**APPENDIX**

This appendix discusses three issues: methodological questions pertaining to the interviews, the methods and sources of recovering the social norm of racial equality, and the “ethnoracial” status of the Roma.

**I. INTERVIEWS[[1]](#footnote-1)**

**Sample Frame and Sampling Methods**

The universe of potential interviewees for this study includes those with expertise in law, knowledge of human rights, or experience working with the Roma. The first group comprises activists, specifically members of international/European and national NGOs with a focus on Roma, human rights, and anti-racism. A non-exhaustive list of international/European NGOs whose members I interviewed include the European Roma Rights Centre, Human Rights Watch, Amnesty International, Open Society Foundations, Roma Education Support Trust, European Roma Grassroots Organisations, and European Grassroots Antiracist Movement. In France, I talked to members of Ligue des droits de l’Homme, Romeurope, La voix des Rroms, Amenca, Secours Catholique, GISTI, La Cimade, Ecodrom, and others. In the Czech Republic, the main NGOs I communicated with include the Czech Society for Inclusive Education (ČOSIV), IQ Roma servis, the League of Human Rights (Liga lidských práv), Slovo 21, Awen Amenca, and more broadly the NGO coalition Together to School. These activists provided useful information about public authorities’ treatment of the Roma. Many of them also have legal expertise, which allows them to speak to the issue of evasion.

The second group contains European bureaucrats and politicians who work on issues pertaining to European legislation, the Roma, and minority rights. They can be subdivided into experts working at the Council of Europe (especially the European Court of Human Rights) and the European Union (EU) (especially Members of the European Parliament and experts at the European Commission). The most relevant departments at the Commission (Directorates-General or DGs) are the DG for Justice, Fundamental Rights and Citizenship (currently named the Directorate-General for Justice and Consumers); the DG for Employment, Social Affairs and Inclusion; and the DG for Regional and Urban Policy. This group provided information about the European legal and policy framework relevant for the Roma, the extent to which France and the Czech Republic were pressured from above to comply with it, and the extent to which these states were responsive to compliance pressures.

The third group includes government officials at the national and local levels, with an emphasis on the regions with larger Roma populations. They can confirm or disconfirm core theoretical expectations about evasion. Because they are not favorably predisposed to admitting evasion, it is particularly credible if they confirm its occurrence. Under the guarantee of anonymity they often acknowledged evasion. Officials can also address whether evasion is due to contradictory pressures by violation and compliance constituencies. In addition to these three main groups I also interviewed ten individuals involved in the legalization process as norm entrepreneurs, legislators, or negotiators (see the detailed discussion in the next section of the appendix). They do not necessarily address the occurrence of evasion, but provide information about the norm-law gap.

To select potential interviewees from these three groups, I employed non-random sampling, which is appropriate for interview-based process tracing.[[2]](#footnote-2) I started with purposive sampling, “selecting elements of a population according to specific characteristics deemed relevant to the analysis...”[[3]](#footnote-3) I used primary and secondary sources (official reports, newspaper articles), national and local governmental websites, as well as online lists of Roma conferences and workshops to identify the most important individuals in each of the three groups discussed above. I supplemented purposive sampling with snowball sampling, asking each interviewee to recommend others. Nearly two-thirds of the interviewees were selected through purposive sampling and the rest through snowballing.

**Response Rate, Type, and Saturation**

Between July 1, 2013 and February 7, 2017 I contacted approximately 700 potential interviewees from the three main groups mainly through e-mail, and I interviewed 127 (143 when including “legalization” and “Czech right” interviews) individuals. I aimed for a diverse and balanced sample, in which the three groups are as well represented as possible. The vast majority of the interviews are oral, almost evenly divided between those conducted in person and those conducted through phone and Skype. In the vast majority of the cases the language employed was English. Less than a quarter of the interviews are written responses to my questions. I continued interviewing subjects in each category until saturation was reached, meaning that new interviewees provided little or no new information.[[4]](#footnote-4) Saturation increases our confidence that additional interviews would not radically alter our findings and conclusions.

**Format, Length, and Data Reporting**

I opted for semi-structured interviews, which provide a balance between flexibility and rigor for elite interviewing. They are flexible enough for probing particular respondents’ unique perspectives and expertise, facilitating the discovery of new facts. At the same time, they contain core questions that most interviewees address, facilitating the comparison and aggregation of responses. Interviews started with general, less sensitive questions and gradually moved towards more specific and sensitive issues regarding evasion.[[5]](#footnote-5) The interview guide below contains the core questions of the study. The length of the oral interviews varies between 19 and 90 minutes, with an average length of 45 minutes. The average length of written responses is 4 pages (Times New Roman 12, single-spaced).

To mitigate problems of reliability and validity, I triangulate the information obtained in individual interviews with that of other interviews, as well as with the primary and secondary source material.[[6]](#footnote-6) I guarantee anonymity to respondents, because some of the issues discussed are sensitive and could have negative repercussions for them. For each interview, I cite the number of the interview in my records (they are arranged chronologically), the category of the interviewee, and the date of the interview (for example: Interview 21, European official, 3/20/2014).

**General Interview Guide - Core Questions**

(1) Could you tell me about the most recent issue pertaining to Roma that you have encountered?

