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Policy Scoping Review of the European Union Policy on
Intersectionality, including Intersectionality within the Contexts
of Citizens' Assemblies

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LIST OF ABBREVIATIONS

CA	Citizens' Assembly
CFREU	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EC	European Commission
EU	European Union
IACtHR	Inter-American Court of Human Rights
PMIMG	People belonging to multiple intersecting marginalised groups
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
WP	Work Package

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EXECUTIVE SUMMARY

Deliverable 2.4 aims to provide a review of legal and policy documents adopted by the European institutions addressing intersectionality in various policy areas of the European Union (EU), and in deliberative democracy and its mechanisms, specially in citizens' assemblies (CAs). Framed within Work Package 2, Deliverable 2.4 adopts a policy and legal focus in order to analyse how intersectionality has been addressed by the European institutions and to identify the shortcomings or gaps that should be addressed by the relevant competent bodies.

Following an introductory section (I) and an explanation of the methodology adopted in choosing and reviewing the legal acts and policy documents (II), the deliverable includes a section on the results (III). These results are presented by distinguishing, on the one hand, intersectionality in general (III.1), and on the other hand, intersectionality within the context of deliberative democracy, with a particular emphasis on CAs i.e. the subject matter of the EU-CIEMBLY project (III.2).

Section III.1 presents the conceptualisation of intersectionality in a broader context and the measures for its operationalisation in both binding acts and non-binding documents, in addition to case-law in order to ascertain if there is sufficient consolidation of this concept in the European Union legal and policy framework. Section III.2 assesses whether the deliberative mechanisms conceived by European institutions in their policy documents take intersectional equality, inclusion and deliberation into account, drawing on findings previously reached in the EU-CIEMBLY project – notably in Deliverable 2.2.

The results of these two sections lead to the formulation of some conclusions as well as to the proposal of several recommendations (IV) that will be completed and expanded in WP5, with the necessary perspective given by the conclusion of the previous deliverables and tasks of the project.

In summary, Deliverable 2.4 not only serves as a starting point for further work during the EU-CIEMBLY project but also as a compilation of the current state of the art in legal and policy terms, identifying shortcomings or gaps which could be useful for the discussion of potential legislative reforms within the European Union and, in particular, in the field of deliberative democracy and CAs.

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I. INTRODUCTION

The foundational democratic principle of the European Union is representative democracy. This is clearly stated in Article 10(1) of the Treaty on European Union (TEU). However, since the Lisbon Treaty, the democratic legitimacy of the EU is also based on participatory democracy. Thus, Article 10(3) TEU enshrines that ‘every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen’. As a result of this inclusion in the TEU, ‘participation is no longer expected to play only an instrumental role’ but also ‘carries an autonomous, non-instrumental meaning – to allow citizens to take part in – and possibly control – the process of governance to which they are subject’ (Alemanno, 2022, p. 24). However, the instruments that the EU offers to implement participatory and deliberative democracy effectively, do not seem to be sufficient for these purposes, while also remaining essentially unknown to most citizens.

It is within this context that besides consultative-type mechanisms and the hybrid European Citizens’ Initiative, different mechanisms of deliberative democracy began to emerge, and one of the large-scale examples was precisely the holding of the Conference on the Future of Europe. At the time of this Conference, the European Parliament pointed out in the Resolution on Citizens’ dialogues and Citizens’ participation in the EU decision-making that ‘the existing participatory instruments have various shortcomings and should therefore be improved and new ones developed to make citizens’ participation more accessible, inclusive, meaningful and effective’¹. In its Resolution, the European Parliament also stated that the new mechanisms should select participants ensuring inclusiveness and representativeness, including the equal access of those living in disadvantaged areas or those who have a lower exposure to EU information. Among other things, it also emphasised the possibility of extending participation to non-EU citizens residing in the EU, the need for citizens to have access to participation mechanisms in all official Union languages and the importance of giving full access to persons with disabilities to all the different instruments that the EU provides to citizens.

¹ European Parliament resolution of 7 July 2021 on Citizens’ dialogues and Citizens’ participation in the EU decision-making (2020/2201(INI)), OJ C 99, 1.3.2022.

After the conclusion of the Conference, the European Commission (EC), in its Communication on the Conference stated that ‘building on the Conference, and its own existing tools, the Commission will propose ways to ensure that citizens have this closer role in EU policy-making’². Since then, five European Citizens’ Panels on different topics have been conducted, further integrating deliberative democracy into the workings of the European Union. In addition to these Union-level developments, a multitude of mini-publics, mainly CAs, are being held throughout the different Member States, as mapped by the EU-CIEMBLY project in task 3.1.

Nevertheless, and despite the terms and agenda set by the European Parliament’s Resolution on Citizens’ dialogues and Citizens’ participation in the EU decision-making, those deliberative mechanisms have not always considered issues of intersectionality, nor have they set out to adopt an intersectional approach.

Indeed, intersectionality in general is an area yet to be explored in much depth within the EU context, although there is growing recognition of the importance of intersectional equality by the European institutions, mostly under a soft law approach. Thus, the European Parliament Resolution on ‘intersectional discrimination in the European Union: the socio-economic situation of women of African, Middle-Eastern, Latin-American and Asian descent’ notes that ‘EU policies have not involved an intersectional approach thus far; whereas they have focused only on the individual dimensions of discrimination’ and that ‘implementing intersectional policy means undertaking thorough impact assessments of policies and legislation’³. Moreover, the Conclusions of the Council and of the representatives of the governments of the Member States meeting within the Council on inclusive societies for young people insists on addressing youth policies from an intersectional approach, defining such an approach as being ‘sensitive to the ways in which personal characteristics and identities intersect, and how these intersections can contribute to unique experiences of discrimination’⁴.

² Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions-Conference on the Future of Europe. Putting Vision into Concrete Action, COM(2022) 404 final, Brussels, 17.6.2022.

³ European Parliament resolution of 6 July 2022 on ‘intersectional discrimination in the European Union: the socio-economic situation of women of African, Middle-Eastern, Latin-American and Asian descent (2021/2243(INI)), OJ C 47, 7.2.2023.

⁴ Conclusions of the Council and of the representatives of the governments of the Member States meeting within the Council on inclusive societies for young people, OJ C, C/2024/3808, 27.6.2024.

Nonetheless, although in a very specific domain, a turn to the binding nature of intersectionality can be detected in the Directive (EU) 2023/970⁵. For the purposes of the Directive, intersectional discrimination is defined as ‘discrimination based on a combination of sex and any other ground or grounds of discrimination protected under Directive 2000/43/EC or 2000/78/EC’ [Article 3(2)(e)].

The EU-CIEMBLY project precisely combines both emerging realities. On the one hand, the participation of citizens in the political life of the European Union through deliberative mechanisms such as the CAs. On the other hand, the need to introduce aspects of intersectionality into the design of these CAs. In doing so, the EU-CIEMBLY project will provide the analytical framework and the prototype of an EU Citizens’ Assembly that encompasses the qualities of intersectional equality, inclusiveness, and deliberation, in every aspect of its design and operation. The project will produce recommendations to policy makers for this prototype and to inform potential reforms to existing assemblies found at European, national and local level (WP5).

For the latter specific purpose, and as an initial task, it is necessary to carry out a prior analysis of the existing gaps in European legislation and policy documents, which is the main goal of this Deliverable 2.4.

This legal and policy gap analysis will be the starting point for the elaboration of recommendations for European policy makers about the legal measures to facilitate the implementation of this prototype in WP5. The Project has conducted a literature review in Deliverable 2.1 which includes relevant bibliography in deliberative democracy and intersectionality. Building on this literature review, Deliverable 2.2 draws on existing literature to formulate a framework for intersectional equality, inclusion, and deliberation in CAs. The insights from these deliverables together with the possible design choices made for CAs in Deliverable 2.3 will serve as a benchmark for the review and analysis of the gaps in European legislation and policy. In this regard, the question of whether the European *acquis* is aligned with the requirements for the establishment of a Citizens' Assembly that encompasses the

⁵ Directive (EU) 2023/970 of the European Parliament and the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, OJ L 132, 17.5.2023.

qualities of intersectional equality, inclusiveness, and deliberation will have to be addressed.

This Deliverable 2.4. will not only be intended for further internal work throughout the project but is also important in its own right. As can be deduced from the above, the issues that come together here, namely mechanisms of deliberative democracy and intersectionality, have been underexplored by the European institutions. For this reason, the conclusions drawn in this deliverable may be useful for these institutions, which have already stressed the importance of the development of intersectionality frameworks for the European Union and which are now faced with the need to provide a legal framework through which to operationalise intersectional equality. In particular, the European Commission has recognised the importance of this issue through its recent project funding agenda, which includes the present project alongside a number of ‘sister’ projects, notably INSPIRE, iDEM, and SINCRONY (European Commission, 2024, p. 49). This deliverable will be of interest to these current projects as well as to other similar projects that might be funded in the future.

In summary, this deliverable will delve into the binding and non-binding European legal acts, and case law of the CJEU – including also references to case law of the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR) because of their relevance to the topic of the project⁶ – regarding deliberative democracy and intersectionality to identify gaps – and even barriers – to the effective creation and implementation of CAs with the specific features stated in previous deliverables of this project.

II. METHODOLOGY

The conducted review is divided into two parts. The first part reviews EU legal and policy documents addressing intersectionality across all areas of European Union action (III.1 below). The second part considers legal and policy documents in the

⁶ Both courts together with the African Court of Human and Peoples’ Rights committed themselves in the San José Declaration (I and II) to ‘contribute to a permanent dialogue and consultation mechanisms to exchange experiences, knowledge and best practices in the interpretation and application of their respective regional human rights instruments’. References of the CJEU to the ECtHR case law are frequent and anchored in primary law provisions [Articles 6(2) of the TEU and 52(3) and 53 of the EU Charter of Fundamental Rights]. References to the IACtHR are less recurrent but not inexistent [cf. Opinion of Advocate Ruiz-Jarabo Colomer delivered on 8 April 2008 (Case C-297/07- *Klaus Bourquain*, preliminary ruling from the Landgericht Regensburg (Germany))].

field of democracy – in particular, deliberative democracy – that address democratic tools, such as CAs, from an intersectional perspective (III.2 below).

II.1. Intersectionality in general

The database used for the search was EUR-Lex, as it ‘provides the official and most comprehensive access to EU legal documents’ (European Union, n.d.). We searched for results that explicitly contained the word ‘intersectionality’ or derivatives of it – such as ‘intersectional’. Among all the types of documents covered by the EUR-Lex collection, we chose the categories ‘legal acts’ and ‘preparatory documents’. In the former category, EUR-Lex includes regulations, directives, decisions, recommendations and opinions. In the latter category, among other types of documents, there are Commission legislative proposals, Council common positions, European Parliament legislative resolutions and initiatives, European Economic and Social Committee opinions and opinions of the Committee of the Regions. The search language was English.

The search returned a total of 217 results. Considering the aforementioned categories, they are classified into 18 legal acts and 199 preparatory documents. However, the fact that the documents contain the word ‘intersectionality’ or derivatives does not mean that it has value for our research. As a result, we analysed each of the documents and filtered those that, for various reasons – date of the document, subject matter, or the way intersectionality is addressed –, were determined likely to be of most interest to our study. The final list of the documents arrived at after the screening can be found in Annex I.

The main outcomes of this analysis are presented in Section III.1 of the deliverable.

II.2. Intersectionality in deliberative democracy

The methodology used for the second part of this deliverable differs from the previous one. If intersectionality has been insufficiently addressed within general European Union contexts, its consideration within deliberative democracy and its mechanisms – mainly CAs – is even more limited.

For this reason, we have specifically selected the well-known but limited European policy documents related to deliberative democracy in an attempt to analyse how these documents address the deliberative mechanisms from an intersectional point of view. The list of documents is provided in Annex IV.

For this purpose we draw on the previous theorisation of this issue in Deliverable 2.2 – i.e. the analytical framework for an intersectional CA. It should be noted that Deliverable 2.4 aims exclusively to revise and analyse the legal and policy documents that address this question, thus avoiding more theoretical and conceptual approaches already conducted under Deliverable 2.2 and Deliverable 2.3 – and also practical ones – i.e. the assessment of previous experiences, which are the purview of WP3. Although as already mentioned the findings drawn from elsewhere in the project, can serve as a point of comparison or support, the approach of Deliverable 2.4 is devoted to producing standalone policy and legal considerations.

