

POSITIVE ACTION FOR ROMA IN BELGIUM

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1. Introduction

In recent years, Roma issues have increasingly received media and scholar attention across Europe. Belgium – along with other European Union Member states – has been struggling to find a fitting response to the various problems that ethnic minority deal with on a daily basis. The issues range from extreme poverty to health concerns, unemployment, uncertain housing situation and irregular educational career. The Roma topic was finally – be it hesitantly – put on the political agenda, but the measures taken so far, if any, have had little or no effect on the everyday life of Roma. Existing policies are clearly falling short to deal effectively with the complex issue at hand, which was emphasized last year when the European Commission adopted an ‘EU framework for National Roma Integration Strategies up to 2020’ to encourage Member states to adopt or further develop a specific, comprehensive and targeted approach to Roma integration in order “to make a tangible difference to Roma people’s lives”.² It is clearly time for governments to explore other options and discover new horizons by expanding already existing mechanisms’ scope of application, such as positive action measures, which so far have been used mainly to eradicate the historical differences between men and women in the workplace. Like women, Roma have – as an ethnic minority - historically been the victim of systematic discrimination, both in their country of origin as in other countries. Stereotyping and negative media attention has aggravated this situation.

The hypothesis of this paper is that positive action for Roma can be the missing link to break the vicious circle of poverty, hopelessness and discrimination in which many Roma are stuck. First, this paper will deal with the concept of positive action. An overview shows how organisations in the international arena, and more specifically the United Nations, the Council of Europe and the European Union interpret this concept and how their respective bodies and/or courts deal with positive action measures. Second, a closer look will be taken at the issues Roma in Belgium deal with. The focus will be on housing, education, employment, health and poverty. Third, positive action in Belgium will be considered. After a look at the applicable legislation, an overview will be given of positive action for Roma that have been taken at different policy levels in Belgium in the past. The focus will be on Flanders and Wallonia. Fourth, attention will be drawn to the need for ethnic data in order to

² COM(2011) 173 final, 5 April 2011, p. 3-4.

render positive action measures – and for that matter any integration policy – for Roma fully effective. Misconceptions concerning the collection and use of such sensitive data will be addressed and it will be explained why the collection and statistical use of ethnic data are a precondition for efficient and effective Roma integration in Belgian – or any any other – society. Fifth and last, a conclusion will be drawn concerning the present situation of positive action for Roma in Belgium and recommendations will be made for the future.

2. What is positive action?

2.1. Concept

The concept ‘positive action’ concerns special measures introduced in a specific situation to benefit certain persons – and not necessarily to damage others – on the basis of a specific criterion – such as ethnic origin – to remove or compensate for a difference in treatment.³ The purpose of such measure is thus the compensation of (past) inequalities by promoting the participation of certain groups.⁴ Positive action is only one of many denominations of such special measures. Other designations include ‘temporary special measures’, ‘positive discrimination’ and ‘reverse discrimination’.⁵ Irrespective of the name, the measures all have the same characteristics: they are extraordinarily and for a limited time period introduced to ensure that a certain group – which would normally be discriminated – is no longer discriminated against.⁶ The measures can be legislative, executive, administrative, budgetary and regulatory instruments at any policy level, as well as plans, policies, programs and preferential systems concerning employment, housing, education, culture and participation of prejudiced group in the public sphere.⁷ In the past, the concept of positive action has been used primarily to eliminate the historical discrimination of women in the work place. The UN Committee on the Elimination of Discrimination against Women takes the view that preferential treatment, targeted recruitment, targeted promotion, numerical goals connected to time frames and quota can be considered positive

³ EU Agency for Fundamental Rights and Council of Europe, *Handbook on European non-discrimination law*, 2011, p. 37.

⁴ EU Agency for Fundamental Rights and Council of Europe, *Handbook on European non-discrimination law*, 2011, p. 38.

⁵ General Recommendation No. 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms of Racial Discrimination, para. 12, UN Doc. CERD/C/GC/32 (2009).

⁶ General Recommendation No. 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms of Racial Discrimination, paras. 11 en 16, UN Doc. CERD/C/GC/32 (2009).

⁷ General Recommendation No. 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms of Racial Discrimination, para. 13, UN Doc. CERD/C/GC/32 (2009).

actions.⁸ Policy makers and the general population have accepted positive action for women for years. In 2011, a new legislation was voted for in Belgium to oblige governmental companies and stock market listed firms to ensure that one third of the seats in their Board of Directors are reserved for women.⁹ Positive action measures are generally considered as an exception to the prohibition of discrimination, as they are introduced to correct pre-existing inequalities.¹⁰ Such reasoning is valid for gender discrimination in the work place, but also for underrepresentation of ethnic minorities in the public service, which results in an incorrect reflection of the actual population's composition.¹¹

2.2. International arena

Positive action measures can be introduced to eliminate discrimination on the basis of race or ethnic origin. In the light of persistent Roma issues across the European Union, the European Commission stated in 2010 that “An effective equality policy goes beyond the prohibition and punishment of discrimination and involves proactive government interventions to promote equality” and that in this light, Member states are encouraged to take positive action measures to tackle discrimination.¹² In addition to the European Union, the competent bodies of the United Nations and the Council of Europe have also interpreted the concept of positive action on the basis of race and ethnic origin. What follows under this title is an overview of interpretations of the concept of positive action given by these organisations.

2.2.1. United Nations

The International Convention on the Elimination of All Forms of Racial Discrimination provides the possibility for positive action by stipulating in article 2.2 that “States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the

⁸ General Recommendation No. 25: Article 4, para. 1 of the Convention (temporary special measures), para. 22, UN Doc. A/59/38 (supp.) (2004).

⁹ Wet van 28 juli 2011 wijziging van de Wet van 21 maart 1991 betreffende de hervorming van sommige economische overheidsbedrijven, tot wijziging van het Wetboek van Vennootschappen en tot wijziging van de Wet van 19 april 2002 tot rationalisering van de werking en het beheer van de Nationale Loterij, teneinde te garanderen dat vrouwen zitting hebben in de raad van bestuur van de autonome overheidsbedrijven, de genoteerde vennootschappen en de Nationale Loterij, B.S. 14 september 2011.

¹⁰ EU Agency for Fundamental Rights and Council of Europe, *Handbook on European non-discrimination law*, 2011, p. 37-41.

¹¹ EU Agency for Fundamental Rights and Council of Europe, *Handbook on European non-discrimination law*, 2011, p. 38.