* Probe how it fits in interviewee’s broader work
* Probe about main achievements and challenges when it comes to Roma, if relevant for interviewee’s work

(2) Is the European legal framework adequate for protecting Roma rights? Tell me about your experience.

* Probe for weaknesses in specific laws
* Probe for the extent of compliance with these laws

(3) In your view, how do the majority of French/Czech citizens feel about the Roma? Which segments of the population are sympathetic and which are not?

(4) What does the norm of racial equality entail for most people in your country?

* Probe for views on welfare, crime, affirmative action (“positive discrimination”), and the appropriateness of telling jokes about the Roma.
* Probe for specific norm-law gaps

(5) *Recap norm-law gaps mentioned above, if any.* Does France/the Czech Republic exploit these norm-law gaps? Does it evade by complying with the law but not the underlying norm?

* Probe about specific evasion strategies
* Probe about how frequent evasion is
* Probe about possibilities to counter evasion

(6) What is the cause of evasion? Is evasion the result of authorities being caught between largely international compliance pressures and largely domestic violation pressures? Are there other reasons for its occurrence?

* Probe for the specific nature of compliance and violation pressures
* Probe for the relative importance of elite ideology, hostile public opinion, and capacity problems as sources of violation pressures

(7) Are you pessimistic or optimistic regarding the situation of the Roma in your country?

* Probe what factors shape the effectiveness of social integration of the Roma

(8) Is there anything else you think is important to mention?

**II. RECOVERING THE NORM OF RACIAL EQUALITY AND IDENTIFYING NORM-LAW GAPS**

Much of the literature conflates international laws and norms. Although laws and underlying norms overlap to a large extent, they are not necessarily the same. Recovering the norm independent of the law is one of the challenges of identifying potential norm-law gaps. I recover the international, or more specifically, European, norm of racial equality in four main ways: discourse analysis of randomly sampled texts, public opinion surveys, interviews with norm entrepreneurs and legislators, and archival research. These sources complement each other, allowing the valid retrieval of the norm. Discourse analysis of randomly sampled texts allows us to recover the contours of the norm in a way that lowers the risks of selection bias. Public opinion surveys can provide more precise information about how widely and deeply the public holds the norm. Interviews and archival research help us identify gaps between the recovered norm and the law. They can also offer valuable information about the norm in the context of the specific cases of this study. It is important to note that the kind of norm we can recover is one that may be shaped by the law. Laws and norms overlap considerably and shape each other, so norms untainted by the law are as unrealistic as laws untainted by norms. I examine the laws and the norm both at the time of legalization and at the time of evasion. We can thus identity all four types of norm-law gaps included in the study’s typology, which vary in terms of the timing of their emergence or creation. This also allows us to capture potential changes across time in the relevant laws and norm, as well as norm-law gaps.

To foreshadow the findings, what emerges is a broad norm of racial equality, with a relatively settled core and a more contested periphery. The core of the norm entails equality of treatment. This normative core is widely held and is relatively uncontested. The periphery of the norm comprises equality of outcomes, which is narrowly held and is highly contested. In between there is equality of opportunity, which has both more broadly and narrowly shared aspects. I rely on a relatively narrow version of the norm, which includes equal treatment and a narrow slice of equal opportunity, both of which are highly supported. As discussed below, this constitutes a harder test for the theory, raising our confidence in its explanatory power if it passes.

**Discourse Analysis**

With the help of my research assistants, I inductively identified the contours of the social norm of racial equality. I adapted the method developed by Hopf and Allan to capture social identities.[[7]](#footnote-7) This adapted method allows us to recover social norms from randomly selected texts whose main stated focus may not be racial equality.

Text Selection

For reasons of tractability, we selected two newspapers and two leadership speeches from 2000 and 2010 for the United Kingdom, France, Germany, and the Czech Republic. We selected the year 2000 because it captures the moment of legalization of racial equality both in the EU (Racial Equality Directive) and the Council of Europe (Protocol 12 of the European Convention of Human Rights (ECHR)). The year 2010 captures partly the period of evasion by France and the Czech Republic. Furthermore, it is the year for which contributors of the Hopf and Allan volume produced their analyses, allowing potential comparisons. We selected the three most influential European countries (France, Germany, and the United Kingdom) to identify the European norm of racial equality. Including France and the Czech Republic makes it possible to compare the European norm of racial equality with domestic norms of racial equality.

Whenever possible, we chose the same or similar texts as contributors to the Hopf and Allan volume did. Speeches selected are by heads of state and government officials on important days, such as national holidays. For each state, we selected two non-tabloid newspapers with the highest national circulation and different political leanings. For the 15th of every other month (or the 14th if articles for the 15th were unavailable), starting with January 15th, we read all op-eds and letters to the editor. These are helpful in recovering elite and mass norms, respectively. The references below provide the list of our sources. We examined a total of 1451 texts: 1198 for the three major European states and 253 for the Czech Republic.

We approached the selected texts with these general questions: What are the collective expectations regarding racial equality and discrimination? What is the content and valence of statements about racial and ethnic equality? Given our relatively specific focus and the method of random selection, only about six percent of the texts were relevant. Another challenge of the analysis was working in different languages, especially in Czech, where we had to rely heavily on translation aids. We believe the findings allow us to identify the contours of the European norm of racial equality.

