understanding of the theory and practice of 'ethnic profiling' and place it within a legal and social context. It does so by explaining how 'profiling' is used in general contexts outside of law enforcement, such as in the area of market research. It then looks at profiling as a practice in the context of law enforcement. In particular, the Guide explains when profiling that uses race, ethnicity or religion will be

⁽¹⁾ See European Parliament Recommendation to the Council of 24 April 2009.

considered to be discriminatory and therefore unlawful, and under which circumstances reference to these characteristics may be permissible. The Guide then goes on to look at the harmful effects of discriminatory ethnic profiling, its effectiveness as a law enforcement tool, as well as alternative policing methods and safeguards against the misuse of profiling.

The Guide uses the language ‘discriminatory ethnic profiling’ rather than the more common ‘ethnic profiling’ to describe the practice of basing law enforcement decisions solely or mainly on an individual’s race, ethnicity or religion. This is because ‘ethnic profiling’ as a term has been used widely by the media, academics and civil liberties organisations without a precise or uniform meaning. The nearest we come to an officially approved European description is by the European Commission against Racism and Intolerance (ECRI), which defines ‘racial profiling’ as: ‘The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin, in control, surveillance or investigation activities.’⁽²⁾ As ECRI has stressed in the Explanatory Memorandum attached to its General Policy Recommendation No. 11, and as will be discussed in Chapter 2, direct discrimination can never be legally justifiable, and the ‘reasonable justification’ for relying on factors of race, ethnicity or religion will only exist in specific and limited circumstances.

The focus of the Guide is limited to examining profiling in the context of general policing, including counter-terrorism. The Guide does not, however, touch on profiling in the context of asylum, immigration or customs where nationality (and hence indirectly possibly race, ethnicity or religion) can play a specific role in decision making. The Guide is also limited to examining profiling in the context of the exercise of stop and search powers. Accordingly it does not examine profiling in other functions such as data mining, legal resident checks or identity checks.

The Guide comprises many examples and ‘case studies’ in order to illustrate police practices and operations that have produced both negative and positive results. The case studies, unless otherwise indicated, have been provided by the University of Warwick and the Open Society Justice Initiative (OSJI).

⁽²⁾ ECRI (2007), para. 1.

We would like to thank the participants of a peer review meeting which took place in October 2009: Ms Greet Elsinga, Commissioner of Police and Senior Adviser with the Police Academy of the Netherlands; Mr Karl-Heinz Grundboeck, Head of Unit for Vocational Training at the Austrian Federal Ministry of the Interior and Secretary General of the Association of European Police Colleges (AEPC); Ms Maria Knutsson, Senior Lecturer at the Swedish National Police College; Mr Andre Konze, Senior Police Officer, State Police of North Rhine Westphalia (Germany); and Mr Murat Yildiz, Training Adviser in the Strategic Police Matters Unit of the OSCE. Comments on the draft Guide were also provided by Simon Denison of the Office for Criminal Justice Reform in the UK and by James A. Goldston, Executive Director of the OSJI.

Where possible, a short form of referencing has been used in the footnotes. Full references are given in the bibliography at the end of the Guide, as well as a list of websites pertaining to those intergovernmental bodies whose documentation is frequently cited.

1. What is profiling?

This chapter will set out the meaning of 'profiling' as a general concept and practice. Profiling is widely used in commercial contexts and we will begin by exploring it in this everyday setting. Once the basic principles and potential risks of profiling have been explained, we will examine how it applies in a law enforcement context.

1.1. Profiling in a general context

At a very general level profiling involves categorising individuals according to their characteristics, whether these are 'unchangeable' (such as gender, age, ethnicity, height) or 'changeable' (such as habits, preferences and other elements of behaviour). Individuals are frequently categorised in this way by insurance companies to assess premium payments according to risks (e.g. smokers may be more likely to have health complications and may therefore be charged higher premiums for health insurance) and by marketing companies to determine which products to advertise (e.g. supermarket loyalty cards may reveal shopping patterns of an individual who then receives details of special offers relating to products that they frequently purchase).

The method for creating these kinds of profiles is similar to a technique known as 'behavioural analysis', where connections are made between patterns of behaviour (e.g. purchasing beer) and certain characteristics (e.g. being male, aged between 18 and 35 years). Profiling of this kind is done in three steps:

- a. Firstly, anonymous data and information are collected to be stored in 'data warehouses' (usually a digital storage device, like a hard-drive). For example, a simple list of responses to questionnaires on patterns of clothes buying.
- b. Secondly, work is done to connect or correlate the relevant variables and create new categories of information. This is known as 'data mining' and is usually done with computer software. Rather than viewing the information as individual questionnaires, it can be looked at as aggregate

or group data to identify, for example, what proportion of males and females and people in certain age categories buy particular brands and types of clothing.

- c. Thirdly, this information is then interpreted to come up with an assumption about the way people behave. This process is known as 'inference', because a pattern of behaviour is inferred from the characteristics identified. Sometimes, only this last step is referred to as 'profiling'. For example, the information might suggest that a high proportion of people who wear a certain brand and style of clothes are females aged between 16 and 19 years. From this we understand that the standard profile of someone wearing that brand and style is a female, aged 16 to 19 years.

*** Profiling allows individuals to be 'categorised on the basis of some observable characteristics in order to infer ... others that are not observable'.⁽³⁾**

The act of data collection to create profiles has raised some questions related to the right to have one's personal data protected, especially when profiling is being used to take important decisions, such as whether to grant a bank loan. A number of problems may arise, of which the following are two key considerations:

- a. Firstly, errors may be made in creating particular 'categories'. For instance, data mining software might mistakenly point to an **incorrect correlation** between sexual orientation and credit-worthiness, so that gay men are thought to be more likely to miss loan repayments. As a result of this false categorisation gay men may then have difficulty in obtaining a bank loan. Not only is the gay man the victim of unfavourable treatment, but the decision has been based on false information of which he is not aware. Reverting to the above example of clothing, it is also possible that **categories are misinterpreted**. So, although most wearers of a certain clothing brand and style are girls aged 16 to 19 years, this should not be taken to mean that all girls aged 16 to 19 years dress in this way. In other words, individuals often present the exception to the rule. Therefore,

⁽³⁾ DINANT ET AL. (2009), p. 3.

general aggregate group profiles can serve to discriminate against those who do not act in accordance with a generic profile. This is why experts call for a right of 'redress' – that is, the opportunity to correct information – when decisions have been taken by automatically following a profile.⁽⁴⁾

- b. The second problem is illustrated and contained within these examples; namely, the collection of information that is considered 'sensitive' such as that related to race, ethnicity, sexual orientation, gender, religious belief, disability or age. People belonging to minorities who are defined by these characteristics currently receive protection in the law against discrimination. If these characteristics are then used as the basis for profiling, there is a strong risk of discriminating against people falling within these groups. This is because profiling relies on making assumptions about the way people behave based on a particular identifiable characteristic. So, for example, if we attempt to profile on the basis of race we are ready to assume that many people of the race in question have similar preferences, opinions or behaviour. As this kind of profiling can be misused, a number of data protection experts call for a general ban on collecting sensitive data, such as race, ethnicity or religion. If, as a general rule, this information is not included in data warehouses, it removes the risk of creating profiles that are discriminatory.⁽⁵⁾



Profiling can allow companies to better tailor their services and target their products by using customers' characteristics to tell them about their preferences and behaviours.

In itself, this may be a valuable tool but there are dangers that mistakes are made when connecting certain characteristics to certain preferences or behaviours.

There is also a danger that profiles built on characteristics like race, ethnicity or religion can create harmful and inaccurate stereotypes and lead to discrimination.

The following section looks at the way in which profiling is used by law enforcement agencies.

⁽⁴⁾ DINANT et al. (2009), p. 32.

⁽⁵⁾ DINANT et al. (2009), p. 33.

1.2. Profiling in the context of law enforcement

This Guide is limited to considering profiling in the context of general policing, including the exercise of counter-terrorism powers. As such, it does not touch on profiling in the areas of immigration, asylum or customs where nationality (and thereby also race, ethnicity or religion) may have a different relevance to decision making. Profiling can occur whenever an officer is in a position to exercise power, in that the decision to target particular individuals with that power can be influenced by considerations of race, ethnicity or religion. Such powers can include:

- identity checks;
- stops and searches of pedestrians and vehicles;
- mass stop and search;
- dispersal of groups;
- the issuing of cautions, arrests or detentions;
- raids;
- surveillance operations;
- data-mining;
- anti-radicalisation policies.

This Guide will focus on the use of profiling during the exercise of stop and search powers.

1.2.1. Law enforcement profiling

In the context of law enforcement, profiling may be, in itself, a legitimate investigation technique.⁽⁹⁾ Profiling may be used to deal with offences that have already been committed, or to prevent the commission of offences in future. This technique is referred to as criminal profiling.

⁽⁹⁾ M. Scheinin defines profiling 'as the systematic association of sets of physical, behavioural or psychological characteristics with particular offences and their use as a basis for making law-enforcement decisions'; see SCHEININ (2007), para. 33.



Criminal profiling is the use of abstract indicators relating to physical features, appearance or behaviour (such as ethnicity, manner of dress, frequented locations), which form the basis for law enforcement action (such as stop and search, arrest and refusal of access to certain areas).

Profiles based on specific intelligence

Profiling is most obviously a legitimate tool for the apprehension of suspected offenders once a crime has been committed. Using a profile that lists the characteristics belonging to specific suspects as a tool to assist in their apprehension is typically seen as a 'common sense' approach to policing. It is based on evidence gathered in relation to a particular event or chain of events. This kind of 'profile' can be more specifically referred to as a 'suspect description'. The more specific or detailed a profile is, the less likely that it will rely heavily on broad categorisations of race, ethnicity or religion, and the less likely it is to be discriminatory (see section 2.4).

Profiles not based on specific intelligence

Profiling can also be a legitimate and useful tool in identifying individuals who may be committing an offence in a 'hidden' manner (such as concealing prohibited items) or are likely to commit an offence in future (such as being en route to a robbery). This is based on educated assumptions derived from experience and training, **with a focus on behaviour** rather than racial, ethnic or religious characteristics. For instance, officers may work with profiles that instruct them to look for individuals who repeatedly visit particular locations, who meet and swap bags before separating, who behave erratically or nervously, or who repeatedly make large purchases using only cash. Profiles that are heavily based on types of behaviour are less likely to be found to discriminate on the basis of race, ethnicity or religion (see section 2.4).

As will be discussed in Chapters 2 and 3, profiling can become problematic if there is no specific intelligence to help identify individual suspects and profiles are based on broad characteristics, such as race, ethnicity or religion, rather than behaviour. If minorities from particular racial, ethnic or religious backgrounds are routinely associated by the police with criminal behaviour, then profiling can become discriminatory. This is because the decision to

take police action becomes determined by the race, ethnicity or religion of an individual, instead of other more relevant factors related to behaviour. Using profiling in a way that is racially discriminatory is not only unlawful but has been challenged as an ineffective means for combating crime (as will be discussed in subsequent chapters).

Profiling may take place at an organisational level and/or an operational level. It is relatively easy to identify unlawful discriminatory profiling at an organisational level. This occurs, for instance, where explicit written or oral instructions are issued at a high level (from government or commanding officers) instructing officers to target particular groups with enforcement action.

At an operational level, profiling may occur in a more subtle manner where individual officers may apply stereotypes or generalisations based on race, ethnicity or religion. This may be consciously motivated by personal prejudices, or it may be that officers are not conscious of the degree to which they are applying generalisations and stereotypes.⁽⁷⁾

1.2.2. Profiling by 'data mining'

This Guide will focus on ethnic profiling in the context of the exercise of police powers to stop and search people. However, for the sake of completeness it will briefly illustrate, through the following case study, how law enforcement authorities may use 'data mining' and 'data warehouses' in a similar way to market researchers or insurance companies.

Following the attacks of 11 September 2001, the German police conducted a computerised search aimed at finding so-called 'terrorist sleepers'. That is, persons who have received training in preparation for attacks at a future date, but for the meantime remain integrated into society and refrain from any activities that might give rise to suspicion. For this purpose, the German authorities built a profile, searching for: males between 18 and 40 years of age, who were currently or formerly students and who were Muslims born in or coming from a specific list of 26 countries. The search was carried out


⁽⁷⁾ 'As with other systemic practices, racial profiling can be conscious or unconscious, intentional or unintentional. Racial profiling by police officers may be unconscious.' *The Queen v. Campbell*, Court of Quebec (Criminal Division) Judgment of 27 January, 2005, para. 34.

between 2001 and 2003 and singled out almost 32,000 persons who fitted all the criteria. The personal data of 200,000 to 300,000 persons had been stored in the database during the process. However, the computerised profile search did not lead to a single arrest.

In 2006, Germany's Federal Constitutional Court ruled that this profile-based search was illegal. It was found to breach the individual right of self-determination over personal information (Art. 2 (1) of the Basic Law), together with Art. 1(1) of the Basic Law on the protection of human dignity. The Court found that, in principle, data-mining could be a legitimate tool for protecting national security but that such a serious interference with human rights (which also particularly stigmatised foreign Muslims) would only be justified where there was an imminent and specific danger. In this case, the danger was of a hypothetical future attack. Although the Court did not examine whether the profiling exercise itself violated the prohibition on discrimination, the decision shows that in itself data mining can fall foul of rules relating to privacy and human rights protection.

2. Discriminatory ethnic profiling

The term 'ethnic profiling' is widely used in the media, among civil liberties campaigners, by legal experts and by politicians. However, it does not have a precise meaning and is used in different ways. Using the term 'ethnic profiling' to describe unlawful profiling can be misleading, because it is possible for race, ethnicity or religion to be used as part of a profile without breaking the law. This chapter explains when profiling that involves factors of race, ethnicity and religion will be unlawful. To describe this situation it will use the term 'discriminatory ethnic profiling'.

