

A Means to an End or an End in Itself? EU Roma Policy, Human Rights and the Economic Investment Myth

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Abstract

The Roma face a dire socio-economic situation and structural discrimination across Europe. To address the challenges experienced by this community, the EU adopted a specific EU Roma policy – the ‘EU Framework for National Roma Integration Strategies’ (2011) – which, together with EU funds, supports Member States with integration of the Roma at the national level. This article argues that the economic framing of the EU Roma policy is underpinned by an economic investment myth: namely, that the EU can only address rights violations as a *means* to achieving the EU’s economic *ends*. It is shown that this myth undermines the EU’s legal and constitutional human rights commitments post-Lisbon, according to which the EU has now the legal capability – but lacks the political will – to tackle rights violations such as discrimination in a manner that is not linked to the functioning of the common market.

Introduction

It is estimated that there are between 10–12 million Roma (including Traveller communities) in Europe (FRA, 2012). The Roma constitute the Europe’s largest ethnic minority (Rostas and Ryder, 2012) as well as its most discriminated against minority (Robert, 2007; Tileaga, 2005). The structural discrimination faced by this community, as well as their dire socio-economic situation, has been widely scrutinized (Erjavec, 2001; ERRC, 2006; OSCE, 2009). While the European Union (EU) has addressed the plight of the Roma in Central and Eastern Europe as part of the EU accession negotiations, it was only after 2007 that the Roma became a ‘European problem’ (Gheorghe, 1997; McGarry, 2011, 2012) or a Europe-wide issue. The Roma issue rose high up on the European agenda particularly after some high-profile

incidents in the old Member States, such as ethnic profiling in Italy in 2008 and the forced expulsion of the Roma from France in 2010.

To address these challenges, in 2011 the European Commission adopted a specific EU Roma policy: the EU Framework for National Roma Integration Strategies (hereafter, the ‘Framework’). The Framework constitutes the first overarching EU policy initiative aimed at providing a roadmap for introducing minimum standards and targets which the Member States have to meet in four crucial policy sectors: education, health, employment and housing. The implementation of the Framework is explicitly linked to EU funding – EU Structural and Investment Funds – and the objectives of Europe 2020, and therefore, it is intended to advance the social and economic inclusion of the Roma across Europe. It has, however, become increasingly evident that the EU Roma policy fails to target the discrimination aspect, and hence the human rights dimension.¹ By endorsing an economic rationale for the integration of the Roma in Europe – namely how the integration of the Roma would generate economic benefits for the European common market – the EU, and particularly the Commission, prioritizes the EU’s economic objectives over its human rights commitments.² The EU’s framing of Roma integration as a primarily *economic* or *market investment policy*, via social inclusion in particular,³ sidelines the role and function that the EU attaches to *human rights protection*, such as non-discrimination, and establishes the *myth in relation to the Roma* that *addressing their rights violations – via socio-economic inclusion*⁴ – *has to*

¹ I equate here equality and non-discrimination with human rights protection. The general principle of equality and non-discrimination is a fundamental element of international human rights law. At the EU level, the ECJ has held that fundamental rights ‘include the general principle of equality and non-discrimination’ (Case C-442/00 Caballero v Fondo de Garantía Salarial (Fogasa) [2002] ECR I-11915 at [32]). The protection of fundamental rights is one of the general principles of EU law.

² By this I refer to the EU’s failure to address the issue of discrimination – hence the human rights dimension – which is not necessarily linked to the common market.

³ Social inclusion here is understood as the opposite of social exclusion. The aims of EU social policy are to improve living and working conditions, promote employment, provide an appropriate level of social protection and develop measures to combat exclusion.

⁴ Economic inclusion is defined here thus: ‘everyone – regardless of citizenship – has the right to work, and Governments are obliged to take progressive measures to safeguard this right. Non-citizens

serve the EU's economic objectives. The creation of this economic investment myth *vis-à-vis* the Roma establishes a new EU approach to solving the marginalization of this minority, and has 'myth'-like features in the post-Lisbon context, where the EU has more competence to address rights violations in a manner not connected to the functioning of single market.