Findings

Following Hopf and Allan (2016), we organized the findings in raw count tables for each country first, and then aggregated them for the European level. We included a text as relevant for the analysis only if it had a relatively clear racial element. When in doubt about the interpretation or coding of a particular text, at least two coders read the text. If there was still disagreement, we placed the text in the “uncategorized” group.

We placed the raw count tables in broader categories that we identified by moving back and forth between the literature on racial equality and the selected texts. The three categories correspond to three main aspects of the norm: equal treatment, equal opportunity, and equal outcomes.[[8]](#footnote-8) For each of these categories, we tracked statements with positive and negative valence. These are useful indicators for the extent to which the elements of the norm are supported or contested. A text may be placed in multiple categories, when these are not mutually exclusive.

The core of the norm is equality of treatment, also known as formal equality. It considers all individuals as equal regardless of their race or ethnicity, and prohibits differential treatment based on these grounds. Inspired by the race literature, we coded sources as falling in this category if they referred to discriminatory treatment, the (direct) racism of specific agents, or equality before the law. We coded a statement as referring to equal treatment and having a positive valence if, for instance, it championed equal rights for minorities or condemned the racism of specific individuals or groups. One example is the following: “It has thus been high time to let the right-wing extremists feel that the state can act decisively. The ban of the disgusting Blood and Honor Division Germany by the Federal Minister of the Interior, Schily, is therefore an important signal.” (*Süddeutsche Zeitung,* 09/15/2000).

At the periphery of the norm is equality of outcomes, an expansive form of substantive equality. Substantive equality recognizes that minorities may be disadvantaged compared to the majority, and treating them equally further entrenches inequality. It requires treating people differently based on race, at least temporarily, to help disadvantaged minorities catch up. Equality of outcomes aims at equal representation across issue areas, usually through affirmative action, redistributive mechanisms, positive valuations of diversity, and combating institutional (indirect) racism. We coded sources as falling in this category if they referred to any of these. An example is the following: “Look, too, at the under-representation of people of colour in senior positions in public authorities, as elected representatives in local and central government and in the corporate world, especially where big bonuses are dished out to those who are already obscenely rich. Institutional discrimination has not been effectively tackled. It is still all about the status quo and keeping power in the hands of the chosen few, who go on making decisions that are as discriminatory in their effect on poor white people as on black people.” (*The Guardian*, 01/15/2010). We also included in this most expansive aspect of equality discourse positive valuations of diversity. One example comes from German President Christian Wulff’s Unity Day Speech in 2010: “For the future, of which I am firmly convinced, belongs to the nations open to cultural diversity, to new ideas and to the discussion with foreigners.” Although valuing diversity may or may not aim at equality of outcomes, we thought it best fits with this broad dimension of equality.

The normative space between equality of treatment and outcomes contains equality of opportunity, a more modest form of substantive equality. Although equality of opportunity overlaps with equality of outcomes, it aims to level the playing field at the “starting line” rather than at the “finish line.” We placed sources in this category when they explicitly referred to equal opportunity or discussed measures that facilitate equal access rather than equal outcomes. An example of equality of opportunity comes from Tony Blair’s 2000 speech at the Labour Conference: “Crime, anti-social behaviour, racial intolerance, drug abuse, destroy families and communities. ... Fail to confront this evil and we will never build a Britain where everyone can succeed. So we invest to give opportunity. Not just in jobs and services.”

Within these three understandings of racial and ethnic equality, most texts pertain to these subcategories: foreigners (immigrants, asylum seekers, refugees), the Global South, and Muslims (when there is a racial rather than religious reference).

The dominant European understanding of racial equality in 2000 is equality of treatment, with about 80 percent of texts falling in this category (Table 1). Three-fourths of the relevant texts had a positive valence, revealing wide support for this aspect of the norm. There is a relatively strong consensus that racism is not permissible and that all people should have equal rights. Equal outcomes are more contested, with about 57 percent of the texts being positive. There is only one, positive, reference to equal opportunity. Although the low number of relevant texts in certain categories raises questions about the reliability of the findings, these are validated by other sources of evidence discussed below. The distribution of texts and findings across countries is relatively even.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Total** | **Speeches** | **Newspapers (Op-Eds)** | **Newspapers (Letters)** |
| ***Treatment*** |  |  |  |  |
| Positive | 34 | 9 | 13 | 12 |
| Negative | 7 | 0 | 3 | 4 |
| ***Opportunity*** |  |  |  |  |
| Positive | 1 | 1 | 0 | 0 |
| Negative | 0 | 0 | 0 | 0 |
| ***Outcomes*** |  |  |  |  |
| Positive | 3 | 1 | 1 | 1 |
| Negative | 3 | 1 | 2 | 0 |
| ***Uncategorized*** | 3 | 0 | 2 | 1 |
| **Total** | **51** | **12** | **21** | **18** |

**Table 1:** **European Racial Equality Norm, Raw Count, 2000**

The European norm for 2010 is similar to that in 2000 (Table 2). There is strong support for equal treatment, albeit slightly lower than a decade earlier. There are only two references to equality of opportunity, both positive. There is an increase in support for equality of outcomes, primarily driven by Germany.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Total** | **Speeches** | **Newspapers (Op-Eds)** | **Newspapers (Letters)** |
| ***Treatment*** |  |  |  |  |
| Positive | 38 | 7 | 18 | 13 |
| Negative | 11 | 3 | 8 | 0 |
| ***Opportunity*** |  |  |  |  |
| Positive | 2 | 1 | 1 | 0 |
| Negative | 0 | 0 | 0 | 0 |
| ***Outcomes*** |  |  |  |  |
| Positive | 12 | 7 | 5 | 0 |
| Negative | 5 | 1 | 4 | 0 |
| ***Uncategorized*** | 3 | 0 | 1 | 2 |
| **Total** | **71** | **19** | **37** | **15** |