III. RESULTS

III.1. Intersectionality in general: analysis of EU legal and policy documents

From the initial dataset comprising 217 documents, a total of 86 were subjected to in-depth analysis. A preliminary review of the full list highlights a few noteworthy initial issues. The first time that a reference related to intersectionality appears was in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on ‘Non-discrimination and equal opportunities: A renewed commitment.’⁷ However, it is from 2019 onwards that the number of references multiplies. 2021 is the year with the highest number of documents which specifically mention intersectionality – 19 in the final list. 48 of the 86 entries are European Parliament resolutions and only 8 of 86 are binding documents, that is to say directives and regulations. 51 of the documents are classified in EUR-Lex under the subject ‘anti-discrimination’ and only one focuses exclusively on intersectional discrimination

⁷ With a brief reference to ‘NGO’s representing intersectional groups’; Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Non-discrimination and equal opportunities: A renewed commitment, COM(2008) 420 final, Brussels, 2.7.2008.

– the European Parliament resolution of 6 July 2022 on intersectional discrimination in the European Union: the socio-economic situation of women of African, Middle-Eastern, Latin-American and Asian descent⁸.

The next subsections will present the main results obtained from the analysis. To ensure coherence, the presentation of the findings is divided into three subsections according to the type documents from which the results are drawn. First, legal acts, because of their legal significance (III.1.1). Second, strategies that form the Union of Equality framework (III.1.2.). The adoption of the Union of Equality strategies was a key priority of the EC in the 2019-2024 legislative term and continues to be in the current term. These strategies also represent the first EU legal documents to address intersectionality in more depth. Third, the rest of the documents which form the so-called soft law. Although non-binding, they have a value in themselves, especially in terms of influencing policies or new legislation (III.1.3.). Lastly we will direct our attention to case law, intending to show if intersectionality is or can be a useful tool in adjudicating equality and discrimination law disputes (III.1.4.).

We build upon the prior understanding that intersectionality has only recently gained attention within European institutions. Notably, references to intersectionality or intersectional discrimination often remain rhetorical or, at least, fail to delineate clear legal pathways for its implementation. Consequently, in an attempt to examine the legal dimensions of the term, we have analysed how EU legal acts define intersectionality or intersectional discrimination and also the protected grounds considered in the documents when addressing intersectional discrimination. Although it is common for references to be limited to the grounds set in the Treaty on the Functioning of the European Union (TFEU) or in anti-discrimination directives, sometimes the analysed EU policy documents go beyond this view and refer to different grounds of protection. It is important for the EU-CIEMBLY project to understand the criteria used by the European institutions when referring to intersectionality, particularly due to their significance with regard to selecting the participants who will be involved in the CA pilots. This issue is dealt with more fully under Task 2.4. of the EU-CIEMBLY project.

⁸ Cited above in footnote 3.

Finally, we have tried to identify and extract from all 86 documents, concrete measures aimed at operationalising intersectionality within the EU, where such measures exist. Some of these findings are presented throughout Section III.1, while the complete list of measures, along with their categorisation, is provided in Annex III.

III.1.1. Legal acts

III.1.1.1. Legal definition of intersectionality and protected grounds of discrimination

Even though the concept of intersectionality has appeared in EU documents since at least 2011, there was no legal definition of intersectionality or intersectional discrimination until 2023.

Thus, Directive (EU) 2023/970 defines intersectional discrimination as ‘discrimination based on a combination of sex and any other ground or grounds of discrimination protected under Directive 2000/43/EC or 2000/78/EC’ [Article 3(2)(e)]. This was not, however, a general definition of intersectional discrimination, as it was explicitly recognised that this definition is designed for the purposes of the Directive only.

A year later, two directives on standards for equality bodies were adopted, the Council Directive (EU) 2024/1499⁹ and Directive (EU) 2024/1500¹⁰. Both directives include a definition of intersectional discrimination in Article 5. When they refer to the activities that State equality bodies must carry out to prevent discrimination, they define intersectional discrimination as ‘discrimination based on a combination of grounds protected under Directives 79/7/EEC, 2000/43/EC, 2000/78/EC or 2004/113/EC’.

⁹ Council Directive (EU) 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC, OJ L, 2024/1499, 29.5.2024.

¹⁰ Directive (EU) 2024/1500 of the European Parliament and of the Council of 14 May 2024 on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation and amending Directives 2006/54/EC and 2010/41/EU, OJ L, 2024/1500, 29.5.2024.

It should be noted that although Directive (EU) 2023/970 does not mention the directives on gender discrimination – as Directive (EU) 2024/1499 and Directive (EU) 2024/1500 do –, it explicitly mentions the ground of sex. Thus, the breadth of the concept seems to be the same.

In any case, this is one example of the difficulties posed by the scattered non-discrimination legislation of the European Union. Indeed, ‘EU anti-discrimination law presents severe structural obstacles to intersectional claims’, notably the fact that ‘different grounds are found in different pieces of legislation’ and that ‘the various directives have differing scopes’ (Fredman, 2016, p. 62).

Indeed, EU anti-discrimination legislation addresses only the few grounds covered by article 10 of the TFEU and article 19 of the TFEU. Article 19 TFEU refers to an exhaustive list of protected grounds, namely sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Since it mandates the Council to adopt measures to combat discrimination on the grounds listed, it does not contain a general discrimination clause and is not extendable by analogy. This brings about difficulties in combining existing grounds of discrimination under different legal regimes, but also in considering other grounds which are not specified in those legal instruments.

By contrast, Article 21 of the Charter of Fundamental Rights of the European Union includes a broader list of grounds, namely sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, and age or sexual orientation¹¹. Similarly, Article 14 of the European Convention on Human Rights includes the grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or *other status* (emphasis ours). That is, non-exhaustive lists.

¹¹ The Explanations Relating to the Charter of Fundamental Rights (2007/C 303/02) draw attention to the distinction between the objective scope of Article 21(1) of the Charter and the objective scope of Article 19 TFEU and to the fact that article 21(1) of the Charter does not alter the extent of powers granted under Article 19 nor the interpretation given to that article (Explanation on Article 21 - Non-discrimination).

Naturally, open-ended provisions are better suited to intersectional approaches, that demand greater flexibility in approaching a situation in all its dimensions and not in a mere additive way. However, this does not mean that closed lists cannot be adjusted to intersectionality, as long as the grounds for discrimination are interpreted more openly, including with regard to structural biases and power relations.

If we go beyond the specific field of discrimination, directives not only mention specific grounds but also refer to groups of marginalised people. For instance, Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, recognises that ‘victims experiencing intersectional discrimination are at a heightened risk of violence’, specifically naming ‘women with disabilities, women with dependant residence status or a dependant residence permit, undocumented migrant women, women applicants for international protection, women fleeing armed conflict, women affected by homelessness, women with a minority racial or ethnic background, women living in rural areas, women in prostitution, women with low income, women detainees, lesbian, gay, bisexual, trans or intersex persons, older women or women with alcohol and drug use disorders’ (recital 71).

In other documents of the European institutions and depending on the subject, we can also find a broader list of protected grounds or reference to specific marginalised social groups. For instance, the European Parliament Resolution of 1 June 2023 on sexual harassment in the EU and MeToo evaluation,¹² add to the ‘traditional’ list the grounds of genetic features, gender identity, gender expression, sexual orientation, and socio-economic class. The ground of disability is mentioned in several policy documents, such as the European Parliament resolution of 13 December 2022 towards equal rights for persons with disabilities.¹³ Mention of ‘power imbalances and patriarchy’ as intersectional factors are included in the European Parliament resolution of 3 May 2022 on the persecution of minorities on the grounds of belief or

¹² European Parliament resolution of 1 June 2023 on sexual harassment in the EU and MeToo evaluation (2022/2138(INI)), OJ C, C/2023/1224, 21.12.2023.

¹³ European Parliament resolution of 13 December 2022 towards equal rights for persons with disabilities (2022/2026(INI)), OJ C 177, 17.5.2023.

religion.¹⁴ Lastly, it is also common to find references to the grounds of migrant background and residence status, e.g. in the European Parliament Resolution of 6 July 2022 on intersectional discrimination in the European Union: the socio-economic situation of women of African, Middle-Eastern, Latin-American and Asian descent.¹⁵

As can be observed, policy documents go beyond legal sources in terms of the grounds of discrimination used in relation to intersectional discrimination. Moreover, policy documents adopt a broader perspective on the concept of intersectionality, as they address not only identity factors but also underlying power structures. Particularly clear in the latter regard is the Council Recommendation of 18 December 2023 on a European framework to attract and retain research, innovation and entrepreneurial talents in Europe.¹⁶ which mentions that ‘gender equality should be understood from an intersectional perspective, where different systems of power among gender and other social categories and identities intersect and reinforce each other’

The EU-CIEMBLY project also goes beyond the conceptualisation of intersectionality as being based on identity, understanding that power structures are a core component of intersectionality theory. Thus the term ‘social groups’ used throughout the project, covers groups such as racial or ethnic origin, immigration or citizenship status, sex and gender, sexual orientation, disability and health status, religion or belief, and age or generation, alongside with other variables that may be important to consider in the sampling for the participants of the CA pilots, notably geographic location, socio-economic status, education, caregiving responsibilities, language, among others.

In short, one of the first steps towards addressing intersectionality in EU law could be clarifying the grounds of discrimination relevant for EU legal instruments. Indeed, if the grounds are not specified, they will not be covered by judicial decisions nor in policy and decision-making (Ganty & Sanchez Benito, 2021, p. 25). The adoption of

¹⁴ European Parliament resolution of 3 May 2022 on the persecution of minorities on the grounds of belief or religion (2021/2055(INI)), OJ C 465, 6.12.2022.

¹⁵ Cited above in footnote 3.

¹⁶ Council Recommendation of 18 December 2023 on a European framework to attract and retain research, innovation and entrepreneurial talents in Europe, OJ C, C/2023/1640, 29.12.2023.

the 2008 proposal for a horizontal anti-discrimination directive could help to break down this barrier and to finally 'address intersectional discrimination'¹⁷, facilitating also the implementation of operational and effective measures.

III.1.1.2. Operationalising intersectionality in EU legal acts

Intersectionality concerns have not been absent from legal acts issued by the EU. However, references to intersectionality have so far been scattered and in some cases they are more aspirational than operational.

The most recent mention of intersectionality, at the time of this deliverable, can be found in Directive (EU) 2024/2841¹⁸ which states, in Article 20(2), that the report on the monitoring its implementation, due 5 June 2031, shall also include an analysis of specific situations of disadvantage resulting from intersectional discrimination, which is understood as discrimination based on a combination of disability and any other grounds protected under Council Directive 79/7/EEC, 2000/43/EC²⁵, 2000/78/EC²⁶ or 2004/113/EC²⁷, with a particular focus on women and girls with disabilities. Therefore, at the present moment, no specific provisions include intersectionality as a concern to be taken into account while issuing or determining the conditions of the European Disability Card and the European Parking Card for persons with disabilities, but this might change if the Commission's assessment finds good reasons to integrate an intersectionality approach in this regard. It should also be noted that a 'combined' approach (that relies on multiple grounds) does not inherently or necessarily equate to an 'intersectional' approach as outlined further in Deliverable 2.2. of the project. So, even when there are attempts at conceptualising and/or operationalising intersectionality, these are usually not particularly ambitious in their approach.

Also in Regulation (EU) 2023/1322¹⁹ intersectionality is referred to as a 'cross-cutting principle' in the EUDA 'research-related activities', but no other specification is found

¹⁷ European Parliament Resolution of 19 April 2023 on combating discrimination in the EU – the long-awaited horizontal anti-discrimination directive (2023/2582(RSP)), OJ C 2023/446, 1.12.2023.

¹⁸ Directive (EU) 2024/2841 of the European Parliament and of the Council of 23 October 2024 establishing the European Disability Card and the European Parking Card for persons with disabilities, OJ L, 2024/2841, 14.11.2024.

¹⁹ Regulation (EU) 2023/1322 of the European Parliament and of the Council of 27 June 2023 on the European Union Drugs Agency (EUDA) and repealing Regulation (EC) 1920/2006, OJ L 166, 30.6.2023.

as to how this principle might be understood and applied in the drug related field, particularly no reference is made to the protected grounds of discrimination, a clear omission when addressing intersectionality issues.

In the anti-discrimination field – noticeably a policy area of the EU that is intimately intertwined with intersectionality – both the aforementioned Directive (EU) 2024/1500 and Council Directive (EU) 2024/1499 establish guidelines for Member States to follow concerning intersectionality. These guidelines are not binding, but are rather presented as potential action points for equality bodies, but which may not be restricted by the Member States. Such activities ‘may, inter alia, include promoting positive action and gender mainstreaming among public and private entities, providing them with relevant training, advice and support, engaging in public debate, communicating with relevant stakeholders, including the social partners, and promoting the exchange of good practices. In carrying out such activities, equality bodies can take into consideration specific situations of disadvantage resulting from intersectional discrimination’ [Article 5(2) in both directives].