This article argues that the economic framing underpinning the EU's Roma policy engendered a *narrative*, and an *economic investment myth vis-à-vis Roma's integration*, according to which the EU can only address the integration of the Roma as long as this is advantageous to the common market – a *means* to achieving the EU's economic *ends*. The article investigates the extent to which the Lisbon Treaty provisions – relevant to the Roma case – have indeed provided the EU with the leverage to overcome the market-driven role attached to addressing rights violations within the EU. In essence, the article raises a fundamental question about the function that the EU ascribes to human rights protection post-Lisbon: namely whether the EU has now both the political will and the legal capability⁵ to address human rights protection – such as non-discrimination and social inclusion – as an end in itself, not necessarily linked to the operation of the common market. The critical scrutiny aims to answer, by drawing on the EU Roma policy case, the question of whether this economic investment myth, namely that addressing rights violations (via socio-economic inclusion) has to be juxtaposed to the EU's economic objectives, is, indeed, only a myth.

Methodologically, the empirical findings of this article draw on a set of qualitative interviews with EU officials, Roma NGOs and experts,⁶ as well as extensive documentary analysis. The findings are validated via the use of triangulation. This article is structured in three parts: the first examines the current EU Roma policy and the economic framing of the Roma issue. The

who are lawfully present in a State are entitled to treatment equal to that enjoyed by citizens in the realm of employment and work' (OHCHR, *The Rights of Non-Citizens*, New York and Geneva, 2006).

⁵ By this I mean the legal mandate provided by the Lisbon Treaty.

⁶ The findings of this article are based on an extensive set of 35 qualitative interviews conducted with European Commission officials (DG Justice, DG Employment, DG Education) and Roma NGOs and stakeholders in Brussels and London between May and July 2015 as part of a project 'Human Rights in Times of Crisis' funded by the Strategic Interdisciplinary Research Development Fund (School of Social Sciences award, University of Southampton).

second part explores the myth-like features of the EU Roma policy by drawing on the relevant analytical debates in the literature. The third section scrutinizes how this economic investment myth, describing EU Roma policy, can be overcome: namely, can the EU promote the protection of Roma's rights as an end in itself? It is argued that the advance of a market-focused approach to Roma's inclusion in the post-Lisbon context undermines the EU's 'fundamental rights myth' – as discussed by Smismans (2010) – and suggests a failure of political will⁷ on the part of the Commission, and the EU institutions more generally, rather than a lack of legal power, to boost human rights provision within the Union.

I. EU Roma Policy

The Roma in Europe face entrenched social exclusion and economic injustices due to low levels of education, high unemployment, inadequate housing, poor health and wide-ranging discrimination (European Parliament, 2011). The EU addressed the situation of the Roma for the first time as part of the Eastern enlargement process. However, given the scale and complexity of the Roma issue, the accession negotiations encouraged form over substantive practice (Ram and Vermeersch, 2009, p. 69) and consequently, the situation of the Roma on the ground did not alter substantially. In 2007, a series of Roma-targeted initiatives were taken at the EU level: for instance, the Council Presidency decided to hold Roma Summits aimed at bringing together the main Roma stakeholders, which also facilitated the meetings of the Integrated Platform for Roma Inclusion.⁸ These meetings have facilitated the exchange of information and best practices, the outcome of which was the adoption of policy guidelines called 'Common Basic Principles of Roma Inclusion' (2010), which provided a framework for the design and implementation of actions conducive to Roma inclusion and which had to guide the actions of the Member States and the European Commission.

⁷ The 'failure' or 'lack of political will' of the Commission here refers to the Commission's reluctance to challenge Member States' discriminatory practices *vis-à-vis* the Roma. In practice this translates into the Commission's unwillingness to take meaningful action – as part of EU Roma policy – to tackle Roma's exclusion by addressing their entrenched discrimination at the domestic level.

⁸ The Platform consists of 'meetings between member-states and Romani activists, policymakers and experts, led by the presidency of the Council and aimed at the identification of best practices and stimulating cooperation and exchanges of experience on successful Roma inclusion policies' (Vermeersch, 2012, p. 1201).

In April 2011 the European Commission published the Communication ‘An EU Framework for National Roma Integration Strategies up to 2020’, which urges the EU Member States to adopt national strategies aimed at improving the economic and social situation of Roma by 2020 (European Commission, 2011). The national Roma strategies are expected to include policy measures which would improve Roma’s access to education – ensuring that each child completes primary education – as well as employment, health care and housing, in order to reduce the existing disparities with the majority population (European Commission, 2011). The Framework calls on national governments to allocate funding from national budgets which will be complemented by EU funding (European Commission, 2011). Therefore, the main objectives of the Framework aim to achieve Roma’s economic integration, which would further lead to their social inclusion.

