Chapter 3
A Roma European Crisis Road-Map: A Holistic Answer to a Complex Problem

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3.1 The Persistence of the Roma Crisis

The Roma are recognized as being deeply discriminated against throughout the European Union (EU) and in all areas of life (European Commission – Directorate-General for Communication 2015). The matters that have been most publicized and made the headlines concern the expulsion of Roma individuals from countries such as France and Italy, and the limitations imposed on the free movement of the Roma. These matters are undoubtedly of extreme seriousness and have a significantly detrimental impact on the well-being of the Roma affected. The gravity of the situation and inadequacy of both Member States and European organisations, particularly the EU, in dealing with these matters have already been addressed by several authors (O'Nions 2011; Ferreira and Kostakopoulou 2016). It is therefore important to shift the focus to all other problems faced by the Roma, especially considering that the latest economic crisis seems to have disproportionately affected the Roma (European Commission 2014).

This chapter thus aims to explore what the EU law and policy have been in relation to Roma issues beyond free movement and forced expulsions. In doing so, the chapter will determine the line of action EU institutions should adopt regarding Roma matters. In particular, it questions the social integration approach and advocates in favour of a more holistic approach. To achieve this aim, this contribution goes beyond the usual disjointed analysis of discrete policy aspects and puts forward a comprehensive and critical analysis of all key Roma-related EU initiatives and norms beyond free movement and EU citizenship. Building on the analysis of a broad range of legal instruments, policy papers and case law, this contribution offers a logical narrative that integrates considerations of a legal, social, economic and cultural nature, thus putting together all the jigsaw pieces that currently contribute

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to the EU Roma policy. This, in turn, allows for the clear identification of the limitations of the current state-of-affairs and for the production of novel policy recommendations, something facilitated by references to and insights from the Council of Europe (CoE) activity in this field woven throughout the analysis.

The analysis starts by considering what competences and scope for action the EU possesses in relation to Roma issues, as well as the EU's approach and increasing number of initiatives in this field (Sect. 3.2). The chapter then moves on to considering particular areas of interest in this field, in particular discrimination law and policy (Sect. 3.3) and broader (individual and collective) human rights law and policy (Sect. 3.4). This will indicate the insufficiency of limiting EU action to particular, orthodox areas of intervention, which justifies considering a range of other aspects that can ensure a holistic approach to Roma issues (including matters such as participation, mainstreaming and funding) (Sect. 3.5). It will gradually become apparent throughout this contribution that a holistic approach is required from the EU in this field, one that combines participation and responsibility to foster both empowerment and responsibilization. Consequently, it will become clear in the conclusion what future directions in the EU's Roma law and policy can secure more humane and effective results.

3.2 The European Union's Scope for Action and Initiatives

The potential of the tools available to the EU in the fight against Roma social and economic deprivation has been recognized from early on by the EU institutions (European Parliament 2008; European Commission 2010a). The EU treaties, in particular, are rich in references to values that should guide EU action, namely human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities (Article 2 Treaty on European Union (TEU)), the rights, freedoms and principles set out in the Charter of Fundamental Rights of the EU (CFR), European Convention on Human Rights (ECHR) and the constitutional traditions common to the Member States (Article 6 TEU), the promotion of a high level of employment, adequate social protection, the fight against social exclusion and a high level of education, training and protection of human health (Article 9 Treaty on the Functioning of the EU, TFEU) and combating discrimination based on racial or ethnic origin, amongst other grounds (Article 10 TFEU). The EU also possesses clear competences in anti-discrimination (Article 19 TFEU), social and labor policy (Article 153 TFEU), education and vocational training (Articles 165 ff TFEU), culture (Article 167 TFEU) and health (Article 168 TFEU), which may all be used in an obvious and direct way to address the issues faced by the Roma.

Additionally, the EU possesses competences in other fields that may complement those mentioned above to support a holistic approach to the issues affecting Roma communities and individuals. These include the Economic, Social and Territorial Cohesion policies (Articles 174 ff TFEU) and the European Neighbourhood and Enlargement policies (European Commission 2012). More than a mere matter of legal competence, this is a matter of policy relevance: there are four million Roma

in Turkey and one million in the Western Balkans (European Commission 2014: section 4), which means that a possible future enlargement to these regions will considerably increase the Roma population in the EU, with all the inherent socio-economic consequences.

To overcome the limited competences of the EU, its institutions can also resort to Article 352 TFEU, the 'flexibility clause' that allows the EU to adopt the necessary measures to achieve the Treaties' objectives when the necessary powers have not been enshrined in the Treaties. This range of competences, although limited, puts the EU in a potentially excellent position to devise a holistic approach to its Roma policy. In exercising these competences, the EU sees itself as a 'coordinator of national policy and facilitator of policy dialogue' (Reding 2010), in a context of joint responsibility and complementary competences (European Commission 2010a). This has determined the exact degree of intervention that the EU has been willing to undertake in this field.