 Discriminatory ethnic profiling involves:

- treating an individual less favourably than others who are in a similar situation (in other words 'discriminating'), for example, by exercising police powers such as stop and search;
- where a decision to exercise police powers is based only or mainly on that person's race, ethnicity or religion.

What follows is a step-by-step explanation of what constitutes discrimination. This concept will then be applied to profiling.

2.1. What is meant by 'discrimination'?

Discrimination in the context of profiling is usually 'direct' discrimination, which is easy to identify because it consists in **differential treatment** that is based on **illegitimate grounds**. In the words of the Racial Equality Directive⁽⁹⁾, one of the key legislative instruments regulating the issue, 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'. A typical example of this would be stopping a member of an ethnic minority on suspicion of committing an offence *solely or mainly* because they are a member of that ethnic minority.

Discrimination can also be 'indirect'. This will be discussed further in section 2.5.

⁽⁹⁾ Article 2, Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22.

2.1.1. Differential treatment

Differential treatment in itself is not necessarily unacceptable. As human beings, we each have preferences and make choices based on those preferences, whether these are connected to profound beliefs or based on whims. We differentiate day-to-day in the choices we make over how or with whom we socialise, as well as more basic elements of our lives such as our choices of food, clothing or where and how we shop. Our motivations may even be based on prejudices that are considered socially harmful, such as sexism or racism.

The law does not tend to interfere with our choices when they are completely personal in nature. For instance, the decision of a woman not to take driving lessons from a man because she considers men to be aggressive and unpleasant could be considered as sexist, but it is not punishable by law, provided that such a choice is restricted to the woman's private sphere. However, if a different situation were to arise, where a woman driving instructor refused all male students for the same reasons, it could fall under discriminatory behaviour affecting the public sphere.

2.1.2. Illegitimate grounds

Differential treatment means to treat someone differently (less favourably) to others when they are all in a relatively similar or comparable situation. This will not be permissible when it takes place in a 'public' context and is based on 'prohibited' grounds. Examples of such grounds are explicitly listed in the various non-discrimination directives and include: race or ethnicity, age, disability, sexual orientation, sex, and religious belief. This Guide will focus on those grounds associated with 'ethnic' profiling – that is, race, ethnicity or religion.

So, for instance, where the police treat an individual differently to others who are in a similar situation and the *only* or *main* reason for this is their ethnicity or religion, this will constitute unlawful discrimination. However, it is extremely difficult, in law and in practice, to determine whether a given decision is made *solely* on the grounds of ethnicity and religion without balancing it against other possibly relevant considerations. The following section will investigate this issue and attempt to address the complexity it entails.

2.2. How does discrimination apply to ethnic profiling?

There is a well-established principle of international law according to which **direct discrimination on the grounds of race, ethnicity or religion can never be justified or lawful**. This prohibition on direct discrimination is so fundamental that under international law it is not even permitted in times of public emergency.⁽⁹⁾ This includes times of high security threats.

At the time of publishing this Guide, it does not appear that a European-level court has yet had the opportunity to deliver a judgment **specifically** dealing with the concept of ethnic profiling in the context of law enforcement. However, in recent years there have been several court cases at the national and international level involving individuals who were subject to checks from police or immigration officials. These cases have set out particular rules that are relevant to the practice of profiling and will illustrate the discussion below.

A 2009 case in which the Human Rights Committee of the United Nations found unlawful discrimination on the grounds of racial profiling – although the term does not appear explicitly in the judgment – is *Rosalind Williams Lecraft v. Spain*. The ruling is particularly significant, as it is the first UN-level body to rule against race and ethnicity motivated identity checks by the police. In this case, the complainant was stopped by a police officer on the platform of a train station in Spain and was asked to display her identity documents. The complainant asked the police officer why she was the only person stopped on the platform, and received the following reply: ‘It’s because you’re black.’ The Human Rights Committee considered that, although it is generally legitimate to carry out identity checks in the interest of public safety, crime prevention and monitoring illegal immigration, ‘when the authorities carry out these checks, the physical or ethnic characteristics of the persons targeted should not be considered as indicative of their possibly illegal situation in the country. Nor should identity checks be carried out so that only people with certain physical characteristics or ethnic backgrounds are targeted. This would not only adversely affect the dignity of those affected, but also contribute to the spread of xenophobic attitudes among the general population; it would also be inconsistent with an effective policy to combat racial discrimination.’⁽¹⁰⁾

⁽⁹⁾ Article 4(1) of the International Covenant on Civil and Political Rights (ICCPR). See: UNITED NATIONS HUMAN RIGHTS COMMITTEE (2001), para. 8; SCHEININ (2007), para. 41.

⁽¹⁰⁾ *Rosalind Williams Lecraft v Spain* Comm No. 1493/2006, 30 July 2009, at para. 7.2. For the ECtHR perspective see *Timishev v Russia* App. No. 55762/00, 13 December 2005, discussed below.

In the context of profiling, let us imagine a counter-terrorist operation:

In a European capital city the police have been given the power to stop and search any person who they think might be involved in terrorism. There is no specific intelligence about the people involved in the possible attacks, except that the threat is thought to come from a group connected to Al-Qaeda. Police officers stop young men of 'Islamic' or 'Asian'⁽¹¹⁾ appearance far more often than people from other ethnic groups because this conforms to the terrorist profile that they have been given by their commanders.

On the basis of the rules established by international law and various court cases, we can conclude the following in relation to the above scenario: where officers stop individuals, and this choice is based solely or mainly on the individual's race, ethnicity or religion, this amounts to direct discrimination and is unlawful. What is meant by 'main reason' is that the officer would not have stopped the individual were it not for their race, ethnicity or religion. Although it is acceptable for race, ethnicity or religion to be **one** of the factors that the officer takes into account, it **cannot be the sole or main reason** for the stop (see Chapter 2 in particular).

*** Stopping and searching an individual when the only or main reason for doing so is their race, ethnicity or religion amounts to direct discrimination and is unlawful.⁽¹²⁾**

2.3. Why is discriminatory ethnic profiling unlawful?

Ethnic profiling is unlawful because it can contribute to the deterioration of relations between different groups in society and because it offends human dignity. It is harmful for society because it can create tension and mistrust

⁽¹¹⁾ Here, 'Asian' means people of Indian, Pakistani or Bangladeshi origins.

⁽¹²⁾ This statement of principle is not a direct quotation from the case-law. Rather, it is distilled from the reasoning of the major decisions on this question. See, for example, ECtHR *Timishev v Russia*, para. 58: 'the Court considers that no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures'. By analogy, see ECtHR *Abdulaziz, Cabales and Balkandali v UK* App. No. 9214/80, 28 May 1985, para. 78. See also on this question: UN HRC *Rosalind Williams Lecraft v Spain* Comm No. 1493/2006, 30 July 2009, para. 7.2; CERD (2002) Concluding Observations, para. 9; CERD (2005), para. 20. See also: Lord Hope in UKHL *R (on the application of Gillan et al. v Commissioner of the Metropolitan Police et al.* [2006] UKHL 12, para. 44; Baroness Hale in UKHL *R v Immigration Officer at Prague Airport et al.*, ex p. *European Roma Rights Centre et al.* [2004] UKHL 55, para. 73.

between different communities, and harmful to human dignity because it ignores that each of us is a unique individual. What the law requires is that each person is treated as an individual. While it may be true that Islamic extremist terrorists associated with the threat in question tend to be Muslim and of Asian appearance, this cannot give rise to an assumption that all those who are Muslim or are of Asian appearance tend to be terrorists.⁽¹³⁾ As Lord Hope (a Law Lord in the UK House of Lords issuing his judgment in the Gillan case) put it:

'The whole point of making it unlawful for a public authority to discriminate on racial grounds is that impressions about the behaviour of some individuals of a racial group may not be true of the group as a whole.'⁽¹⁴⁾

For similar reasons, discriminatory ethnic profiling can also be considered to be counter-productive. If action is taken on the basis of unlawful profiling, it can result in increasing racial tensions, fuelling resentment within minorities towards the police and the majority population. In this respect, the EU Network of Independent Experts on Fundamental Rights noted:

'The consequences of treating individuals similarly situated differently according to their supposed 'race' or to their ethnicity has [such]... far-reaching consequences in creating divisiveness and resentment, in feeding into stereotypes, and in leading to the over-criminalisation of certain categories of person in turn reinforcing such stereotypical associations between crime and ethnicity, that differential treatment on this ground should in principle be considered unlawful under any circumstance.'⁽¹⁵⁾ In cases where relations with the public are soured, this can also have a negative impact on intelligence-gathering and other forms of cooperation with minority communities. This is discussed in section 3.3.

⁽¹³⁾ Lord Hope, in explaining this point in the *Gillan* case refers to Baroness Hale's statement regarding a policy of immigration officials to treat Roma travellers with greater suspicion (in terms of whether they intended to claim asylum on reaching the UK) than other travellers. Baroness Hale stated that an officer 'may be acting on belief of assumptions about members of the... racial group involved which are often true and which if true would provide a good reason for the less favourable treatment in question. But 'what may be true of a group may not be true of a significant number of individuals within that group'. *UKHL R v Immigration Officer at Prague Airport et al, ex p. European Roma Rights Centre et al.* [2004] UKHL 55, para. 82. Baroness Hale quotes Hartmann J in *Equal Opportunities Commission v Director of Education* [2001] HKLRD 690, para. 86.

⁽¹⁴⁾ Lord Hope's judgment in *R (on the application of Gillan et al.) v Commissioner of the Metropolitan Police et al.* [2006] UKHL 12, para. 44. See the European Court of Human Rights judgment in this case: *Gillan and Quinton v. United Kingdom* ECtHR App. No. 4158/05, 12 January 2010.

⁽¹⁵⁾ EU NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS (2006), para. 54.

2.4. Keeping profiling within the law

As mentioned in Chapter 1, using a profile in itself is not unlawful and is a legitimate law enforcement tool. The following section examines what this means for law enforcement authorities and clarifies the difference between lawful and unlawful enforcement activities or policies in the context of ethnic profiling.

For the exercise of powers to stop and search to be legal, it needs to be based on a profile that is not purely about race or ethnicity or religious affiliation.⁽¹⁶⁾ This does not mean that race or ethnicity or religion have to be ignored. However, all members of the public should be treated in the same way, unless there is a specific reason to treat someone differently. In this regard, the European Code on Police Ethics states:

'The police shall carry out their tasks in a fair manner, guided in particular by the principles of impartiality and non-discrimination.'⁽¹⁷⁾

It may be that ethnicity, race or religious affiliation is one reason to put an officer on alert, but the officer must have something else to go on. To what this 'something else' amounts will depend on the requirements of national law. The usual starting point would require that there exist 'reasonable grounds' to form a 'suspicion' (e.g. based on suspicious or unusual behaviour in a particular context).⁽¹⁸⁾ In some cases, a lower standard exists which might allow powers to be exercised on the basis of professional intuition.⁽¹⁹⁾

It is, of course, not necessarily unlawful to stop and search somebody who belongs to an ethnic, racial or religious minority. Sometimes, ethnicity, race or religion will be a legitimate factor for officers to consider. Imagine, for example, that available intelligence suggests that a robbery will take

⁽¹⁶⁾ This applies even where the powers given to officers appear to be very wide. For instance, sections 44-47 of the UK Terrorism Act 2000 allows authorisation to be given to stop anyone in order to search for certain items without the need for a reasonable suspicion that an offence has been committed. The UK House of Lords has stated, however, that this power must still be exercised in accordance with the principle of non-discrimination. *R (on the application of Gillan et al. v Commissioner of the Metropolitan Police et al.* [2006] UKHL 12. Also see the European Court of Human Rights judgment in this case: *Gillan and Quinton v. United Kingdom* ECtHR App. No. 4158/05, 12 January 2010.

⁽¹⁷⁾ COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE (2001), para. 40.

⁽¹⁸⁾ COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE (2001), para. 40.

⁽¹⁹⁾ Lord Brown in UKHL *R (on the application of Gillan et al. v Commissioner of the Metropolitan Police et al.* [2006] UKHL 12, paras. 78-79.

2.4. Keeping profiling within the law

As mentioned in Chapter 1, using a profile in itself is not unlawful and is a legitimate law enforcement tool. The following section examines what this means for law enforcement authorities and clarifies the difference between lawful and unlawful enforcement activities or policies in the context of ethnic profiling.

For the exercise of powers to stop and search to be legal, it needs to be based on a profile that is not purely about race or ethnicity or religious affiliation.⁽¹⁶⁾ This does not mean that race or ethnicity or religion have to be ignored. However, all members of the public should be treated in the same way, unless there is a specific reason to treat someone differently. In this regard, the European Code on Police Ethics states:

'The police shall carry out their tasks in a fair manner, guided in particular by the principles of impartiality and non-discrimination.'⁽¹⁷⁾

It may be that ethnicity, race or religious affiliation is one reason to put an officer on alert, but the officer must have something else to go on. To what this 'something else' amounts will depend on the requirements of national law. The usual starting point would require that there exist 'reasonable grounds' to form a 'suspicion' (e.g. based on suspicious or unusual behaviour in a particular context).⁽¹⁸⁾ In some cases, a lower standard exists which might allow powers to be exercised on the basis of professional intuition.⁽¹⁹⁾

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place in a particular part of a city and that it will be carried out by a criminal organisation with Chinese origins. Under these circumstances officers could legitimately consider racial appearance as relevant to determining whether an individual becomes a potential suspect.⁽²⁰⁾ The law requires that there must be some reason other than this person's race for the officer to treat this person differently from other members of the public. The reason must be specific to this person.⁽²¹⁾ It may be that they are acting suspiciously or carrying an unusual object or stand out in some other way.⁽²²⁾ It may be that a specific description of a suspect exists which this person matches. What is essential is that the person's ethnicity or race or religion is not the only or main reason that they have been subject to a stop and search or other police action.