**Table 2:** **European Racial Equality Norm, Raw Count, 2010**

In addition to capturing the common understanding of racial equality at the European level, the analysis also does the same at the domestic level. In France most texts refer to equal treatment (Tables 3 and 4). In 2000, there is more support for equal treatment and less support for equal outcomes, while there is no mention of equal opportunity. In 2010 equal treatment and equal outcomes both appear contested with an equal number of positive and negative texts referring to them. There is only one, positive, reference for equal opportunity. The results are surprising since France is usually characterized as a colorblind state that embraces equality of treatment or formal equality. In our view the findings are due to the smaller sample size, which resulted in an idiosyncratic sample of relevant texts. The total number sampled texts for France is 159, compared to the United Kingdom’s 614 and Germany’s 425. This translates into a lower number of relevant texts (10 for each year), such that results should be taken with a grain of salt and should be compared with those from other sources.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Total** | **Speeches** | **Newspapers (Op-Eds)** | **Newspapers (Letters)** |
| ***Treatment*** |  |  |  |  |
| Positive | 4 | 1 | 0 | 3 |
| Negative | 2 | 0 | 0 | 2 |
| ***Opportunity*** |  |  |  |  |
| Positive | 0 | 0 | 0 | 0 |
| Negative | 0 | 0 | 0 | 0 |
| ***Outcomes*** |  |  |  |  |
| Positive | 2 | 0 | 1 | 1 |
| Negative | 1 | 0 | 1 | 0 |
| ***Uncategorized*** | 1 | 0 | 1 | 0 |
| **Total** | **10** | **1** | **3** | **6** |

**Table 3:****French Racial Equality Norm, Raw Count, 2000**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Total** | **Speeches** | **Newspapers (Op-Eds)** | **Newspapers (Letters)** |
| ***Treatment*** |  |  |  |  |
| Positive | 3 | 0 | 3 | 0 |
| Negative | 3 | 1 | 2 | 0 |
| ***Opportunity*** |  |  |  |  |
| Positive | 1 | 1 | 0 | 0 |
| Negative | 0 | 0 | 0 | 0 |
| ***Outcomes*** |  |  |  |  |
| Positive | 1 | 0 | 1 | 0 |
| Negative | 1 | 0 | 1 | 0 |
| ***Uncategorized*** | 1 | 0 | 1 | 0 |
| **Total** | **10** | **2** | **8** | **0** |

**Table 4:****French Racial Equality Norm, Raw Count, 2010**

The Czech norm is recovered from a total of 253 texts (Tables 5 and 6). While the Czech Republic is not incorporated into our analysis of a European norm on racial equality, it does not significantly deviate from the results of the European norm, and its inclusion would not change our findings. The dominant category for the Czech Republic for both 2000 and 2010 is equality of treatment, for which there appears to be significant support and little contestation. About 62 percent of the texts in 2000 have a positive leaning regarding equal treatment, compared to 82 percent in 2010. There are no relevant texts for equal opportunity and outcome, so we have to rely on alternative sources to capture the Czech position on those.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Total** | **Speeches** | **Newspapers (Op-Eds)** | **Newspapers (Letters)** |
| ***Treatment*** |  |  |  |  |
| Positive | 10 | 5 | 3 | 2 |
| Negative | 5 | 0 | 4 | 1 |
| ***Opportunity*** |  |  |  |  |
| Positive | 0 | 0 | 0 | 0 |
| Negative | 0 | 0 | 0 | 0 |
| ***Outcomes*** |  |  |  |  |
| Positive | 0 | 0 | 0 | 0 |
| Negative | 0 | 0 | 0 | 0 |
| ***Uncategorized*** | 1 | 1 | 0 | 0 |
| **Total** | **16** | **6** | **7** | **3** |

**Table 5:****Czech Racial Equality Norm, Raw Count, 2000**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Category** | **Total** | **Speeches** | **Newspapers (Op-Eds)** | **Newspapers (Letters)** |
| ***Treatment*** |  |  |  |  |
| Positive | 9 | 0 | 7 | 2 |
| Negative | 2 | 1 | 1 | 0 |
| ***Opportunity*** |  |  |  |  |
| Positive | 0 | 0 | 0 | 0 |
| Negative | 0 | 0 | 0 | 0 |
| ***Outcomes*** |  |  |  |  |
| Positive | 0 | 0 | 0 | 0 |
| Negative | 0 | 0 | 0 | 0 |
| ***Uncategorized*** | 0 | 0 | 0 | 0 |
| **Total** | **11** | **1** | **8** | **2** |

**Table 6: Czech Racial Equality Norm, Raw Count, 2010**

In conclusion, the discourse analysis indicates the highest support and lowest contestation for equal treatment. For 2000 and 2010 together a total of 72 texts refer to it positively and 18 negatively. There is moderate support and more contestation for equality of outcomes: 15 positive and 8 negative texts. There is also some support for equality of opportunity (3 positive and 0 negative texts), but the insufficient number of relevant texts precludes reliable conclusions. The findings for France in 2000 align with the European norm, but somewhat surprisingly for 2010 equality of treatment appears contested. The findings for the Czech Republic are similar to the European norm. Triangulating these findings with other sources helps us assess their reliability.