All EU institutions have contributed somehow to the EU's Roma policy, but the Commission and Parliament clearly stand out as the most active in the development of an EU Roma policy (see Magazzini's, Chiozza's and Rossi's contributions to this book). Key highlights include the 2009 launch of the European Platform for Roma Inclusion, which brings together EU institutions, international organizations, domestic authorities and civil society stakeholders, in an effort to exchange best practices and ensure effective cooperation (European Commission 2010a). Another highlight occurred in 2010, which brought the Commission's Communication "The social and economic integration of the Roma in Europe" (European Commission 2010a), followed by the 2011 Communication "An EU Framework for National Roma Integration Strategies up to 2020" (European Commission 2011a). By establishing targets in the fields of poverty reduction, employment and education, the 2011 Communication established a link between an EU Roma policy and the Europe 2020 strategy.

The year of 2013 brought a follow up Communication entitled "Steps Forward in Implementing National Roma Integration Strategies" (European Commission 2013a). In this document, the Commission made its second assessment of the Roma integration strategies. It highlighted the need for Member States to involve more effectively local and regional authorities and civil society, allocate more resources from national budgets to the Roma strategies, monitor and enable policy adjustments (including the production of impact indicators), fight discrimination more forcefully, and endow the national contact points with the necessary status, capacity, resources, mandate and political support. In its 2014 report (European Commission 2014), the Commission not only assessed progress regarding education, employment, healthcare and housing, but also regarding the fight against discrimination and the use of funding. The overall assessment was cautious, to say the least: "progress, although still slow, is beginning to take shape in most Member States" (European Commission 2014: section 3). In relation to all aspects covered by the report, Member States were asked to step up their efforts, as so much remained to be done. The subsequent 2016 report did not bring any good news: the focus remained on education, employment, health and housing (European Commission 2016a). Worryingly, some Member States (namely Denmark, Luxembourg and the Netherlands) did not report to the European Commission on the measures (if any)

taken in this field, without any apparent consequences. And despite some positive trends (including in relation to early childhood education and use of funds), the overall picture has become even bleaker. What is striking in all these policy papers is the almost complete absence of allusion to "hard law" instruments and actual EU sanctions, which gives the EU Roma policy a rather weak tone. A holistic approach, as advocated in this contribution, requires a more prominent role for "hard law" instruments in the Roma policy, as will be considered further below.

The European Parliament has also enthusiastically contributed towards the formation of an EU Roma policy, especially with strong-worded texts regarding the fingerprinting of the Roma in Italy (European Parliament 2008). The 2011 resolution on the EU strategy on Roma inclusion immediately preceded the Commission's "An EU Framework for National Roma Integration Strategies up to 2020", but whilst the Parliament prompted the Commission to concentrate on fundamental rights, education, culture, employment, housing, healthcare and political and civil participation as priority areas (European Parliament 2011), the Commission opted for only four priority areas (education, employment, housing and healthcare) (European Commission 2011a), leaving aside fundamental rights, culture and political and civil participation. This runs counter to the holistic approach advocated by this contribution, which, as will be seen below, requires a more thorough consideration of human rights and political and civil participation.

Despite its apparently broad substantive scope, EU Roma policy in fact falls considerably short of a holistic policy backed up by effective enforcement mechanisms. It is in the aftermath of this succession of policy initiatives and inter-institutional dialogue in which we now find ourselves. Much has been discussed and proposed in these documents, but it is crucial to assess what tangible legal tools have been made available to the Roma to fight their socio-economic deprivation. The obvious starting point is discrimination law tools.

3.3 The Limitations of a Discrimination Policy Approach

The potential to use the Race Equality Directive to address several of the problems affecting the Roma is apparent.[1] Indeed, Article 3 of the Race Equality Directive brings within its scope the prohibition of discrimination on race or ethnic grounds in relation to forced evictions, lack of provision of adequate housing, school segregation and discriminatory provision of services. These are still urgent matters, as such practices are still common in some Member States (Amnesty International 2015).

And it is, perhaps, regarding educational segregation that the Race Equality Directive – in conjunction with the CFR (namely its Articles 14, 21, 22 and 24 on the rights to education, prohibition of discrimination, respect for cultural diversity and rights of the child respectively) – has the greatest potential in the context of

[1] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000, pp. 22–26.

Roma deprivation. The Commission has rightly made use of this Directive in the context of school segregation by issuing letters of formal notice against Hungary, Czech Republic and Slovakia and subsequently initiating proceedings against the latter two owing to their legislation and administrative practices leading to Roma children being over-represented in special schools for children with mental disabilities and being segregated in mainstream schools (European Commission 2016a, b). The effective use of this legal tool before the Court of Justice of the EU (CJEU) by victims of this form of discrimination may lead to a powerful synergy between the case law of the CJEU and of the European Court of Human Rights (ECtHR) on this matter. This seems to be well illustrated by the decisions in *DH and other v Czech Republic*,[2] *Sampanis and others v Greece*,[3] and *Oršuš v Croatia*,[4] where the ECtHR referred to the Race Equality Directive to support its understanding of the legal principles applicable to the instances of school segregation before them. This approach can be used as an example of many other aspects of Roma lives that may be improved by a more systematic coupling of specific anti-discrimination legal tools (such as the Race Equality Directive) and broader human rights instruments (such as the ECHR). It remains true that the EU lacks competence to organize domestic educational systems, so its ("hard law") intervention is mostly restricted to anti-discrimination measures. Yet, the potential of this intervention can be far-reaching, in the light of the lack of margin of appreciation and limited role of parental consent in the context of the application of this Directive (as opposed to the ECHR system) (Stalford 2012: 164).