¹² European Commission, *Improving the tools for the social inclusion and non-discrimination of Roma in the EU*, 2010, p. 21.

adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved”.¹³ The UN Committee on the Elimination of Racial Discrimination, the body of independent experts responsible for interpreting and monitoring the implementation of the Convention by State parties, stresses that positive action should be of temporary nature and that the measures may not – in time or in application – reach further than what is necessary to eliminate the existing inequality.¹⁴ The purpose of positive action measures must be limited to the elimination of existing inequalities and the prevention of future inequalities.¹⁵

2.2.2. Council of Europe

Within the Council of Europe, the possibility to introduce positive action is derived from the prohibition of discrimination in article 14 European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter ECHR).¹⁶ So far, the European Court of Human Rights (hereinafter ECtHR) has only made *remarks* on positive action on the basis of ethnic origin. For example, concerning an electoral system providing in equal representation of certain ethnic groups, the ECtHR mentioned 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”.¹⁷ Another example involves an educational system in which Roma children were put in separate Roma classes because of their insufficient knowledge of the language, where the ECtHR stated that “[...] in certain circumstances such placement would pursue the legitimate aim of adapting the education system to the

¹³ International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965, artikel 2.2, UNTS vol. 660 p. 195.

¹⁴ General Recommendation No. 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms of Racial Discrimination, UN Doc. CERD/C/GC/32 (2009).

¹⁵ General Recommendation No. 32: The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms of Racial Discrimination, paras. 21-26, UN Doc. CERD/C/GC/32 (2009).

¹⁶ Article 14 states that “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”. European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, CETS No.: 005 (hereinafter ECHR).

¹⁷ Eur. Court H.R., *Sejdic and Finci v. Bosnia-Herzegovina*, judgment of 22 December 2009, para. 44.

specific needs of the children. However, when such a measure disproportionately or even, as in the present case, exclusively affects members of a specific ethnic group, then appropriate safeguards have to be put in place”.¹⁸ The ECtHR thus has yet to *rule* on the compatibility of positive action with article 14 ECHR¹⁹, which allows Member states to treat groups differently in order to eliminate a factual inequality between them.²⁰ Indeed, the ECtHR already decided that “the right not to be discriminated against in the enjoyment of the rights guaranteed under the [ECHR] is also violated when States [...] fail to treat differently persons whose situations are significantly different”.²¹ This means that the failure to implement a difference in treatment – with or without objective and reasonable justification – to try and eliminate an inequality, can in certain situations lead to an infringement of article 14 ECHR.²² Despite the lack of specific case law, positive action measures would probably pass the test before the ECtHR, provided the difference in treatment is proportional to the purpose.²³

Protocol No. 12 to the ECHR also provides for the possibility – not obligation²⁴ – to adopt positive action measures to promote full and effective equality.²⁵ The Preamble to Protocol 12 ECHR reaffirms “that the principle of non-discrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures”.²⁶ Even though the drafters of the Protocol remained distant on the issue,²⁷ the Preamble indicates that – provided the proportionality principle is respected²⁸ – Member states can adopt temporary measures introducing specific benefits to promote equality in situation where certain groups are injured or where de facto inequalities exist.²⁹ In contrast with the ECHR and its ECtHR, the European Committee of Social Rights (hereinafter ECSR) has explicitly considered positive actions by stating that

¹⁸ Eur. Court H.R., *Oršuš and Others v. Kroatija*, judgment of 16 March 2010, para. 157.

¹⁹ Olivier De Schutter, *The Prohibition of Discrimination under European Human Rights Law*, 2011, p. 6 and 48.

²⁰ Eur. Court H.R., *Thlimmenos v. Greece*, judgment of 8 April 2000, Reports of Judgments and Decisions 2000-IV, para. 44.

²¹ Eur. Court H.R., *D.H. and Others*, judgment of 13 November 2007, para. 175.

²² Eur. Court H.R., *Thlimmenos v. Greece*, judgment of 8 April 2000, Reports of Judgments and Decisions 2000-IV, para. 44.

²³ Eur. Court H.R., *Pretty v. UK*, judgment of 29 April 2002, para. 88.

²⁴ Olivier De Schutter, *The Prohibition of Discrimination under European Human Rights Law*, 2011, p. 31.

²⁵ *Idem*.

²⁶ Explanatory report of 29 August 2000 of Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, H (2000) 11 prov., para.16.

²⁷ Protocol No. 12 of 4 November 2000 to the Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No.: 177.

²⁸ Third recital of the Preamble to Protocol No. 12 of 4 November 2000 to the Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No.: 177.

²⁹ Olivier De Schutter, *The Prohibition of Discrimination under European Human Rights Law*, 2011, p. 6.

³⁰ Proportionality means that the difference in treatment must pursue an objective and legitimate goal by means of proportionate measures.

³¹ Explanatory report of 29 August 2000 of Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, H (2000) 11 prov., para.16.

antidiscrimination legislation not only contains an obligation for Member states to put efficient integration first by means of an active social and employment policy and that they should closely monitor the impact of their antidiscrimination policies on the most vulnerable groups in society.³⁰ The European Social Charter follows that same reasoning,³¹ which was demonstrated in a Decision of the ECSR demanding positive action from Bulgaria to improve the housing and accommodation of Roma.³² The Committee decides that “[...] in the case of Roma families, the simple guarantee of equal treatment as the means of protection against any discrimination does not suffice [...]” given all relevant differences must be taking into consideration and the State must act accordingly, which means that “[...] for the integration of an ethnic minority as Roma into mainstream society measures of positive action are needed”.³³

2.2.3. European Union

The European Court of Justice (hereinafter ECJ) has repeatedly interpreted the concept of positive action in her case law concerning employment.³⁴ The ECJ has strictly considered the proportionality of positive action measures for women introduced by the Member states.³⁵ In its case law, the ECJ ruled that measures which are discriminatory in appearance, but intend to eradicate inequalities in social life, are in line with the applicable rules as long as the measures are proportionate to the aim of eliminating inequalities; in other words, discretion must be built into the measures to prevent that the preferential treatment is automatic, unconditional and absolute.³⁶ Since 2000, Member states can also adopt positive action on the basis of ethnic origin. Directive 2000/43/EC (hereinafter Race Directive) stipulates in article 5 that the principle of equal treatment does “not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin”.³⁷ The consideration is that “[t]he prohibition of discrimination should be without prejudice to the maintenance or adoption of measures intended to

³⁰ Olivier De Schutter, *The Prohibition of Discrimination under European Human Rights Law*, 2011, p. 6-7.

³¹ The principle of non-discrimination is contained in article E. European Social Charter (*Revised*) of 3 May 1996, ETS No.: 163.

³² European Committee of Social Rights, *European Roma Rights Centre v. Bulgaria*, Decision of 18 October 2006, Complaint no. 31/2005, para. 42.

³³ *Idem*.

³⁴ EU Agency for Fundamental Rights and Council of Europe, *Handbook on European non-discrimination law*, 2011, p. 39.