This option is in our view not satisfactory given the high-level discussions that have been taking place on intersectionality and the already-demonstrated commitment of the EU to addressing it in the field of anti-discrimination. A solution such as that already reached in the field of equal pay in employment with regards to penalties or sanctions imposed by Equality Bodies would have been preferable, since this would be a method to unequivocally empower those Equality Bodies to mobilise intersectionality as an effective tool in addressing discrimination complaints.

In fact, Directive (EU) 2023/970 defines intersectional discrimination in Article 3(2)(e) and elevates it to an integral part of the framework designed to achieve substantive equality.

This distinctive role of intersectionality is clear from recital 25 which stipulates that the Directive aims to remove

'any doubt that may exist in this regard under the existing legal framework and enabling national courts, equality bodies and other competent authorities to take due account of any situation of disadvantage arising from intersectional discrimination, in particular for substantive and procedural purposes, including to recognise the existence of discrimination, to decide on the appropriate

comparator, to assess the proportionality, and to determine, where relevant, the level of compensation awarded or penalties imposed'.

This leap from a mere aspirational to a more operational approach is materialised in Article 16(3) which clearly includes as a criterion to be taken into account when awarding compensation the fact that sex intersects with other protected grounds of discrimination, therefore recognising intersectionality as an aggravating factor i.e. it compounds the effects of discrimination. The same applies to penalties, as defined in Article 23(3) according to which 'the penalties referred to in paragraph 1 shall take into account any relevant aggravating or mitigating factor applicable to the circumstances of the infringement, which may include intersectional discrimination'.

Another EU act that shows the amplitude of possible legal implications when using intersectionality as an integral part of the legal framework is Directive (EU) 2024/1712²⁰. Intersectionality in judicial cooperation in criminal matters is also ranking highly amidst other more traditional approaches to tackling trafficking in human beings. Recitals 6 and 71 of the Directive clearly state that violence against women and domestic violence can be exacerbated where it intersects with discrimination based on a combination of sex and any other ground or grounds of discrimination as referred to in Article 21 CFREU and that heightened risk of violence could be directed particularly to

'women with disabilities, women with dependant residence status or a dependant residence permit, undocumented migrant women, women applicants for international protection, women fleeing armed conflict, women affected by homelessness, women with a minority racial or ethnic background, women living in rural areas, women in prostitution, women with low income, women detainees, lesbian, gay, bisexual, trans or intersex persons, older women or women with alcohol and drug use disorders'.

Specific protection and support measures are therefore required. First, the guidelines for law enforcement and prosecutorial authorities, which are of utmost importance in this matter, shall be gender sensitive and advisory in nature and may include

²⁰ Directive (EU) 2024/1712# of the European Parliament and of the Council of 13 June 2024, amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, OJ L, 2024/1712 24.6.2024.

guidance on how to cater for enhanced protection and all relevant support needs of victims experiencing intersectional discrimination [Article 21(g)].

Second, Member States shall ensure the provision of specific support to victims experiencing intersectional discrimination who are at an increased risk of violence against women or domestic violence [Article 33(1)], detailing specific needs for people with disabilities and for third-country nationals who are victims. This means, as a minimum and according to recital 42 of the Directive that referral to appropriate support services is required, according to the assessment of individual circumstances. However the Directive goes further and requires Member States to have sufficient capacity to accommodate victims with disabilities, including personal assistance [Article 33(2)] and to 'ensure that victims who so request can be kept separate from persons of the other sex in detention facilities for third-country nationals subject to return procedures or accommodated separately in reception centres for applicants for international protection' [Article 33(3)]. This demonstrates the additional demands that result from a heightened risk or impact of intersectional violence.

Third, Article 33(4) also aims to ensure greater redress in these cases, by establishing that any person can report occurrences of violence against women or domestic violence in institutions and reception and detention centres to the relevant staff and that such processes are adequately and swiftly addressed.

Besides these EU legal acts, a brief mention should be made to Regulation (EU) 2021/692²¹. This Regulation establishes the Citizens, Equality, Rights and Values Programme with financial support for the period from 2021 to 2027, the objective of which is 'to protect and promote rights and values as enshrined in the Treaties, the Charter and the applicable international human rights conventions, in particular by supporting civil society organisations and other stakeholders active at local, regional, national and transnational level, and by encouraging civic and democratic participation, in order to sustain and further develop open, rights-based, democratic, equal and inclusive societies which are based on the rule of law' (Article 1).

²¹ Regulation (EU) 2021/692 of the European Parliament and of the Council of 28 April 2021, establishing the Citizens, Equality, Rights and Values Programme and repealing Regulation (EU) 1381/2013 of the European Parliament and of the Council and Council Regulation (EU) 390/2014, OJ L 156, 05/05/2021.

One of its specific objectives is ‘to promote rights, non-discrimination and equality, including gender equality, and to advance gender mainstreaming and the mainstreaming of non-discrimination’ [Article 2(b)]. Regarding this, recital 11 states that addressing ‘intersectional discrimination’ is of particular importance. Although it does not elaborate on this further in its provisions, the two-year work programmes adopted for its implementation include funding proposals for activities addressing intersectional discrimination.²²

III.1.2. Union of Equality Strategies

As stated in the ‘Political Guidelines for the Next European Commission 2019-2024’ presented by European Commission President Ursula von der Leyen, one of her major priorities was the creation of the framework for a ‘Union of Equality’.

This proposal resulted in the adoption of five Strategies to address discrimination on specific grounds: the LGBTIQ Equality Strategy 2020-2025²³; the Gender Equality Strategy 2020-2025²⁴; the Strategy for the Rights of Persons with Disabilities 2021-2030²⁵; the EU Anti-racism Action Plan 2020-2025²⁶; and the EU Roma strategic framework for equality, inclusion, and participation 2020-2030²⁷.

All of these documents explicitly incorporate an intersectional approach in their policies, thereby representing the first time that the EC has taken such an approach in its equality agenda.

²² Commission Implementing Decision on the financing of the Citizens, Equality, Rights and Values Programme and the adoption of the multiannual work programme for 2021-2022, Brussels, 19.4.2021, C(2021) 2583 final; and Commission Implementing Decision on the financing of the Citizens, Equality, Rights and Values Programme and the adoption of the work programme for 2023-2024, Brussels, 1.12.2022, C(2022) 8588 final.

²³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Union of Equality: LGBTIQ Equality Strategy 2020-2025, COM(2020) 698 final, Brussels, 12.11.2020.

²⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Union of Equality: Gender Equality Strategy 2020-2025, COM(2020) 152 final, Brussels, 5.3.2020.

²⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030, COM(2021) 101 final, Brussels, 3.3.2021.

²⁶ Communication from the Commission to the European Parliament and the Council, the European Economic and Social Committee and the Committee of the Regions, A Union of Equality: EU anti-racism action plan 2020-2025, COM(2020) 565 final, Brussels, 18.9.2020.

²⁷ Communication from the Commission to the European Parliament and the Council, A Union of Equality: EU Roma strategic framework for equality, inclusion and participation, COM(2020) 620 final, Brussels, 7.10.2020.

While this should be recognised as an evolution in European equality policy, it also serves as a reflection of the European Union's continued limited view of intersectional discrimination. In this sense, Debusscher & Maes (2024) analyse these Strategies, reflecting on their weaknesses in terms of intersectionality. One of the main criticisms is the decision of the EC to compartmentalise the 'Union of Equality' agenda into five distinct strategies, because this 'introduces an immediate tension, contradicting intersectionality theory' (p.11). According to the new 'Political Guidelines for 2024-2029', the idea seems to be to maintain this division, since only an interest in 'updating' the Strategies is mentioned.

The aforementioned scholars also point out the conceptualisation of intersectionality used in the Strategies. Thus, these documents refer to the intersection of identities rather than considering societal and intersecting power structures. This is clearly reflected, for instance, in the Strategy for the Rights of Persons with Disabilities.²⁸ However, the Anti-racism Action Plan embraces the other perspective, linking 'individual experiences to structural inequality systems' (Debusscher & Maes, 2024, p.12).

One of the main points of the five Strategies is mainstreaming the equality dimension in all policy areas. Thereby, as stated, for instance, in the Anti-racism Action Plan,

'the Commission will seek to ensure that the fight against discrimination on specific grounds and their *intersections with other grounds of discrimination*, such as sex, disability, age, religion or sexual orientation is integrated into all EU policies, legislation and funding programmes' (emphasis ours).

To do so, on an institutional level, the Gender Equality Strategy creates a Task Force for Equality. This Task Force is composed of representatives of all Directorates-General and the European External Action Service, and 'will facilitate the mainstreaming of equality relating to six grounds of discrimination: sex, race or ethnic origin, religion or belief, disability, age and sexual orientation'. In the mission of integrating an equality perspective in all EU policies – which includes 'providing strategic guidance, designing a toolbox for policy-makers, organising trainings and

²⁸ 'It promotes an intersectional perspective, addressing specific barriers faced by persons with disabilities who are at the intersection of identities (gender, racial, ethnic, sexual, religious), or in a difficult socioeconomic or other vulnerable situation'.

facilitating the work on equality undertaken by different services' –, the Task Force 'pursues an intersectional approach' (European Commission, 2022). The creation of this Task Force within the Commission will hopefully provide coherence to the mainstreaming of intersectional discrimination in all EU policies.

Related to this, the need for reliable and comparable data in order to adopt effective policies is constantly repeated in all the strategies. Thus, 'data should be disaggregated by relevant intersectional aspects' (Gender Equality Strategy). For instance, the Anti-racism Action Plan – and in a similar way the LGBTIQ Equality Strategy – proposes the organisation of a

'roundtable on equality data bringing together key stakeholders to examine obstacles to the collection of data related to racial or ethnic origin and identify paths to a more harmonised approach, including on intersectional data as regards, for instance, religion or belief and gender'.

The data disaggregated on the basis of racial or ethnic origin will allow the capture of 'both subjective experiences of discrimination and victimisation and structural aspects of racism and discrimination'.

Apart from this, although the five strategies contain some measures to operationalise equality in their policies, 'the specifics regarding the implementation of the intersectional approach remain unclear' (Debusscher & Maes, 2024, p.13). Specific measures to operationalise intersectionality are indeed scarce and, when they appear, they are focused mainly on funding and prevention, such as awareness-raising activities and training. The LGBTIQ Equality Strategy admits a lack of 'research on the intersectional experiences of LGBTIQ people, as those who are elderly or with disabilities'. Consequently, the proposed measure is Horizon Europe support of 'gender studies and intersectional research relevant for LGBTIQ people' and the dissemination of the research results. The Gender Equality Strategy also mentions that 'funding for gender and intersectional research will also be made available'. At the same time, some strategies mention communication campaigns, for example to combat gender stereotypes, tackling 'all spheres of life with an intersectional approach', and training for European Commission staff – this is the case for the Anti-racism Action Plan, which mentions the 'training on unconscious

bias, including in relation to racial and ethnic origin, including in intersection with other grounds of discrimination’.

In summary, few measures are found in the five strategies that actually operationalise intersectionality in EU policies. However, as claimed by Debusscher, P. & Maes, E. (2024, p.18), ‘the widespread incorporation of intersectionality into EU policy realms, at least as a rhetorical commitment, can also be viewed with cautious optimism’.

As the implementation period of some of the strategies draws to a close, the EC is undertaking an evaluation of their actual application. For instance, the LGBTIQ Equality Strategy remarks that its implementation ‘is having a positive impact’ and ‘it helps mainstreaming LGBTIQ equality across different policy areas, with an intersectional perspective’. However, only one specific mention to a completed intersectional measure is made throughout the text, namely the several projects addressing ‘discrimination and violence from an intersectional perspective’ that have been funded with EU funding. Besides, as the European Committee of the Regions suggested, ‘given the cross-cutting nature of the aforementioned strategies’ it would be appropriate ‘to have not only individual progress reports but also intersectional ones, evaluating the interaction between the different strategies and their cumulative effects in the case of multiple forms of discrimination’.²⁹

III.1.3. Other policy documents

As stated above, the European Parliament stands out among European Union institutions for its consistent focus on intersectionality in its own-initiative resolutions. Although not binding, these resolutions express the European Parliament's position on specific subjects and can influence policy-making at European level.

Since 2014, the European Parliament has been inviting the European Commission to ‘put forward a proposal for a legal framework on the issue of multiple and intersectional discrimination’.³⁰ Since then, there has been an evolution in its position

²⁹ Opinion of the European Committee of the Regions - A Union of equality: EU anti-racism action plan 2020-2025 (2021/C 300/05), OJ C 300, 27.7.2021, p. 23.