Until the adoption of the Framework, the Roma question in Europe was addressed via various EU or European instruments, such as the Race Equality Directive 2000/43/EC, the Open Method of Coordination (OMC) regarding poverty and social exclusion or the ‘Decade of Roma Inclusion 2005–2015’, a pan-European initiative supported by the World Bank and the Open Society Institute. Nevertheless, none of these instruments linked the integration of the Roma to the improvement of the common market. The implementation of the Framework’s objectives is monitored and assessed by the Roma unit in Directorate General (DG) Justice in the European Commission. The Member States endorsed the Roma Framework by adopting in December 2013 the Council Recommendation on ‘Effective Roma Integration Measures in the Member States’, whereby national governments committed themselves to adopting effective policy measures to meet the Roma targets outlined in the Framework. While the Roma Framework is a soft law instrument, Roma stakeholders contend that the Council Recommendation has teeth, and therefore can elicit national governments’ compliance with the Framework provisions.

The catalyst which led to the adoption of the Framework, as well as increasing the political visibility of the Roma question⁹ at the EU level, was the expulsion in 2010 by French

⁹ For instance Pusca (2010) describes the ‘Roma problem’ in the EU as being a ‘space problem’: namely the targeting of Roma settlements by national authorities. In the same vein, Guillem (2011)

authorities of Roma residents in France who had not secured employment. A leaked memo revealed that the Roma were being deliberately targeted. Commissioner Viviane Reding responded by comparing the expulsions to Nazi deportations during the holocaust.¹⁰ Roma NGOs and networks had been pushing for the adoption of an EU Roma Directive since 2007; however this had been rejected by the EU institutions due to the Directive's focus on ethnicity. The incidents in France, together with the Commission's public denouncement of the French government's actions, generated a propitious political momentum for stepping up EU action on the Roma question. Despite being designed and promoted by the Commission, the Framework does not attach a specific Roma responsibility to the EU: on the contrary, the primary responsibility and enforcement clout for the national Roma integration strategies rest with the Member States.

The Economic Framing of Roma Integration

The Framework provides a set of minimum standards (in the four policy sectors) which EU Member States should aim to achieve by implementing their national Roma strategies. The Roma Framework focuses on the socio-economic inclusion dimension of the Roma question, emphasizing their economic situation and social exclusion. The fundamental shortcoming of the Framework, however, is the complete lack of a focus on discrimination, which is central to the situation of the Roma. This omission is all the more surprising given that the EU has the legal power to address discrimination. Roma stakeholders were extremely critical of the Framework's failure to focus on anti-discrimination and anti-Gypsism (ERPC, 2011). Indeed, most Roma NGOs contend that Roma inclusion cannot be addressed successfully without tackling the structural discrimination faced by the Roma in all spheres of life.¹¹ The poor economic situation of the Roma is, most often, the upshot of the systemic discrimination

examined how the discursive construction of the Roma minority is linked to discriminatory policy-making.

¹⁰ McGarry (2012, p. 131) and Gould (2014). In September 2010, a leaked French memo showed that Roma were being targeted. See the *Guardian* (2010) 'Europe compares France Roma expulsion to Nazi deportations', 15 September.

¹¹ Author's interviews with Roma NGOs, Brussels, May 2015.

faced by this community in key social and economic spheres.¹² Yet, the EU's Roma policy seems to be disconnected from the pursuit of an anti-discrimination approach,¹³ which is particularly surprising given that the EU does have actual leverage in this sector. Although the discrimination faced by the Roma is mentioned in the Framework, the enforcement of EU anti-discrimination legislation at the national level does not constitute one of the Framework's aims. The broad contention at the EU level, however, is that the legal and policy dimensions of the Roma issue are to be pursued separately from each other, although in practice they do not complement each other. Given the coupling of the Framework's economic integration objectives with the EU's economic growth strategy and the EU funds (as discussed below), it becomes clear that the Commission's economic approach to Roma integration is the dominant policy framing.