³⁵ EU Agency for Fundamental Rights and Council of Europe, *Handbook on European non-discrimination law*, 2011, p. 37-41.

³⁶ The most important case law of the European Court of Justice in this regard can be found in following judgments: Case 450/93, *Kalanke v. Freie Hansestadt Bremen*, 1995 ECR I-3051. Case 409/95, *Marschall v. Land Nordrhein-Westfalen*, 1997 ECR I-6363. Case 407/98, *Abrahamsson and Leif Anderson v. Elisabet Fogelqvist*, 2000 ECR I-5539.

³⁷ EC Directive 2000/43/EC of 29 June 2000, O.J. 2000 L 180.

prevent or compensate for disadvantages suffered by a group of persons of a particular racial or ethnic origin, and such measures may permit organisations of persons of a particular racial or ethnic origin where their main object is the promotion of the special needs of those persons”.³⁸ Member states have a large margin of appreciation in this matter, given only they can decide to adopt or preserve certain measures compensating or preventing inequalities on the basis of ethnic origin in the public sphere. Note that the Race Directive only introduces the *possibility* of positive action only in the *public* sphere and not in the private sphere.³⁹ It is thus up to Member states to decide whether or not to implement positive action measures. However, in certain circumstances where an ethnic group is underrepresented in a segment of the labor market or in a specific position, it is possible that Member states have a duty to introduce positive action measures to secure equality.⁴⁰ In any event, it would only be logical for the ECJ to employ the same strict interpretation of positive action for Roma as it does for women.

3. Roma in Belgium

3.1. Introduction

Estimates on the Roma population in Belgium vary from 15.000 to 50.000 people.⁴¹ No official or exact data on the number of Roma in Belgium exist, because ethnicity is not registered in public registers, such as the population and the foreigners register.⁴² Registration in these registers is done on the basis of country of origin, which can be an indication of ethnicity, but it cannot be considered to be a decisive proof. There are also other factors adding to the difficult process of mapping the Roma population in Belgium. Namely, Roma often live anonymously in closed Roma communities and prefer not identifying themselves as Roma out of fear for stigmatisation, stereotyping and discrimination.⁴³ In addition, Roma often move more

³⁸ Recital 17 to EC Directive 2000/43/EC of 29 June 2000, O.J. 2000 L 180.

³⁹ Article 3 International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965, UNTS vol. 660 p. 195.

⁴⁰ Erika Szyszczak, *Positive Action as a Tool in Promoting Access to Employment*, 2006.

⁴¹ COM(2011) 173 final, 5 April 2011. Federale Overheid, *Nationale strategie voor de integratie van de Roma*, 2012, p. 9. Vlaamse Overheid, *Vlaams actieplan MOE(Roma)-migranten 2012*, 2011, p. 9-19. Centre de Médiation des Gens du Voyage en Wallonie A.S.B.L., *Caravane et logement: entre précarité juridique et bien-être social*, 2010, p. 4.

⁴² Ramón Peña-Casas, Dalila Ghailani and Ides Nicaise, *Promoting the Social Inclusion of Roma. A Study of National Policies*, 2011, p. 5-6 and 16. Centrum voor Gelijkheid van Kansen en Racismebestrijding, *RAXEN Thematic Study on Housing Conditions of Roma and Travellers in Belgium*, 2009, p. 7.

⁴³ Federale Overheid, *Nationale strategie voor de integratie van de Roma*, 2012, p. 11. Elias Hemelsoet, *Samenleven met Roma: fictie of realiteit?*, in D. Dierckx, J. Coene en A. Van haarlem (ed.), *Armoede en sociale uitsluiting. Jaarboek 2011*, 2011, p. 367.

easily across borders, both within Belgium and across Europe, thereby constantly influencing the size of the Roma population in a given country.⁴⁴

Many misconceptions exist about Roma and their lifestyle. One such misconception concerns the term ‘Roma’. Contrary to what some people may think, there is no such thing as ‘the Roma’. The term is merely used as an umbrella to refer to a collection of groups of people who possess more or less similar cultural characteristics and share a history of discrimination and marginalisation in Europe.⁴⁵ The term thus not only covers Roma, but also – among others – Roms, Travellers, Manouches and Sinti. Another misconception is that all Roma maintain an itinerant lifestyle. On the contrary, most Roma in Belgium maintain – be it out of free will or forced because of lack of caravan plots – a sedentary lifestyle and live in fixed caravans, houses or apartments.⁴⁶ The majority of Roma in Belgium live in cities such as Antwerp, Brussels, Charleroi, Diest, Ghent, Heusden-Zolder, Liège, Namur, Temse and Tienen.⁴⁷ A smaller number of Roma lives in cities such as Leuven, Ostend, Sint-Niklaas, Verviers and Waver.⁴⁸ A final misconception concerns the nationality of Roma. The majority of the Travellers (approximately 7.000 persons), Manouches (approximately 1.500 persons) and Roms (approximately 700 persons) in Belgium have the Belgian nationality.⁴⁹ On the contrary, the majority of Roma in Belgium (approximately 20.000 persons) do not have the Belgian nationality but the one of their country of origin.⁵⁰ For the purpose of this paper, the term ‘Roma’ will be used in its broad definition, encompassing all different groups.

Jacqueline Fastrès and Sophie Hubert, *De Charybde en Scylla? Petites chroniques d'une intégration impensée: les Roms en Wallonie*, in *Intermag*, 2009, p. 8-14.

⁴⁴ *Idem*.

⁴⁵ The term is utilized for practical reasons in policy documents dealing with discrimination and social exclusion issues and not to deal with issues of cultural identity. SEC(2010) 400 final, 7 April 2010.

⁴⁶ In Belgium, especially Manouches and Sinti live in fixed caravans, whereas especially Roma live in houses or apartments and most Roms maintain a semi-sedentary lifestyle: they travel in summer and live in private or public caravan parks in winter. Federale Overheid, *Nationale strategie voor de integratie van de Roma*, 2012, 7-8. Centrum voor Gelijkheid van Kansen en Racismebestrijding, information received via email on 11 April 2012.

⁴⁷ Vlaamse Overheid, *Vlaams actieplan MOE(Roma)-migranten 2012*, 2011, p. 11. Matthias Stamper, *De Roma-problematiek te Gent. Naar een integrale en duurzame oplossing*, 2011, p. 10. Sarah Carpentier, *Recherche-pilote sure la sensibilisation des autorités publiques à la Communauté Rom et sur l'intégration scolaire des enfants Roms*, 2004, p. 28.

⁴⁸ *Idem*.