The Parliament has also highlighted the role of Article 18 TFEU (that prohibits discrimination on grounds of nationality) in the context of discrimination between EU citizens of Roma origin and other EU citizens, particularly regarding fingerprint collection by Italian authorities (European Parliament 2008). Although this treaty norm is ancillary to market building (as opposed to an inherently anti-discriminatory provision), it constitutes part of the EU anti-discrimination arsenal and should thus be used whenever appropriate.

Yet, anti-discrimination law is nowadays consensually seen as an insufficient and inadequate instrument to address the historical and wide-spread institutional and social discrimination suffered by the Roma. The limits pointed out tend to relate to discrimination law's scope and enforcement (including monitoring and sanctioning). O'Nions, for instance, argues that the Race Equality Directive's formal approach, coupled with a lack of focused strategy and with the principle of subsidiarity, have left Member States to deal with those policies that could ensure greater social equality (O'Nions 2011: 363). It may be questioned how formal EU anti-discrimination policy really is and how much the EU is lacking a focused strategy. Still, it remains true that the current discrimination law framework relies on an individual claim model, which does not address collective, deeply-entrenched socio-economic disparities, so a more holistic approach to Roma policy-making is urgent.

[2] Application No. 57325/00, Judgment of the Grand Chamber, 13 November 2007.

[3] Application No. 32526/05, Judgment of 5 June 2008.

[4] Application No. 15766/03, Judgment of 16 March 2010.

It is also crucial to examine how particular groups of Roma are discriminated against. It has been confirmed that Roma women are victims of multiple discrimination (even to a greater extent than other ethnic minorities), and are affected particularly with regards to education, health, employment, and participation in public/political life (Corsi et al. 2010; European Parliament 2011). Contentiously, though, some of the sources of such multiple discrimination have been located not only externally (health services, educational structures, potential employers, etc.), but also internally, i.e., in connection with 'the role of women in Roma culture and family structure' – in particular with having caring tasks from a very early age, marrying at a young age, and giving birth to a high number of children (Corsi et al. 2010: 12). The range of social, cultural and economic factors that interact to produce the current reality is vast and complex, which requires not only gender mainstreaming, but also an enhanced degree of intercultural sensitivity and possibly evolution, again highlighting the importance of a holistic approach to Roma policy-making.

Similarly, Roma children have been recognized as particularly vulnerable to discriminatory practices, being amongst the most socio-economically deprived within the Roma minority (European Parliament 2011). This is starkly illustrated by reports of exclusion of children from French primary schools (ERRC 2014). This state-of-affairs has warranted several EU initiatives, including requests for particular regard for children in the monitoring systems of the implementation of the National Roma Integration Strategies (European Parliament 2013: par. 12).

Bearing in mind all of the above, the measures required to develop anti-discrimination law into a more appropriate tool to improve the lives of the Roma thus include: (i) broadening the scope of the current discrimination legal framework as to cover more fields of life; (ii) bringing within its scope instances of multi and intersectional discrimination; and (iii) promoting affirmative/positive action (namely in the fields of education and labor) (Committee of Ministers 2008: section VII.2; European Commission – Directorate-General for Employment, Social Affairs and Equal Opportunities 2010; European Parliament 2011: para. 4(c), 68, 76–78). The EU could go as far as amending the Race Equality Directive to require Member States to introduce affirmative action measures to address socio-economic inequality, rather than leaving this to the discretion of domestic authorities. A shift of mindset is required to more fully incorporate affirmative action into the EU legal framework – not just as tolerable, but as a necessary good as part of a more holistic approach to Roma policy-making.

No matter how good an anti-discrimination legal framework may be, it is of limited value if there is insufficient awareness of its existence. The lack of current awareness by Roma individuals of their right not to be discriminated is striking: in an EU Agency for Fundamental Rights (FRA) survey, 73% of the Roma individuals interviewed replied that they believed that there was no law forbidding discrimination against ethnic minorities or that they did not know whether there was such a law (European Union Agency for Fundamental Rights n.d.). Awareness-raising is thus an essential element of a holistic Roma policy to effectively use discrimination law to improve the situation of the Roma.

At any rate, the overlapping layers of discrimination and rights deprivation that affect the Roma cannot be addressed by a traditional, unimaginative and classic paradigm of discrimination law that relies on individual claims and negative obligations. An effective approach to this complex phenomenon will require a much more holistic approach, including political leadership and shaping public discourses to promote the need to respect and value diversity (European Commission 2014: section 3.5). Yet, not even a broader public and political discourse about diversity will suffice – an even broader framework, one entailing human rights and minority protection discourses, is required in this context. That makes it vital to consider how the wider EU human rights framework can be used to address the problems that affect the Roma.

3.4 Looking for the Answer in Human Rights and Minorities' Protection

In the light of the acknowledged insufficiency and inadequacy of anti-discrimination law to comprehensively address the difficulties suffered by the Roma, a broader framework protecting the fundamental rights of the Roma is often seen as a more appropriate tool to help the Roma improve their lives – something (at least to some extent) within reach of the EU on the basis of Article 6 TEU. This has been recognized by the European Parliament, which also highlighted the relevance of Article 7 TEU in this context, thus hinting at the possibility of the EU, as a last resort, declaring a clear risk of a serious breach of the fundamental rights of the Roma by a Member State and even suspending that Member State's voting rights (European Parliament 2011). Crucially, the CFR establishes the principles of non-discrimination (including on grounds of race, color, ethnic or social origin, genetic features, language, membership of a national minority and birth; Article 21) and of respect for cultural, religious and linguistic diversity (Article 22). The use of broader human rights discourses by EU institutions in the context of Roma policy can thus be very powerful. Even if these may not afford new competences to the EU (Article 51 CFR), they can ensure more comprehensive analyses and appropriate policy-making.