This does not mean, however, that officers would be prevented from stopping only people of a particular racial or religious group in certain circumstances, so long as this is not based solely on their race, ethnicity or religion. Consider a case, for instance, that involved a group of illegal immigrants who were all non-'white' and decided to occupy a public building in protest over the refusal to grant them residence permits. These individuals were thus openly protesting that their residence had not been made legal through the grant of a permit. The police evacuated the building and only stopped those individuals who were protesting, and all those individuals happened to be non-'white'. Although the police stopped only non-'whites', this did not necessarily mean that they were guilty of racial or ethnic discrimination. This is because they had other grounds for suspecting that these individuals may have committed an offence (being illegally resident in the country). Their grounds for believing this came from the admission of the individuals themselves. The reason that they were treated differently from other members of the public was that they were in an objectively different situation since they admitted that they were illegally resident.⁽²³⁾

⁽²⁰⁾ *Baroness Hale, UKHL R v Immigration Officer at Prague Airport et al, ex p. European Roma Rights Centre et al.* [2004] UKHL 55, para. 92. Similarly, Lord Scott in *UKHL R (on the application of Gillan et al.) v Commissioner of the Metropolitan Police et al.* [2006] UKHL 12, paras. 80, 81, 45.

⁽²¹⁾ 'It is one thing to accept that a person's ethnic origin in part (and sometimes a highly material part) of his profile; quite another (and plainly unacceptable) to profile someone solely by reference to his ethnicity. In deciding whether or not to exercise their stop and search powers police officers must obviously have regard to other factors too.' Lord Brown in *UKHL R (on the application of Gillan et al.) v Commissioner of the Metropolitan Police et al.* [2006] UKHL 12, para. 91.

⁽²²⁾ Lord Scott in *UKHL R (on the application of Gillan et al.) v Commissioner of the Metropolitan Police et al.* [2006] UKHL 12, para. 67.

⁽²³⁾ This was the situation in *ECtHR Cissé v France (Admissibility)* App No. 51346/99, 16 January 2001.

Imagine the situation slightly altered, where none of the protesters openly admitted that they had committed an offence. If officers were to stop all non-whites when evacuating the building simply because they are non-white, then this would amount to discrimination. Officers would have to show some other grounds for suspecting these individuals, such as their behaviour.⁽²⁴⁾

Consider a second example. Following a series of brutal robberies in Austria's capital city Vienna, allegedly committed by two dark-skinned male perpetrators, law enforcement officials were ordered to stop all black men seen in groups for identity checks. After a public outcry, the order was refocused on 'black Africans, about 25 years old and 170 cm tall, slim figure, wearing ... light down jackets'.⁽²⁵⁾ In one day, the police stopped and searched 136 black men but none of them were found to have any connection with the robberies.⁽²⁶⁾

Stopping individuals on the basis of the original suspect description is likely to be considered an example of direct discrimination, whereas using the second profile would probably not be. Obviously, the ethnicity of the suspect is important to identify them. However, it cannot be the only basis for law enforcement measures against a person. What emerges from looking at the above cases is that the 'suspicion' that needs to be raised in order for police action to take place (whether this be a requirement of 'reasonable grounds' or some lower standard) should be based on an individual's behaviour or similar factor that singles them out and should not be based on characteristics such as race, ethnicity or religion.

*** Profiling will be considered as discriminatory (and therefore unlawful) where police powers are exercised in relation to individuals and the only or main reason for this is their race, ethnicity or religion.**

To avoid being considered discriminatory any decision to exercise police powers should be based on factors additional to

⁽²⁴⁾ This is similar to the situation in United Nations Human Rights Committee *Rosalind Williams Lecraft v Spain* Comm No. 1493/2006, 30 July 2009, where an officer stopped a woman simply because she was black and automatically suspected of being an illegal immigrant, despite the fact that the officer had no other reason to believe this was the case.

⁽²⁵⁾ EU NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS (2006), p. 48.

⁽²⁶⁾ AMNESTY INTERNATIONAL (2009), p. 35.

a person's race, ethnicity or religion, even when race, ethnicity or religion are relevant to the particular operation or policy.

Requiring additional factors which single out a particular individual ensures that officers are not applying a procedure or policy that automatically connects race, ethnicity or religion to criminal behaviour.

By basing 'reasonable grounds' for identifying a suspect on behavioural factors that single out a particular individual, the risk of engaging in discriminatory ethnic profiling is reduced.

2.5. Indirect discrimination in the context of ethnic profiling

Where officers have an instruction or decide themselves because of conscious or unconscious prejudices to stop individuals on the basis of their race, ethnicity or religion, this will amount to direct discrimination. The criteria that is being applied (even if it only exists in the form of a personal prejudice) when deciding whether to treat that individual differently is illegitimate on the surface. However, it is possible to discriminate indirectly as well. Indirect discrimination involves:⁽²⁷⁾

- a. applying a rule that is neutral on the surface (e.g. stop one out of every 10 cars in town X between the hours of 21.00 and 01.00);

⁽²⁷⁾ 'Indirect discrimination' is defined in EC legislation as well as in the case-law of the Court of Justice of the European Union and ECtHR. In order to appreciate the approach of the of the Court of Justice of the European Union, an instructive case is *Case 170/84 Bilka-Kaufhaus GmbH v. Karin Weber von Hartz* [1986] ECR 1607, where the court delineated the concept of indirect discrimination in connection with a company policy which excluded part-time employees from its occupational pension scheme, thus affecting a far greater number of women than men. According to the test developed by the Court of Justice of the European Union, indirectly discriminatory measures may be justified if they correspond to a 'real need' on the part of the employer and the means chosen to achieve the objective are 'appropriate and necessary' as well as proportionate. The ECtHR perspective on indirect discrimination, on the other hand, is illustrated in ECtHR *D.H. v. Czech Republic*, App. No. 57325/00, 13 November 2007. The latter case concerned indirect discrimination of Roma children who were placed in special schools for children with learning disabilities in disproportionate numbers, thus entailing a violation of Article 14 ECHR. As far as legislative definitions are concerned, the Racial Equality Directive 2000/43/EC, the Employment Equality Directive 2000/78/EC, and the Gender Equality 'Recast' Directive 2006/54/EC are particularly relevant. Specifically, the Racial Equality Directive, Article 2, defines the term 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 at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary'.

- b. but that in practice has mainly a more negative impact on one particular ethnic, racial or religious group compared with other groups (e.g. 60% of the population of town X driving during these hours are of Afro-Caribbean descent, although the Afro-Caribbean population of the town and the surrounding area does not exceed 30%).

It is possible, however, for indirect discrimination to be found to be legitimate where there is a justification. Indirect discrimination can be justified where:

- a. the difference in treatment pursues a legitimate aim (e.g. checking for stolen vehicles);
- b. the action taken is proportionate to achieving that aim (e.g. town X has been found to have a high number of stolen vehicles).

While the courts have accepted that indirect discrimination can occur, it is difficult for an individual to prove a case of indirect discrimination or that the justification used is incorrect or disproportionate. This is because it is necessary to rely on statistics in order to prove that a group is being treated less favourably than other groups or that the action is not proportionate to achieving the aim.⁽²⁸⁾ In the above example, ideally a number of factors would need to be taken into consideration to identify the interplay between the 'facts' and discriminatory practices; for example: (a) the population of the town and surrounding area (as people drive into town in the evening for entertainment), according to ethnicity; (b) the population driving cars, according to ethnicity; (c) the population driving cars in certain areas of the town and at certain times, according to ethnicity; (d) the number of arrests/prosecutions as a result of stops (the 'hit rate'), relative to the number of stops in certain locations at certain times, according to ethnicity and the available population to be stopped.

With detailed data, it can be shown that intensive policing of town X has a disproportionately negative effect on particular groups and with little

⁽²⁸⁾ See, for example, ECtHR *D.H. v. Czech Republic*, App. No. 57325/00, 13 November 2007, paras. 192-193; Another significant ECtHR ruling highlighting the importance of statistical data in order to identify discriminatory practices is ECtHR *Opuz v. Turkey*, App. No. 33401/02, 9 June 2009, paras. 192-202. Also see ECtHR *Oršuš and Others v. Croatia*, App. No. 15766/03, 17 July 2008. Similarly, the Court of Justice of the European Union drew extensively on statistics in order to determine a difference in treatment between two groups in similar situations (primarily in the context of sex discrimination in the employment remit) in Case C-167/97 *Seymour-Smith and Perez* [1999] ECR I-623; Case C-256/01 *Allonby v. Allonby v Accrington & Rossendale College and Others* [2004] I-873; Case C- 300/06 *Voß v. Land Berlin* [2007] ECR I-10573.

'success' (that is, few crimes were detected). Therefore, some other policing strategy (one which does not capture one racial group predominantly) would be more proportionate and appropriate for tackling crime. Unfortunately, in most countries this kind of data is not available: when statistics are collected they rarely include racial, ethnic or religious categories. This is due to the fact that many national authorities misinterpret data protection rules on the collection of 'sensitive' data to exclude aggregate statistical data collection that can identify discriminatory practices that do not produce effective results for the police⁽²⁹⁾.

* Ethnic statistics

In order to prove a claim of indirect discrimination in the context of ethnic profiling, it is essential that statistical information relating to the use of police powers is both available and disaggregated according to race, ethnicity or religion. Unfortunately, such 'ethnic' data is not available in most countries. The main hurdle to the collection of such data is the widespread understanding by national institutions that this kind of data collection is incompatible with the rules relating to the protection of privacy, particularly data protection law. Despite the potential for the misuse of data that contains this sensitive information, the law does allow a balance to be struck between the right to protect one's data and the need to collect such information in order to prevent discrimination by public bodies, so long as sufficient safeguards exist.⁽³⁰⁾

Furthermore, the results of the FRA EU-MIDIS survey (see section 3.1) show that 65% of 23,500 interviewees with an ethnic minority or immigrant background in the EU Member States were willing to provide anonymous information on their ethnic origin in the context of a census if this could be used to combat discriminatory practices.⁽³¹⁾

⁽²⁹⁾ See the Opinion of the European Data Protection Supervisor 2009/C 276/02; European Parliament Resolution 2010/C 16 E/08, p. 44–49; Commission Communication on the application of Directive 2000/43/EC (COM (2006) 643).

⁽³⁰⁾ See in particular SIMON (2007).

⁽³¹⁾ Question A5a of the EU-MIDIS survey was phrased in the following way: Would you be in favour of or opposed to providing, on an anonymous basis, information about your ethnic origin, as part of a census, if that could help to combat discrimination in [COUNTRY]?

3. Problems posed to policing and communities by discriminatory ethnic profiling

Profiling based on broad categories of race, ethnicity or religion may have several disadvantages. From the point of view of law enforcement, the greatest difficulty relates to the strain it can place on relations with minority communities.⁽³²⁾ This, in turn, can undermine effective policing methods that rely on public cooperation, and it can also generate resentment among the communities concerned. There are also doubts over the actual effectiveness of using broad profiling in detecting crime, that is, whether profiling actually increases the success rate in stop and search operations (known as the 'hit rate'). This chapter will first introduce the FRA EU-MIDIS survey, the findings of which will be drawn on to illustrate particular points, and then examine each of these issues in turn.

As a preliminary point, it should be noted that where profiling is carried out in a discriminatory and unlawful manner, law enforcement authorities will be open to legal action. This can take the form of internal supervision through police complaints authorities or the regular civil and criminal court system or specialised complaints bodies that deal with non-discrimination. This can itself place a drain on resources, as well as police morale, and interrupt the work of policing.

3.1. The EU-MIDIS survey

Part of the data for this chapter is drawn from the FRA European Union Minorities and Discrimination Survey or, in short, EU-MIDIS survey. The results presented in this Guide are accompanied by a *Data in Focus Report* from the survey on law enforcement, which provides more detailed findings.⁽³³⁾

⁽³²⁾ See OSCE (2006).

⁽³³⁾ FRA (2010) 'Police Stops and Minorities', *Data in Focus Report 4*, Luxembourg: Publications Office of the European Union. See also *EU-MIDIS Main Results Report* (December 2009) from EU-MIDIS, which presents data on police stops and perceptions of profiling according to general groups surveyed – for example, for all Sub-Saharan Africans or all North Africans surveyed.


Apart from the few research studies that exist on the experiences of particular groups with police profiling practices, hard data that documents the extent and nature of police profiling is difficult to come by. Without this evidence, it is difficult to prove whether differences in police action towards diverse groups exist and – should this be the case – whether these differences might be the result of discriminatory profiling practices.

Of the 27 EU Member States, the UK is currently the only one that systematically collects police data on stops, which include information on the ethnicity of those stopped. For example, in the period April 2007 to March 2008, the police in England and Wales collected data on 1,205,841 stops of persons, which include self-identified information on ethnicity.⁽²⁴⁾ Importantly, the data is made available in the public domain and can therefore contribute to ensuring police accountability, as well as possible reform, should it become apparent that there are unjustifiable differences in the policing of minority groups in the population.

In the absence of this kind of data in most Member States, the FRA decided to include questions in the EU-MIDIS survey about respondents' experiences of police stops and their perceptions of 'ethnic profiling' during stops.