⁴⁹ Approximately 7.000 Travelles, 1.500 Manouches and 750 Roms have the Belgian nationality. Approximately 20.000 Roma in Belgium have the nationality of their country of origin. Federale Overheid, *Nationale strategie voor de integratie van de Roma*, 2012, p. 7. Wolf Bruggen, *Roma in Vlaanderen. Minderheid onder de minderheden?*, Vlaams Minderhedencentrum, 2003, p. 5. Toon Machiels, *Garder la distance ou saisir les chances, Roms et gens du voyage en Europe occidentale*, 2002, p. 17.

⁵⁰ Turkey, Poland, Bulgaria and Romania are the most important inflow countries in Belgium. The inflow from Middle- and Eastern-European countries varies from municipality to municipality. Federale Overheid, *Nationale strategie voor de integratie van de Roma*, 2012, p. 7. Wolf Bruggen, *Roma in Vlaanderen. Minderheid onder de minderheden?*, Vlaams Minderhedencentrum, 2003, p. 5. Toon Machiels, *Garder la distance ou saisir les chances, Roms et gens du voyage en Europe occidentale*, 2002, p. 17.

3.2. Roma Issues

Over the past few years, a number of articles have been written about Roma in Belgium. However, when Roma issues are reported upon in the news, this often has a negative connotation. That generates unfavourable feelings with the majority of the population towards Roma and adversely influences the integration process of Roma in Belgium. Under this title, a closer look is taken at the main issues many Roma deal with in Belgium, namely housing, education, employment, extreme poverty, health, and migration. But while it is true that many Roma face these issues, other Roma do not face the same struggles and are perfectly integrated in Belgian society.

- For many Roma, finding housing is a priority, be it that the quality of the home is only of secondary importance.⁵¹ The Roma living – or wanting to live – in caravans are faced with a big lack of caravan plots, whereas the available spots are very expensive.⁵² It is also difficult to obtain building permits for caravans, which results in illegal stays by Roma families on other – not for caravan designated – plots and constant fear of expulsion for the involved families.⁵³ On existing caravan plots, infrastructure and sanitary provisions – if any – are often poor and insufficient.⁵⁴ The Roma living in houses or apartments are often the victim of slum landlords or they live in squatted houses.⁵⁵ In addition, financial and social considerations often contribute to different families living in the same house, which in turn leads to neighbourhood problems.⁵⁶

- Education forms an essential part of the successful future integration of all children. For Roma children, however, social, cultural and economical differences between Roma and non-Roma appear to affect their regular school attendance.⁵⁷ Bottlenecks include – among others – language barriers, expenses of school activities, semi-sedentary or itinerant lifestyle, and attitude.⁵⁸ Despite the absence of official education statistics on Roma, research shows big varieties in the enrolment of Roma

⁵¹ Koen Geurts, *De Roma van Brussel*, 2004.

⁵² Centre de Médiation des Gens du Voyage en Wallonie A.S.B.L., *Caravane et logement: entre précarité juridique et bien-être social*, 2010, p. 8. Minderhedenforum, *Bouwstenen voor een effectief minderhedenbeleid. Ons verleden, onze toekomst*, 2010, 78-81. Regionaal Integratiecentrum Foyer, *Nota Situatie Woonwagenterreinen in het Brussels Hoofdstedelijk Gewest*, 2006, p. 1-15.

⁵³ Regionaal Integratiecentrum Foyer, *Nota Situatie Woonwagenterreinen in het Brussels Hoofdstedelijk Gewest*, 2006, p. 9-12.

⁵⁴ Regionaal Integratiecentrum Foyer, *Nota Situatie Woonwagenterreinen in het Brussels Hoofdstedelijk Gewest*, 2006, p. 5-8.

⁵⁵ Matthias Stamper, *De Roma-problematiek te Gent. Naar een integrale en duurzame oplossing*, 2011, p. 6, 23 and 36.

⁵⁶ Stijn De Reu, Geert Matthys, Benedicte Vanderhaegen, Christophe Janssens and David Talloen (reds.), *Identiteit: Oost-Vlaming. Etnisch-culturele diversiteit in onze provincie*, 2010, p. 48.

⁵⁷ Matthias Stamper, *De Roma-problematiek te Gent. Naar een integrale en duurzame oplossing*, 2011, p. 12 and 36. Koen Geurts, Natasja Naegels en Norah Van den Daele, 'Roma kinderen op de schoolbanken', in *Welwijs* (jaargang 21 nummer 1, 2010), p. 11-12. Koning Boudewijnstichting, *Scholing van Romakinderen in België. Ouders aan het woord*, 2009, p. 41-64. Regionaal Integratiecentrum Foyer, *Scholarisatie van Roma in Brussel. Analyse en aanbevelingen*, 2006, 1-7.

⁵⁸ Idem.

children in primary education.⁵⁹ In addition, truant behaviour, irregular attendance, early dropout rates and poor flow-through to secondary education are remarkably higher among Roma children than among other groups.⁶⁰

- Unemployment amongst Roma is high.⁶¹ Only a small number of Roma are employed through a standard employment contract; most Roma are self-employed with a focus on informal economy and irregular work.⁶² From the later it follows that many Roma depend on themselves and their group for their income.⁶³ The same goes for Roma beggars who often live in extreme poverty. For their income and maintenance, they mainly dependent upon their own social network, which is often limited to their own Roma community.⁶⁴ Social services and the general public are insufficiently informed and sensitized about the existence, causes and needs of (minor) Roma beggars.⁶⁵

- Roma often have insufficient knowledge about the availability, functioning and cost of social services and health care services in Belgium.⁶⁶ For many Roma, the focus appears to be on short-term health issues rather than on long-term health concerns.⁶⁷ This minority is also insufficiently familiar with preventative health care and lacks knowledge of disease symptoms resulting in not getting appropriate care in a timely fashion.⁶⁸ In addition, underage marriages and teen pregnancies lead to early school dropout of girls, which in turn negatively influences the position of Roma women in society.⁶⁹

- In addition to culture specific elements, the illegal and insecure residency status of Roma who do not obtain the Belgian nationality thwarts their integration process into Belgian society.⁷⁰ For some, this insecure situation leads to future

⁵⁹ European Monitoring Centre on Racism and Xenophobia, *Roma and Travellers in Public Education. An overview of the situation in the EU Member states*, 2006, p. 22.

⁶⁰ Idem.

⁶¹ Federale Overheid, *Nationale strategie voor de integratie van de Roma*, 2012, p. 10 (totaal 40 p.).

⁶² Idem.

⁶³ Koen Geurts, *De Roma van Brussel*, 2004.

⁶⁴ Ann Clé, *Bedelarij onderzocht*, 2007, p. 6-7. Frédérique Van Houcke, *Recherche d'une réponse sociale à la mendicité des mineurs*, 2005, p. 5.