A key example of how the EU human rights framework can be used to defend the fundamental rights of the Roma regards the census and fingerprinting of the Roma in Italy on the basis of their ethnicity. Indeed, this initiative constituted a violation of the fundamental rights of the Roma affected, including their personal dignity (European Parliament 2008: par. N). The CoE Commissioner for Human Rights concluded that the EU Data Protection Directive had been violated by the Italian census targeting the Roma, as none of the exceptions in that Directive could apply to the case in question (Hammarberg 2009: par. 59).[5]

[5] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, pp. 31–50.

Another example of how EU law designed to protect fundamental rights can be used to defend the Roma concerns hate speech. Recital 6 of the Council Framework Decision on Combating Racism expressly acknowledges that racism and xenophobia cannot be addressed exclusively by criminal law, as a more comprehensive framework is required for those purposes.[6] Still, this is an essential instrument to ensure that across the EU all forms of racist and xenophobic offences, including instigation, aiding and abetting (Article 2), are punished by criminal law and that their racist or xenophobic nature constitutes an aggravating circumstance or at least is taken into consideration in the determination of the penalty (Article 4). The future may also bring improvements to this Decision, namely the prohibition of any crime committed with a discriminatory motive and the obligation on states to investigate any allegation of discriminatory motive (Amnesty International 2014: 31).

Human rights concerns relating to minorities, including the Roma, have also permeated EU's neighbourhood and accession policies. Yet, the pre-accession level of scrutiny regarding the respect afforded to the rights of the Roma has been considered poor and at the post-accession stage such matters ironically become much harder to monitor and control (O'Nions 2011: 366). Consequently, although the "carrot" of accession to the EU was used to introduce some improvements in the lives of the Roma in accession countries, its full potential was far from exhausted and the Roma within accession countries remained generally socio-economically deprived (O'Nions 2011: 367).

Limiting one-self to these instruments produced by the EU only offers patchwork protection to the Roma, so the EU needs to go beyond its own human rights instruments and rely on the international – especially regional – human rights framework. In the light of Article 6 TEU and its allusion to the ECHR, the obvious complement and support to the EU's own framework is the rich array of tools produced by the CoE. The CoE has developed a web of conventions, recommendations, resolutions and case law that can be effectively used by the EU to enhance the protection that its own framework offers the Roma. The EU – an economically and politically powerful organisation – can rely on the relatively strong standards produced by the CoE (Ahmed 2015), which often lacks the EU's political and economic leverage. Key examples can be found in the work of several CoE institutions, with the Committee of Ministers being particularly prolific in this field.[7] The European Commission against Racism and Intolerance (ECRI) has naturally also paid attention to the plight of the Roma.[8] All this policy activity has been offered a

[6] Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328, 6.12.2008, pp. 55–58.

[7] For example, Recommendation CM/Rec(2012)9 to member States on mediation as an effective tool for promoting respect for human rights and social inclusion of Roma, adopted by the Committee of Ministers on 12 September 2012 at the 1149th meeting of the Ministers' Deputies.

[8] For example, ECRI General Policy Recommendation no. 3 on combating racism and intolerance against Roma/Gypsies, adopted on 6 March 1998.

useful and coherent umbrella under the 1995 Framework Convention for the Protection of National Minorities (ETS No.157).

Yet, the most prominent aspect of the CoE activity in supporting the human rights of the Roma has been the case law produced by the ECtHR. The Court has made judgments on a range of very grave violations of ECHR rights affecting the Roma, including school segregation (discussed above, Sect. 3.3), beatings, violence by police, public harassment, state-sponsored discrimination, forced sterilisation and lack of investigation of violation of rights of the Roma.[9] Another significant line of case law relates to caravan-settlements in the UK.[10] The Court generally found that the UK's rules on caravan-settlement and town planning were neutral (hence non-discriminatory), within the allowed margin of appreciation, and sufficiently sensitive to the needs of the Roma. This has been done at the cost of criminalising the Roma for parking their caravans on the properties owned by themselves (Barth 2007: 383), which seems to indicate an instance of indirect discrimination that is hard to justify. This is even more the case if one recalls the special protection that cultural practices of minority groups deserve and that nomadism is an extremely relevant cultural practice, which, despite having been historically slandered as "vagabondage", actually reflects a "sophisticated commercial trading system" (Barth 2007: 397 ff). It is possible that a more stringent assessment of instances of indirect discrimination under the Race Equality Directive, supported by Articles 21 and 22 CFR, could lead to greater protection of the Roma caravan-settlement practice.