³⁰ European Parliament resolution of 27 February 2014 on the situation of fundamental rights in the European Union (2012) (2013/2078(INI)), OJ C 285, 29.8.2017.

on this matter, firstly being critical of the fact that EU policies only focused on the individual dimension of discrimination instead of adopting an intersectional approach,³¹ and secondly welcoming the inclusion of intersectionality as a core principle in certain European Commission strategies and documents, but regretting the 'lack of targets, indicators and specific actions in order to implement it'.³² The European Parliament also recognises the importance of adopting a 'dual approach', including targeted measures and the implementation of intersectionality as a cross-cutting principle.³³

Some of these possible measures are highlighted in its Resolution of 6 July 2022 on intersectional discrimination in the European Union: the socio-economic situation of women of African, Middle-Eastern, Latin-American and Asian descent.³⁴ For instance, the Resolution includes institutional measures such as the creation of a mainstreaming mechanism for cooperation and coordination for EU and national equality policies ensuring that intersectional discrimination is considered in the review and adoption of policies; and the institutionalisation and reinforcement of the Commission's Task Force on Equality to ensure that all policy measures include and intersectional perspective. Procedural measures such as the evaluation of intersectionality in impact assessments of policies and legislation are also included. It also contains preventive measures, specifically, the development of guidelines of good practices on the adoption of an intersectional approach in policy making and giving visibility of marginalised girls and young women in textbooks and other didactic materials. In addition, the Resolution suggests measures for Member States such as the adoption of criminal and civil law prohibiting intersectional discrimination and the application of intersectional discrimination in the criminal justice system, ensuring access to justice for women facing intersectional discrimination which includes quality legal assistance and in understandable language. Lastly, some positive action measures are mentioned, such as the use of temporary quotas, incentive mechanisms and mentorships for women facing intersectional discrimination to attain positions in public institutions.

³¹ e.g. European Parliament resolution of 21 January 2021 on the EU Strategy for Gender Equality (2019/2169(INI)), OJ C 456, 10.11.2021.

³² e.g. European Parliament resolution of 10 March 2022 on the EU Gender Action Plan III (2021/2003(INI)), OJ C 347, 9.9.2022.

³³ European Parliament resolution of 21 January 2021 on the EU Strategy for Gender Equality, *cit.*

³⁴ Cited above in footnote 3.

Various measures to operationalise intersectionality can be found in other European Parliament documents. Many of them are preventive and insist on awareness-raising campaigns, training and educational programs. These activities are then oriented to each specific context – e.g. the context of victims and professionals working with them³⁵, police training³⁶, staff of the European institutions, or sexual harassment.³⁷ Others are focused on funding.³⁸ Institutional measures such as the adoption of a Council configuration on gender equality and equality including intersectional discrimination to facilitate discussions on these issues³⁹ are also among the proposed actions. Lastly, the importance of disaggregated, intersectional data is emphasised repeatedly throughout the documents.⁴⁰

As regards the European Economic and Social Committee and the European Committee of the Regions, both encourage the European Commission to adopt an intersectional approach in its legislative proposals. To illustrate this, the European Economic and Social Committee ‘applauds the *regulatory innovation* of a Directive on combating violence against women from an *intersectional perspective*’ (emphasis ours).⁴¹ Nevertheless, there are few specific operational measures in the Committee’s opinions. This can be contrasted with recommendation from the European Committee of the Regions to ‘combine intersectional measures with positive measures in sectoral areas’ emphasising the importance of ‘having staff who have qualifications and/or are experts in gender issues and of promoting specific and lifelong training on gender in all areas in which decisions are made or public policies are managed’.⁴²

³⁵ European Parliament resolution of 19 April 2018 on the implementation of Directive 2011/99/EU on the European Protection Order (2016/2329(INI)), OJ C 390, 18.11.2019.

³⁶ European Parliament resolution of 25 October 2017 on fundamental rights aspects in Roma integration in the EU: fighting anti-Gypsyism (2017/2038(INI)), OJ C 346, 27.9.2018.

³⁷ European Parliament Resolution of 1 June 2023 on sexual harassment in the EU and MeToo evaluation (2022/2138(INI)), OJ C, C/2023/1224, 21.12.2023.

³⁸ European Parliament resolution of 24 November 2015 on cohesion policy and marginalised communities (2014/2247(INI)), OJ C 366, 27.10.2017.

³⁹ European Parliament resolution of 10 November 2022 on racial justice, non-discrimination and anti-racism in the EU (2022/2005(INI)), OJ C 161, 5.5.2023.

⁴⁰ European Parliament resolution of 14 December 2021 with recommendations to the Commission on combating gender-based violence: cyberviolence (2020/2035(INL)), OJ C 251, 30.6.2022.

⁴¹ Opinion of the European Economic and Social Committee on the proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence (EESC 2022/01395), OJ C 443, 22.11.2022.

⁴² Opinion of the European Committee of the Regions – A Union of Equality: Gender Equality Strategy 2020-2025 (COR 2020/02016), OJ C 440, 18.12.2020.

III.1.4. Intersectionality in Case Law

If engaging with intersectionality in EU policy and legal documents is already a complex topic, the process of recognising intersectionality in case law is even more complex.

It might be said that the position of the Court of Justice of the European Union (CJEU) has been quite clear since the *Parris* case (C-443/15 - *David L Parris v. Trinity College Dublin and Others*) in which the Court found that there is no new category of discrimination in EU law consisting of the combination of more than one ground (in that case, sexual orientation and age) where there was no discrimination on the basis of either of the grounds considered separately. The Court concluded that 'consequently, where a national rule creates neither discrimination on the ground of sexual orientation nor discrimination on the ground of age, that rule cannot produce discrimination on the basis of the combination of those two factors' (par. 81).

This was the first case in which the Court had to decide on a discrimination claim that had been argued explicitly on two grounds of discrimination, namely sexual orientation and age. The Court's decision calls into question the relevance of intersectionality in EU discrimination law, when it is necessary to establish two infringements when a substantial violation of the Directive⁴³ results from an intrinsic nexus between them. This case could have been decided differently if an intersectional approach had been embedded into the reasoning of the CJEU.

Such judicial openness is evidenced elsewhere, including in the fact that certain discriminatory behaviours not explicitly provided in law, such as discrimination by association and presumed discrimination, were developed through case law. It is also worth noting, the Opinion of Advocate General Kokott in *Parris*, which pointed out that 'the Court's judgment will reflect real life only if it duly analyses the combination of those two factors, rather than considering each of the factors of age and sexual orientation in isolation' (par. 4).

⁴³ In this case the Directive was the same - Council Directive 2000/78/EC - therefore no question on different legal basis or scopes of protection were of relevance. Also, the Court of Justice was not asked to extend the grounds to others not listed exhaustively in the Directive. Therefore the main technical impediments to consider intersectional arguments were not even present in this case.

The Court nevertheless insisted on maintaining the formal position that the different grounds of discrimination must be established individually, thereby adopting a potential additive rather than intersectional approach.

This has long been the Court's approach to 'multiple' discrimination (for previous examples, see Fredman, 2016, pp. 71-79) and continues to be so in cases where the Court has been confronted with gender and religion as combined grounds for discrimination (for instance, C-157/15, *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV*.; Joined Cases C-804/18 and C-341/19 - *IX v. WABE eV and MH Müller Handels GmbH v. MJ*; and C-344/20 - *LF v. SCRL*). In these cases, only one of the grounds (religion) was appraised by the Court due to the fact that there is no specific mention in the preliminary ruling request to the Gender Equality Directive.

More recently, in Case C-649/22 (*XXX v Randstad Empleo ETT, SAU and Others*), the Court seems to have provided indications as to how discrimination claims combining discrimination grounds could be assessed, explaining that

'in so far as the order for reference contains a reference to Article 14 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation' (OJ 2006 L 204, p. 23),

under which 'there shall be no direct or indirect discrimination on grounds of sex', the file before the Court does not contain the slightest evidence of any discrimination against XXX on grounds of sex' (par. 33). It seems therefore that beyond a specific mention to the relevant directives, more concrete substantiation of the ground of discrimination (and eventual link between grounds of discrimination) is required. Despite the Court's continued formalism evidenced here, there are indications of a potential avenue for introducing intersectional claims. The same indications result from case C-148/22 (*OP v Commune d'Ans*), which concludes that

'the order for reference does not contain any information enabling ascertainment of the factual situation on which the second question is based or of the reasons why an answer to that question – in addition to the answer

to the first question – is necessary in order to resolve the dispute in the main proceedings’ (par. 49).

Another avenue suggested by Howard (2024) for introducing intersectional claims is the ‘move to an intra-group comparison’, as this ‘would help to overcome the single-ground approach’. The intra-group comparison is based on the comparison between people within the group of people sharing the same protected ground of discrimination. This approach was used by the CJEU, for instance, in Case C-193/17 (*Cresco Investigation GmbH v Markus Achatzi*). As Howard suggests, applying this interpretation to the *Parris* case would imply asserting that

‘the group of homosexual people is vulnerable to discrimination because of their sexual orientation; and that, within that group, older homosexual people are extra vulnerable because of their age and because of the big shift in attitudes towards homosexuality and same-sex relationships in their lifetime’ (p. 305).

Another side of openness of the Court of Justice of the European Union’s case law comes from the field of migration. For example in Case C-621/21 (*WS v Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet*), the Court gave application to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul convention) and adjudicated on the basis of a gender-based approach to an asylum claim, recognising that

‘depending on the circumstances in the country of origin, women in that country, as a whole, and more restricted groups of women who share an additional common characteristic may be regarded as belonging to “a particular social group”, as a “reason for persecution” capable of leading to the recognition of refugee status’ (par. 62).

The CJEU thereby recognised the inclusion into a single category – ‘a particular social group’ – of multidimensional and intersectional traits that intimately link women subject to violence and seeking migrant status.

With regard to ECtHR case law – mentioned here in particular due to its close proximity to the CJEU jurisprudence – the approach is less formal, given the non-exhaustive list of grounds for discrimination in Article 14 of the ECHR and the more open-ended nature of the rights included in the Convention and its Protocols in comparison with EU legislation, both at the Treaty level and at secondary law level.⁴⁴ Additionally, Protocol no. 12 to the ECHR provides general protection against discrimination as long as the right is protected under national law, even when not explicitly mentioned in the ECHR.

This means that although the ECHR lacks explicit reference to intersectional discrimination, the ECtHR is not prohibited from reaching such a finding. Nonetheless, the Court has so far been reluctant, in the cases where a substantive intersectional claim was at stake, to address the issue using intersectionality as an hermeneutical tool in reaching a decision. Instead, even when it finds that there was a discrimination based on multiple grounds it prefers to rely on less ‘technical’ concepts such as ‘vulnerable individuals’ (*N.B. v Slovakia*, Application no. 29518/10; *B.S. v Spain*, Application no. 47159/08; *J.I. v. Croatia*, Application no. 35898/16). This is despite the fact that in most cases third-party interveners had asked for the recognition of intersectional discrimination. Hefti (2024) remarks on a slight shift in *Carvalho Pinto de Sousa Morais v. Portugal* (Application no. 17484/15). In that case, the ECtHR did not refer explicitly to a particular vulnerability of the applicant ‘but instead emphasized her age and gender’ (p. 8). Indeed, the ECtHR held that the decision taken by the national court was informed by gender and age preconceptions, thus underlining the intersecting nature of these grounds of discrimination.⁴⁵

⁴⁴ The Charter of Fundamental Rights is much closer to the ECHR normative model; however, the fact that it does not extend the application of the Treaties [Article 52(2)] has turned so far the Charter into an interpretative tool at the hands of the Court but not a self standing legal instrument.

⁴⁵ ‘The question at issue here is not considerations of age or sex as such, but rather the assumption that sexuality is not as important for a fifty-year old woman and mother of two children as for someone of a younger age. That assumption reflects a traditional idea of female sexuality as being essentially linked to child-bearing purposes and thus ignores its physical and psychological relevance for the self-fulfilment of women as people. Apart from being, in a way, judgmental, it omitted to take into consideration other dimensions of women’s sexuality in the specific case of the applicant. In other words, in the instant case the Supreme Administrative Court made a general assumption without attempting to look at its validity in the specific case of the applicant herself, who was fifty at the time of the operation at issue’ (par. 52).

In other cases, the Court decided not to find there was discrimination, even when several grounds were at stake, as happened in *Garib v. the Netherlands* (Application no. 43494/09) and *S.A.S v France* (Application no. 43835/11). In the first case, a dissenting opinion of Judge Pinto de Albuquerque (joined by Judge Vehabović) deserves mention. He considered that the Court has unfortunately refused to consider

‘a particular form of discrimination that European human rights law must incorporate into its bulwark of legal protection. I refer to the concept of “intersectional discrimination”, which represents a reality that has been virtually disregarded to date by the European system, whereas it has been increasingly acknowledged in international law. It is now indispensable to take this phenomenon into consideration in order to reach a global and comprehensive understanding of the various discrimination situations and thus guarantee the effectiveness of the Convention rights.’