⁶⁵ Catherine Joppart, *Recherche relative au développement d'une réponse sociale à la question de la mendicité des enfants en Belgique*, 2003, p. 55 and 60-61. Frédérique Van Houcke, *Recherche d'une réponse sociale à la mendicité des mineurs*, 2005, p. 4-5.

⁶⁶ Vlaams Minderhedencentrum, *Werknota: Roma in Vlaanderen, knelpunten en aanbevelingen*, 2010, p. 8.

⁶⁷ Vlaams Minderhedencentrum, *Werknota: Roma in Vlaanderen, knelpunten en aanbevelingen*, 2010, p. 14-15 and 17-18. Frauke Decoodt and Stijn De Reu (reds.), *Kosovaarse Roma in het Waasland. 10 jaar beleid met Roma in Temse en Sint-Niklaas*, 2009, p. 27. Koen Geurts, *De Roma van Brussel*, 2004.

⁶⁸ Walter Leenders, *Jaarboek 2007 Oost-Vlaams Diversiteitscentrum vzw*, 2008, p. 23.

⁶⁹ Idem.

⁷⁰ Koen Geurts, *De Roma van Brussel*, 2004.

poverty.⁷¹ A request of stay for humanitarian reasons in Belgium does not entitle one to social aid, work or protection against expulsion.⁷² Intercultural communication and intermediary structures can help to built trust and bridge big cultural difference between Roma, society and public and health services thereby leading to more efficient cooperation.⁷³ Mediators and outreaching have proved to be success factors for Roma integration, be it so far only on a very small, local scale.⁷⁴

A quick look at the abovementioned problems shows that they are interrelated and mutually reinforcing. It is therefore of crucial importance for all policy domains and policy levels to cooperate and align their strains so as to realize effective long-term effects and full equality for Roma in Belgium. Only an integrated, vertical and horizontal approach – including coordinated, consistent and structured agreements – to the multi-faceted context of Roma in Belgium can lead to real changes.⁷⁵ In this process, the recognition of the cultural identity is a precondition for efficient assistance and a meaningful integration policy adapted to the specific situation and needs of Roma in Belgium.⁷⁶

4. Positive Action for Roma in Belgium

4.1. Legislation

As mentioned, Directive 2000/43/EC allows for the implementation of positive action measures to eliminate the consequences of (past) inequalities linked to race or ethnic origin, provided such measures are limited in time and targeted at members of the excluded or underrepresented minorities.⁷⁷ In practice, this can be the provision of additional information to or training for ethnic minorities to stimulate member of said minorities to apply for jobs in which they are underrepresented.⁷⁸ In 2007, the EU Fundamental Rights Agency reported that only a limited number of Member states

⁷¹ Koen Geurts, De Roma van Brussel, 2004. Wolf Bruggen, *Roma in Vlaanderen. Minderheid onder de minderheden?*, Vlaams Minderhedencentrum, 2003, p. 20.

⁷² Ann Clé, *Bedelarij onderzocht*, 2007, p. 6.

⁷³ Koen Geurts, “Met één achterste kan je niet op twee paarden zitten” Roma-leerlingen op de schoolbanken, in *Handboek Leerlingenbegeleiding* (2010). Vlaams Minderhedencentrum, *Werknota: Roma in Vlaanderen, knelpunten en aanbevelingen*, 2010, p. 20-21. Federale Overheid, *Nationale strategie voor de integratie van de Roma*, 2012, p. 17 and 22.

⁷⁴ Vlaamse vereniging voor Voyageurs, Roms, Roma en Manoesjen, *Laat maar zitten... Integratie van Roma is een doe-woord*, 2009.

⁷⁵ Federale Overheid, *Nationale strategie voor de integratie van de Roma*, 2012, p. 4 and 31.

⁷⁶ Koen Geurts, De Roma van Brussel, 2004.

⁷⁷ EU Agency for Fundamental Rights, *Report on Racism and Xenophobia in the Member states of the EU*, 2007, p. 156.

⁷⁸ Idem.

had utilized the possibility to take positive actions for ethnic minorities.⁷⁹ In addition, some Member states experimented with public procurement contracts by putting conditions concerning equal opportunity criteria upon recruitment in companies with which they contracted for the delivery of goods and services.⁸⁰ In 2011, the European Commission stressed in the “EU Framework for National Roma Integration Strategies up to 2020”⁸¹ (hereinafter EU Roma Framework) the importance to focus integration policies at all levels on Roma. Such policies and implementing measures must be clearly, specifically and explicitly focused on Roma and their needs in order to “prevent and compensate for disadvantages they face”.⁸² Such a targeted approach – which the European Commission frames within “the broader strategy to fight against poverty and exclusion”⁸³ – is in line with the non-discrimination principle and key to making real progress towards Roma integration.⁸⁴ In the EU Roma Framework, the European Commission reminds Member states of the possibility to take positive action for ethnic minorities in Directive 2000/43/EC,⁸⁵ and that – prior to the implementation of the EU Roma Framework – only a few Member states, including the UK, Hungary and Bulgaria, implemented measures to promote Roma rights after finding existing classical social inclusion measures insufficient to meet the specific needs of Roma.⁸⁶

In implementation of Directive 2000/43/EC, the Belgian Antiracism Law defines positive action as “*specifieke maatregelen om de nadelen verband houdende met een van de beschermde criteria te voorkomen of te compenseren, met het oog op het waarborgen van een volledige gelijkheid in de praktijk*” (specific measures to prevent or compensate for the disadvantages related to one of the protected criteria, in view of warranting a full equality in practice).⁸⁷ Under the law, national or ethnic origin are considered protected criteria next to nationality, so-called race, complexion and descent.⁸⁸ The Antiracism Law provides that “[e]en direct of indirect onderscheid op

⁷⁹ Germany, Finland and Austria are identified in the report as Member states that implemented positive action measures at the recruitment stage in the course of 2006. EU Agency for Fundamental Rights, *Report on Racism and Xenophobia in the Member states of the EU*, 2007, p. 67-68 and 156. European Monitoring Centre on Racism and Xenophobia, *Roma and Travellers in Public Education. An overview of the situation in the EU Member states*, 2006, p. 60.

⁸⁰ EU Agency for Fundamental Rights, *Report on Racism and Xenophobia in the Member states of the EU*, 2007, p. 10.

⁸¹ COM(2011) 173 final, 5 April 2011, p. 4.

⁸² Idem.

⁸³ Idem.

⁸⁴ Idem.

⁸⁵ Article 5 EC Directive 2000/43 of 29 June 2000, O.J. 2000 L 180. COM(2011) 173 final, 5 April 2011, p. 4.

⁸⁶ COM(2011) 173 final, 5 April 2011, p. 4.