In an attempt to follow the lead of this arsenal of tools developed by the CoE, the EU institutions have occasionally adopted a human rights, minorities and culturally sensitive tone, arguing in favour of the protection of the cultural and linguistic identity of the Roma, the value of their cultural heritage to richer and more diverse societies, and the need to take into account cultural diversity in the context of policy-making and implementation, namely in the context of education and healthcare (European Parliament 2011: para. 4(c), 12, 79, European Commission 2014: sections 3.1 and 3.3). The value of cultural diversity, however, clearly also has its limits, as the human rights and cultural relativism debate has evidenced for a long time (Donders 2010). A clear sign of this dilemma is the attempt to reconcile intercultural sensitivity with the wish to prohibit cultural practices that are harmful to children, such as child marriages and child labour (European Parliament 2011). Whilst it is legitimate not to go

[9] See, for example, *Velikova v Bulgaria* (Application No. 41488/98, Judgment of 18 May 2000), *Nachova and Others v Bulgaria* (Applications No. 43577/98 and 43579/98, Judgment of 6 July 2005), *Anguelova v Bulgaria* (Application No. 38361/97, Judgment of 13 June 2002), *M and others v Italy and Bulgaria* (Application No. 40020/03, Judgment of 31 July 2012), *Stoica v Romania* (Application No. 42722/02, Judgment of 4 March 2008), *Assenov and Others v Bulgaria* (Application No. 90/1997/874/1086, Judgment of 28 October 1998), *V.C. v. Slovakia* (Application no. 18968/07, Judgment of 8 November 2011), and *Lăcătuş v Romania* (Application No. 12694/04, Judgment of 13 November 2012).

[10] For example, *Buckley v UK* (Application No. 20348/92, Judgment of 29 September 1996), *Varey v UK* (Application No. 26662/95, Judgment of 21 December 2000), *Coster v UK* (Application No. 24876/94, Judgment of 18 January 2001), and *Jane Smith v UK* (Application No. 25154/94, Judgment of 18 January 2001).

as far as letting cultural relativism justify child labour or child marriage, a more culturally sensitive approach could be adopted regarding very precise and practical matters. For instance, the proof of sufficient resources and of residence, for the purposes of fulfilling the requirements set in the Citizenship Directive,[11] should be carried out in the light of the cultural specificities of some Roma communities, namely the fact that individuals may be solely engaged in the informal economic sector and may be camp dwellers (Ferreira and Kostakopoulou 2016).[12]

A human rights and minority protection perspective of the EU Roma policy can do much to overcome some of the limitations of a purely anti-discrimination framework. Still, a human rights framework is itself plagued with limitations (O'Nions 2007: 19), and it cannot address a range of non-individual/human rights aspects that a Roma policy requires. A more holistic framework is thus required, as it will now be seen.

3.5 Adopting a Holistic View of EU Roma Law and Policy

The need for adopting a holistic approach to policy-making regarding the Roma is patent if, besides all aspects discussed above, one considers the inter-connectedness of all problems afflicting this minority. For instance, segregation in schools leads to poor education, which in turn leads to reduced chances of success in the labour market, lower income and, more generally, lower socio-economic status, which also leads to a lack of ability to access healthcare and articulate one's needs at all levels (including political), leading to further exclusion, discrimination and segregation (European Commission 2014: section 3.3). The complex and web-like vicious circles described here are extremely hard to address by isolated or sectoral policies, and thus require a holistic, complex and dynamic approach by the EU institutions.

The notion of mainstreaming, so familiar in the field of EU discrimination law (in particular with reference to gender), is key here and has been adopted regarding the needs of the Roma (Committee of Ministers 2008: section VII.6, European Commission 2010c, 2014: section 2). Indeed, in any legal and policy-making activity, the EU institutions (alongside domestic and regional authorities) should bear in mind the needs and interests of the Roma and the impact of any decision on the Roma (or any other socio-economic-cultural minority group, for that matter) (European Commission – Directorate-General for Employment, Social Affairs and Equal Opportunities 2010). This has been reflected in EU initiatives in a range of fields, including regarding youth, culture, education, employment and housing policies (European Commission 2010a). Mainstreaming, however, only improves pol-

[11] Directive 2004/38/EC of the European Parliament and of the Council, of 29 April 2004, on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 158, 30.4.2004, p. 77–123.

[12] Also suggested by Rec(2005)4 on improving the housing conditions of Roma and Travellers in Europe (adopted on 23 February 2005) and Rec(2004)14 on the movement and encampment of Travellers in Europe (adopted on 1 December 2004).

icy that already exists for other purposes, and the needs of the Roma require targeted policies, so it is necessary to engage with more complex and sophisticated targeted policies (European Commission – Directorate-General for Employment, Social Affairs and Equal Opportunities 2010). These policies should target all actors of Roma discrimination, deprivation, hostility and disadvantage, be them private or public, Roma or non-Roma, European or domestic.

To support such targeted policies funding is essential, which accounts for funding having become a recurrent theme in EU policy-making. The different EU funds have come to be seen as tools with great potential to address many of the problems the Roma experience. This is also reflected in the creation of the European Network on Social Inclusion and Roma under the Structural Funds. The Commission has been clearly keen on seeing EU funds being used in Roma-specific projects or, at least, projects that have the Roma as potential beneficiaries, and has changed the applicable rules to address, amongst others, the needs of the Roma, such as housing (European Commission 2010e). The use of EU funds in this context is, however, also plagued with problems, including difficult and time-consuming application procedures, lack of local administrative and technical expertise, limited capacity to co-fund by domestic authorities, insufficient use of funds ("lack of absorption capacity") by Member States, inappropriateness of the projects funded, limited impact of the funds used, and lack of involvement by civil society and Roma communities themselves (European Commission 2010d, European Parliament 2011: para. 36, 49, 55). The Parliament has summarized many of the issues at stake in this regard, by calling on the Commission and Members States to launch "more target- and development-oriented, complex, flexible and sustainable programmes with a longer time coverage and greater territorial relevance, focusing on the most disadvantaged micro-regions in their geographical, socio-economic and cultural context, while also addressing the problem of suburban and rural poverty and segregated Roma neighbourhoods" (European Parliament 2011: par. 36).