In the second, the ECtHR received several briefs from third-party interveners that highlighted the risk of intersectional discrimination against Muslim women at the crossover between gender and religion, notably within the context of restrictions on the wearing of religious dress, headscarves in particular. Lastly, the ECtHR decides that only one ground for discrimination was enough to find a discriminatory behaviour (‘sex’) and does not take into account other invoked grounds (comparison to male athletes, race, ethnicity or ‘colour’, and, therefore does not address at all the questions of intersectionality raised by interveners (*Semenya v. Switzerland*, Application no. 10934/21).

This reluctance of the ECtHR to refer to intersectionality or to draw from arguments based on intersectionality, that would better characterise discriminatory behaviours and their effects in ‘intersectional victims’, can be contrasted with the approach of another regional human rights court – the IACtHR. Also responsible for the interpretation and application of a ‘living instrument’ (the American Convention), the IACtHR has been able to integrate intersectionality into its reasoning. We will refer only to some illustrative examples that show how intersectionality can evolve into an important instrument also in case law, helping better to understand discriminatory situations, their impacts, and also the way they could be effectively redressed.

The first case in which the Court referred to intersectionality was decided on 1 September 2015. The IACtHR noted, in the case of *Gonzales Lluy et al. v. Ecuador*, that

‘there was an intersectional confluence of multiple factors of vulnerability and risk of discrimination associated with her [Talía’s] status as a girl, a woman, a person living in poverty and a person with HIV. The discrimination Talía experienced was not only caused by multiple factors, but also resulted in a specific form of discrimination that resulted from the intersection of these factors, i.e. if any one of these factors had not been present, the discrimination would have had a different nature’ (par. 290, author’s translation).

Subsequently, other cases reinforced this intersectional approach as was the case of *I.V. v. Bolivia*, 30 November 2016 (loss of reproductive function due to a procedure in a public hospital); *Guzmán Albarracín et al. v. Ecuador*, 24 June 2020 (on sexual violence in educational context); *Ramírez Escobar et al. v. Guatemala*, 9 March 2018; *Maria et al. v. Argentina*, 22 August 2023 (both on motherhood and adoption issues); and *Employees of the Fireworks Factory of Santo Antônio de Jesus and their families v. Brazil*, 15 July 2020 (on the consequences of the explosion of a factory in the rights of the workers, mostly women and children, from African descent who lived in poverty and had low levels of schooling) (Del Carpio, 2021).

Perhaps most significant is the case *Manuela et al. v. El Salvador*, 2 November 2021, in which the criminalisation of abortion had led to women being prosecuted for these crimes that have little or no income, come from rural or marginalised urban areas and have low schooling. The facts of the present case fall within this context. Manuela was a woman of limited economic resources, illiterate and living in a rural area with her family. In February 2008 Manuela suffered a miscarriage and was denounced by the doctor who assisted her, finally being charged with homicide. In this case, the Court uses intersectionality as a hermeneutic element which helps it in deciding the merits of the cases submitted and provides the necessary perspective for establishing reparations, including non-repetition measures. Besides, the fact that victims belong to a group in a particular situation of vulnerability because of the intersectional discrimination, accentuates the duties of the State to respect and

guarantee the human rights of such individuals. Lastly, the positive obligations of a State when faced with the verification of a pattern of intersectional discrimination consists of the development of lines of action through the development of systematic policies that act on the origins and causes.⁴⁶

This brief detour into the IACtHR case law shows how intersectionality can be applied to a variety of situations and how it might become a valuable hermeneutical tool in case law.

III.2. Intersectionality in deliberative democracy

The EU recognises the right of every citizen ‘to participate in the democratic life of the Union’ in Article 10(3) TEU. Furthermore, Article 11(1) requires the institutions to give, by appropriate means, ‘citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action’.

On this basis, several mechanisms have been created to enhance the participation of citizens in European democratic and political life. However, many of them are of a consultative nature, such as public consultations on new EU policies and existing laws – now through the portal ‘Have your say’. Others, such as the European Citizens’ Initiative, have not been as successful as expected. Recognised in Article 11(4) TEU and currently implemented in Regulation (EU) 2019/788 of the European Parliament and of the Council of 17 April 2019, the European Citizens’ Initiative allows citizens to invite the EC to submit a proposal on matters where they consider that a legal act is required. However, only ten initiatives have been answered by the EC so far.⁴⁷ The European Parliament already stressed in 2021 the insufficiency of these participatory instruments at enabling citizens to influence EU decision-making.⁴⁸

⁴⁶ The IACtHR Advisory Opinion OC-29/22 of 30 de May 2022, although not mentioning intersectionality, also reinforces the need for adoption of positive measures from the State in cases where multiple grounds intersect (in the case, with the category of persons deprived of liberty), demanding a “differentiated approach”.

⁴⁷ European Union (n.d.). *European Citizens’ Initiative*. Retrieved November 26, 2024, from https://citizens-initiative.europa.eu/find-initiative/eci-lifecycle-statistics_en

⁴⁸ European Parliament resolution of 7 July 2021 on Citizens’ dialogues and Citizens’ participation in the EU decision-making (2020/2201(INI)), OJ C 99, 1.3.2022.

The weaknesses of these models have led to the emergence of new proposals for citizen participation that focus on deliberation. Among other mechanisms, this is the case of CAs, which are the focus of the EU-CIEMBLY project. For a few years now, several CAs have been held throughout different Member States, at a national, regional or local level. Focusing on the EU context, the first experience of a deliberative participatory mechanism resembling CAs was the Conference on the Future of Europe held from April 2021 to May 2022. An important part of the Conference was the European Citizen's Panels, where a total of 800 people were randomly selected, met in groups of 200 and held three deliberative sessions. Building on the success of the Conference – and the European Citizen's Panels specifically –, the holding of European Citizens' Panels on different topics has become more regular, with five such panels being conducted since 2022.

Furthermore, the possibility of institutionalising these deliberative mechanisms has already been considered. Thus, the European Economic and Social Committee has reflected on the establishment of a citizens' panel in its organisation to use it in its advisory work, adapting its Rules of Procedure to incorporate this procedure⁴⁹. As far as we are aware, this is the first time that an EU institution has declared the possibility of institutionalising a deliberative mechanism within its own framework.

In any case, despite their success in participatory terms, it remains to be asserted whether the configuration of those mechanisms and the related EU policy documents address considerations of intersectionality. For this purpose, an analysis of specific European policy documents is done (Section III.2.2) viewed from the lens of the three qualities that CAs should have from the point of view of the EU-CIEMBLY project – intersectional equality, inclusion and deliberation, according to Deliverable 2.2 –, which are summarised in Section III.2.1.

⁴⁹ Opinion of the European Economic and Social Committee on 'How to engage with the intended public and how to effectively use the results of the work of citizens' panels (EESC 2023/00732), OJ C 349, 29.9.2023.

III.2.1. Intersectional framework for a Citizens' Assembly: intersectional equality, inclusion and deliberation

An intersectional approach to equality, as described in Deliverable 2.2., recognises that some groups, such as PMIMG, may need to be treated differently or more favourably (positive discrimination) to achieve genuine equality in participation or inclusion, including recognising and removing as many barriers as possible. In addition, intersectional equality requires recognition of a more expansive conception of discrimination, one that is focused not only on individual grounds but also on power relations.

Regarding intersectional inclusion, Deliverable 2.2 differentiates two types of inclusion: external inclusion, i.e., who is present in the deliberation, which leads to participant sampling and recruitment; and internal inclusion, i.e. what happens during deliberation. Regarding the former, an intersectional inclusion model may prioritise the inclusion of marginalised groups over representativeness. With regard to the latter, power imbalances and biases need to be taken into account in order to try to include those with intersectional views in the deliberation. Lastly, intersectional inclusion involves looking at all levels of a CA, i.e. examining whether intersectional inclusion occurs in its creation, the deliberative process, the role of experts, facilitators and chairs, the way in which the members of the CA reach their conclusions, and the uptake or follow-up of those deliberations.

Finally, intersectional deliberation means recognising that barriers exist for some social groups in expressing their viewpoints and having them heard in deliberation. It should also consider that biases and power dynamics influence communication between participants and that knowledge or experiences of PMIMG should be drawn upon.

III.2.2. European framework for Citizens' Assemblies: the right path towards intersectional equality, inclusion and deliberation?

The European institutions have adopted a number of policy documents that address deliberative democracy (see Annex IV). We identify from these texts key elements that illustrate to some extent the attributes these institutions associate with deliberative mechanisms. It should be noted that they include only suggestions or recommendations from the European institutions, which can be followed or not in the configuration of deliberative mechanisms, and specially CAs. However, we bring all these points together to outline the kind of framework for CAs that the European Union embraces and then assess its shortcomings and strengths in relation to intersectionality.

III.2.2.1. Conference on the Future of Europe

As mentioned above, the first deliberative experience in the European Union was the Conference on the Future of Europe, within whose framework the Citizens' Panels were held. In advance of the Conference, the European Parliament, noted the need to ensure gender-balance in all Conference bodies as well as the need to reimburse the travel and accommodation costs of the participants. It was also recognised that participants may require 'authorised leave of absence from their workplace and compensation for social costs (e.g. loss of income, day-care and special arrangements for disabled persons)'.⁵⁰ These issues raised by the European Parliament are important for ensuring intersectional inclusion. While the reference to the 'Conference bodies' may be to the Executive Board and the Conference Plenary, the right way forward for intersectional inclusion should also include other staff within the CAs framework, such as facilitators or experts participating in the Panels. However, attention should be paid not only to gender balance but also to other grounds of discrimination or to the membership of a social group. The mention of compensation and authorised leave is something to be explored as these could be a

⁵⁰ European Parliament resolution of 15 January 2020 on the European Parliament's position on the Conference on the Future of Europe (2019/2990(RSP)), OJ C 270, 7.7.2021.

key point in achieving intersectional inclusion, even more than the selection of a suitable day to hold the CA, particularly for PMIMG.

In another vein, the European institutions clearly reiterated the need for the European Citizens' Panels at the Conference to be representative of the diversity of the EU and to include one third of young people among the participants. For instance, the Joint Declaration of the European Parliament, the Council and the European Commission on the Conference on the Future of Europe, announced it as a 'new space for debate with citizens' in which 'European citizens from all walks of life and corners of the Union will be able to participate, with young Europeans playing a central role in shaping the future of the European project'.⁵¹ This brings us to the question of participant recruitment. Regarding this, Article 5 of the Rules of Procedure of the Conference on the Future of Europe⁵² required the random selection of the participants of the Panels, being 'representative of EU sociological diversity, in terms of citizens' geographic origin, gender, age, socioeconomic background and/or level of education'. It also defined quotas so as to ensure gender balance – 'one female and one male citizen per Member State' – and that a third of the participants were between 16 and 25 years old. In addition, according to the Final report of the Conference – focused on the study on the Citizens' Panels –, quotas were also set on other criteria, ensuring that 40% of the participants were employed and 60% not, 72% were urban and 28% rural, and 40% had a tertiary education level and 60% primary, secondary or no education (Jones et al., 2022, p. 38). That said, Jones et al. (2022) stress that the 'selection processes to recruit citizens did not specifically target underrepresented groups, and ensuring that specific underrepresented groups were present was not a set objective' (p. 44). This is therefore an example of prioritising representativeness over the inclusion of specific social groups or marginalised groups, with the latter being more aligned with an intersectional approach to inclusion.

⁵¹ Joint Declaration of the European Parliament, the Council and the European Commission on the Conference on the Future of Europe Engaging with citizens for democracy – Building a more resilient Europe, OJ C 91I, 18.3.2021.

⁵² Available at <https://futureu.europa.eu/uploads/decidim/attachment/file/9340/sn02700.en21.pdf>

III.2.2.2. Participation of young people in democratic life

One of the contexts in which European institutions have given greater consideration to deliberative democracy and its mechanisms is that of youth participation. Indeed, it is in this context that most references to intersectionality and inclusion are made. It therefore does not seem a coincidence that the Conference on the Future of Europe required a third of the participants to be young people.