The Roma Framework adopts a specific framing of the Roma issue. Framing is usually defined as a way of selecting and organizing aspects of complex issues in order to provide guidelines for analyzing, interpreting and acting (Rein and Schön, 1991). A frame, therefore, defines the nature of the issue-area and determines the key aspects of the policy process, such as which problem is being addressed, which actors are involved and which policy instruments are the most appropriate (Rhinard, 2010, p. 2). The promotion of certain frames also highlights different patterns of issue selections and interpretations (Matthes, 2012). Given that frames are 'selective views on issues – views that construct reality in a certain way leading to different evaluations and recommendations' (Matthes, 2012, p. 249), then policy framing implies the selection and promotion of certain policy solutions at the expense of others (Entman, 1993).

¹² Roma NGOs contend that there are two interrelated aspects that describe the plight of the Roma: structural discrimination and poverty, the latter is usually manifested as socio-economic exclusion. Author's interview with Roma NGOs, Brussels, May 2015.

¹³ It should be noted that in the latest evaluation of the Roma Framework, the Commission briefly mentioned some national anti-discrimination measures (European Commission, 2016), yet the Commission does not monitor or evaluate the national actions taken to combat discrimination against the Roma.

In the case of the Roma, the Framework focuses primarily on Roma's social and economic exclusion, and hence on the violation of Roma's rights stemming from this. Nonetheless, what transpires from the framing of the Framework is that *the socio-economic integration of the Roma at the domestic level would benefit the European common market*, and hence *addressing the violation of Roma's rights would act as a market investment initiative*.¹⁴ The Commission's choice to advance this economic-instrumental framing of the EU Roma policy is an upshot of two factors. First, in 2010 the World Bank had published an influential study – *Roma Inclusion: An Economic Opportunity for Bulgaria, Czech Republic, Romania and Serbia* – in which it provided empirical evidence supporting the economic argument for Roma inclusion. The World Bank study demonstrated that Roma inclusion is 'smart economics' (World Bank, 2010, p. 4) as Roma's access to the labour market has far-reaching economic advantages: Member States will reap the economic and financial benefits and European integration and the common market will profit significantly from the Roma inclusion (World Bank, 2010, p. 21). It has been claimed that the World Bank study – whose figures are cited in the Framework – was influential in providing the Commission with the necessary empirical evidence for embracing the economic rationale to justify Roma inclusion.¹⁵ The economic logic of Roma integration provides a reasonable justification for the adopted Roma framing, nevertheless, this should not act as the main motivation driving EU endeavours to tackle the Roma issue. Put differently, the economic framing of Roma inclusion provides a *necessary* yet not *sufficient* account for the EU's intervention in this policy issue.

The second factor was pragmatic,¹⁶ and recognized that targeting discriminatory practices in the Member States is challenging: it is difficult for the Commission to gather sufficient reliable evidence to demonstrate the existence of discrimination, while at the same time Member States are reluctant to admit the prevalence of Roma discrimination at the national

¹⁴ It is a fact that the vast majority of working-age Roma lack education and skills to access the labour market.

¹⁵ Author's interview with Roma networks, Brussels, May 2015.

¹⁶ This pragmatism refers to the Commission's choice of a policy approach that would appeal to the Member States and would be in tune with the EU's economic growth goals rather than the situation of the Roma.

level.¹⁷ Indeed, Commission officials contend that national governments dislike being accused by the EU of condoning discriminatory practices. The underlying problems faced by the Roma, such as dire poverty and systemic discrimination, mutually reinforce each other. Instead of addressing both problems simultaneously, the Commission chose to focus on socio-economic exclusion, which is an area more likely to garner the support of the Member States. By focusing on the socio-economic inclusion of the Roma instead, the Commission avoided the sensitivity of highlighting Roma's entrenched discrimination in the Member States. Essentially, the economic argument was one that the Member States were willing to listen to, although it addressed only one dimension of the Roma question.

The language employed in the Roma Framework clearly links Roma integration to the improvement of the European market. For instance, 'Roma integration in the labour market would bring economic benefits [...] would improve economic productivity' in Europe, while the Commission is 'committed to help [...] the efforts [of Member States] to improve the social and economic inclusion of the Roma' (European Commission, 2011, pp. 4, 13). The Framework also draws on empirical evidence regarding each policy sector –health, education, housing, employment – to demonstrate that, indeed, Roma integration would be economically beneficial both nationally and regionally.¹⁸ Most of the empirical evidence cited is from the 2010 World Bank study, also discussed in this article. The focus on socio-economic inclusion, however, is advanced at the expense of the structural discrimination faced by the Roma, which is illustrated by the objectives of the EU Roma policy, along with its connection to the EU funds and Europe 2020, as shown below.