The EU-MIDIS results on police stops are based on a sample of 23,500 ethnic minority and immigrant people across the EU Member States. The results can be compared with a sub-sample of 5,000 people from the majority population who were interviewed in 10 Member States about their experiences of police stops and who were living in the same neighbourhoods as the minority interviewees. In sum, the survey results present the first EU-wide research on the extent and nature of police stops affecting minorities, including minority people's perceptions of experiencing discriminatory police stops.

⁽²⁴⁾ The sum of stops is based on section 1 of the Police and Criminal Evidence Act 1984 and other legislation, such as stops under section 60 of the Criminal Justice and Public Order Act 1994 and stops under section 44(1) & (2) of the Terrorism Act 2000. Data on the 'self-defined' (as opposed to the police-identified) ethnicity of individuals subject to stop and search was included in the UK figures for the first time in the UK Ministry of Justice report covering April 2007-March 2008 (see Ministry of Justice (2009)).

 A word of caution:

The findings from the EU-MIDIS survey cannot be read as conclusive evidence that discriminatory police profiling practices are occurring.

What EU-MIDIS does is indicate where differences exist between the minority groups surveyed in the 27 Member States, and between minorities and the majority population who were surveyed in 10 Member States, in the following areas:

The number of people being stopped: how many people as a percentage of those surveyed were stopped in a 12-month period?

The frequency of stops: of those who were stopped by the police in the last 12 months, how often did this happen?

The nature of stops: where did the stop occur and what did the police do, and did people think they were treated respectfully by the police?

One explanation for any differences in the results might be discriminatory police practices. In this regard, it should be noted that only minority respondents were asked whether they thought they were treated differently by the police according to their ethnicity or immigrant background. However, respondents from both the majority and minority populations were asked whether they were treated respectfully by the police during their last experience of a police stop (more of which later in this Guide and in the *Data in Focus Report* on police stops and minorities).

What do EU-MIDIS results tell us about minorities' and the majority populations' experiences of police stops? Looking at the survey results for those 10 Member States where a control group of majority population respondents was surveyed who were living in the same neighbourhoods as minority respondents, a number of differences can be identified between the extent, frequency and the nature of stops experienced; for example:

- **The number of people being stopped – see Figure 1:**
 - In general, more people from minority backgrounds have been stopped by the police in comparison with the majority population.
 - On average 28% of minorities in the 10 Member States were stopped by the police in the last 12 months in comparison with 20% of the majority population.
 - In seven of the 10 Member States, minorities were stopped more than the majority population.

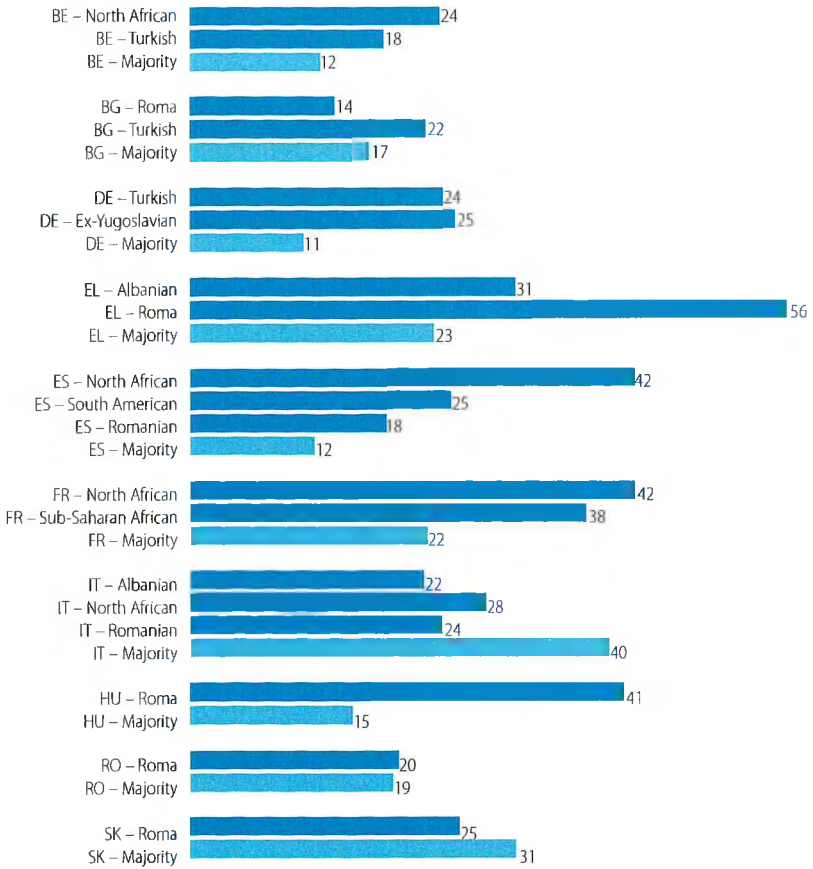
- **Frequency of stops – see Figure 2:**
 - In general, members of minority groups who are stopped by the police experience more stops over a 12-month period than the majority population.
 - Taking those groups who indicated they were stopped three or more times by the police in the last 12 months, only minority groups are represented in this category.

- **Circumstances and nature of stops ⁽³⁵⁾:**
 - Between 70% and 98% of majority respondents interviewed were in a private vehicle when stopped. In comparison, the likelihood of being stopped in a private vehicle fluctuates significantly between the different minorities surveyed, with more minority respondents than majority respondents likely to be stopped on public transport or on the street; which, in itself, denotes a situation where profiling is more likely to occur as people are easier to see when not in a car.
 - Overall, respondents from the majority population tended to think that the police were respectful towards them during a stop, whereas more minority respondents indicated that the police were disrespectful towards them.

⁽³⁵⁾ See FRA (2010) 'Police Stops and Minorities', *Data in Focus Report 4*, Luxembourg: Publications Office of the European Union.

Figure 1

**Stopped by police in the past 12 months
(% out of all respondents) ⁽³⁶⁾**



Source: EU-MIDIS Survey Questionnaire, question F3

⁽³⁶⁾ Country references are as follows: BE=Belgium, BG=Bulgaria, DE=Germany, EL=Greece, ES=Spain, FR=France, IT=Italy, HU=Hungary, RO=Romania, SK=Slovakia.

Looking at Figure 1, Italy presents a striking exception to the general rule that majority people are stopped less often by the police than minorities; that is, in Italy the survey indicates that the majority population is stopped more than minorities. However, the survey's results indicate that the majority population is stopped far more frequently in cars, which may reflect the nature of police stops in Italy, and is also indicative of the fact that fewer minorities interviewed in the survey owned cars in comparison with the majority population – hence the higher number of police stops involving traffic stops for the majority population.

The results show diverse patterns both within and between Member States on the circumstances of the stop – that is, whether someone is in a private vehicle, on public transport or on foot – and warrant further study to shed light on police practices that could result in differential treatment of sectors of society. Importantly, when looking at apparent patterns in profiling practices that appear to effect groups differently, we need to ask the following – are differences between the majority and minority populations' experiences of police stops occurring by chance or is there an underlying pattern that might be the result of discriminatory police practices?

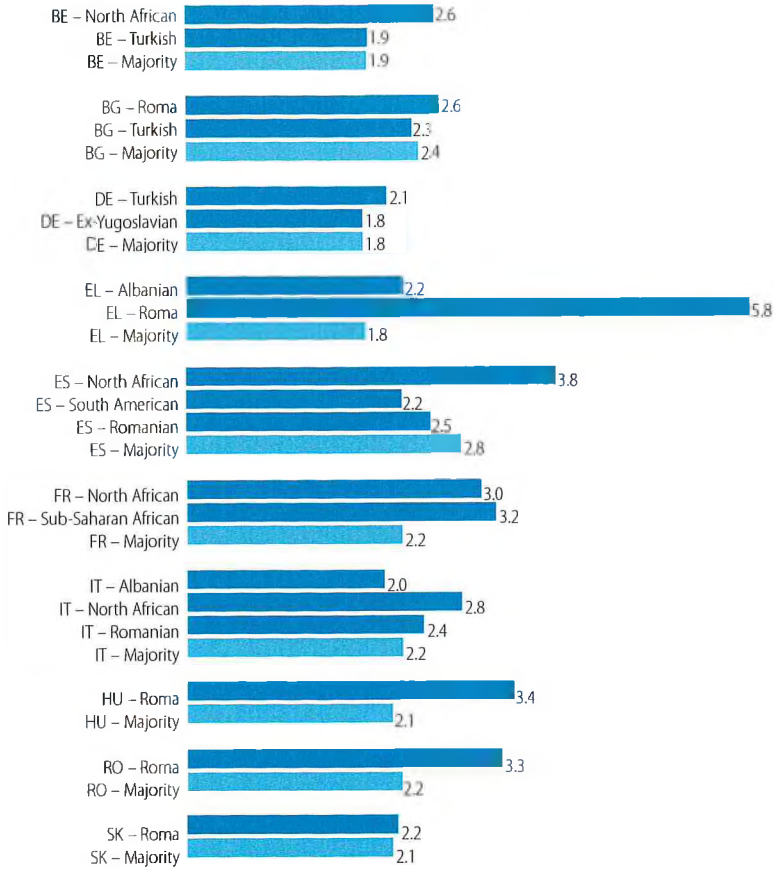
By testing for statistical differences between results for majority and minority respondents in 10 Member States,⁽³⁷⁾ EU-MIDIS indicates that in most cases these differences are not occurring by chance. In other words, **differences between minority and majority populations' experiences of police stops are not occurring by chance – there is a pattern that needs explaining through further research.**

Looking at Figure 2, where we can compare findings between the majority and minority populations in 10 Member States, it is clear that certain minority groups are heavily policed – in other words, they experience more stops in a 12-month period than the majority population. For example, in Greece, Roma respondents who indicated that police had stopped them in the last 12 months were stopped on average 5.8 times, whereas the Albanian respondents and members of the majority population were stopped on average 2.2 and 1.8 times, respectively. Of the minority groups surveyed in the 10 Member States, the Roma emerge, along with North Africans, as the most heavily policed group.

⁽³⁷⁾ At the 95% confidence level, Pearson chi-square test.

Figure 2

**Incidence of police stops in the past 12 months
(among those who were stopped)⁽³⁸⁾**



Source: EU-MIDIS Survey Questionnaire, question F4

⁽³⁸⁾ Country references are as follows: BE=Belgium, BG=Bulgaria, DE=Germany, EL=Greece, ES=Spain, FR=France, IT=Italy, HU=Hungary, RO=Romania, SK=Slovakia.

3.2. Ethnic profiling – Is it simply ‘good policing’?

Law enforcement authorities often argue that profiling using broad racial or ethnic categories is simply ‘good policing’ – in other words, it is effective policing. Socio-economic and demographic characteristics, such as race or ethnicity, are commonly used in policing as indicators of offending patterns, with certain types of offences considered as more common among members of particular minorities. On the basis of this, it is argued that law enforcement strategies should be adapted to target particular communities in relation to particular offences.

It is plausible that in particular societies ethnic groups have distinct offending profiles that are influenced by factors such as social and economic status.⁽³⁹⁾ However, some evidence suggests that the rates at which individuals are stopped and searched does not necessarily correspond to offending rates among different ethnic or racial groups.⁽⁴⁰⁾

To test the ‘effectiveness’ of police stops, data is required in two areas:

- first, data on **‘population disproportionality’** can be collected to identify how existing stop and search practices have an impact on different ethnic/racial groups with respect to their numbers in the overall population, and with respect to the ‘available’ population to be stopped in certain locations at specific times;
- second, data is needed concerning the effective **‘hit rate’** resulting from a police stop, which means simply whether the police officer concerned found evidence of law breaking.

Definitions of ‘hit rate’ and ‘population disproportionality’

The **‘hit rate’** is the proportion of stops and searches that find evidence of law breaking, and which can result in action under the criminal law – such as an arrest.

As an example: a **‘hit’** would mean when a law enforcement officer finds evidence that a person or the vehicle he or she is driving is in possession of or carrying illegal drugs.

⁽³⁹⁾ MODDOOD ET AL. (1997); GROSS & LIVINGSTON (2002), pp. 1413, 1415; HARCOURT (2004), pp. 1329-1330.

⁽⁴⁰⁾ PHILLIPS & BOWLING (2002); DELSOL & SHINER (2006), pp. 241-263.

Criminal justice data in most Member States does not allow for an overview of individual incident or case progress through the criminal justice system; so, at present it cannot be determined whether an arrest results in prosecution and, ultimately, in sentencing. The ‘hit rate’ is therefore not conclusive that the person stopped has broken the law.

‘Population disproportionality’ refers to a situation where members of some ethnic groups in the population are subject more frequently to police action than other groups, when compared with their respective proportions within the overall population of a given area. It should not be confused with legal tests for ‘proportionality’. So, if the proportion of people living and passing through a particular area is around 90% white and 10% non-white, and 50% of stop and searches in that area are carried out on non-white people, this would suggest that stop and searches are being used disproportionately on one segment of the population. One would expect that the proportion of stop and searches would be more in line with the proportions of different groups in the available population.

The results from EU-MIDIS on the number and frequency of police stops experienced by members of the majority and minority populations in 10 Member States (see Figures 1 and 2) are not indicative in themselves of discriminatory police profiling, as they could reflect patterns of criminality in certain neighbourhoods and among certain communities that results in more intensive police operations. Yet, when we look at the survey findings on the outcome of the last stop experienced by respondents, which included a range of questions about what the police actually did, we are able to see whether a stop resulted in an arrest – which can indicate a ‘hit’; for example, that the person stopped was found in possession of illegal drugs. In sum – for all 10 Member States where we can compare results for the majority and minority populations, with the exception of minorities in Greece – arrest rates, which are indicators that the police found evidence of the law having been broken, were under 10% for both majority and minority respondents⁽⁴¹⁾; yet, in most cases, minorities were stopped more frequently than the majority population (see Figure 2).