As stated by the Council,

‘enabling all young people to experience democracy requires an inclusive approach which takes account of their diversity in many respects. Special attention should be given to young people who have only limited access to participatory processes, youth work opportunities and interactions with other civil society actors as a result of individual or structural disadvantages, while bearing in mind the risk of intersectional discrimination’.⁵³

For its part, the European Economic and Social Committee considers it important to ‘identify and overcome social, economic and cultural obstacles to the full participation of young people, especially the most vulnerable’. It also recognises the importance of the EU Youth Dialogue, emphasising the need to include ‘marginalised groups of young people and taking an intersectional approach’.⁵⁴

The EU Youth Dialogue is a participation mechanism for young people. As defined in the European Union Youth Strategy 2019-2027⁵⁵,

‘EU Youth Dialogue means the dialogue with young people and youth organisations involving policy and decision makers, as well as experts, researchers and other relevant civil society actors, as appropriate. It serves as

⁵³ Conclusions of the Council and of the representatives of the governments of the Member States meeting within the Council on fostering democratic awareness and democratic engagement among young people in Europe, OJ C 415, 1.12.2020.

⁵⁴ Opinion of the European Economic and Social Committee on cooperation on youth, OJ C 293, 18.8.2023.

⁵⁵ Resolution of the Council of the European Union and the Representatives of the Governments of the Member States meeting within the Council on a framework for European cooperation in the youth field: The European Union Youth Strategy 2019-2027, OJ C 456, 18.12.2018.

a forum for continuous joint reflection and consultation on the priorities, implementation and follow-up of European cooperation in the field of youth’.

Although it is not a CA, it shares some of its characteristics, especially with regard to the Citizens' Panels. As mentioned above, the participants of these panels were randomly selected, they met during deliberative sessions and made recommendations on previous themes selected by the EC and the citizen's contributions on the multilingual digital platform. In this regard, the Resolution of the Council on the outcomes of the 9th cycle of the EU Youth Dialogue insists on the need to engage ‘young people from diverse backgrounds and social groups’ and recalls participants' emphasis on the need to make all aspects of this mechanism ‘more inclusive and diverse and to improve its outreach to various groups of young people’.⁵⁶

III.2.2.3. European Parliament and citizens’ participation

As with intersectionality in general in European policies (Section III.1.3 above), the European Parliament has also played a leading role in emphasising the need to make citizens’ participation more inclusive. One of the earliest statements by European institutions addressing aspects of inclusion within deliberative democracy mechanisms was the European Parliament’s Resolution on Citizens’ dialogues and Citizens’ participation in the EU decision-making.⁵⁷

In its resolution from 7 July 2021 and at the moment the Conference on the Future of Europe was taking place, the European Parliament already proposed to improve existing, and to create new, participatory tools to make participation more accessible and inclusive. Thus, participatory mechanisms should be ‘participatory, inclusive, open, deliberate, transnational, transparent, non-partisan, accountable, effective, visible and engaging’.

⁵⁶ Resolution of the Council and of the representatives of the Governments of the Member States meeting within the Council on the outcomes of the 9th cycle of the EU Youth Dialogue, OJ C 185, 26.5.2023.

⁵⁷ European Parliament resolution of 7 July 2021 on Citizens’ dialogues and Citizens’ participation in the EU decision-making (2020/2201(INI)), OJ C 99, 1.3.2022.

This resolution clearly incorporates elements that align with the principles of intersectional equality, inclusion and deliberation. It indeed stresses that ‘all citizens should have equal access to participatory mechanisms, including those living in disadvantaged areas or those who have a lower exposure to EU information’. Moreover, these mechanisms should be ‘extended to all, including non-EU citizens residing in the EU as well as EU citizens residing in another Member State or in a non-EU country’.

In addition, the European Parliament encourages the use of all official languages of the Union in participation in order to remove barriers and increase inclusiveness. In terms of equality, the resolution underlines ‘the importance of giving full access to persons with disabilities’, in particular, ‘through systematic interpretation and translation into sign language and easy-to-read language’.

The resolution also focuses on the policy impact of the mechanisms. In this regard, it points out the need to communicate from the beginning the ‘purpose, rules and timeframes’ of the process in order to be effective. Even before the launching of the participatory process, the European institutions ‘must commit themselves to following up on their outcome’. This is also something important to increase the participation and engagement in the process, mainly from marginalised groups, who are more likely to not participate or to drop out before the end of the process – referred to in Deliverable 2.2. as the ‘attrition of marginalised groups’. Related to this, at the end of the process, the European Parliament’s resolution advocates for the clear definition of outcomes and the provision of feedback on each proposal, and to do this in clear language.

More recently, the European Parliament has adopted a resolution on Parliamentarism, European citizenship and democracy.⁵⁸ This resolution explicitly recalls that improved participation ‘will only be possible by addressing the problem of discrimination’ although merely mentions the one resulting from the digital divide. In any case, it holds particular significance as it advocates for the institutionalisation of deliberative mechanisms. Thus, mini-publics

⁵⁸ European Parliament resolution of 14 September 2023 on Parliamentarism, European citizenship and democracy, OJ C, C/2024/1769, 22.3.2024.

‘with randomly selected participants representing subsets of the socio-economic structure of the Union and thereby the whole spectrum of society need to be organised in a way that helps prevent unequal access to participation in the democratic life of the Union by offering citizens that otherwise might not have this opportunity a way of expressing their vision’.

III.2.2.4. Commission Recommendation (EU) 2023/2836 of 12 December 2023 on promoting the engagement and effective participation of citizens and civil society organisations in public policy-making processes

Commission Recommendation (EU) 2023/2836 stands out among all the policy documents analysed. The Recommendation explicitly suggests a general framework for the effective participation of citizens and civil society organisations. Even though it is addressed to Member States, some useful issues – and sometimes unprecedented in this context – are worth highlighting. It should be noted, however, that the main objective of the Recommendation is not deliberative mechanisms, but the participation of citizens and civil society organisations in public policy-making processes, whether or not they take the form of citizen deliberation mechanisms. Even so, the EC Recommendation explicitly recognises that ‘these innovative forms of participation associating citizens directly, such as online and in person deliberative and co-creation processes, are promising practices to support and renew governance mechanisms’. Indeed, the EC reflects on the possibility to introduce these mechanisms ‘at different stages of policy-making’, thus institutionalising them in a way. In short, the specific measures included below in Table 1 do not always refer to CAs – or deliberative mechanisms –, but can be tailored for them.

The Recommendation mentions general aspects already found in the aforementioned European documents: the need for the participation process to be inclusive, to reflect the demographic diversity and the needs of underrepresented groups or of persons with disabilities; the need to provide reasonable accommodation to ensure the participation of persons with disabilities on an equal basis with others; to encourage the participation of children and young people; and to continue envisaging and enabling in-person participation to bridge the digital divide.

Apart from these general considerations, the general framework for the effective participation of citizens recommended by the EC has several measures to make deliberative processes more intersectional. These measures are presented in the following table.

Table 1

Measures included in the EC Recommendation to create a general framework for participation under the lens of intersectionality

Intersectional equality	Provide information about the participatory processes specifically to citizens that are likely to be affected, with a particular attention to the most marginalised, underrepresented and vulnerable individuals and groups
	Provide for ways to participate in a non-discriminatory and accessible manner, including for persons with disabilities, without excessive formalities and free of charge
	Prevent and remove obstacles to participation of underrepresented groups, by taking into account special needs, including of persons with disabilities, the youth, elderly, citizens with a migrant background and mobile Union citizen
Intersectional inclusion	Envisage sufficient resources and time to ensure meaningful impact and take into account the holiday seasons to allow appropriate participation
	Ensure conducive conditions for participation without burden and, where appropriate, the reimbursement of participation costs, including to support economically excluded citizens
	Ensure inclusiveness by using the best available statistical random sampling and sortition techniques. Where possible, identify and address differences in participation of different groups by making use of statistics and attitudinal studies ⁵⁹
Intersectional deliberation	Participation processes and exercises should be facilitated with best available expertise to ensure an inclusive approach allowing all participants to be equally heard as well as an accurate presentation of the plurality of opinions on the issues discussed
	Ensure that citizens and civil society organisations have an

⁵⁹ The Commission also states that 'the selection of citizens should be based on demographic criteria, to ensure that the participants reflect the demographic configuration of the Member State including by relying on census or other similar relevant data and any other attitudinal criteria that ensure diversity'. Although this could be the starting point, it does not address the basis of intersectional inclusion as it insists on representativity – selecting participants based on demographic criteria and other attitudinal criteria to ensure diversity, instead of looking for a more targeted sampling, ensuring the inclusion of specific social groups or marginalised groups.

	equal opportunity to participate and that there is a plurality of opinions taken into account, including those of the underrepresented, most vulnerable and marginalised persons
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Source: own elaboration based on Commission Recommendation (EU) 2023/2836 of 12 December 2023 on promoting the engagement and effective participation of citizens and civil society organisations in public policy-making processes

Some of the measures, however, do not fully align with an intersectional framework, although they may come close. For example, the reference to ensuring inclusiveness by using demographic criteria and ‘any other attitudinal criteria that ensure diversity’ might fall short in terms of intersectional inclusion. Conventional random sampling may guarantee representativeness but not inclusiveness, and the above criteria may not be sufficient to ensure the participation of specific social groups.

It remains to be said that the Recommendation places significant emphasis on the participation of civil society organisations in policy-making processes, although it does not specifically focus on their involvement in deliberative processes. However, civil society organisations can have a very important role in CAs.⁶⁰ As an example, some of the theoretical models for an intersectional and inclusive CA study in Deliverable 2.3 involve them in the operationalisation of CAs, for instance in the recruitment of participants or even in nominating someone from its internal organisation to be part of the CA.

IV. CONCLUSIONS AND RECOMMENDATIONS

This Deliverable provides a systematic review of the legal acts and policy documents of the European Union that tackle intersectionality in general and in deliberative democracy specifically, focusing particularly on CAs.

Based on the theoretical framework provided in previous deliverables and tasks of the EU-CIEMBLY project, this review highlights some advances in the intersectional path taken over the last years by the EU, but also reveals continued shortcomings

⁶⁰ The European Economic and Social Committee believes that ‘the issue regarding the representativeness of citizen contributions to the public debate must be raised, as well as the expertise needed to contribute. Does the opinion of an association representing thousands of members hold the same weight as that of one sole citizen?’; Opinion of the European Economic and Social Committee on ‘How to engage with the intended public and how to effectively use the results of the work of citizens’ panels, cited above in footnote 49.

and policy gaps. This final section presents the conclusions, alongside some recommendations aimed at addressing those gaps.

IV.1. Conclusions regarding intersectionality in general

Intersectionality, within the European Union, is already emerging as a powerful concept, paving the way to becoming a cross-cutting principle in all relevant areas of competence of the EU. However, the nature and effects of this principle are still unclear. Besides the absence of a single legal notion of intersectionality, questions arise as to whether this might indicate a lack of political consensus on how to understand and develop it further.

In particular, it would be important to clarify if intersectionality is in itself a novel principle which requires a specific set of institutional, procedural or substantive rules to be applied or if it can be seen as a principle that should be embedded into the existing political and legal framework, demanding adaptations and improvements, but not necessarily a 'foundational moment' to be able to be applicable. For instance, in the field of anti-discrimination, we are left wondering if intersectional discrimination is something different from direct or indirect discrimination – which would require a legal framework of its own to make it relevant in the anti-discrimination field – or if it is a manifestation of discriminatory behaviours such as discrimination by association, by assumption or multiple discrimination that are legally relevant, also in case law, but not mentioned in the Equality Directives. If so, it would be possible for the EU and Member States to adjust legal frameworks to the demands of intersectionality in each policy field – and also, since this is our scope of study, in citizens assemblies – without, in most cases, having to 'reinvent the wheel' or produce specific regulations for this specific purpose.

Indeed the multiform and dynamic nature of the intersectionality phenomena (see Deliverable 2.2.) itself seems to eschew the adoption of a very strict regulatory approach to introducing intersectionality into policy areas of the EU. Policy areas are also very distinct, with the EU enjoying very different scopes of action, depending on the type of competency at stake, which is particularly visible in the equality area, where still no horizontal equality directive has been adopted.

This does not mean, however, that intersectionality should be 'melted' or 'blended' into other policy and legal instruments so that it is hard to grasp its relevance besides its inspirational and aspirational traits. The added value of intersectionality should be inserted clearly and explicitly into those instruments, moulding the way they should be redefined, interpreted and applied. Therefore, it is hardly explainable why the mere reference to intersectionality is absent from the Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), although it broadly includes discrimination and is concerned about perpetuating historical patterns of discrimination concerns or creating new forms of discriminatory impacts. The same can be said for the recent EU's Pact on Migration and Asylum that only relied on the concept of vulnerability, despite the calls to incorporate elements that favour an intersectional approach at a normative, policy and institutional level (Duarte et al., 2023 and Standke-Erdmann, 2021).