To address the shortcomings identified throughout time in relation to EU funding, the Commission proposed changes to the cohesion policy 2014–2020 that allow a combination of EU funds, private and third sector resources, and urged Member States to use resources on social investment (European Commission 2013a: 7, 12–13). A significant proportion of the funding made available by the EU is to be dedicated to "investment in human capital, employment and social inclusion", which necessarily includes projects that benefit the Roma, such as housing schemes (European Commission 2014: section 3.6). As the Commission sums it up, there is the need for a "multi-sector, multi-stakeholder and multi-fund approach" (European Commission 2014: section 3.6). Funding has also been seen as a potentially useful tool to endow the Open Method of Coordination (OMC) process with greater effectiveness, as associating funding mechanisms with the peer-review processes may encourage domestic authorities to be more proactive and prone to change (European Parliament 2011: par. M).

As with the use of EU funding, the problem with many other strategies and measures relating to the Roma relates to the lack of monitoring and evaluation of the implementation stage. EU policy-makers have thus highlighted the importance of

monitoring and enabling policy adjustment (European Commission 2013a: par. 1), including the collection of reliable data and evaluation of results (European Commission 2010d). Similarly, to ensure adequate and effective implementation of projects funded by the EU, the role of mediators has been recurrently highlighted, particularly in the context of schools and the healthcare sector (European Parliament 2011: para. G and 4(c), European Commission 2014: section 3.3). According to CoE's guidance, mediators should be chosen in consultation with the communities in question, and serve as contact persons for both authorities and communities for the purposes of disseminating information, facilitate policy-making and assist in the implementation of measures (Committee of Ministers 2008: section VII.3). Yet, rather than relying on mediators on a long-term basis, communities and individuals should continue to be empowered and educated to be able to dispense with mediators in due course (Committee of Ministers 2008: section VII.3.ii).

Crucially, the focus throughout EU and domestic Roma strategies is placed on integration. An illustration of that is the Commission's belief that "all Roma policies should aim at integrating Roma into standard schools, labour market and society rather than creating a parallel society" (European Commission 2010c). Integration, however, is far from being the best approach. Integration, or even inclusion, is an unfortunate focus for any approach to address the difficulties experienced by the Roma, as it directs minds to ideas of the smaller group being absorbed by the larger group, losing its identity and changing its characteristics for the sake of fitting into the homogenising supra-structure – thus raising fears of a return to past assimilationist policies (O'Nions 2007: 5–6). Although "integration" is seen by integrative communication theory as requiring a much lower degree of absorption into the host society than "assimilation" does (Berry 1997), the EU policy-makers seem to see "integration" as demanding much more from the Roma than mere respect for the key values of the host society. This has been put down in words in a rather unfortunate way by Commissioner Reding, by stating that "[w]e need dedication (…) from Roma communities to be willing to integrate and to be willing to have a normal way of living" (Reding 2014: 35:15). Yet, the "normalising" pressure lacks any sort of legitimacy unless any illegal activities are in question.

Contrarily, one should favour alternative notions that require a smaller degree of abdication of one's own cultural identity. For example, a much better theoretical and policy-making framework for the Roma and other socio-economic-cultural minorities may be simply *convivencia*, as Commissioner Reding herself mentioned at the Second European Roma Summit – *convivencia* understood as a form of harmonious cohabitation or coexistence impregnated with respect and tolerance for other cultures and religions (Reding 2010). This framework would be much closer to recognising the importance of intercultural dialogue and pluralist approaches, as highlighted in current scholarly debates on social relationships (O'Nions 2007: 18–19 and 174ff, Kostakopoulou 2009, Mansouri 2017). The Parliament has also highlighted the value of intercultural dialogue (European Parliament 2011: par. 74), and has even offered a positive example of a dynamic understanding of *convivencia*, in the context of education: those children of families wishing to maintain a nomadic life style should be offered the possibility to attend school in a less rigid format, possibly by offering educational activities in Roma camps (European Parliament 2011: par. 89).

Such an approach based on intercultural dialogue would favour greater equality and dignity. This would not, however, mean that communities would remain isolated and detached; on the contrary, this approach would be necessarily accompanied by a dialogical strategy, in the sense that communities should enter into dialogue and cooperate to contribute towards the common good, even if retaining different cultural traditions (Goodwin 2009: 147). At the very least, the EU should adopt a richer and broader understanding of "integration", along the lines of the CoE, which intertwines integration with community empowerment, capacity building, intercultural awareness of the rest of society, and respect for the Roma and Traveller identity (Committee of Ministers 2008: section II). Accommodation of cultural differences within the limits of the rule of law is paramount to create a harmonious and peaceful society, one that truly values, respects and promotes cultural diversity. But we may actually be going in the opposite direction. The Commission's campaign "for Roma with Roma" – fighting Roma stereotypes and promoting cultural understanding – is a positive step (European Commission 2016a: 2.2), but EU official documents need to similarly reflect that mind-set.