In brief, the attachment of an economic framing to EU Roma policy justifies the EU's actions to address the plight of the Roma – and hence the violation of their rights – as long as they can benefit the functioning of the common market. This economic logic is further reinforced

¹⁷ Author's interview with Roma civil society actors and Commission officials in DG Justice, Brussels, May 2015.

¹⁸ For instance, the Roma's integration in the labour market would amount to tax benefits estimated at around € 175million annually (European Commission, 2011, p. 4).

by the clear association between the EU's economic growth objectives and those of the Roma Framework, as discussed below.

Europe 2020 and EU Structural and Investment Funds

The economic rationale for the EU Roma policy is further reinforced by the link with the EU funds and the objectives of Europe 2020, the EU's economic growth strategy. By focusing on the EU's smart, sustainable and inclusive growth (European Commission, 2010), three of Europe 2020 strategy's targets – employment, education and fighting poverty and social exclusion – are directly linked to Roma integration. Given that poverty alleviation, and thus social inclusion, is a central theme of Europe 2020 there is a strong connection between EU Roma policy goals and the economic objectives of Europe 2020: Roma inclusion in the four policy sectors in the Framework is deemed to contribute to the attainment of Europe 2020 targets (European Commission, 2011). However, the first linkage between Roma integration and EU economic growth strategy was drawn in 2010 by the Commission Communication 'The Social and Economic Integration of the Roma in Europe',¹⁹ although this policy document failed to outline targeted Roma integration measures.

For the new financial period 2014–20 the deployment of the EU Structural and Investment Funds, particularly the European Social Fund (ESF) and the European Regional and Development Fund (ERDF), is directly linked to the implementation of EU Roma policy at the national level. In the previous financial period there was a significant disconnect between the EU's financial instruments and its social policy objectives as the EU funds had been misused and failed to reach the disadvantaged groups²⁰ they targeted (Harvey, 2009). The new regulations governing the employment of the EU Funds – the ESF Regulation²¹ and the

¹⁹ COM (2010) 133 final.

²⁰ As a Roma expert who collaborated closely with Commission officials in DG Employment put it: 'EU funds go into things which are big and showy [...] they don't reach the people who need support most'. Author's interview with a Roma expert, Brussels, May 2015.

²¹ Regulation (EU) No 1304/2013 of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006.

Common Provisions Regulation²² – include provisions that couple explicitly the deployment of EU funds with the implementation of national Roma strategies. In both Regulations the focus is on social inclusion and poverty reduction, therefore the integration of the Roma has to be conducive to the attainment of the economic growth and employment objectives of Europe 2020. For instance, one of the investment priorities²³ of the ESF is the ‘socio-economic integration of marginalised communities such as the Roma’²⁴; yet access to ESF finance is made conditional²⁵ – *ex-ante conditionality* – on the availability of a national Roma integration strategy, addressing the four policy sectors in the Framework, whose implementation should be supported by the ESF. As part of the legally binding *ex-ante conditionality* requirements, the Member States have to demonstrate that they have in place monitoring mechanisms for the implementation of the Roma strategies, as well as continuous engagement with Roma NGOs in designing, implementing and monitoring the national Roma strategies.

By linking the EU Roma policy to the EU funds and the Europe 2020 objectives, the EU further reinforces the economic investment logic underpinning Roma inclusion. As Roma stakeholders have pointed out, this constituted another missed opportunity to address the entrenched discrimination at the national level.²⁶ This shortcoming is further reflected in the Commission’s annual monitoring of the national efforts to meet the Roma targets in the Framework, which has highlighted the deficient or even lack of implementation of EU anti-discrimination legislation (European Commission, 2015, 2016). The absence of an anti-

²² Common Provisions Regulation No 1303/2013 of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006.

²³ Under the same investment priority, ERDF can support investment in health care and social infrastructure (according to the Common Provisions Regulation).

²⁴ Common Provisions Regulation.

²⁵ Common Provisions Regulation.