Sampled Texts

*Speeches.*

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*Newspapers.*

*Die Welt*

*Le Figaro*

*Le Monde*

*Mladá Fronta Dnes*

*Právo*

*Süddeutsche Zeitung*

*The Guardian*

*The Times (United Kingdom)*

**Public Opinion Surveys**

Specific survey questions help ascertain how widely and strongly the general public holds the norm. The most relevant and comprehensive surveys are Eurobarometer surveys on racial equality and discrimination. For our time period, the specific surveys are Eurobarometer 53 (Spring 2000), Eurobarometer 57 (or Special Eurobarometer 168 of Spring 2001), Special Eurobarometer 296 (February-March 2008), Special Eurobarometer 317 (November 2009), and Special Eurobarometer 393 (November 2012).

For 2000-2001 the most pertinent survey is Eurobarometer 57. It asked respondents whether they thought it was appropriate to treat people differently based on race or ethnicity in four issue areas—work, housing, services, and education.[[9]](#footnote-9) To ensure that the questions captured social norms rather than just individual attitudes, the survey also asked the same questions in the form of “Do you think that in general people consider it right or wrong to [engage in discrimination in various areas]?” The vast majority of respondents answered that discrimination is inappropriate across issue areas both in their own view and in the view of others. According to the combined average, 82 percent considered discrimination based on race or ethnicity wrong (“usually wrong” or “always wrong”), and 68 percent thought in general people consider it wrong (the other answer options included “always right,” “usually right,” “sometimes right and sometimes wrong”). Regardless of the candidness of these answers, they clearly indicate the presence of a widely held norm of racial equality, particularly equality of treatment. The French averages are generally higher than the EU-15 average, meaning the norm was stronger in France. The Czech Republic was not included in the surveys because it was not a member of the EU at the time.

While Eurobarometer 57 focuses more on equality of treatment, Eurobarometer 53 also includes questions pertaining to equality of opportunity and equality of outcomes.[[10]](#footnote-10) The findings indicate weaker support for these more expansive notions of equality and anti-discrimination. For example, 37 percent of the respondents supported equality of opportunity in all areas of social life (42 percent in France). Based on the survey questions, the European Monitoring Centre on Racism and Xenophobia constructed a helpful typology of Europeans: 14 percent were intolerant (strong negative view of minorities and immigrants), 25 percent were ambivalent (neither positive nor negative views), and the majority at 60 percent was tolerant.[[11]](#footnote-11) Most of those classified as tolerant (39 percent) were passively tolerant (positive attitudes toward minorities and immigrants but little support for affirmative or positive policies), while 21 percent were actively tolerant (positive view of minorities and immigrants, and supportive of affirmative or positive policies). France’s numbers are very similar to the EU average. Overall, there seems to be decreasing support as we move from equal treatment to equality of opportunity and outcomes.

There is no relevant Eurobarometer poll for 2010, but there are surveys for 2008, 2009, and 2012. Special Eurobarometer 296 (2008) found that 72 percent of Europeans were in support of equal opportunity in employment regardless of ethnic origin, and 57 percent were in support of monitoring the implementation of equal opportunity measures (54 percent in the Czech Republic and 55 percent in France).[[12]](#footnote-12) There are signs that the majority embraces equality of opportunity. At the same time, 36 percent feel comfortable with Roma neighbors (48 percent in France and 9 percent in the Czech Republic), suggesting that the norm is widely but not very deeply held.[[13]](#footnote-13) Special Eurobarometer 317 provides similar findings for 2009.[[14]](#footnote-14) Special Eurobarometer 393 of 2012 finds widespread support for monitoring recruitment to ensure equal opportunity (76 percent is the EU average; 79 percent in France and 82 percent in the Czech Republic).[[15]](#footnote-15) 34 percent think citizens in their state would feel uncomfortable if their children had Roma schoolmates (52 in the Czech Republic and 41 percent in France), and 53 percent think society could benefit from Roma’s better integration.[[16]](#footnote-16)

What does the public opinion data mean for the norm of racial equality? Adopting a conservative interpretation, we can say that throughout the period under study there is evidence of a norm of racial equality. Specifically, equality of treatment enjoys the highest levels of support, while equal opportunity enjoys moderate to high support. Based on attitudes toward affirmative or positive policies, support levels for equal outcomes are low to moderate, but cannot be reliably established as few questions address it explicitly. The norm seems relatively stable, and at least equal treatment is relatively uncontested. Support for equal treatment in France indicates the contestation found in the discourse analysis was probably due to the idiosyncratic sample of the analyzed texts. Anti-Roma attitudes suggest that the norm is widely but not always deeply held. Of course, we should be cautious when interpreting the data given variation in questions and respondent pool (due to EU enlargement), and the sensitivity of answers to question wording. Again, triangulating the results with other sources helps limit potential weaknesses in this particular source. A final issue worth noting is that throughout this period about a third of respondents in confirm that they know their legal rights (generally, not only related to racial discrimination). This means that probably even fewer are familiar with the specific laws under study here, which limits the extent to which the relevant laws could have shaped the norm.[[17]](#footnote-17) This is of interest in light of the paper’s discussion of the possibility of law-induced norm narrowing in the concluding section.