⁸⁷ Article 4, 11° Wet van 30 juli 1981 tot bestraffing van bepaalde door racisme of xenofobie ingegeven daden, B.S. 8 August 81 (last modified on 10 May 2007 (B.S. 30 May 2007)) (hereinafter ‘Belgian Antiracism Law’).

⁸⁸ Article 4, 4° Belgian Antiracism Law.

grond van een van de beschermde criteria geeft nooit aanleiding tot de vaststelling van enige vorm van discriminatie wanneer dit directe of indirecte onderscheid een maatregel van positieve actie inhoudt’ ([a] direct or indirect difference on the basis of one of the protected criteria never leads to the determination of any form of discrimination when this direct or indirect difference comes down to a measure of positive action).⁸⁹ For positive action measures to be implemented in Belgium, four cumulative conditions must be fulfilled, namely (1) there needs to be an obvious inequality, (2) the removal of such inequality must be defined as a promoted objective, (3) the measure of positive action must be of a temporary nature and disappear as soon as the promoted objective has been reached, (4) the rights of others cannot be unnecessarily limited.⁹⁰ Positive actions are thus implemented in order to ensure that everyone is treated equally in practice. Just like Directive 2000/43/EC, the Antiracism Law only provides in the possibility of positive action in public relations and not in private relations. The application rules and conditions of positive action measures in Belgium must be fixed in a Royal Decree.⁹¹

4.2. Policy Levels

4.2.1. Federal and Brussels

Having legislation providing for the possibility of adopting positive action measures for the reparation or elimination of obvious inequalities of ethnic minorities is one thing; making use of such a possibility is another; it is the difference between *de jure* et *de facto*. At the federal level in Belgium, no positive actions specifically targeting Roma have been taken so far. The National Roma Strategy, which was submitted in March 2012 by the federal government to the European Commission,⁹² does not provide for specific positive action measures for Roma either. It merely contains a grouping of previously existing actions not specifically targeting Roma, which are thus not adjusted to the specific needs of this minority.

At the level of the Brussels-Capital Region, no positive action measures specifically for Roma have been adopted so far either. Throughout the years, small-scale projects have been implemented – among others be the initiative of the Brussels based

⁸⁹ Article 10, par. 1 Belgian Antiracism Law.

⁹⁰ Article 10, par. 2 Belgian Antiracism Law.

⁹¹ Article 10, par. 3 Belgian Antiracism Law.

⁹² Federale Overheid, *Nationale strategie voor de integratie van de Roma*, 2012, 40 p.

organisation Foyer – to promote education of Roma minors in Brussels. Such projects were financed both by the federal State and the Brussels-Capital Region.⁹³ They included mediators of Roma origin who functioned as bridge figures to moderate and simplify the contact between Roma families and school instances.⁹⁴

4.2.2. Flanders

On 28 April 1998, the Flemish government adopted a Decree on the Flemish policy concerning ethnic-cultural minorities (hereinafter Flemish Decree 1998), thereby bringing Roma and Travellers – defined as “the traveling population” (“*de trekkende bevolking*”) – under the scope of application of legislation promoting the participation of ethnic-cultural minorities as full-fledged citizens in the Flemish Community.⁹⁵ Prior to this date, Roma and Travellers did not fall under the scope of Flemish positive action in employment.⁹⁶ In application of the Decree, the Flemish Minorities Centre (“*Vlaams Minderhedencentrum*”) was set up as semi-public institution to follow-up the situation of Roma and Travellers in Flanders, and to mediate where needed.⁹⁷ In addition, a cell for caravan work was set up in each of all five integration centres in Flanders, which are recognized and subsidised by the Flemish government to stimulate, support and watch over the Flemish minorities policy.⁹⁸ Since 30 April 2009, Flemish Decree 1998 encompasses the whole Flemish integration policy,⁹⁹ which is defined as an emancipation policy directed at the proportional participation of people protected by the Decree, the accessibility of all provisions by all and a policy based on coexistence within diversity.¹⁰⁰ Since, the Decree focuses on three groups of people, namely (1) people who reside legally in Belgium and who live or used to live in a trailer or whose parents did – with the exception of people living on a camping site or a weekend house,¹⁰¹ (2) people who reside in Belgium legally and

⁹³ Emmanuelle Bribosia and Isabelle Rorive, *Report on measures to combat discrimination. Country report 2010 Belgium*, 2011, p. 145.

⁹⁴ Koning Boudewijnstichting, *Scholing van Romakinderen in België. Ouders aan het woord*, 2009, p. 34-38. Koen Geurts, “Met één achterste kan je niet op twee paarden zitten” Roma-leerlingen op de schoolbanken, in *Handboek Leerlingenbegeleiding* (2010). Koen Geurts, Natasja Naegels en Norah Van den Daele, ‘Roma kinderen op de schoolbanken’, in *Welwijs* (jaargang 21 nummer 1, 2010), p. 14-15.

⁹⁵ Decreet van 28 april 1998 van de Vlaamse Overheid inzake het Vlaamse beleid ten aanzien van etnisch-culturele minderheden, B.S. 19 juni 1998 (hereinafter Flemish Decree 1998).

⁹⁶ Emmanuelle Bribosia and Isabelle Rorive, *Report on measures to combat discrimination. Country report 2010 Belgium*, 2011, p. 143.

⁹⁷ Article 2, 8°, 10, 12 and 13 Flemish Decree 1998.

⁹⁸ Article 2, 9° and 11°, article 10 and 27 Flemish Decree 1998.

⁹⁹ Decreet van 30 april 2009 van de Vlaamse Overheid betreffende het Vlaamse Integratiebeleid, B.S. 2 July 2009, p. 45282 (partly in force since 1 January 2011) (hereinafter Flemish Decree 2009).

¹⁰⁰ Article 4 para. 1 Flemish Decree 2009.

¹⁰¹ Article 3 para. 1, 2° Flemish Decree 2009.

permanently and who did not possess the Belgian nationality upon birth as well as people with Belgian nationality whose parents did not have the Belgian nationality at birth,¹⁰² and (3) illegal immigrants, especially those requesting guidance because of an emergency situation.¹⁰³

The educational policy of the Flemish Community generally contains intercultural elements but no positive action measures specifically targeting discrimination of Roma.¹⁰⁴ The Decree of 28 June 2002 on equal opportunities in education (hereinafter Flemish Decree 2002) is an exception, as it determines that schools enrolling children of Roma and Travellers can receive additional financial means.¹⁰⁵ The Decree also provides for the possibility for children of ‘the travelling population’ – which includes Roma children in addition to the children of bargees, circus artists and exploiters of fairground attractions¹⁰⁶ – to receive priority upon enrolment in schools.¹⁰⁷ So far, these actions have only had little impact, as only a very limited numbers of schools used this option, usually after receiving active support from civil society organisations.¹⁰⁸ Another exception is contained in a Circular of 16 August 2002 concerning the absence of students in primary education, which allows children of traveling families to be absent from school during the so-called ‘travel periods’ on the basis of a specific agreement for the follow-up of their academic progress.¹⁰⁹ No concrete evidence of the effectiveness of this measure was found.¹¹⁰

The Flemish Community has also undertaken some steps to improve the housing situation of the Roma in Flanders. Since 1990, local governments that decide to open a caravan site for Travellers can receive financial means up to 90% of the total cost of such site from the Flemish government.¹¹¹ Partly thanks to this initiative, there are approximately thirty caravan sites in Flanders today; together they can house about

¹⁰² Article 3 para. 1, 1° Flemish Decree 2009.