As Ovalle et al. put it 'what we cannot name, we cannot see. What we cannot see, we cannot address' (Ovalle et al., 2023). This is why it is important that a clear and robust intersectionality toolbox is developed and expanded within the EU and shared with its Member States, so that a method to integrate intersectionality demands and concerns is mainstreamed, shared and disseminated across the EU. This is not an immediate and easy task since one of the main identifiable gaps in intersectionality theory has been how to translate it into policy instruments (Hankivsky & Cormier, 2011). However, as Smooth has put it 'as much as political scientists can offer intersectionality, in return, intersectionality can offer political science an expanded appreciation for varied methodological tools and approaches' (Smooth, 2013, p. 32).

That is the reason why in Annex III we purport to bring to light some of these policy and legal measures, most of them already included in policy and legal instruments adopted by the EU, as previously explained, others based on our own reflections and on expert reports (Tudisco, Lantschner, 2022, pp. 66-70; Fredman, 2016, pp. 80-85). All measures aim, in their own capacity, to provide political and legal content to a

principle whose concrete relevance for EU law and policy making is beginning to emerge.

IV.2. Conclusions regarding intersectionality in deliberative democracy

The aim of the review of the policy documents adopted by the EU institutions that address issues of deliberative democracy was to identify signs within these documents that would indicate that the EU advocates for citizen participation through deliberative mechanisms and that these mechanisms are conceived with parameters of intersectional equality, inclusion and deliberation in the sense theorised in Deliverable 2.2 of the EU-CIEMBLY project.

The result of this review – which, we emphasise, does not evaluate specific experiences that will be the subject of WP3 – leads to two main conclusions. First, many of these documents do not always focus on deliberative democracy, nor on CAs, but on general citizens' participation in more traditional mechanisms. Second, even so, when referring to general citizens' participation and in the few cases that the documents consider deliberative processes, it appears to be a slight evolution in terms of inclusion and intersectionality. Despite these very initial steps, there is still a long path to go to conceive and put into practice these mechanisms through an intersectional lens.

From a more general approach, it is now widely accepted that the participation in decision-making of marginalised groups, disabled people, young people, or vulnerable groups must be a reality and efforts should be made in that way. Nevertheless, in contrast to the case of the policy documents of intersectionality in general presented in Section III.1, there are no specific mentions of PMIMG or intersecting groups that may require specific needs (see, e.g. Section III.1.1.1 above). Apart from that, as the European Parliament points out, discrimination is a barrier to better participation. Despite this rhetoric, discrimination in participatory mechanisms is not analysed in depth by the EU institutions, whether in relation to its causes nor the measures to combat it. In fact, the few references to discrimination are made in relation to very specific aspects – such as the discrimination resulting from the digital divide – and there are only two mentions of intersectional

discrimination throughout the analysed documents, always in the context of youth participation. Related to this, although we agree on the importance of youth participation in policy-making, the limited participation of other important groups are being overlooked⁶¹, including PMIMG.

From the approach of deliberative democracy and deliberative mechanisms, there are indeed some advancements and some concrete proposals, for instance regarding youth participation and the importance of providing material conditions for vulnerable groups to be able to participate fully. However, an intersectional lens is still lacking for instance with regard to adjusted processes for sampling and recruitment, as they are still limited to recruit people based on demographic criteria and specific quotas related to gender and age, without extending it to e.g. PMIMG. Also regarding the specific role of civil society organisations in drawing out and conducting CAs and the role of other CA participants such as facilitators, experts and translators.

Intersectional avenues in deliberation still need to be further defined and tested, so as to empower PMIMG to make themselves heard and their voices count. This is precisely one of the major gaps in the documents analysed that cater these issues, with only the EC Recommendation addressing deliberative issues. There is no point in addressing inclusion in the processes – external inclusion – while leaving the deliberation phase – internal inclusion – behind, therefore new and more creative forms of deliberation are needed that go alongside policy makers' reinforced commitment to deliberative democracy. In this regard, the EU could benefit from the progress already achieved in this area by the OECD, one of the leading actors in the deliberative democracy field today (OECD, 2020), and also by the more recent recommendations of the Council of Europe on deliberative democracy (Council of Europe, 2023). Enhanced dialogue with these organisations may help strengthen its policies regarding inclusion in deliberative mechanisms.

All of this needs to be considered without forgetting, moreover, broader issues such as the effective impact of the output of the CAs on policy making, and the reflection on whether or not institutionalising these deliberative mechanisms is needed.

⁶¹ We can find only a few considerations of the participation of Roma people in the Estrategy EU Roma strategic framework for equality, inclusion, and participation 2020-2030.

In any case, this is the work to be carried out by EU-CIEMBLY in subsequent work packages, making sure that the integration of an intersectional approach to citizens assemblies does not change their nature as citizens deliberative tools, but enriches them with dimensions that make them more equal, inclusive and relevant, which mirrors the society we all wish to be a part of.

IV.3. Initial recommendations

As mentioned above, the review also delves into policy gaps, which can be addressed by the recommendations included in this subsection. These recommendations can be offered considering the project's developments up to this point, but they lay only a first foundation for a further in-depth exploration of policy-making issues in subsequent work packages, especially WP5. Thus, the major recommendations for European policymakers, within the policy areas of the EU, that can be drawn from this Deliverable are as follows:

- The definition of intersectionality should cover the intersection of different protected grounds as well as underline discrimination due to power structures, which could allow for a consideration of protected grounds other than those currently included in anti-discrimination law.
- Intersectionality should be inserted clearly and explicitly into policy and legal instruments as a transversal concern, although adjusted to each specific field, molding the way those instruments should be redefined, interpreted and applied.
- A robust intersectionality toolbox, including preventive, procedural, proactive, institutional, organisational, funding and monitoring measures, should be developed as a method to mainstream intersectionality demands and concerns.
- From an intersectional perspective, some of the European Union's major strategies, such as the 'Union of Equality', ought to be revised as different types of discrimination should not be treated as isolated compartments but emphasising their interconnectedness.

- Ideally, there should be no equality bodies dedicated to specific protected grounds which does not allow a global consideration of the many faces of discriminatory phenomena, or effective collaboration between equality bodies should be reinforced in order for intersectional discrimination to be effectively tackled.
- The concept of inclusion currently considered in CAs should be broadened, as it is not enough to fully address essential issues such as sampling and recruitment, once it only considers demographic or attitudinal criteria and overlooks other possible methods that may be used, such as the involvement of civil society organisations.
- The recruitment process should specifically target underrepresented groups as intersectional equality may need to break barriers to the participation of many other different groups, depending on the relevant intersections, not only young people, as seems to be nowadays the main concern of the EU. Thus, policy documents should address the participation of PMIMG or intersecting groups, including but not limited to age.
- The bodies and the staff participating in the CAs, including experts, facilitators and chairs should be selected taking also into account intersectional inclusion; gender-balance is not enough and other grounds of discrimination or membership of a social group should be considered, so that there is a greater diversity in staff members. Additionally, training for experts, facilitators and chairs before the start of the process should include specific guidelines to ensure inclusion.
- Policy documents should consider each specific phase of a deliberative mechanism, particularly the deliberative phase, which is often the most overlooked. Creative forms of deliberation are needed and more reflection should be given to the deliberative aspect of CAs when addressing these issues in policy documents. Developing innovative techniques that facilitate engagement in the debate, regardless of the difficulties in expressing someone's views, and reimagining how the outcomes of the CAs may be produced should be an issue of concern for upcoming CAs.

- In general, a deeper dialogue with other organisations, such as the OECD and the Council of Europe, that also have an agenda on deliberative democracy and inclusion could be a step forward in achieving a better and shared understanding of intersectionality in general and in CAs all throughout Europe.

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ANNEX I

Intersectionality in general

List of reviewed EU legal and policy documents

Document	Date
Directive (EU) 2024/2841 of the European Parliament and of the Council of 23 October 2024 establishing the European Disability Card and the European Parking Card for persons with disabilities	23-10-2024
Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Implementation of the 2020-2025 LGBTIQ equality strategy	25-09-2024
Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Implementation of the EU anti-racism action plan 2020-2025 and on national action plans against racism and discrimination	25-09-2024
Directive (EU) 2024/1712 of the European Parliament and of the Council of 13 June 2024, amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims	13-06-2024
Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence	14-05-2024

Directive (EU) 2024/1500 of the European Parliament and of the Council of 14 May 2024 on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and amending Directives 2006/54/EC and 2010/41/EU	14-05-2024
Conclusions of the Council and of the representatives of the governments of the Member States meeting within the Council on inclusive societies for young people	13-05-2024
Council Directive (EU) 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC	07-05-2024
European Parliament resolution of 8 February 2024 on the implementation of the EU LGBTIQ Equality Strategy 2020-2025	08-02-2024
European Parliament resolution of 18 January 2024 on extending the list of EU crimes to hate speech and hate crime	18-01-2024
European Parliament resolution of 18 January 2024 on the situation of fundamental rights in the European Union – annual report 2022 and 2023	18-01-2024
European Parliament resolution of 18 January 2024 on the gender aspects of the rising cost of living and the impact of the energy crisis	18-01-2024
Council Recommendation of 18 December 2023 on a European framework to attract and retain research, innovation and entrepreneurial talents in Europe	18-12-2023

Opinion of the European Economic and Social Committee on 'Advancing the EU's just transition policy framework: what measures are necessary?	14-12-2023
European Parliament resolution of 12 December 2023 on mental health	12-12-2023
Joint report to the European Parliament and the Council - Joint mid-term report on the implementation of the EU Gender Action Plan (GAP III)	20-11-2023
European Parliament resolution of 4 October 2023 on harmonising the rights of autistic persons	04-10-2023
European Parliament resolution of 14 September 2023 on the regulation of prostitution in the EU: its cross-border implications and impact on gender equality and women's rights	14-09-2023
Regulation (EU) 2023/1322 of the European Parliament and of the Council of 27 June 2023 on the European Union Drugs Agency (EUDA) and repealing Regulation (EC) No 1920/2006	27-06-2023
Opinion of the European Economic and Social Committee on cooperation on youth	15-06-2023
European Parliament resolution of 14 June 2023 with recommendations to the Commission on quality traineeships in the Union (2020/2005(INL))	14-06-2023
European Parliament Resolution of 1 June 2023 on sexual harassment in the EU and MeToo evaluation (2022/2138(INI))	01-06-2023
Directive (EU) 2023/970 of the European Parliament and the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms	10-05-2023

European Parliament resolution of 19 April 2023 on combating discrimination in the EU — the long-awaited horizontal anti-discrimination directive	19-04-2023
Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and the Council on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation (COM(2022) 688 final — 2022/0400 (COD)) and on the Proposal for a Council Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC	22-03-2023
European Parliament resolution of 18 January 2023 on human rights and democracy in the world and the European Union's policy on the matter — annual report 2022	18-01-2023
European Parliament resolution of 13 December 2022 towards equal rights for persons with disabilities	12-12-2022
European Parliament resolution of 10 November 2022 on racial justice, non-discrimination and anti-racism in the EU	10-11-2022
European Parliament resolution of 5 October 2022 on the situation of Roma people living in settlements in the EU	05-10-2022
Join Communication to the European Parliament and the Council, Youth Action Plan (YAP) in EU external action 2022 – 2027	04-10-2022
European Parliament resolution of 15 September 2022 on the situation of fundamental rights in the European Union in 2020 and 2021	15-09-2022

Opinion of the European Economic and Social Committee on the proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence	13-07-2022
Opinion of the European Economic and Social Committee on gender equality	13-07-2022
European Parliament Resolution of 6 July 2022 on intersectional discrimination in the European Union: the socio-economic situation of women of African, Middle-Eastern, Latin-American and Asian descent	06-07-2022
European Parliament resolution of 5 July 2022 towards a common European action on care	05-07-2022
European Parliament resolution of 5 July 2022 on women's poverty in Europe	05-07-2022
European Parliament resolution of 3 May 2022 on reaching women's economic independence through entrepreneurship and self-employment	03-05-2022
European Parliament resolution of 3 May 2022 on the persecution of minorities on the grounds of belief or religion	03-05-2022
European Parliament Resolution of 10 March 2022 on the EU Gender Action Plan III	10-03-2022
European Parliament resolution of 17 February 2022 on empowering European youth: post-pandemic employment and social recovery	17-02-2022
European Parliament resolution of 15 December 2021 on equality between women and men in the European Union in 2018-2020	15-12-2021
European Parliament resolution of 14 December 2021 with recommendations to the Commission on combating gender-based violence: cyberviolence	14-12-2021