⁽⁴¹⁾ See EU-MIDIS *Data in Focus Report 4* on ‘Police Stops and Minorities’ for details about what happened to respondents who were stopped by the police.

An arrest in most cases *might* indicate that a crime occurred; however, where no further action was taken beyond the stop itself, the survey's results point more to a culture of heavy policing, which at best could be understood as part of *crime prevention*, but which perhaps cannot be considered as effective *crime control*.

In the EU, the UK has produced the richest official data on police stops and 'hit rates'. For example, in the period April 2007-March 2008, under section 44(1) of the Terrorism Act, there were 699 arrests from 65,217 stops, which gives a hit rate of 1%. For section 44(2) of the Terrorism Act, 553 persons were arrested from 52,061 stopped, with a hit rate again of 1%. Given the resources demanded of these policing operations, a hit rate of 1% would seem very low. In comparison, the negative impact on certain communities of anti-terrorism policing activities post 9/11 are high given that the majority in any suspect community are not connected with terrorism.

Outside the EU, research on profiling is most developed in the USA. A study from 1999 on stop and 'frisk' (search) practices by the New York City police outlines findings concerning disproportionality and hit rates. A review of 175,000 records showed that, although the Latino population of New York is about 22%, Latinos made up about 33% of all of those persons that police stopped and frisked; the 'black' (African-American) population amounts to approximately 24%, yet comprised about 52% of those stopped and frisked.⁽⁴²⁾ In contrast, the city's 40% white population only made up about 10% of all of those stopped and frisked; yet, the data showed a hit rate of 12.6% for whites, 11.5% for Latinos and 10.5% for 'blacks'. In sum, the data serves to question the efficiency of profiling practices that are not more effectively targeted, and also supports claims of discriminatory profiling.

3.2.1. Moving the focus away from race or ethnicity and onto behaviour

There is some evidence from research undertaken on drug couriers that by removing race or ethnicity from a general criminal profile (rather than a specific suspect profile) and by requiring officers to look at specified non-ethnic criteria, this can help improve the efficiency or 'hit rate' of policing while avoiding discriminatory treatment. In a rare instance in which ethnic

⁽⁴²⁾ SPITZER (1999).

profiling was ended and an explicit non-racial behavioural profile introduced, and its impact measured, the results suggested that behavioural profiles – rather than using the determining factor of race or ethnicity – may indeed enhance law enforcement effectiveness.

CASE STUDY 1: USA

Changed policing patterns lead to a higher ‘hit rate’

In 1998, 43% of searches that US Customs performed were on ‘blacks’ and Latinos, a far higher rate than their proportion of travellers. A particularly large number of searches, including highly invasive x-rays and strip searches, were carried out on Latina and black women suspected of being ‘drug mules’, which was based on a profile that relied heavily on nationality and ethnicity. The hit rates for these searches were low across all groups: 5.8% for ‘whites’, 5.9% for ‘blacks’ and 1.4% for ‘Latinos’. It was particularly low for ‘black’ and ‘Latina’ women, who were in fact the least likely to be carrying drugs on or in their bodies. In 1999, Customs changed its procedures, removing race from factors to consider in making stops and introducing observational techniques focusing on behaviours such as nervousness and inconsistencies in passenger explanations, using more intelligence information, and requiring closer supervision of stop and search decisions. By 2000, the racial disparities in customs searches had nearly disappeared. The number of searches carried out dropped by 75% and the hit rate improved from just under 5% to over 13%, and became almost even for all ethnic groups.⁽⁴³⁾

Research on ‘hit rates’ and ethnicity is advanced in the USA and has also been undertaken in the UK. However, detailed empirical research is needed across the EU to provide unequivocal evidence of the potential for discriminatory policing practices in different locations and settings, and among different groups within the population.

Chapter 4 includes further discussion of behavioural analysis.

⁽⁴³⁾ HARRIS (2002), US CUSTOMS SERVICE (1998).

3.2.2. The limitations and negative potential of profiling

Ethnic profiling has some inherent limitations, and while potentially seen as an effective instrument for crime detection in the short-term, profiles are both predictable and can be evaded. Over-reliance on a stereotyping profile may actually increase the overall offending rate for that crime over time for two reasons; that is, groups of people who are criminally stereotyped may live up to that stereotype – a process that has been understood by sociologists and criminologists through theories such as 'labelling'; and, secondly, groups that are not associated with certain crimes may be able to commit these crimes while police attention remains focused on another group. In essence, patterns of offending can respond to patterns of policing. Thus, even as law enforcement may achieve a certain 'hit rate' among minorities, the offending rate in the majority population may increase precisely because their members are not targeted and thus are less likely to be caught.⁽⁴⁴⁾

3.3. Negative impact on individuals, communities and policing

The very negative implications of discriminatory police practices on minority communities have been documented and responded to in the UK since the early 1980s. The touchstone for these events was the intensive policing, employing stop and search, of the mainly African-Caribbean community in Brixton, south London in 1981, which resulted in a riot between the police and members of this community; a pattern that was repeated over several weeks in other British cities. The government undertook a public enquiry into the Brixton riots, which was headed by Lord Scarman who described the events as 'an outburst of anger and resentment by young black people against the police'.⁽⁴⁵⁾ The enquiry's findings were the starting point for a number of changes to the policing of minority communities and the use of stop and search powers in England and Wales.⁽⁴⁶⁾ However, it took another enquiry into police responses to the racist murder of a young African-Caribbean man in London in the 1990s, Stephen Lawrence, for further recommendations and improvements to be made to the policing of minority communities in England and Wales.⁽⁴⁷⁾

⁽⁴⁴⁾ HARCOURT (2004).

⁽⁴⁵⁾ SCARMAN (1981).

⁽⁴⁶⁾ See Chapter 4 for a discussion regarding the introduction of the Police and Criminal Evidence Act 1984 (PACE).

⁽⁴⁷⁾ See HOME OFFICE (1999) and HOUSE OF COMMONS HOME AFFAIRS COMMITTEE (2009).

Similar dynamics to those encountered in Brixton in 1981 were at play in the much larger riots in France of November 2005, which were also triggered by an event involving the accidental death of two minority youths while allegedly being pursued by the police.⁽⁴⁸⁾

Some European governments have acknowledged that police functions of crime prevention and detection depend heavily for their effectiveness on good community relations:

'[P]olice activities to a large extent are performed in close contact with the public and... police efficiency is dependent on public support'.⁽⁴⁹⁾

Where police powers are exercised on the basis of broad profiles involving race, ethnicity or religion they may become counter-productive because of the negative effects they have on individuals and the communities to which they belong. Individuals have described such encounters as a 'frightening, humiliating or even traumatic' experience.⁽⁵⁰⁾ The following text boxes offer a few examples illustrating the range of reactions provided by 'black' and 'Arab' interviewees on how they felt after being stopped by the police.

CASE STUDY 2: FRANCE

How do you feel after this stop?

'It's very dispiriting.'

'There's no justice; it's always the same people being stopped: the Blacks and the Arabs.'

'There's injustice and discrimination; the repercussions will be felt in the suburbs.'

'They stop me because of my looks; I feel like slapping them.'

'It's fine; they're just doing their job.'

'They're bastards.'

'It's disgusting; people are stopped because of how they look.'

'For cops, there is a criminal under every baseball cap. I understand that they are doing their job, but most of the criminals are wearing suits. There was more dialogue when we had community police.'

⁽⁴⁸⁾ See CENTRE D'ANALYSE STRATÉGIQUE (2006).

⁽⁴⁹⁾ Committee of Ministers of the Council of Europe (2001), Preamble.

⁽⁵⁰⁾ Shuford (1999), p. 373.

'They're just doing their job.'

'It's racism, plain and simple.'

'It's fine – It's the police's job to stop people.'

'I think I was stopped because I don't 'look right.'"

'I don't mind the stops – they happen all the time.'⁽⁵¹⁾

The following two case studies reflects broader attitudes among the general public, minorities, those who are stopped and searched and officers themselves across four countries.

CASE STUDY 3: UK

The Views of the public on stops and searches

In a study conducted for the UK Home Office, respondents from all ethnic groups were interviewed and all described the experience of being stopped and searched similarly. A stop and search, no matter how cursory, was felt to be intrusive, embarrassing and potentially frightening. Those who were regularly stopped felt victimised by the police. This was especially true of black and Asian respondents who felt they were stopped more than white people and that they were being targeted solely due to their ethnicity.

Although there was general support and acknowledgement of the value of stop and search, when handled badly it caused more distrust, antagonism, and resentment than any of the positive effects it might have. Respondents welcomed the introduction of stop forms and believed that having information in writing about the stop would increase accountability. Respondents also said that a respectful attitude on the part of the officer as well as being given a valid reason for the stop and search were very important.⁽⁵²⁾

⁽⁵¹⁾ This study on stop-and-search was conducted at several Paris underground stations. See OPEN SOCIETY JUSTICE INITIATIVE (2009), 'Profiling Minorities: A study of Stop and Search Practices in Paris', p. 36.

⁽⁵²⁾ STONE & PETTIGREW (2000).

CASE STUDY 4: BULGARIA, HUNGARY AND SPAIN

Views of the police and public on stops and searches

In 2005, research in Bulgaria, Hungary and Spain used a qualitative research approach to look at experiences and attitudes towards profiling based on interviews with police officers, focus groups and Roma minority groups in all three countries, as well as with immigrants in Spain.

Despite the very different national contexts, the research concluded that the police in all three countries were profiling Roma and immigrant groups. Roma pedestrians in Bulgaria and Hungary and immigrants in Spain were more likely to be stopped than members of the majority population and, once stopped, they were more likely to have an unpleasant experience. In interviews, officers frequently cited a 'sixth sense,' or 'intuition' or 'past experience' as driving their decisions about who to stop, sometimes adding factors such as a person appearing 'nervous,' or 'out of place' or 'strange'. The research found that while stops may be called in to headquarters, they were generally not reviewed by line supervisors at local stations, nor were they recorded and assessed in terms of efficiency, meeting operational objectives or fairness on a systematic basis.⁽⁵³⁾

Of course, it is perhaps inevitable that many individuals will object to being stopped and questioned, even where this is done lawfully and legitimately. However, the sum of these 'individual experiences may translate into negative group effects.'⁽⁵⁴⁾ That is, where a racial, ethnic or religious profile is applied, internally, the minority group may develop a negative perception of itself and, externally, the wider community may develop a negative perception of that community; for example:

The minority group may become a 'suspect community',⁽⁵⁵⁾ associated with criminality by the public. This may result in additional negative consequences, such as increasing racial prejudices.

⁽⁵³⁾ MILLER ET AL. (2008) and OPEN SOCIETY JUSTICE INITIATIVE (2007). In Bulgaria, interviews were conducted with 1,202 persons from representative households and 534 Roma as well as three focus groups and 55 police officers. In Hungary, 1,047 adults including 56 Roma were interviewed along with six focus groups and 20 persons who experienced police stops as well as 80 police officers. In Spain, 10 focus groups and 12 interviews were conducted with people who experienced police stops and 61 police officers.

⁽⁵⁴⁾ SCHEININ (2007), para. 57.

⁽⁵⁵⁾ EUROPEAN MONITORING CENTRE ON RACISM AND XENOPHOBIA (2006), p. 54

The minority group may become overly supervised by a disproportionate amount of police resources, which, in turn, is likely to lead to higher numbers of arrests. Hence, a self-fulfilling relationship between intensive policing and higher arrest rates can be established.⁽⁵⁶⁾

In addition to the social effects of ethnic profiling, specific impacts have direct consequences for law enforcement efficacy. Policing is profoundly dependent on the cooperation of the general public; however, if confidence and trust in the police is damaged, then cooperation becomes less likely. Law enforcement authorities rely on the public not only as witnesses for the investigation of crimes but also for the prevention and detection of incidents. Without public cooperation, law enforcement officers rarely identify or apprehend suspects, or obtain convictions. Research in the UK and USA shows that where members of the public feel unhappy about encounters with the police this has a negative impact on public confidence and cooperation with enforcement authorities. This is because individuals concerned may share their experience with family members, friends and associates.⁽⁵⁷⁾

*** Law enforcement depends on public cooperation**

A study in the UK found that of all recorded crimes solved/cleared up, only 15% were attributable to the police acting on their own, and the number of crimes solved using only forensic evidence is under 5%.⁽⁵⁸⁾

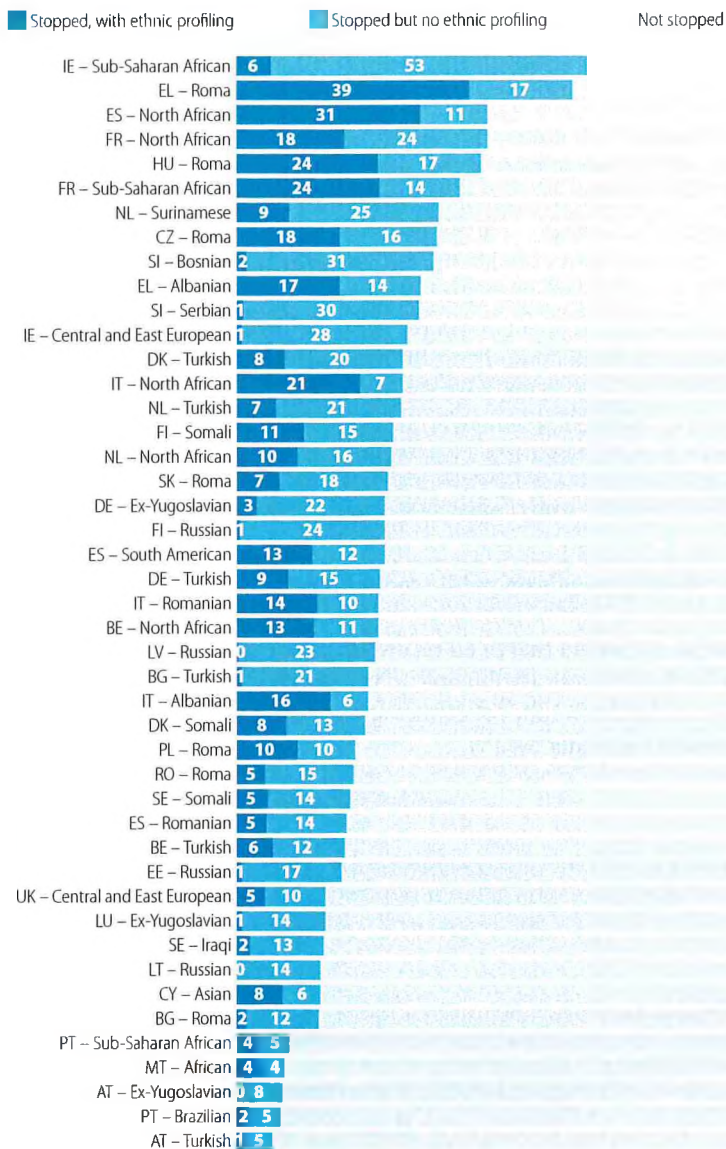
⁽⁵⁶⁾ HARCOURT (2004), pp. 1329-1330; HOUSE OF COMMONS HOME AFFAIRS COMMITTEE (2009), para. 16.; SCHEININ (2007), p.15, para. 57.