¹⁰³ Article 3 para. 2 Flemish Decree 2009.

¹⁰⁴ European Monitoring Centre on Racism and Xenophobia, *Roma and Travellers in Public Education. An overview of the situation in the EU Member states*, 2006, p. 69.

¹⁰⁵ Decreet van 28 juni 2002 van de Vlaamse Gemeenschap betreffende gelijke onderwijskansen, B.S. 14 september 2002 (hereinafter Flemish Decree 2002).

¹⁰⁶ Article II.1, 21° Flemish Decree 2002.

¹⁰⁷ Articles III.4, 3°, III.5 and III.6 Flemish Decree 2002.

¹⁰⁸ Emmanuelle Bribosia and Isabelle Rorive, *Report on measures to combat discrimination. Country report 2010 Belgium*, 2011, p. 144. European Monitoring Centre on Racism and Xenophobia, *Roma and Travellers in Public Education. An overview of the situation in the EU Member states*, 2006, p. 69.

¹⁰⁹ Point 3.5 of Omzendbrief BaO/2002/11 van 16 augustus 2002 van de Vlaamse Overheid inzake de afwezigheid van leerlingen in het basisonderwijs.

¹¹⁰ Emmanuelle Bribosia and Isabelle Rorive, *Report on measures to combat discrimination. Country report 2010 Belgium*, 2011, p. 144.

¹¹¹ Idem.

half of all Travellers in Belgium.¹¹² Despite the efforts made, there is still a serious lack of affordable and efficient caravan sites to accommodate the other half of the Travellers in Belgium, who are sometimes forced to live in houses or apartments because of such lack. The quality of water, electricity and sanitary provisions on the existing sites are – if present – often insufficient and unacceptable. Since 2004, the Flemish Housing Code (“Vlaamse Wooncode”) recognizes caravans – defined as “[e]en woongelegheden, gekenmerkt door flexibiliteit en verplaatsbaarheid, bestemd voor permanente en niet-recreatieve bewoning” ([a] living quarter, characterised by flexibility and mobility, designated for permanent and non-recreational habitation) – explicitly as a way of housing and they are thus protected accordingly.¹¹³ That same year, improving the housing condition of caravan inhabitants became one of the goals of the Flemish housing policy.¹¹⁴

4.2.3. Wallonia

Since 1 July 1982, the French Community has rules determining that local governments that install a site for mobile housing can receive financial means of up to 60% of the total cost.¹¹⁵ The Walloon Housing Code provides that the Walloon Region will take care of the costs of the sewerage, lighting and water provisions when local governments install caravan sites.¹¹⁶ Despite these regulations, Wallonia had only one caravan site for Travellers in 2011.¹¹⁷ In addition to housing, the French Community is also making efforts to improve the integration of Roma into the community. The Walloon Declaration of Regional Policy 2009-2014 stipulates support for communal projects promoting the integration of and coexistence with Travellers, the fight against stigmatisation of this ethnic minority and the development of additional regulations to organise the temporary stay of Travellers on

¹¹² Emmanuelle Bribosia and Isabelle Rorive, *Report on measures to combat discrimination. Country report 2010 Belgium*, 2011, p. 145.

¹¹³ Article 2, 33° of Decreet van 15 juli 1997 van de Vlaamse Overheid houdende de Vlaamse Wooncode, *B.S.* 19 augustus 1997 (as modified by Decreet van 19 maart 2004) (hereinafter Flemish Housing Code).

¹¹⁴ Article 4, 4° (c) Flemish Housing Code.

¹¹⁵ Arrêté de l'Exécutif de la Communauté française de 1 juillet 1982 fixant les conditions auxquelles des subsides peuvent être octroyés aux provinces, aux communes, agglomérations, fédérations et associations de communes et aux pouvoirs subordonnés, en vue de l'acquisition, de l'aménagement et de l'extension de terrains de campement en faveur des nomades, *M.B.* 10 Septembre 1982.

¹¹⁶ Article 44 du Décret du 29 octobre 1998 de la Communauté française sur la Code Wallon du Logement, *M.B.* 04 Décembre 1998, p. 38965.

¹¹⁷ Emmanuelle Bribosia and Isabelle Rorive, *Report on measures to combat discrimination. Country report 2010 Belgium*, 2011, p. 144.

the territory of Municipalities.¹¹⁸ Since 2001, Wallonia has its own Minorities Centres – the Mediation Centre of Travellers of the Walloon Region (“Centre de Médiation des Gens du Voyage de la Région wallonne”) – that is in charge of organising the dialogue between Travellers, society, regional and local governments.¹¹⁹ Aside from the above-mentioned specific measures, the French Community has adopted positive action measures, which are targeted at a larger injured population group than only Roma, namely newly arrived migrants.¹²⁰ A Decree of 30 April 2009 introduced a differentiated supervision scheme within schools allowing for differentiated attribution of means – especially personnel – to schools taking in socially disadvantaged children.¹²¹ The level of the supervision personnel at schools in the French Community is thus connected to the social-economical origin of the pupils in each school.¹²²

5. Importance of Ethnic Data

For positive action measures to be implemented and executed effectively, there is a need for precise and accurate equality data concerning the situation – for example in employment or education – of the group(s) for whom the positive action measures are introduced.¹²³ The collection of such equality data serves different purposes. Namely, the collection of data on ethnicity would finally (1) provide a decisive answer as to the number of Roma residing in Belgium, instead of having to work with rough estimates from various organisations. Such exact information would also (2) allow for the clear identification of Roma problems and discrimination in Belgian society and thus the identification of policy domains and levels where positive action is needed.¹²⁴ Directive 2000/43/EC does not oblige Member states to employ statistics when proving discrimination, but the use of statistics can be preliminary in certain situations

¹¹⁸ Déclaration de politique régionale wallonne 2009-2014 du Gouvernement wallonne, 2009 available at: http://easi.wallonie.be/servlet/Repository/DPR_wallonnie_2009.PDF?IDR=9295, p. 219.