Opinion of the European Committee of the Regions — Union of Equality: LGBTIQ Equality Strategy 2020-2025	14-10-2021
European Parliament resolution of 7 October 2021 on the protection of persons with disabilities through petitions	07-10-2021
Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Strategy on Combating Antisemitism and Fostering Jewish Life (2021-2030)	05-10-2021
European Parliament resolution of 16 September 2021 with recommendations to the Commission on identifying gender-based violence as a new area of crime listed in Article 83(1) TFEU	16-09-2021
European Parliament resolution of 24 June 2021 on the situation of sexual and reproductive health and rights in the EU, in the frame of women's health	24-06-2021
European Parliament resolution of 10 June 2021 on promoting gender equality in science, technology, engineering and mathematics (STEM) education and careers	10-06-2021
European Parliament resolution of 19 May 2021 on artificial intelligence in education, culture and the audiovisual sector	19-05-2021
Opinion of the European Committee of the Regions — A Union of equality: EU anti-racism action plan 2020-2025	07-05-2021
Regulation (EU) 2021/692, of the European Parliament and of the Council of 28 April 2021, establishing the Citizens, Equality, Rights and Values Programme and repealing Regulation (EU) No 1381/2013 of the European Parliament and of the Council and Council Regulation (EU) No 390/2014	28-04-2021

Opinion of the European Economic and Social Committee on 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Union of Equality: LGBTIQ Equality Strategy 2020-2025	27-04-2021
Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive')	19-03-2021
European Parliament resolution of 11 March 2021 on children's rights in view of the EU Strategy on the rights of the child	11-03-2021
European Parliament resolution of 10 March 2021 on the implementation of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation in light of the UNCRPD (2020/2086(INI))	10-03-2021
Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030	03-03-2021
European Parliament resolution of 11 February 2021 on challenges ahead for women's rights in Europe: more than 25 years after the Beijing Declaration and Platform for Action	11-02-2021
European Parliament resolution of 21 January 2021 on the gender perspective in the COVID-19 crisis and post-crisis period	21-01-2021

European Parliament resolution of 21 January 2021 on the EU Strategy for Gender Equality (2019/2169(INI))	21-01-2021
European Parliament resolution of 17 December 2020 on the need for a dedicated Council configuration on gender equality	17-12-2020
Joint Communication to the European Parliament and the Council - EU Gender Action Plan (GAP) III - An ambitious agenda for gender equality and women's empowerment in EU external action	25-11-2020
Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Action plan on Integration and Inclusion 2021-2027	24-11-2020
Conclusions of the Council and of the representatives of the governments of the Member States meeting within the Council on fostering democratic awareness and democratic engagement among young people in Europe	20-11-2020
Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Union of Equality: LGBTIQ Equality Strategy 2020-2025	12-11-2020
Opinion of the European Economic and Social Committee on Diversity management in the EU Member States	27-10-2020
European Parliament resolution of 23 October 2020 on Gender Equality in EU's foreign and security policy	23-10-2020
Opinion of the European Committee of the Regions – A Union of Equality: Gender Equality Strategy 2020-2025	14-10-2020
Communication from the Commission to the European Parliament and the Council, A Union of Equality: EU Roma strategic framework for equality, inclusion and participation	07-10-2020

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Union of equality: EU anti-racism action plan 2020-2025	18-09-2020
European Parliament resolution of 17 September 2020 on the implementation of National Roma Integration Strategies: combating negative attitudes towards people with Romani background in Europe	17-09-2020
Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Union of Equality: Gender Equality Strategy 2020-2025	05-03-2020
Opinion of the European Economic and Social Committee on 'Shaping the EU agenda for disability rights 2020-2030: a contribution from the European Economic and Social Committee' (own-initiative opinion)	11-12-2019
European Parliament resolution of 14 February 2019 on the future of the LGBTI List of Actions (2019-2024)	14-02-2019
Opinion of the European Economic and Social Committee on — The situation of women with disabilities (Exploratory opinion requested by the European Parliament)	11-07-2018
European Parliament resolution of 19 April 2018 on the implementation of Directive 2011/99/EU on the European Protection Order	19-04-2018
Opinion of the European Committee of the Regions — Work-life balance for parents and carers	30-11-2017
European Parliament resolution of 25 October 2017 on fundamental rights aspects in Roma integration in the EU: fighting anti-Gypsyism	25-10-2017
European Parliament resolution of 13 September 2016 on creating labour market conditions favourable for work-life balance	13-09-2016

European Parliament resolution of 8 March 2016 on Gender Mainstreaming in the work of the European Parliament	08-03-2016
European Parliament resolution of 24 November 2015 on cohesion policy and marginalised communities	24-11-2015
European Parliament resolution of 9 June 2015 on the EU Strategy for equality between women and men post 2015	09-06-2015
European Parliament resolution of 27 February 2014 on the situation of fundamental rights in the European Union (2012)	27-02-2014
European Parliament resolution of 11 December 2013 on women with disabilities	11-12-2013
European Parliament resolution of 9 March 2011 on the EU strategy on Roma inclusion	09-03-2011
European Parliament resolution of 8 March 2011 on equality between women and men in the European Union – 2010	08-03-2011
Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Non-discrimination and equal opportunities: A renewed commitment	02-07-2008

ANNEX II

Case law

Court	Case	Date	Identifier
CJEU	<i>C-649/22 (XXX v. Randstad Empleo ETT, SAU and Others)</i>	22-02-2024	ECLI:EU:C:2024:156
	<i>C-621/21 (WS v. Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet)</i>	16-01-2024	ECLI:EU:C:2024:47
	<i>C-148/22 (OP v. Commune d'Ans)</i>	28-11-2023	ECLI:EU:C:2023:924
	<i>C-344/20 (LF v. SCRL)</i>	13-10-2022	ECLI:EU:C:2022:774
	<i>Joined Cases C-804/18 and C-341/19 (IX v. WABE eV and MH Müller Handels GmbH v. MJ)</i>	15-07-2021	ECLI:EU:C:2021:594
	<i>C-193/17 (Cresco Investigation GmbH v Markus Achatzi)</i>	22-01-2019	ECLI:EU:C:2019:43
	<i>C-157/15 (Samira Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV)</i>	14-03-2017	ECLI:EU:C:2017:203
	<i>C-443/15 (David L Parris v. Trinity College Dublin and Others)</i>	24-11-2016	ECLI:EU:C:2016:897
ECtHR	<i>Semenya v. Switzerland</i> (Application no. 10934/21)	11-07-2023	ECLI:CE:ECHR:2023:0711JUD001093421
	<i>J.I. v. Croatia</i> (Application no. 47159/08)	08-09-2022	ECLI:CE:ECHR:2022:0908JUD003589816
	<i>Garib v. the Netherlands</i> (Application no. 43494/09)	06-11-2017	ECLI:CE:ECHR:2017:1106JUD004349409
	<i>Carvalho Pinto de Sousa Morais v. Portugal</i> (Application no. 17484/15)	25-10-2017	ECLI:CE:ECHR:2017:0725JUD001748415
	<i>S.A.S. v. France</i> (Application no. 43835/11)	01-07-2014	ECLI:CE:ECHR:2014:0701JUD004383511

	<i>B.S. v. Spain</i> (Application no. 47159/08)	24-07-2012	ECLI:CE:ECHR:2012:0724JUD004715908
	<i>N.B. v. Slovakia</i> (Application no. 29518/10)	12-06-2012	ECLI:CE:ECHR:2012:0612JUD002951810
IACtHR	<i>Maria et al. v. Argentina</i> (Series C No. 494)	22-08-2023	
	Advisory Opinion OC-29/22, Differentiated approaches with respect to certain groups of persons in detention (Series A No. 29)	30-05-2022	
	<i>Manuela et al. v. El Salvador</i> (Series C No. 441)	02-11-2021	
	<i>Employees of the Fireworks Factory of Santo Antônio de Jesus and their families v. Brazil</i> (Series C No. 407)	15-07-2020	
	<i>Guzmán Albarracín et al. v. Ecuador</i> (Series C No. 405)	24-06-2020	
	<i>Ramírez Escobar et al. v. Guatemala</i> (Series C No. 351)	09-03-2018	
	<i>I.V. v. Bolivia</i> (Series C No. 329)	30-11-2016	
	<i>Gonzales Lluy et al. v. Ecuador</i> (Series C No. 298)	01-09-2015	

ANNEX III

Measures to operationalise intersectionality

Preventive measures
Information campaigns and awareness-raising
Communication and cooperation with relevant stakeholders
Training and education
Guidelines and exchange of good practices
Procedural measures
Special assistance and support
Detailed impact assessment of measures that may have intersectional effects
Particular evaluation of circumstances with an intersectional view
Integrate intersectional concerns within AI
Improve collective redress mechanisms
Hermeneutical element in finding discrimination by Courts and in defining reparation measures
Proactive measures
Decision that might take into account intersectional factors to find discrimination, define a comparator and proportionality requirements
Aggravate sanctions and compensation for damages
Award of punitive damages or compensation to the body (for instance NGO) which has been granted legal standing
Tailored positive actions and temporary quotas
Create mechanisms and mentorships for persons potentially facing intersectional discrimination to attain positions in public (or private) institutions
Institutional measures
Institutional measures in the EU itself
Include awareness of disability and of multiple and intersectional discrimination among recruitment criteria for personnel

Establish a Council configuration on gender equality and equality to facilitate high-level discussions including intersectional discrimination, in a regular and permanent forum and to ensure anti-racism and gender mainstreaming in all policies
Institutionalise the Commission's Task Force on Equality
Institutional measures in Member States
Include awareness of disability and of multiple and intersectional discrimination among recruitment criteria for personnel in judicial and penitentiary system
Increased litigation powers of equality bodies, despite they might be various (as long as one criteria is concerned, they must cooperate with other equality bodies to take intersectionality into account)
Mediation processes with an intersectional focus
Organisational measures
Separation in accommodation in detention facilities if requested
Physical accessibility measures
Take note of the compounded effect of intersectional discrimination on access to healthcare diagnosis, particularly concerning reproductive health and specifically for Black women, women of colour and minority women
Support education of small children
Funding measures
More specific funding for specific subjects (e.g. Autism)
Finance activities and provide funding for smaller networks of NGOs representing intersectional groups
Qualitative assessment of the projects to be financed by the ESI funds
Fund projects that tackle intersectional discrimination through the 'Citizens, Equality, Rights and Values' programme
Evaluation (monitoring) measures
Reporting on the situation to define or better policies, which implies the definition of relevant and clear indicators
Collection of detailed intersectional data for assessing the situation of specific social groups for better policy making
Screen laws to ensure that seemingly neutral laws and policies do not have intersectional impacts

ANNEX IV

Intersectionality in deliberative democracy

List of reviewed EU policy documents

Document	Date
Opinion of the European Economic and Social Committee on 'Advancing the EU's just transition policy framework: what measures are necessary?'	14-12-2023
Commission Recommendation (EU) 2023/2836 of 12 December 2023 on promoting the engagement and effective participation of citizens and civil society organisations in public policy-making processes	12-12-2023
Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions-On Defence of Democracy	12-12-2023
European Parliament resolution of 14 September 2023 on Parliamentarism, European citizenship and democracy	14-09-2023
Opinion of the European Economic and Social Committee on 'How to engage with the intended public and how to effectively use the results of the work of citizens' panels'	13-07-2023
Opinion of the European Economic and Social Committee on cooperation on youth	15-06-2023
Resolution of the Council and of the representatives of the Governments of the Member States meeting within the Council on the outcomes of the 9th cycle of the EU Youth Dialogue 2023/C 185/04	15-05-2023
Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions-Conference on the Future of Europe. Putting Vision into Concrete Action	17-06-2022
European Parliament resolution of 8 March 2022 on the shrinking space for civil society in Europe	08-03-2022
Conclusions of the Council and of the representatives of the Governments of the Member States meeting within the Council on safeguarding and creating civic spaces for young people that facilitate meaningful youth participation	29-11-2021
European Parliament resolution of 7 July 2021 on Citizens' dialogues and Citizens' participation in the EU decision-making	07-07-2021

Resolution of the European Committee of the Regions on the Conference on the Future of Europe	07-05-2021
Joint Declaration of the European Parliament, the Council and the European Commission on the Conference on the Future of Europe	18-03-2021
Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions-On the European Democracy Action Plan	03-12-2020
Conclusions of the Council and of the representatives of the governments of the Member States meeting within the Council on fostering democratic awareness and democratic engagement among young people in Europe	20-11-2020
European Parliament resolution of 15 January 2020 on the European Parliament's position on the Conference on the Future of Europe	15-01-2020
Resolution of the Council of the European Union and the Representatives of the Governments of the Member States meeting within the Council on a framework for European cooperation in the youth field: The European Union Youth Strategy 2019-2027	18-12-2018