⁽⁵⁷⁾ MILLER ET AL. (2000); WEITZER & TÜCH (2005), pp. 279-297; MILLER ET AL. (2005); ROSENBAUM ET AL. (2005), pp. 343-365; McCLUSKEY ET AL. (1999), pp. 389-416.

⁽⁵⁸⁾ MORGAN & NEWBURN (1997).

Figure 3

Stopped by police in the past 12 months (%)



Source: EU-MIDIS Survey Questionnaire, questions F3 and F5

Looking at Figure 3, it is apparent that many members of minority groups in EU Member States consider that they were specifically stopped by the police because of their immigrant or ethnic minority background – that is, because of discriminatory police profiling. The results indicate that certain minority groups – such as the Roma and Sub-Saharan Africans – report higher levels of discriminatory police profiling than other groups surveyed – such as Russians in the Baltic States. Herein, it is apparent that there is a clear relationship between appearance and higher perceptions of discriminatory profiling.

The EU-MIDIS survey results also show a pattern between general levels of trust in the police and perceptions of discriminatory police profiling. In the survey, respondents were asked a general question about their trust in the police prior to being asked questions about their experiences of police stops and whether they considered they were the victims of discriminatory police profiling. The results indicate that those respondents who tended to have lower levels of trust in the police also tended to perceive ethnic profiling more in their encounters with the police; for example: 50% of minority respondents who were stopped by the police and did not consider it to be a result of ethnic profiling said they generally trust the police, whereas only 27% of minority respondents who were stopped and did consider it to be a result of profiling tended to trust the police. Although it cannot be determined from the results whether heightened distrust in the police predated respondents' negative perceptions of police treatment, or whether negative perceptions of police profiling led to increased distrust in the police, the findings do point to the existence of a relationship that cannot be readily overlooked.

The repercussions of this lack of trust have been at the heart of debates on policing practices in the UK since the 1980s and remain a strong point of contention in police-community relations. As a result of calls for monitoring the impact of police action on diverse groups in society, the UK government introduced the mandatory collection of police data on stops, including information on the ethnicity of the person stopped. The findings from EU-MIDIS support the practice of collecting evidence on the extent and nature of potentially discriminatory profiling practices in an effort to identify and address problems that currently exist in many Member States with respect to police-minority community relations.

Finally, another potential adverse effect of ethnic profiling is increased levels of hostility in other encounters between individuals and police or other law enforcement.⁽⁵⁹⁾ Greater hostility increases the chances that routine encounters will escalate into aggression and conflict, posing safety concerns for officers and community members alike.⁽⁶⁰⁾

⁽⁵⁹⁾ See also for additional information: *EU-MIDIS – Data in Focus Report 4 ‘Police Stops and Minorities’* (2010).

⁽⁶⁰⁾ See Ontario Human Rights Commission (2003), 21.

4. Combating discriminatory ethnic profiling

This chapter discusses measures that can help to exclude the risk of discriminatory ethnic profiling actually occurring or being perceived to occur. Such measures can be taken at both management and operational levels, and include: issuing clear guidance to officers; training that allows officers to develop good relations with communities; recording the use of stop and search powers accompanied by adequate internal oversight and complaints mechanisms to identify and rectify discriminatory policing practices; the use of good intelligence and, in particular, good suspect descriptions.

While a number of broader policing strategies are not discussed here, it should be noted that, at a general level, cultivating good relations through community policing, particularly with minorities who may already feel under suspicion, can help to enhance trust and cooperation. In the long term, this is also important in dispelling prejudices and false stereotypes, which individual officers may hold. As part of such an approach attention should also be paid to recruitment policy in order to ensure that all communities are represented within law enforcement agencies.

This short Guide does not set out to propose a complete policing response to profiling, but instead attempts to provide introductory information to encourage discussions and action in those Member States where the issue is insufficiently addressed.

4.1. Clear guidance to officers

Clear guidance issued by senior officers is of particular importance given the difficulties in understanding when the use of ethnicity, race or religion will be discriminatory and unlawful. Officers in management positions will need to clarify to subordinates when reliance on racial, ethnic or religious characteristics is permissible, and thereby reduce the risk of differing interpretations as well as reliance on stereotypes and prejudices. The following case-study underlines the difficulties that can arise where officers lack a precise and uniform understanding of when it will be legitimate for them to exercise their discretionary powers.

CASE STUDY 5: UK

Police stops, decision making and practice

Research published in 2000 explored how officers make the decision to stop and search people, identifying a range of factors that inform officers' suspicion, including the working rules or assumptions that may underpin police practice.

The research showed that officers had vastly different understandings of how to operationalise the concept of 'reasonable suspicion.' Officers' suspicions are aroused by age, appearance (particularly clothing, such as baseball caps and hooded tops), older cars (which are more likely to have vehicle defects), makes of cars which are commonly stolen, expensive cars (particularly when driven by ethnic minorities who they assume would not be able to afford to buy them legitimately), behaviour (such as 'checking out cars' or avoiding eye contact), the time and place of the encounter (looking 'out of place' in a particular area at a particular time) and information and intelligence (as provided by witness statements or crime reports) The result is great variation between officers in their decisions to carry out stop and searches.⁽⁶¹⁾

Given the difficulties inherent in understanding when differential treatment will amount to discrimination, which is unlawful, it is essential for managers to disseminate guidance to clarify when race, ethnicity or religion can legitimately be taken into account. An example of good guidance given to officers on the role of race or ethnicity in suspect descriptions comes from the US Department of Justice:

'In making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, Federal law enforcement officers may not use race or ethnicity to any degree, except that officers may rely on race and ethnicity in a specific suspect description. . . . In conducting activities in connection with a specific investigation, Federal law enforcement officers may consider race and ethnicity only to the extent that there is trustworthy information, relevant to the locality or timeframe, that links persons of a particular race or ethnicity to an identified criminal incident, scheme, or organization.'

⁽⁶¹⁾ QUINTON ET AL. (2000). The report drew on interviews with 90 operational officers.

More detailed guidance is found in the 1984 Police and Criminal Evidence Act (PACE) England and Wales. The first case study shows how guidance can be issued through a Code of Practice attached to legislation, and the other two case studies show how further explanation of legislation can be issued by police authorities themselves.

CASE STUDY 6: UK

Police and Criminal Evidence Act (PACE) 1984 and other stop and search legislation

The PACE 1984 Code of Practice A sets out the power of police to stop and search people on the street.⁽⁶²⁾ This includes PACE 1984 (section 1), the Misuse of Drugs Act 1971 (section 23), the Firearms Act 1968 (section 47), the Terrorism Act 2000 (sections 43 and 44) and section 60 of the Criminal Justice and Public Order Act 1994.

Section 1 of PACE grants police officers the power to stop, search and detain an individual if there is 'reasonable suspicion' that the person is carrying stolen or prohibited articles, in order 'to enable officers to allay or confirm suspicions about individuals without exercising their power of arrest.'

The Code of Practice states that 'reasonable suspicion' must be based on objective and individual grounds, and that:

'Reasonable suspicion can never be supported on the basis of personal factors alone without the supporting intelligence or information. For example, a person's colour, age, hairstyle or manner of dress, or the fact that he is known to have a previous conviction for possession of an unlawful article, cannot be used alone or in combination with each other as the sole basis on which to search that person. Reasonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity. A person's religion cannot be considered as reasonable grounds and should never be considered as a reason to stop and search an individual.' (paragraph 2.2)

⁽⁶²⁾ The PACE Code of Practice A has been revised several times, the latest version came into effect on the on 26 October 2008; another review is currently underway.

CASE STUDY 7: UK

Stop and search under section 44 of the Terrorism Act 2000: London Metropolitan Police Service Standard Operating Procedure

In certain contexts, such as counter-terrorism, British law allows police to stop persons with no requirement of reasonable suspicion (see section 44 of the Terrorism Act 2000).

The London Metropolitan Police Service (MPS) Standard Operating Procedures (SOPs) provide the following guidance for officers on how to select people to stop:

‘The profile of people being searched should reflect the profile of the people in that area. Terrorists come from all ethnic groups and all walks of life. Actions define a terrorist not ethnicity, race or religion.

Terrorists may come from a wide variety of backgrounds and may attempt to change their behaviour to disguise their criminal intentions and blend into their surroundings.

Officers must never use stereotypical images of ‘terrorists’ when deciding to use their powers of stop and search, to do so could lead to:

- targeting of certain communities or groups
- disproportionality
- discrimination
- terrorists avoiding detection whilst carrying out their objective.’⁽⁶³⁾

CASE STUDY 8: UK

UK National Policing Improvement Agency, ‘Practice Advice on Stop and Search in Relation to Terrorism’

The Advice notes that, although no grounds are required to conduct section 44 searches, the police should never conduct arbitrary searches:

⁽⁶³⁾ METROPOLITAN POLICE AUTHORITY, SECTION 44 TERRORISM ACT 2000 standard Operating Procedures 2007, p. 16.

'Officers should always use objective criteria to select people for search; criteria could be related to:

- the individuals themselves
- the location the person is in
- a combination of the two'

The Advice defines racial or religious profiling as:

'[T]he use of racial, ethnic, religious or other stereotypes, rather than individual behaviour or specific intelligence, as a basis for making operational or investigative decisions about who may be involved in criminal activity. Officers should take great care to avoid any form of racial or religious profiling when selecting people for searching using section 44 powers. Profiling in this way may amount to an act of unlawful discrimination as would discrimination on the grounds of age, gender, sexuality or disability.'

The Advice states that terrorists can come from any background and there is no profile for what a terrorist looks like. It instructs that:

'Great care should be taken to ensure that the selection of people is not based solely on ethnic background, perceived religion or other personal criteria. A person's appearance or ethnic background will sometimes be a factor, but an officer's decision to search them under section 44 should be made only if it is a result of evaluated intelligence. Profiling people from certain ethnicities or religious backgrounds may also lose the confidence of communities. An effective way of protecting against this is to compare the numbers of people searched in proportion to the demographic make-up of the area where searches take place. However in doing so, forces should ensure that the comparison is not skewed. For example, if an operation is carried out in a large city centre railway station the demographic make-up of the people searched should be compared with the travelling public at that location and not the resident local population.'

The Advice makes clear the importance of informing communities of the existence and location of a section 44 operation, unless it is operationally inappropriate, through consultation mechanisms such as independent advisory groups and posters and leaflets.⁽⁶⁴⁾

⁽⁶⁴⁾ NATIONAL POLICE IMPROVEMENT AGENCY (2008), P. 14.

4.2. Training

As well as issuing specific guidance to officers, a further tool in minimising the risk of discriminatory ethnic profiling is the use of training. Training should have various aims: educating officers on the law relevant to discrimination; challenging stereotypes and prejudices; raising-awareness of the consequences of discrimination and the importance of public trust; and practical advice on how to communicate with the public. In particular, governments have agreed, through the European Code of Police Ethics, that '[p]olice training shall take full account of the need to challenge and combat racism and xenophobia' within the police organisation itself.⁽⁶⁵⁾ Certain types of training are already well-instituted in some countries, such as 'diversity training' or 'sensitivity training'. Diversity training tries to address personal feelings about ethnicity, difference and stereotypes, and how these influence our daily lives. However, some diversity courses do not necessarily discuss discrimination. Some studies argue that cultural and diversity training can in fact single out and reinforce differences, increasing, rather than reducing, stereotyping.⁽⁶⁶⁾ 'Cultural sensitivity training' (as opposed to general diversity training) tries to educate officers about the culture of specific ethnic groups that officers frequently encounter but with whom they are not personally familiar. This training addresses 'do's and don'ts' and provides guidance on politeness viewed through different ethnic, religious or national perspectives. Cultural training is most effective when developed and delivered with the assistance and participation of persons from the relevant communities.

CASE STUDY 9: IRELAND AND NORTHERN IRELAND

Diversity Works Training

Irish and Northern Irish law enforcement jointly developed the 'Diversity Works Training' course under an EU Peace II project and have since tailored it to their specific contexts. Training development included consultation with police officers, minority communities and academics with relevant expertise; piloting training; providing feedback to adjust the materials and methods.