One may legitimately fear that EU law and policy on the Roma is, in fact, distancing itself from culturally sensitive and socially embedded initiatives, in favour of a more utilitarian view of these matters. As alluded to above, in 2010 Commissioner Reding opted to focus on *convivencia*, allied with participation, equal rights and equal opportunities for the Roma – something akin to an intercultural dialogue or "living together in dignity" approach. Yet, the Commission's subsequent outputs on this topic have increasingly shifted the focus towards the economic benefits of social integration. Although references to these economic benefits may have been made *en passant* in the early outputs of the Commission (or at least only after the fundamental rights, social and moral reasons to act had been mentioned) (Andor 2010; Reding 2010; European Commission 2011b, c), those references have become increasingly pervasive, until almost overtaking the basic rationale for undertaking any initiative in this field. For instance, the 2013 Commission's memo on the International Roma Day goes as far as to list a range of reasons of material nature ("productivity", "investment", "growth") as to why "Roma inclusion makes sense", failing to mention rights, social or moral imperatives a single time, and simply dropping the word 'equality' towards the end of the memo (European Commission 2013b). The "cultural and historical factors and gender roles" (Reding 2010) that required so much attention in 2010 are nowhere to be found in more recent papers from the Commission.

This shift seems to have been influenced, at least partly, by the adoption of the Europe 2020 strategy, so often referred to in the Commission's work on the Roma. The focus is currently on "delivering growth", with aims in the areas of employment, innovation, education, poverty reduction and climate/energy (European Commission 2010b). The most recent European Commission report on assessing the implementation of the EU Framework for National Roma Integration Strategies reiterates that message by stating that the "Commission has linked monitoring progress in Roma inclusion to its wider growth agenda, Europe 2020" (European Commission 2016a). The apparently benign nature of these aims is tainted by the disproportionate emphasis on the economic benefits of Roma integration (amounting to around

EUR 0.5 billion a year) alleged by the World Bank in a policy note presented in 2010 (World Bank 2010) and used by the EU in several documents (European Commission 2011b, c). Even if this trend may occur due to the relatively anodyne political strategic aim of harnessing support for the "Roma cause" or couching EU's action more safely within the remit of EU competences, the message conveyed is still that it is imperative to support the Roma for the sake of the rest of the society, not for the sake of the Roma themselves. This can hardly be interpreted as a humane approach to such matters. And even if, for some reason, this may be considered a caricature of the real state-of-affairs, it cannot be denied that the EU's policy has distanced itself from a fully-fledged humane, culturally sensitive and morally righteous policy.

This worrying trend is compounded by the fact that, more generally, the Commission highlights the "benefits of diversity" (European Commission 2014: section 3.5), rather than the need to respect and value it for its inherent moral good, which may be interpreted as diversity only deserving respect if it brings benefits. The danger of this approach is that diversity will stop deserving attention and support if it is proven that no tangible economic or otherwise material benefits derive from it. This inappropriate emphasis on the (economic) benefits of Roma integration and diversity contrasts sharply with the CoE's emphasis on protection from racism and discrimination, participation and mediation. Indeed, the CoE's approach to the Roma seems more culturally sensitive and less prescriptive. This is not to say the EU institutions are not capable of such an approach. For example, in the field of education, the Commission has shown a good degree of cultural sensitivity (European Commission – Directorate-General for Education, Youth, Sport and Culture 2012). Yet, such an approach by the EU has become rarer. Even if a clear reflection of the different histories and mandates of the CoE and the EU, such a difference in these organisations' approaches requires adjustments for the sake of the dignity and autonomy of the Roma.

Perhaps a way of bringing EU law and policy on the Roma back to a more humane approach would be to allow future initiatives to be informed by the capabilities approach developed by Sen (1992, 2010). Hints at this approach can be read between the lines in some EU policies on the Roma: for example, Commissioner Reding has talked about "strengthening the capacity of potential beneficiaries" (Reding 2010), and Commissioner Andor has spoken of strengthening capacity and ownership and of Roma inclusion having "to be done with the Roma communities, not for them – and certainly not instead of them" (Andor 2010). This focus on capabilities and capacity-building is inextricably linked to the promotion of the civil and political participation of the Roma to a greater degree, a fundamental rights issue in itself (O'Nions 2007: 236, European Commission – Directorate-General for Employment, Social Affairs and Equal Opportunities 2010; Ferreira and Kostakopoulou 2016). Despite the Parliament's emphasis on the importance of participation (European Parliament 2011: par. 4(a)) and the Commission's realisation of that importance (European Commission 2010d), the EU initiatives in this field have neglected the importance of this policy dimension. For now, participation is very much limited to the platforms that the Roma themselves have successfully created, such as the European Roma Rights Centre (ERRC). A greater degree of civic

and political Roma participation is necessary to ensure that Roma interests are appropriately considered, and that the Roma are empowered to take part in all decision and policy-making affecting them.