¹¹⁹ Emmanuelle Bribosia and Isabelle Rorive, *Report on measures to combat discrimination. Country report 2010 Belgium*, 2011, p. 144.

¹²⁰ Emmanuelle Bribosia and Isabelle Rorive, *Report on measures to combat discrimination. Country report 2010 Belgium*, 2011, p. 145.

¹²¹ Décret de 30 avril 2009 de la Communauté française organisant un encadrement différencié au sein des établissements scolaires de la Communauté française afin d’assurer à chaque élève des chances égales d’émancipation sociale dans un environnement pédagogique de qualité, B.S. 9 juillet 2009, p. 47476.

¹²² This legislation adds to the Decree of 14 June 2001 concerning the reception of newly arrived children in the educational system organised or subsidised by the French speaking Community. Décret de 14 juin 2001 visant à l’insertion des élèves primo-arrivants dans l’enseignement organisé ou subventionné par la Communauté française, B.S. 17 juillet 2001, p. 24355. Emmanuelle Bribosia and Isabelle Rorive, *Report on measures to combat discrimination. Country report 2010 Belgium*, 2011, p. 145.

¹²³ EU Agency for Fundamental Rights, *Report on Racism and Xenophobia in the Member states of the EU*, 2007, p. 1.

¹²⁴ EU Agency for Fundamental Rights, *Report on Racism and Xenophobia in the Member states of the EU*, 2007, p. 156.

of indirect discrimination, namely when a seemingly neutral practice or rule disproportionately impacts individuals of a certain group.¹²⁵ In addition, equality data would make it possible to (3) effectively implement positive action measures as well as evaluate the effect of implemented measures.¹²⁶ Finally, the data (4) would allow policy makers to monitor when the discriminatory situation has been eliminated and thus when positive action measures should be removed.¹²⁷

When a census is taken in Belgium, people are asked about their nationality but never about their ethnicity because such question is considered to be contrary to data protection rules and the right to privacy. As mentioned, nationality can be an indication of ethnicity but it does not provide certainty. In any event, assuming – without any nuances – that the collection and use of ethnic data is in violation of privacy and data protection rules is incorrect. Provided certain conditions are met – including permission and the right to self-identification – the collection and use of such data is perfectly possible and even required in a pro-active policy fighting discrimination. In November 2006, the European Commission published the *European Handbook on Equality Data* in which it is explained why and how Member states should build “a national knowledge base on equality and discrimination on the grounds of racial and ethnic origin, religion and belief, disability, age and sexual orientation”.¹²⁸ Member states are thus stimulated by the European Commission to collect and use sensitive data on ethnicity in order to render their equality policies fully effective. For example, if racist and discriminatory incidents in Belgian public educational institutions as well as data on school performance of ethnic minorities would be systematically recorded, it would become possible to identify the required analytical tools to tackle and remove practices and structures leading to inequality in Belgian education.¹²⁹ Such reasoning can also be applied to other problematic domains, such as housing. In the course of 2006, consultations were held in Belgium at different levels about ethnic monitoring. While at the federal level the topic was merely discussed, at the Flemish level a data management tool was implemented to make a difference on the basis of names between “ethnic categories” within the

¹²⁵ Emmannuelle Bribosia and Isabelle Rorive, *In search of a balance between the right to equality and other fundamental rights*, 2010, p. 34.

¹²⁶ EU Agency for Fundamental Rights, *Report on Racism and Xenophobia in the Member states of the EU*, 2007, p. 156.

¹²⁷ *Idem*.

¹²⁸ European Commission, *European handbook on equality data*, 2006, 105 p.

¹²⁹ EU Agency for Fundamental Rights, *Report on Racism and Xenophobia in the Member states of the EU*, 2007, p. 157.

Flemish Service for Employment Mediation and Professional Training (VDAB).¹³⁰ The Flemish Service admitted the system was not flawless but that for the groups it targets – namely the labour market position of the two largest groups of non-EU migrants in Belgium – it suffices to look at the name as effective proxy.¹³¹ Even though this tool mainly targets people of Maghreb and Turkish origin and not Roma, it could be a forerunner of a future system in which data on ethnic origin are collected and statistically processed to fight discrimination of Roma and enhance their integration in Belgian society as full-fledged citizens.

6. Conclusion

The road towards Roma equality in Belgium - and across the EU for that matter – has been slow and the end is still far out of sight. A serious step towards a better integration of and life for Roma was taken last year when Roma issues were finally put high on the EU agenda. The EU Roma Framework forced Member states to face the problems the Roma in their country struggle with on a daily basis. It reaffirmed that the prohibition of discrimination does not suffice, but that active employment, housing, and other policies are required to fight inequalities and to realize the full integration of Roma into society. Another – be it very small – step to tackle Roma issues was taken when the EU Member states submitted their National Roma Strategy to the European Commission. This can only qualify as a very small step, because both the European Commission and civil society was not too inspired by these National Strategies. In the Belgian Roma Strategy, for example, no effort was made to introduce new positive action measures specifically targeted at the needs of the Roma population; it merely collects already existing, general measures, which clearly have not had sufficient impact on the situation of Roma in Belgium. It is true there have been local initiatives and successes toward Roma integration, but they were too small and too local to tackle the bigger issues at hand. Tackling Roma inequalities should be put high up on the political agenda. The complex issues call for firm cooperation across policy borders and levels. Long-term explicitly targeted, structured, coordinated, integrated initiatives should be introduced, both horizontally between

¹³⁰ EU Agency for Fundamental Rights, *Report on Racism and Xenophobia in the Member states of the EU*, 2007, p. 50.

¹³¹ The VDAB publishes monthly statistics on the unemployment rate of persons labelled to belong to the non-active ethnic category based on name recognition. The statistics can be consulted at <http://arvastat.vdab.be/arvastat/index.html>. EU Agency for Fundamental Rights, *Report on Racism and Xenophobia in the Member states of the EU*, 2007, p. 50-51.

different policy domains and vertically between different competence levels, as well as at the local, provincial, national and European level. Belgium should invest more in positive action measures for Roma, as well as in information and awareness campaigns of the complex situation of Roma and the need for positive action. In this process of fighting inequality and discrimination, ethnic data are indispensable. Despite encouragement and guidance by the European Commission, Belgium – and many other EU Member states – is still far away from reaching an agreement on the collection and statistical use of such sensitive data. The debate on this topic should be revived and stimulated instead of being shunned. Namely, the lack of ethnic data forms a huge barrier to the exact identification of problem areas where inequalities exist, the implementation of effective measures to eliminate such inequalities and discrimination, as well as to the monitoring of the impact of these measures. It is clear Belgium still has long way to go, which is exactly why serious action should be taken now.

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