The course covers: understanding every individual's ability to stereotype, exclude and marginalise others; reflection on stereotypes, prejudices and

⁽⁶⁵⁾ COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE (2001), para 30: Explanatory Memorandum, Commentary on para. 30.

⁽⁶⁶⁾ WRENCH (2007), pp. 108-114.

assumptions; getting participants to understand their power and how the combination of prejudices and power can result in discrimination; better understanding of diversity; becoming aware of the different types of discrimination faced by members of minority groups; recognising, acknowledging and respecting differences (RAR); intercultural communication skills; respecting cultural and religious practices during police operations; and diversity as a professional issue of good policing.

Training delivery is activity-based, including video and the participation of members of minority groups. The Garda Síochána runs the course during continuous professional development training (not in basic training for new recruits). The Diversity Works training does not specifically address ethnic profiling; however, it has, at times, facilitated debate.

CASE STUDY 10: THE NETHERLANDS

Leadership training

The Amsterdam police force trained 300 management officials on leadership roles and behaviour as part of a 'safe climate' programme. Participants work in groups over a 30-month period, with 10 days obligatory training and further flexible content designed to respond to their needs to provide varied learning approaches. The training aims to make leaders aware of prejudices and stereotypes; listen and withhold immediate judgments; gain cultural awareness; improve communication skills, improve community skills; learn different styles of leadership and behaviours relevant to managing diverse environments. The programme seeks to create a safe environment in which leaders can discuss and reflect on their questions and dilemmas about leadership and diversity. Project organisers describe it as 'building a bridge while walking on it.'

Similar examples of diversity training can be found in other EU Member States, such as Austria.⁽⁶⁷⁾ However, the focus of diversity training has generally been on challenging discriminatory attitudes, rather than specifically focusing on the dangers of discriminatory ethnic profiling. This remains something that could be developed further.

⁽⁶⁷⁾ The anti-bias and diversity training 'A World of Difference' developed by the Anti-Defamation League forms part of the human rights curriculum of the Austrian Police. It is based on the concept that one has to face one's own prejudice in order to 'unlearn' discriminatory attitudes, for further information visit the website of the Anti-Defamation League: available at http://www.adl.org/education/edu_awod/default.asp.

A final example illustrates how training might be used to make officers aware of how their behaviour during a stop and search can have a negative or positive impact. This training, as the case study shows, can also work both ways in enhancing public understanding of the challenges faced by police, and hence improve public trust and cooperation (see pp. 41-42 concerning EU-MIDIS results in relation to perceptions of profiling during stops and trust in the police).

CASE STUDY 11: UK

Youth-police training on stop and search

Second Wave is a London-based youth arts project that has organised award-winning training workshops on stop and search for three years with local young people and the Lewisham Territorial Support Group (TSG).⁽⁶⁸⁾ Being mobile units, TSGs frequently work in areas where they have no local connections; this has generated public concern about their use of stop and search, particularly on young people.

Second Wave organises regular workshops with small groups of young people and TSG officers using drama-based methods such as reverse role plays based on real experiences of young people. Recent workshops examined issues such as ownership of public space, perceptions of young people and identity in relation to the recording of ethnicity on stop forms. In role plays, officers wear civilian clothes, and when roles are reversed, young people put on police uniforms. The role plays are also taken into public spaces. The discussions have continued from one workshop session to another, developing bonds between the young people and officers.

Officers report gaining important insights into the experiences and perceptions of young people. The young people report feeling energised, and that they have a say in how they are being policed.

EU-MIDIS asked respondents whether they had been treated respectfully during their last experience of a police stop. The results show that, with the exception of Roma respondents in Greece, majority of those who were stopped considered police conduct either respectful or neutral. However,

⁽⁶⁸⁾ TSG are specialised search units which are usually based centrally in a borough and then drafted into different areas to conduct stops and searches or other police actions. For further information, see: http://www.met.police.uk/co/territorial_support.htm.

apart from South American and Romanian respondents in Spain, in all the other cases where comparisons between the experiences of majority and minority respondents in the country could be made, majority respondents were more likely to say that police had treated them respectfully than minority respondents.

4.3. Stop and search forms

Stop and search forms can be a useful practical tool in encouraging officers to consider making well-grounded stops, as well as promoting openness and accountability with the public. An example of this can be found in the UK where the PACE Code of Practice requires officers to provide the person stopped with a record of the encounter wherever this is practicable. Currently, the UK is the only EU Member State where this is obligatory.⁽⁶⁹⁾ However, a project under the EU AGIS programme⁽⁷⁰⁾ called STEPPS (Strategies for Effective Stop and Search), which has met with some success, was recently implemented in an effort to develop training packages to support the introduction of stop forms in Hungary and Spain. This initiative also provided guidance on grounds for suspicion and involved community members in the design and delivery of forms.⁽⁷¹⁾ The forms include the grounds for the search, the object(s) that officers are looking for, the outcome, and the name and station of the officer(s) conducting the search. Information on the personal details of the individual/s searched is recorded; such as name, address and ethnic origin – all of which the person can refuse to give.

Currently, the UK stop form features 16 'ethnic' categories and the generic category of 'other'. The person stopped is asked to self-identify according to these categories. The officer can also provide his or her perception of the persons' ethnicity if they disagree with the self identification.

As noted in Chapter 2, there may be a number of barriers at the national level to the collection of data that identifies race, ethnicity or religion, especially on grounds of data protection. In order to overcome these barriers, it may be necessary to underline the specific use of such information for the protection

⁽⁶⁹⁾ The 2005 version of the Code of Practice introduced the reporting of 'stops' as well as stop and searches. Stops or stop and accounts are defined as stops where officers ask an individual to account for their actions or presence in an area but do not go on to search that person.

⁽⁷⁰⁾ AGIS was a framework programme by the European Commission, which ran from 2003 to 2006, to help police, the judiciary and professionals from the EU Member States and candidate countries cooperate in criminal matters and in the fight against crime.

⁽⁷¹⁾ OPEN SOCIETY JUSTICE INITIATIVE (2009), 'Addressing Ethnic Profiling by Police'.

of minority groups through the identification of potentially discriminatory practices. A further difficulty in many Member States may be that a practice of stop and search forms does not exist and will first need to be introduced by central government, with the support of both the police and minority groups themselves.

Several benefits flow from recording the use of stop and search powers, and, in particular, recording the race, ethnicity or religion of those subjected to stops; namely:

- **Internal monitoring** and detection of disproportionate targeting of minorities can lead to corrective action. At a national, regional or local level, records of stops and searches permit statistics to be gathered that can indicate whether powers are being directed disproportionately at particular minorities. This, in turn, can prompt corrective action in terms of guidance issued to forces nationally, but also guidance issued to individual officers or teams at the local level.
- **Availability of statistics and data for the public can support complaints of discrimination.** The collection of such data is also important for members of the public in order to be able to hold law enforcement agencies or particular officers to account. As noted in chapter two, this is essential in order to prove cases of indirect discrimination by law enforcement agencies on the basis of aggregate statistics. It is also important for supporting complaints of direct discrimination more generally.

4.3.1. Internal monitoring and detection of disproportionality

A long-term benefit of keeping records is to allow senior officers to identify whether stop and search powers are disproportionately targeting particular minority groups, and to adjust guidance given to officers accordingly. The PACE Code of Practice in England and Wales places a statutory duty on supervisory officers to monitor the use of stop and search powers, considering in particular: 'whether there is any evidence that they are being exercised on the basis of stereotyped images or inappropriate generalisations'.⁽⁷²⁾ The Code recommends that supervisory officers examine the stop records to identify any trends or patterns that give cause for concern; it calls for such monitoring to be supported through the compilation of statistical records of stop and

⁽⁷²⁾ HOME OFFICE (2008), para 5.1.

search used by every police service, and at the area level within policing districts. The two following case-studies exemplify two ways in which different police forces have made use of data gathered from stop and search forms in order to make adjustments to their policing practices.⁽⁷³⁾

CASE STUDY 12: UK

Computerised monitoring of individual officers' stops in Hertfordshire

The Hertfordshire Constabulary's statistics showed that from 2006-2007, 43,326 stops and 11,511 stop and searches had been conducted.⁽⁷⁴⁾ While this was a relatively low number compared with other UK police forces, analysis of the data showed that 'black' people were 5 times more likely and Asian people 1.8 times more likely to be stopped and searched than white people. Senior officers recognised, however, that supervising officers were neither getting this information nor in receipt of training over how to address this disproportionality. Due to the relatively low rate of stops and searches, it was hard for supervisors to identify disparities. Without statistical evidence supervisors were reluctant to challenge officers for fear they would be perceived to be making accusations of racism.

In April 2007, new stop forms were introduced, which supervising officers were required to check at the end of every shift. These were then scanned into a database that was open to all officers on the police intranet. Supervisors generated a statistical picture of the use of stops by individual officers and teams. In early 2008, the force developed software that identified whether officers were stopping a statistically disproportionate number of ethnic minorities.⁽⁷⁵⁾ The software also controlled for: chance and coincidence; the fact that overall numbers of stop and searches were low; that officers did not control where they were sent to police; and on certain days that they may only come across minority suspects. It created 'probability bands' based on the probability that individual officers would stop minority people above a specific statistically significant ratio. The programme identified any officer that had stopped minorities beyond their specific ratio.

⁽⁷³⁾ Approaches similar to those described below can also be found in the USA, see HILL (2002), p. 18.

⁽⁷⁴⁾ MINISTRY OF JUSTICE, (2008).

⁽⁷⁵⁾ In calculating disproportionality, allowance was made for the population composition of each local beat area and the time that officers worked in each area. Previously, disproportionality was determined by measuring the percentage of minorities stopped with their proportion in the local residential population. Officers would justify disproportionate patterns by saying that they took place in areas with large minority populations.

Initially, some 25 officers fell within the probability band. The diversity unit spoke to all those identified; it also interviewed officers with proportionate ratings and high rates of detection to determine how they targeted their stops. The analysis of the data illustrated problems with officers' understanding of 'reasonable grounds' for making stops and with certain operations that had legitimate objectives but were producing disproportionate results.

The programme is now run on a monthly basis, automatically emailing the supervisor of any officer it identifies, and generating details of the officers' stops and a template of questions to ask the officer. Supervisors have also received relevant training and are required to interview the officer. Supervisors report on all interviews with recommendations for action or re-training.

The rate of statistically significant disproportionality has dropped among the officers who have been identified and interviewed, as well as across the force as a whole. The data enables routine conversations by supervisors with officers, and officers are aware that their stops are scrutinised and that any disproportionality must be justified. Complementing the focus on individual officers, community impact assessment protocols have been improved, so that the planning of operations takes into account their potential impact on the public and briefs officers accordingly.

CASE STUDY 13: UK

London Metropolitan Police Service: Operation Pennant

In October 2006, the Metropolitan Police Service introduced Operation Pennant, an internal accountability system aimed at reducing disproportionality in the exercise of stop and search powers by holding the worst performing policing areas, based on London boroughs, to account. The Pennant performance framework looks at five main issues around the use of stop powers:

- the number of stop and searches;
- the arrest rate;
- whether self-defined ethnicity has been recorded on the form;
- the timeliness of data entry from stop forms to the central database;
- ethnic disproportionality in searches of Londoners.

Each variable is weighted on its importance and the software generates a ranked list of how the 37 London boroughs are performing. On a quarterly basis, the five worst performing boroughs are required to complete a self-

assessment questionnaire to highlight policy and practice that may be having a disproportionate impact. They then have to explain their performance to the Commander, the Metropolitan Police Authority (MPA) and local community members. Badly performing boroughs are required to produce a three-month action plan and report back at subsequent meetings.

Since the launch of Operation Pennant, the Metropolitan Police Service has seen a reduction in the level of disproportionality across London and greater parity in ethnicity arrest rates subsequent to a stop and search. Data entry is completed in a more timely manner and supervision has improved, ensuring that officers ask and record the self-defined ethnicity of those stopped. Some 15 to 20 boroughs have been identified during the process, 90% of which have shown a marked improvement.

4.3.2. Public complaints mechanisms

Having a formal process associated with conducting a stop and search also provides the opportunity to give the individual who has been stopped information about their own rights and how to make a complaint. This allows the general public to play a role in ensuring that powers are not exercised in a discriminatory manner.

CASE STUDY 14: UK

'Know your Rights' booklets:

The Association of Police Authorities produces a 'know your rights' booklet aimed at giving the public, and in particular young people, information about the stop and search procedure. It is available in 20 languages including Arabic, Chinese, Gujarati, Serbian, Somali and Vietnamese. It provides clear and accessible information on:

- what constitutes a stop and a stop and search;
- why stop and searches take place;
- where they can take place;
- what clothing the officer can require people to remove
- what information an officer should provide and what must be recorded on the stop form;
- how to complain where unfair treatment is alleged.⁽⁷⁶⁾

⁽⁷⁶⁾ ASSOCIATION OF POLICE AUTHORITIES (2009).

Complaints mechanisms are an extremely important means of deterring abuse of police powers, but also for restoring and securing public trust in the system of law enforcement by ensuring accountability. There are several different models of complaints mechanisms and they often operate side-by-side:

- Specialised police complaints bodies – These may be internal mechanisms (usually composed of police officers) that investigate allegations of unfair treatment and may take disciplinary action. Alternatively, specialised complaints bodies may be independent of and external to the police (with a mixture of police officers and civilians).
- Specialised discrimination bodies – All Member States of the EU are obliged to establish bodies that promote racial equality. Although it varies from one Member State to another, most of these bodies also have the power to deal with complaints of racial discrimination.
- Mainstream courts – Where officers themselves commit a criminal offence or a violation of civil or administrative law they will, just as members of the public, be subject to action before the national courts.