**Interviews and Archival Research**

The third source of identifying the norm is interviews and archival research. In a second round of interviews I asked respondents about how they and other people in their country understood the norm of racial equality. Most provided high support for the equal treatment aspect of the norm, moderate support for equal opportunity, and low support for equal outcomes. There is widespread support for equal treatment: “From my perspective everybody should be treated the same as an individual.”[[18]](#footnote-18) Another added: “For me and perhaps most of the people in the Czech Republic equality means equality before the law. The government cannot guarantee the equality in achievements; it must only guarantee the equality before the law.”[[19]](#footnote-19) As this interviewee also indicates, there is very little support for equality of outcomes (“achievements”). In addition to equal treatment, respondents also tended to include equality of opportunity in their understanding of the norm.[[20]](#footnote-20) Although equality of treatment and partly equality of opportunity seem relatively widely held, these aspects of the norm are not always deeply internalized. The norm coexists with strong anti-Roma prejudices.[[21]](#footnote-21) Nonetheless, the norm is strong enough that “People would be strongly offended if they are being called racist.”[[22]](#footnote-22)

An additional set of ten interviews involves norm entrepreneurs and drafters. They can offer useful information about the content of the legalized norm and about the nature of norm-law gaps. I interviewed the main advocates of codifying the norm of racial equality in the EU’s legal instruments. They are mostly members of the Starting Line Group, a loose coalition of approximately 400 NGOs, trade unions, academics, independent experts, and some governmental agencies. The Starting Line was established in 1991 with the specific aim to legalize the norm of racial equality. Its members were concerned about what they saw as rising racism and xenophobia in Europe (especially in Austria). They hoped that legalizing the norm would help combat these pernicious phenomena. Their lobbying and advocacy deserves much credit for the EU’s Racial Equality Directive. They also influenced and contributed, albeit to a lesser degree, to discussions of racial equality and anti-discrimination at the Council of Europe, which passed a general prohibition of discrimination in Protocol 12 of the ECHR almost simultaneously with the Racial Equality Directive. I also talked to negotiators involved in the drafting of the Freedom of Movement Directive (FMD) and the Racial Equality Directive (RED).

The norm of racial equality that emerges from these conversations corroborates the other sources: equality of treatment forms the norm’s core, and substantive elements of equal opportunity and outcomes are more peripheral and contested.[[23]](#footnote-23) Norm entrepreneurs and their supporters in the European Commission and the European Parliament held an ambitious understanding of equality that included equal opportunities and outcomes. Because not all member states were supportive of an ambitious racial equality law, and unanimity was needed to pass Directives, watering down the legalized form of the norm was necessary. As one leader of the Starting Line put it, “If you think too lofty, and too abstract, you probably achieve nothing…And we did not want to kill an initiative by beginning to talk about setting [equality of] outcomes.”[[24]](#footnote-24) The eventual compromise was that the Racial Equality Directive protects equality of treatment fully, equality of opportunity partially, and allows equality of outcomes (and related positive action).[[25]](#footnote-25) The Freedom of Movement Directive’s conception of equality is similar, but perhaps somewhat narrower, as it centers on the equality of treatment.[[26]](#footnote-26)

One norm-law gap worth highlighting in the Racial Equality Directive (and most anti-discrimination laws) is the nationality exception. Due to this, in some cases states can escape legal control to racially discriminate against foreign citizens: “What I don’t like is the hypocrisy behind it, so you take an excuse of nationality in order to perform racial discrimination.”[[27]](#footnote-27) In such cases, there is a gap between legality and normative acceptability: “It is an enormous hole, because it allows to actively discriminate on an ethnic basis, disguised by nationality basis.”[[28]](#footnote-28) I discuss other relevant gaps in the paper.

Archival research corroborates the interviews. Examining the preparatory works of the laws under study can shed light both on the norm about to be legalized and the norm-law gaps that emerge in the process. For the EU, I consulted the European Council’s archive on the Racial Equality Directive and the Freedom of Movement. The general pattern was that the European Parliament and the Commission pushed for more expansive legal protection of equality and anti-discrimination, while some member states and the European Council preferred more watered-down versions.[[29]](#footnote-29) The resulting laws demand equality of treatment and allow positive (affirmative) action that seeks equality of outcomes or opportunity.[[30]](#footnote-30) The ECHR is similar to the EU legislation, demanding formal equality and allowing equality of outcomes.[[31]](#footnote-31) Other documents, including policy papers and reports on discrimination, offer additional information. Perhaps the most prominent policy documents preceding legalization are the Evrigenis, Ford, and Kahn Reports.[[32]](#footnote-32) They all contain a broad understanding of racial equality and non-discrimination, which encompasses all three types of equality (as well as direct and indirect discrimination). For example, the Evrigenis Report recognizes and aims to combat not only direct discrimination but also indirect discrimination rooted in “structural arrangements and institutionalized practices.”[[33]](#footnote-33) The Kahn Report also states: “The right to equal treatment and protection against discrimination must be considered one of the most important fundamental rights of each person, as well as protection against violations of fundamental rights. This protection includes combating racism and xenophobia” (43).