²⁶ Author’s phone interview with a Roma NGO, June 2015.

discrimination focus is also highlighted in a recent evaluation of the Framework commissioned by the European Parliament: its findings contend that Roma populations ‘continue to [...] suffer extensive discrimination and high-levels of anti-Gypsism’ (European Parliament, 2015, p. 3). Despite acknowledging that within the context of the Framework ‘fighting discrimination of Roma and promoting their social and economic inclusion are closely interlinked’ (European Commission, 2015, p. 2), the Commission assumes that the two dimensions of the Roma question – fighting discrimination²⁷ and promoting socio-economic inclusion – can be pursued separately at the EU level. Therefore, in this context, only the socio-economic integration of the Roma is targeted by the Roma Framework and its association with Europe 2020 and the EU Structural Funds.

This lack of an anti-discrimination focus is further reflected by the content of national Roma strategies, which fail to promote both anti-discrimination and awareness-raising at the national level.²⁸ Therefore, the Commission’s latest assessment of the Framework’s implementation concludes that ‘no real improvements can be seen on the ground [...] a more systematic approach is needed and Member States are urged to demonstrate political will to combat discrimination’ (European Commission, 2016, p. 8). Yet this disjuncture between the social inclusion dimension and the anti-discrimination one is embedded in the Framework, which prioritizes the former at the expense of the latter. Indeed, by prioritizing the socio-economic condition of the Roma, rather than their racial discrimination, the EU separates the EU policy dimension from the binding EU legislation that targets discrimination on racial and ethnic grounds. As highlighted by Roma NGOs, this was a pragmatic choice for the Commission: it was deemed that the Member States were more likely to commit to a socio-economic inclusion approach to Roma integration tightly linked to EU funding, rather than an

²⁷ The key legal instruments used to fight discrimination are the Racial Equality Directive 2000/43/EC and the Employment Equality Directive 2000/78/EC.

²⁸ According to the Commission (2015, p. 11) ‘although awareness-raising and antidiscrimination measures are a precondition to the success of Roma inclusion, these measures are not prioritised enough within most NRIS (national Roma integration strategies)’.

anti-discrimination agenda, which is a politically sensitive topic for the national governments.²⁹

II. Economic Investment Myth and Human Rights

The section above revealed how the framing of the EU Roma policy – as evinced by the Roma Framework – is underpinned by an economic logic: namely the inclusion of the Roma at the national level is beneficial to the EU's common market. This economic framing of the Roma policy gives rise to a *policy narrative* and a *myth*.³⁰ The content and meanings of these are discussed below.

Policy narratives and political myths play a crucial role in justifying and legitimizing the actions taken by policy-makers and politicians more generally. Their action-sanctioning role is even more pertinent at the EU level, where EU intervention in policy sectors is confined to the availability of EU legal mandate to act. According to the literature, the concept of a policy narrative can refer to 'attempts by actors to develop plausible interpretations of complex phenomena or events' (Boswell *et al.*, 2011, p. 4). Policy narratives become important in situations of uncertainty. In essence, the role of a narrative is to provide a story line 'about who should do what, and how, when and why they should do it in order to address policy dilemmas' (Kaplan, 1986, p. 770). In other words, a policy narrative provides a simplified version of policy issues or controversies which are 'put together into a plot in which there are causal relations between actions' (Banerjee, 1998, p. 193).

The EU Roma policy and its economic framing, as discussed above, meet the policy narrative contours and therefore, play a legitimizing role. Indeed, given the complexity of the problems faced by the Roma across Europe, a policy narrative about the need for Roma's socio-economic inclusion was consistent with the EU's economic growth objectives. Yet, this narrative is more than just a narrative: it is argued here that the EU's Roma policy relies on a

²⁹ Author's interview with Roma NGOs, Brussels, May 2015.

³⁰ This terminology draws on Smismans's (2010, p. 45) discussion of the EU's 'fundamental rights myth', according to which the EU has placed fundamental rights retrospectively, as inherent to the EU and based on a common European heritage.