4.4. Behavioural analysis

As mentioned in Chapter 2, in order to avoid discriminatory ethnic profiling officers should base their decisions to take action on factors specific to the suspect in question. In particular, officers should focus on the behaviour of an individual to determine whether ‘reasonable suspicion’ or another applicable standard has been reached for conducting a stop. What follows are case studies relating to training offered to officers in order to develop their capacity to spot and analyse suspicious behaviour, drawing attention away from characteristics that may appeal to prejudices such as race, ethnicity or religion.⁽⁷⁷⁾

CASE STUDY 15: THE NETHERLANDS

The Search Detect and React Training Program (SDR)

This training programme has been developed by the International Security and Counter-Terrorism Academy for Police and Security Entities. The application of the SDR programme aims to secure public spaces and mass crowd events as ‘a tool to recognize cases of potential violence, public disorder, illicit activities and lethal attacks’⁽⁷⁸⁾ and enhances the capacity of

⁽⁷⁷⁾ For an analysis of similar approaches in the USA see HARRIS (2002), p. 8; US CUSTOMS SERVICE (2009).

⁽⁷⁸⁾ The International Security & Counter-Terrorism Academy, ‘The SDR™ (Search, Detect and React)™’, available at: <http://www.sdr.org.il/index.html>.

security personnel in behavioural profiling. This means that attention is drawn away from unalterable characteristics, such as skin colour, and refocused on individuals' behaviour in order to inform choices about police action. During training, officers learn how people in particular places normally act and how best to detect deviant, suspicious behaviour. Having detected such patterns of conduct, the officers are required to act in a 'sensitive' manner. In most cases, they will only address the suspect in an informal way without using any formal police powers. The programme entails components of classroom teaching, applied and on the job training. The SDR is currently applied at Schiphol Airport, as well as by different units of the Dutch Police forces.⁽⁷⁹⁾

CASE STUDY 16: UK

Transport Police behavioural assessment screening system (BASS) training

The Behavioural Assessment Screening System, or BASS, was originally developed by the Massachusetts State Police in the USA and adapted for use by the British Transport Police. The training is based on behavioural profiling of people under stress in airports or transport hubs. The Massachusetts State Police worked with criminologists to review the footage of the 9/11 hijackers taking flights in and out of Logan Airport in Boston before the attacks. They developed a set of criteria to identify behaviour exhibited by people when they are under stress in crowds, or during check-in or security checks. These criteria were adapted using information gathered from the 7/7 London underground attacks.

All British Transport Police (BTP) officers working on the London underground system have received BASS training, and it is being rolled out to officers working on the rail network nationwide. The two-day training includes lectures, discussions, and practical exercises both within the classroom and in transport hubs. The training points out that there is no racial or religious profile for terrorists – recent attacks have been conducted by people of all ethnicities.

An internal evaluation conducted by the BTP six months after all officers had received the training found that the quality of stops on the underground had improved. The actual number of stops was substantially reduced, while the numbers of arrests as a result of stops had increased significantly. The collection of intelligence from stops also improved. Officer feedback was appreciative of the practical tools provided by the training.⁽⁸⁰⁾

⁽⁷⁹⁾ The INTERNATIONAL SECURITY & COUNTER-TERRORISM ACADEMY, 'The SDR™ (Search, Detect and React)™', available at: <http://www.sdi.org.il/index.html>.

⁽⁸⁰⁾ See also, BRITISH TRANSPORT POLICE AUTHORITY (2009), Minutes of Stakeholder Relations and Communications Strategy Committee Meetings of 20 January 2009 (Agenda Item 9.1), pp 2-3 and of 6 April 2009 (Agenda Item 8.3), p 3.

4.5. Good suspect descriptions and good intelligence

Good suspect descriptions can help to avoid the risk of unlawful discriminatory profiling. A suspect description consists of personal information, such as colour of skin, hair and eyes, height and weight, and clothing, and is derived from descriptions provided by the crime victim or witnesses. A good suspect description can be provided to officers as the basis on which to conduct stops and searches seeking to detain suspects. However, when law enforcement officers receive an overly general suspect description that features race, ethnicity or similar characteristics, they should not use that description as the basis for operations such as stop and search, which are likely to result in many stops of innocent persons who happen to share the same characteristics. Rather, they should seek further specific operational intelligence to guide the investigations.

*** ‘Detailed profiles based on factors that are statistically proven correlated with certain criminal conduct may be effective tools better to target limited law-enforcement resources.’**

United National Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism, (Scheinin 2007) paragraph 33.

Good intelligence can also reduce the risk of unlawful discriminatory profiling. When law enforcement actions are based on specific and timely intelligence, they are more likely to be objective and less likely to be based on stereotypes. Providing timely and detailed intelligence to officers, for example, at ‘briefings’ at the start of each shift, should reduce discretion and provide officers with guidance on how to target their powers more specifically on current crime patterns and identified safety issues. Improving the quality and use of intelligence to focus on behavioural factors or intelligence information is most effective when combined with increased supervision and monitoring of officers’ use of their powers.

4.6. Good ‘quality’ encounters

As discussed in Chapter 3, the very use of stop and search powers can generate negative feelings among the public. This means that efforts should

be made to ensure that unnecessary police interference with individuals is minimised as far as possible, that the process is transparent, and that members of the public are treated with respect and dignity. Beyond the frequency with which law enforcement focuses on ethnic minorities, officers' treatment of the person they have stopped (often termed the 'quality of the stop') and the grounds for stopping someone has been found, in British research, to be the greatest concern of people stopped.⁽⁸¹⁾

The negative impacts of being repeatedly stopped by the police are significantly diminished if the officer's conduct is professional and respectful. In particular, being provided with a reason for the stop increases the level of satisfaction with the encounter. Ensuring that police officers are courteous and informative is a low-tech, albeit not always easy, policy to implement. Difficulties in addressing the quality of stops arise from officers' sometimes limited communication skills, the inability to articulate the reason for the action and, in some cases, the need to overcome built-up hostilities with sections of the community. Of course, ensuring a good quality encounter in itself does not eliminate ethnic profiling, but it may, firstly, oblige officers to confirm to themselves and the individual that ethnicity, race and religion were not determinative reasons for the stop and, secondly, help to ensure that the individual does not perceive a discriminatory motive behind the action. It is where an individual feels that discriminatory ethnic profiling has occurred – even if it is not in fact the case – that the damage caused by this practice occurs.

CASE STUDY 17: UK

Informing persons of the reason for a stop and search

Section 2 of PACE provides statutory safeguards for stop and search powers. Before searching a person or vehicle, or detaining a person or vehicle for the purposes of a search, the officer must take reasonable steps to bring to the person's attention:

- his/her name;
- the name of the police station to which he/she is attached;
- the object of the search;
- the grounds for making the search.

The person must also be informed that he or she is entitled to a record of the search and to which police station he or she should apply to obtain the record.

⁽⁸¹⁾ HAVIS and BEST (2004).

The acronym GO-WISELY is taught to police officers as a means of reminding them of their responsibilities in stopping and searching:

[G]rounds for the search

[O]bject of the search

[W]arrant card must be produced if in plain clothes

[I]dentify, the PC must inform the suspect of his name

[S]tation, the police station at which the constable works

[E]ntitlement to a copy of the search record

[L]egal power being used for detention

[Y]ou are being detained for the purpose of a search. That is, the suspect must be told he is being detained.

CASE STUDY 18: UK

Hertfordshire Constabulary monitoring the quality of encounters

The stop and search forms introduced by the Hertfordshire Constabulary in April 2007 contain a section that enables the person stopped to record the quality of the encounter. Hertfordshire is the first force in the UK to do this systematically. At the end of a stop and search encounter, officers are required to ask the person stopped:

'Thinking about the experience of being stopped by your local police on this occasion, which of the following do you agree with:

- I understand the reason I was stopped? Yes/No
 - During the stop, I was treated professionally, respectfully and with dignity? Yes/No
- Please sign.'

CASE STUDY 19: AUSTRIA

Courteous forms of address

Austrian legislation contains guidelines on the manner in which the police should address members of the public. Paragraph 5(2) of the Guidelines Regulation stipulates: 'The public security organs shall use the formal term of address (that is, 'Sie') in respect of all persons who are usually addressed

or demand to be addressed in such a manner.'⁽⁸²⁾ Furthermore, the Ministry of Interior has issued a decree on the use of language by law enforcement officials to prevent the impression of discriminatory, humiliating, degrading or prejudiced treatment. The Decree of 7 August 2002 states that '...the reputation and acceptance by the population, as well as ultimately the efficiency in complying with the tasks of the security services depends largely on how the law-enforcement staff deals with other persons and, in particular, with persons of foreign origin and members of groups exposed to discrimination. It is therefore indispensable from this perspective that for professional conduct during work every member of the security services uses language and expressions that do not even give rise to any impression of a discriminatory, degrading, humiliating or prejudiced procedure and/or allow one to conclude that such motives are part of the basis attitude.'⁽⁸³⁾

While the existence of such rules are, of course indispensable, it is also important for some supervisory mechanism to be introduced to monitor their implementation in practice.

4.7. Considerations for the future

In light of the UK's history in addressing the issue of discriminatory ethnic profiling, a large body of evidence and considerable literature are available in connection with the UK context. It is to be hoped that, in the future, we will be able to witness a similar response in other EU Member States which are currently facing the realities of increased immigration, renewed efforts in combating terrorism and the need for effective policing.

As the aim of the present Guide is to provide a practical and useful tool, the FRA encourages readers to submit to its dedicated website (<http://fra.europa.eu/>) for evidence, case studies, action papers and general literature in connection with issues which have touched upon in the Guide.

⁽⁸²⁾ See the Guidelines Regulation ((Richtlinien-Verordnung - RLV) StF: BGBl. Nr. 266/1993).

⁽⁸³⁾ Decree of the Interior Ministry, General Administration for Public Security of 07.08.2002 on the use of language by law enforcement officers (Erlass des BMI, Generaldirektion für die öffentliche Sicherheit vom 07.08.2002, GZ 19.038/237-GD/01, betreffend Sprachgebrauch in der Exekutive).

Revisiting some of the main points of the Guide

- Treating a person less favourably than others who are in a similar situation amounts to discrimination. This is unlawful in the context of exercising stop and search powers.
- It is acceptable to refer to an individual's race, ethnicity or religion as part of a specific suspect description in relation to a concrete offence. Race, ethnicity or religion may also be taken into account where specific intelligence exists relating to a particular offence.
- A decision to stop and search an individual that is motivated solely or mainly by virtue of a person's race, ethnicity or religion can be described as discriminatory ethnic profiling and is unlawful.
- Emphasis should be placed by officers on factors specific to an individual that singles them out as a concrete suspect. This should centre on the behaviour of an individual. 'Behaviour' should not be taken to include physical appearance.
- Discriminatory ethnic profiling can have effects that are damaging to community relations and consequently damaging to other methods of policing that rely on public cooperation and trust. There is also evidence indicating that discriminatory ethnic profiling seems to be inefficient when considered in the light of the 'hit rate' resulting from a stop; that is, whether an arrest and/or prosecution resulted from the stop.
- In order to reduce the risk of discriminatory ethnic profiling occurring, officers should receive adequate training. This should be accompanied with monitoring by superiors of the exercise of stop and search powers.
- Monitoring of the use of stop and search necessitates the collection of racially disaggregated data in order to allow for an accurate understanding of whether powers are being exercised proportionately to population distributions. This is also essential in order to support claims of the existence of indirect discrimination by law enforcement agencies.
- When collecting data on ethnicity, adequate safeguards for the protection of privacy should be put in place; namely, anonymity and the informed consent of those persons who are subject to a stop and search should be obtained in order to collect such data for statistical purposes.

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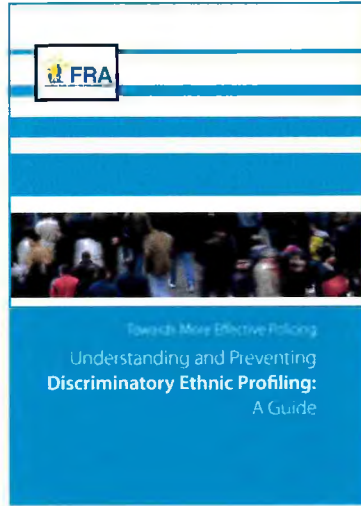
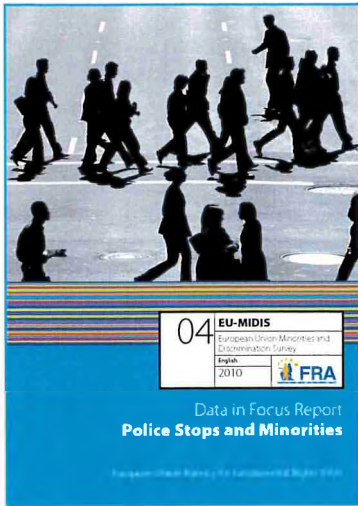
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The *FRA Guide on Understanding and Preventing Discriminatory Ethnic Profiling* provides a thorough survey of profiling practices in the context of law enforcement, while seeking to improve the reader's understanding of the concept's theoretical and practical underpinnings. As the publication is primarily designed as a guide for officers at management level in law enforcement agencies, considerable emphasis is placed on the context of policing.

The incorporation of case studies and practical examples makes it a valuable practical resource for law enforcement professionals.

The Guide explains when profiling based on race, ethnicity or religion may constitute discriminatory conduct and when it is permissible. It also examines the harmful effects of discriminatory ethnic profiling. Furthermore, the Guide highlights the negative impact of such a practice on effective policing.

These two reports by the European Union Agency for Fundamental Rights (FRA) look at closely related issues dealing with the relationship between policing and minorities.



European Union Agency for Fundamental Rights

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