Overall, the interviews and archival research support the findings of the other sources. The one notable difference is that, at least among the general public, equality of outcomes is seen as having little to no support. Norm entrepreneurs, on the other hand, embrace it at a personal level, but accept watered down versions for pragmatic reasons to ensure the passing of antidiscrimination laws.

**Constructing a Narrow Norm**

Across sources and methods, there is much evidence that equality of treatment is widely shared and is relatively uncontested. Support levels for equal opportunity are moderate to high. There is low to moderate support for equality of outcomes, which is more narrowly held and is more contested. Based on the findings above, there are two main ways to construct the norm. The expansive version would embrace all three aspects of the norm, including the most ambitious aspect, equal outcome. This would reflect the norm as held by norm entrepreneurs and their allies. The narrow version would rely on the lowest common denominator of the norm: elements that are highly supported across populations as found in the different sources. In this view, racial equality and anti-discrimination is primarily about equal treatment and uncontroversial aspects of equal opportunity that are highly supported (such as equal access to education). It excludes more ambitious understandings of equality of opportunity that are more contested and are moderately supported. It also excludes equality of outcomes (and associated measures such as affirmative action).

For purposes of this paper, I employ the narrower version of the norm. This choice is based on methodological grounds rather than on personal preference. It should be harder to find the type of norm-law gap the study focuses on between a narrow version of the norm and the law. The law is less likely to be underinclusive of a narrow norm than of an expansive one. It should also be harder to show that a behavior violates a narrower norm, making the proof of evasion more demanding. If the theory of evasion stands up to scrutiny when we define the norm narrowly, we should have more confidence in its explanatory value.

I capture the law based on treaty and case law. There are numerous European and international statutes that contain stipulations regarding racial equality, immigration, and education. To keep this study feasible, I focus primarily on the Racial Equality Directive, the Freedom of Movement Directive, the European Convention on Human Rights, and to a lesser extent the International Convention on the Elimination of All Forms of Racial Discrimination. In terms of case law, I rely primarily on judgments by the European Court of Human Rights and the EU’s Court of Justice. The paper discusses the gaps that arise between the narrow norm and the law recovered from these sources.

**III. THE ROMA AS AN “ETHNORACE”?**

One might wonder whether the Roma are better seen as an ethnic or a racial group. I briefly propose that the Roma might be best seen as an “ethnorace” for at least two reasons.[[34]](#footnote-34) First, an imperfect but common way to distinguish between race and ethnicity is that while both may be based on *beliefs* of common descent, race emphasizes its phenotypic markers and ethnicity stresses its cultural markers.[[35]](#footnote-35) The social construction of the Roma as a distinct group in European popular imagination mixes phenotypic (such as allegedly darker skin color) and cultural markers (such as Romani language and music) such that neither clearly dominates.

Second, the racialization of social groups depends, among others, on the nature of their boundaries and histories of being labeled races.[[36]](#footnote-36) The boundaries demarcating the Roma from other groups are naturalized to a considerable extent, but the Roma are not conventionally referred to as a race. For these reasons, they can be placed in the middle of the European race-ethnicity continuum, between minorities largely seen as ethnic (Hungarians in Romania) and those considered racial (people of African origin). That said, I conclude on a note of caution. We should keep in mind that generalizing is difficult because, among others, of the considerable diversity among the Roma and the difficulty of demarcating some Roma groups from non-Roma ones. We should also be careful not to essentialize this highly heterogeneous group.