political myth. Borrowing Smismans' (2010) account of political myths in the context of EU fundamental rights policy, a political myth here amounts to the Roma policy narrative containing factual errors, which, nevertheless, are believed and acted upon by both institutional myth-makers and civil society actors (*cf.* Smismans, 2010, pp. 46–47). There is a fundamental aspect that defines this political myth underpinning the EU Roma policy: namely, the EU's action to address the violation of rights, such as socio-economic exclusion, has to benefit the economic objectives of the common market. In other words, Roma's integration at the national level is a means to achieve the EU's economic ends, as contained in Europe 2020. The gist of the myth underlying the Roma policy is the following: *that the EU can only address the violation of rights (such as socio-economic exclusion) as long as this benefits, economically, the common market*. Put differently, *addressing human rights issues – via socio-economic inclusion – can only serve as a means to an end*, in this case, the end is EU economic growth. The fact that this economic investment myth exists and has implications for how the Roma issue is tackled at the EU level transpires from what Smismans (2010, p. 59) calls *myth appropriation*: namely a political myth provides legitimacy as long as it is appropriated by *civil society* actors, and of course, by the *institutional myth-makers* themselves. This myth appropriation can be easily observed with respect to the EU Roma policy. First, despite being critical of the absence of an anti-discrimination focus in the EU Roma policy, the main Roma civil society actors were very supportive of the Commission's Roma policy, and its connection to the EU's economic growth objectives.³¹ Indeed, the clear interlinkage between the EU Roma policy and the EU funds meant that Roma civil society organizations at the domestic level would have more opportunities to apply for EU funding in line with their agendas. In the same vein, European Commission officials fully embraced the economic framing of the Roma policy as this was consistent with the EU's economic growth goals and was in accord with the EU's *raison d'être*.

The political myth and policy framing conceptualizations, as applied to EU policy-making, share common elements with the so-called 'imaginaries' (Wetzstein, 2013). These are

³¹ For instance, according to a Roma NGO, the EU Roma policy constitutes the outcome of almost 10 years of Roma civil society lobbying for the EU to adopt a Roma policy. Author's interview with Roma NGOs, Brussels, May 2015.

‘integral elements of discourse, policy-making and power-based intervention (Buerkner, 2014, p. 3). Similar to policy frames, imaginaries highlight the role of ‘discourse’ – like framing – to provide influence and legitimation. Applied to the Roma case, the economic framing and the accompanying myth yield an imaginary of how the Roma question has to be addressed: namely as an economic integration problem that is instrumental to the single market.

The *economic investment myth vis-à-vis the Roma*, namely that their human rights violations can only be tackled by the EU as long as they are linked to the single market, reflects the economic approach to fundamental rights taken by the EU institutions over the course of European integration. However, the novelty of this economic logic and its myth-like features is two-fold: first, it amounts to a new EU policy approach to addressing Roma’s marginalization, and second, in the post-Lisbon context, this constitutes a ‘myth’ due to factual errors given that now the EU has legal competence to address certain rights violations in a manner not linked to the operation of the internal market. As the history of European integration illustrates it, the EU institutions, particularly the European Court of Justice (ECJ), could only give effect to fundamental rights where they arose juxtaposed with EU law, which was directed at securing the internal market (De Witte, 1999). Throughout the history of the EU, the Court upheld fundamental rights as a means to enhancing the autonomy, supremacy and legitimacy of EU law rather than for their own sakes (Coppel and O’Neill, 1992; Douglas-Scott, 2011): the ‘integration through law’ advanced by the Court promoted human rights protection only to the extent to which it was advantageous for the operation of the internal market. Nevertheless, this was consistent with the EU’s then legal mandate. The novelty concerning the employment of an economic investment logic *vis-à-vis* the Roma in the post-Lisbon context is that this logic can only be justified by resorting to a myth-like perspective. As shown below, the post-Lisbon context provides the EU with more legal and political leverage to address human rights violations not necessarily in an instrumental-market investment manner: namely the EU could tackle certain human rights violations, such as the ones faced by the Roma community, as ends in themselves. These aspects and the accuracy of the Roma economic investment myth credentials are investigated below.

III. Human Rights Protection and Market Investment: Myth or Reality?

Should the EU Roma policy aimed to address the exclusion and rights violations of this community be inevitably tied to the economic improvement of the European common market? In other words, is the economic investment myth underlying the EU Roma policy just a myth intended to legitimize a specific course of action and framing of the EU role in addressing the plight of the Roma? This section aims to address this conundrum by scrutinizing the post-Lisbon human rights provisions and their relevance for the EU Roma policy. In essence, the gist of the matter here is whether post-Lisbon, EU interventions to target rights violations – as faced by the Roma – can be disconnected from the underlying driver of EU human rights policy, which has long been economic (Alston and Weiler, 1999).