An analysis of EU law and policy regarding the Roma may not, however, simply conclude with the preference for a holistic approach. In other words, a holistic approach entails more than simply the consideration of a range of factors that should affect the choice of policy and action by the EU: consistent with the importance of Roma participation, attention also needs to be placed on what is required from the Roma themselves. Although frequently avoided, for the sake of not falling into the trap of blaming the Roma for their own plight, some institutional and academic actors have been bold enough – in a culturally sensitive way – to highlight the need for the Roma to also assume their fair share of responsibility and initiative in this process, something looked at by some scholars from the perspective of "exit barriers" and "entry barriers", i.e., the "cost of exit from the traditional Roma community and the cost of entry into the mainstream society" (Ciaian and Kancs 2016). The Parliament, for example, has asserted that "true integration of the Roma is possible only by means of mutual recognition of the rights and *obligations* of the communities concerned" and that "concerted action and *responsibility* should be taken throughout the whole process *by Roma* and non-Roma organisations" [emphasis added] (European Parliament 2011: para. J and 22).

Although the Parliament resorts to the "integration" terminology, it does so in a balanced way, by stressing that "integration is a two-track exercise and that every integration effort implies shared but asymmetrical responsibilities of the parties in light of their capacities and their economic, political and social resources" (European Parliament 2013: par. 28). Yet, as discussed above, integration may not be the way forward, at least not in the narrow way it is often understood. Any attempt to restrict Roma freedom and identity should be limited to the extent necessary to enforce the rule of law – anything beyond that is illegitimate social and cultural engineering.

3.6 In Conclusion

Most discussions about issues relating to the Roma make for depressing reading. Indeed, the gravity of the issues, allied with the lack of prospects for improvement any time soon, is extremely worrying. Nevertheless, there have also been positive developments and no lack of examples of success in the lives of the Roma. The difficulties along the way have been foreseen since the beginning by policy-makers and academics alike. To manage these difficulties as effectively as possible, the CoE has rightly adopted a "rights-based, comprehensive, dynamic and integrated approach" (Committee of Ministers 2008: section III.i), which reflects the need to consider the range of aspects discussed in this chapter. Stalford clearly summarizes the importance of a complex and nuanced approach to the needs of the Roma by stating that the "multifarious nature of discrimination and social exclusion, even within particular communities, reinforces the need for a mixed strategy at European

level: one that deploys a blend of legal and non-legal initiatives, including top-down legal prescription, coupled with the OMC and complemented by bottom-up awareness-raising and grass-roots advocacy" (Stalford 2012: 164). O'Nions also aptly concludes that we require a "complementary approach to human rights which emphasizes the importance of cultural identity and autonomy in addition to the prevention of discrimination and promotion of equality" (O'Nions 2007: 279).

The key, therefore, seems to lie in a combination of participation and responsibility to allow empowerment and responsibilisation. Whilst illegal activities by Roma individuals should obviously not be allowed, all instances of commission or complicity with anti-Roma violence, harassment or discrimination must also be vigorously fought against by the police and other public authorities, namely by using the Framework Decision on Combating Racism (discussed above in Sect. 3.4). Moreover, the Commission's powers to enforce the Treaties and ensure respect for EU law (especially Articles 17 and Article 258 TFEU) need to be used not only in instances of lack or seriously deficient transposition of directives, but more broadly to address many of the problems the Roma suffer in the context of housing, education, employment and more generally services. In this context, the Parliament has already alerted the Commission to the need to rely on stronger monitoring and enforcement mechanisms, including infringement proceedings (European Parliament 2013: par. 2). In the light of the infringement procedures launched in 2014 against the Czech Republic (Amnesty International 2015) and in 2015 against Slovakia (ERRC 2014), the Commission seems to have tried to address the subsisting segregation of Roma children in schools. In order to have available a single, comprehensive "hard law" instrument to ameliorate most of the issues identified in this chapter, the idea of a directive specifically aimed at Roma integration could be revisited.[13] Yet, this directive would need to be wary of assimilationist trends and reflect the relevant CoE case law, standards and recommendations.

The shortcomings of EU law and policy analysed in this chapter should not completely obfuscate the valuable work that has been carried out and the strategies that have been developed at EU level. Nonetheless, the large majority of the Roma are still in a situation of socio-economic deprivation that needs to be urgently addressed. Most importantly, it remains true that there is a "powerful EU framework of legislative, financial and policy coordination tools already available to support Roma inclusion, but […] more can be done to make them work more effectively" (European Commission 2010a). Yet, the success of the future of EU Roma policy requires greater depth (in the obvious policy fields of employment, education and discrimination, for instance) and breadth (to make better use of all competences afforded to the EU, as analysed in Sect. 3.2). Furthermore, in the light of CoE's knowledge and experience on Roma matters, cooperation with the CoE remains essential across all fields of the well-being of the Roma. In any case, the ultimate relevance of the EU Roma policy depends, in the end, on fundamental changes to mind-sets – including

[13] Proposed in 2004 by the European Union Network of Experts in Fundamental Rights (European Union Network of Experts in Fundamental Rights 2004) and supported by the European Commission (European Commission 2004: 44–45).

shifting the focus from "integration" to respect for "diversity". Only by adopting a holistic approach based on intercultural dialogue will the EU enact the values enshrined in Article 2 TEU and Article 22 CFR, thereby truly protecting its peoples and cherishing their cultural contributions, for the enrichment of everyone.

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