1. The structure of the interview discussion draws on Erik Bleich and Robert Pekkanen, “How to Report Interview Data,” in Layna Mosley, ed., *Interview Research in Political Science* (Ithaca: Cornell University Press, 2013), pp. 84-105. [↑](#footnote-ref-1)
2. Oisin Tansey, “Process Tracing and Elite Interviewing: A Case for Non-probability Sampling,” *PS: Political Science and Politics*, Vol. 40, No. 4 (2007): 765-772. [↑](#footnote-ref-2)
3. Julia F. Lynch, “Aligning Sampling Strategies with Analytic Goals,” in Layna Mosley, ed., *Interview Research in Political Science* (Ithaca: Cornell University Press, 2013), p. 41. [↑](#footnote-ref-3)
4. Erik Bleich and Robert Pekkanen, “How to Report Interview Data,” p. 91. [↑](#footnote-ref-4)
5. Beth L. Leech, “Asking Questions: Techniques for Semistructured Interviews,” *PS: Political Science and Politics*, Vol. 35, No. 4 (2002), pp. 665-668. [↑](#footnote-ref-5)
6. Jeffrey M. Berry, “Validity and Reliability Issues in Elite Interviewing,” *PS: Political Science and Politics*, Vol. 35, No. 4 (2002), pp. 679-682. [↑](#footnote-ref-6)
7. For more details see Ted Hopf and Bentley B. Allan, *Making Identity Count: Building a National Identity Database* (New York: Oxford University Press, 2016). [↑](#footnote-ref-7)
8. This corresponds to the findings of the broader literature on racial equality such as Erica Howard, “The EU Race Directive: Time for Change?” *International Journal of Discrimination and the Law* 8 (2007): 237-261; Mark Bell, *Racism and Equality in the European Union* (New York: Oxford University Press, 2008); Sandra Fredman, *Discrimination Law* (New York: Oxford University Press, 2011). [↑](#footnote-ref-8)
9. Discrimination in Europe, Eurobarometer 57, Spring 2001. The most relevant are questions 37.1, 38.1, 39.1, 40.1, 53a1, 53b1, 54a1, 54b1. [↑](#footnote-ref-9)
10. I draw on survey results presented and analyzed in the European Monitoring Centre on Racism and Xenophobia, *Attitudes towards Minority Groups in the European Union: A Special Analysis of the Eurobarometer 2000 Survey* (Vienna, 2001). [↑](#footnote-ref-10)
11. European Monitoring Centre on Racism and Xenophobia 2001, pp. 24-25. [↑](#footnote-ref-11)
12. Special Eurobarometer 296, “Discrimination in the European Union: Perceptions, Experiences and Attitudes,” (July 2008), p. 28, 31. [↑](#footnote-ref-12)
13. Special Eurobarometer 296, p. 44. [↑](#footnote-ref-13)
14. Special Eurobarometer 317, Discrimination in the EU in 2009 (November 2009). [↑](#footnote-ref-14)
15. Special Eurobarometer 393, Discrimination in the EU in 2012 (November 2012), p. 11, 90-91. [↑](#footnote-ref-15)
16. Special Eurobarometer 393, 114. [↑](#footnote-ref-16)
17. See for instance Special Eurobarometer 393, p. 72. [↑](#footnote-ref-17)
18. Interview 110, Czech rightist, 8/31/2016. [↑](#footnote-ref-18)
19. Interview 112, Czech rightist, 8/30/2016; Interview 100, French official, 21/1/2015. [↑](#footnote-ref-19)
20. Interview 130, Czech official, 9/18/2016; Interview 133, Czech official, 9/27/2016. [↑](#footnote-ref-20)
21. Interview 48, French activist, 7/18/2014; Interview 8, European official, 3/17/2014; Interview 142, Czech activist, 1/6/2017; [↑](#footnote-ref-21)
22. Interview 136, Czech official, 9/29/2016. [↑](#footnote-ref-22)
23. Interview 137, Czech activist, 9/30/2016. [↑](#footnote-ref-23)
24. Interview 145, norm entrepreneur, 1/16/2017; also Interview 146, norm entrepreneur, 1/16/2017. [↑](#footnote-ref-24)
25. Interview 149, EU official, 1/17/2017. [↑](#footnote-ref-25)
26. Interview 143, FMD negotiator, 1/12/2017. [↑](#footnote-ref-26)
27. Interview 153, norm entrepreneur, 1/20/2017. [↑](#footnote-ref-27)
28. Interview 151, norm entrepreneur, 1/18/2017. [↑](#footnote-ref-28)
29. For these dynamics compare Council of the European Union, *Progress Report from the Presidency to the Council: Proposal for a Directive of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*, Interinstitutional File 2001/0111(COD), Brussels, 7 November 2002, pp. 5-6; Council of the European Union, *Political Agreement from the Presidency to the Council*: *Amended Proposal for a Directive of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*, Interinstitutional File 2001/0111(COD), Brussels, 18 September 2003 (drops language of exceptional circumstances as a condition for expulsion); Council of the European Union, From the Secretary-General of the European Commission: Amended Proposal *for a Directive of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*, Interinstitutional File 2001/0111(COD), Brussels, 2 June 2003; Council of the European Union, *Common Position adopted by the Council on 5 December 2003 with a view to the adoption of a Directive of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States,* Interinstitutional File 2001/0111(COD), Brussels, 5 December 2003. [↑](#footnote-ref-29)
30. Articles 2 and 5, Racial Equality Directive; Recital 20 and Article 24 of the Freedom of Movement Directive. [↑](#footnote-ref-30)
31. Council of Europe, Preparatory Work on Article 14 of the European Convention on Human Rights, CDH (67)3, Strasbourg, 1967, pages 3, 6, 7, 17. Council of Europe, *Explanatory Report to the Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms,* Rome, November 4, 2000, para. 27. [↑](#footnote-ref-31)
32. European Parliament, Committee of Inquiry into the Rise of Fascism and Racism in Europe: Report on the Findings of the Inquiry, December 1985, Draftsman: Dimitrios Evrigenis; European Parliament, Committee of Inquiry into Racism and Xenophobia, rapporteur Glyn Ford (Luxembourg: Office for Official Publications of the European Communities, 1991); Kahn, Jean. (1995) *Final Report from: Consultative Commission on Racism and Xenophobia [commonly called the Kahn Report], 23 May 1995.* [↑](#footnote-ref-32)
33. Evrigenis Report, p. 22, also p. 66. [↑](#footnote-ref-33)
34. For good scholarly discussions of the “race or ethnicity” question, see also Jorge J. E. Gracia, *Race or Ethnicity?: On Black and Latino Identity* (Ithaca, NY: Cornell University Press, 2007). [↑](#footnote-ref-34)
35. Paul C. Taylor, *Race: A Philosophical Introduction* (Malden, MA: Polity Press, 2004), 54. [↑](#footnote-ref-35)
36. David T. Goldberg, *Racist Culture: Philosophy and the Politics of Meaning* (Cambridge: Blackwell,

1993), pp. 76-77. [↑](#footnote-ref-36)