The maturity of the EU's role in human rights protection, particularly in the light of the legal and constitutional provisions contained in the Lisbon Treaty, demonstrates that the EU now possesses the legal clout to advance human rights matters head-on – in areas where it has competence to do so – with no linkage to the functioning of common market whatsoever. In other words, the EU does have the legal instruments and power to address anti-discriminatory practices directly, as part of its policies to promote the inclusion of vulnerable groups – such as the Roma – if it wishes to do so. Against this backdrop, we can start to unpack the *economic investment myth* underpinning the EU Roma policy for the EU's human rights role post-Lisbon. It is argued that there are two main consequences of this myth: first, the framing of Roma inclusion merely from an economic perspective undermines the EU's legal and constitutional commitments – as enshrined in the Treaty of Lisbon – to promote human rights protection, *qua* anti-discrimination, within the EU. Connected to this, second, this myth – namely addressing rights violations (such as EU Roma policy) as an economic investment assisting the functioning of the common market – challenges the very essence of the European project: namely that the well-being and rights of European citizens matter to the EU only to the extent to which they advance and contribute to the EU's economic growth.³²

³² The EU was not designed to be a human rights organization, yet over time, the Court ruled that fundamental rights constitute part of the general principles of EU law. At the same time, the Treaties recognize human rights protection as one of the EU's founding principles or values (depending on the revised Treaty version). As Smismans (2010) showed it, this incremental endorsement of human rights created the EU's 'fundamental rights myth', which attaches an intrinsic value to human rights protection at the EU level.

First, the framing of Roma inclusion, as primarily an economic investment for the common market, undermines the EU's legal and constitutional commitments to human rights as transpiring from the Lisbon Treaty provisions. Indeed, the amendments in the Lisbon Treaty to the EU Treaties (now TFEU and TEU) do strengthen the legal and constitutional reach of EU law and policy to take action conducive to the enforcement of the principles of equality and non-discrimination (Douglas-Scott, 2011; Ellis and Watson, 2012, pp. 13–19) at national level. For instance, according to Douglas-Scott (2011, p. 646) the Lisbon Treaty has enhanced provisions strengthening the protection of fundamental rights, such as the binding status of the Charter of Fundamental Rights (CFR), the extra powers acquired by the European Court of Justice (ECJ), and the provisions in Art. 6 TEU. Art. 19 TFEU is particularly relevant here as it reinforces the EU's commitment to curb discrimination in a wide range of sectors by legislating to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. In the same vein, Art. 9 TFEU is also significant here as it establishes a pro-active role for the EU to combat discrimination by stipulating that 'in defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'.³³ The imperative tone of these Articles denotes that the Union can take action meant to advance the 'protection' of human rights – *qua* anti-discrimination – rather than rely only on the restrictive approach of 'respect' for human rights. Two aspects regarding the EU Roma policy emerge from this: first, the Commission could have attached a strong anti-discrimination dimension to the Framework, and second, addressing discrimination can, indeed, be disconnected from the market-investment logic.

Article 21(1) in the CFR further reinforces this by prohibiting any 'discrimination based on any ground such as 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, age or sexual orientation'.³⁴ The bidding nature of the CFR, 'has forced the Union to take fundamental rights even more seriously, a move that has consequently pushed the ECJ in the same direction' (Sarmiento, 2013, p. 1270). What these provisions highlight is

³³ See https://europadatenbank.iaaeu.de/user/view_legalact.php?id=253.

³⁴ See http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

that the EU has the legal and constitutional leverage to link the EU Roma policy to a strong anti-discrimination framework, hence a human rights approach. By adopting an anti-discrimination approach, along with socio-economic inclusion, and consistent with the EU's legal mandate, the Commission could have pursued an EU Roma policy that would not have promoted Roma inclusion tantamount to a market-investment logic.

Second, by endorsing a Roma policy that is strictly linked to EU economic objectives, the EU downplays the role and scope that human rights protection should play in relation to the European project. By failing to endorse an anti-discrimination approach as part of the EU Roma policy, the EU institutions adopted policy objectives that are subordinated to the aims of the common market, such as the Europe 2020 objectives. Despite the rhetorical endorsement of human rights as being quintessential to the European project,³⁵ the EU – as steered by the Commission in the Roma case – still seems to approach human rights as a ‘casualty of economic driven mentality’ (Douglas-Scott, 2011, p. 681) where the lack of political will trumps legal capability, and therefore the myth-making power of rights (*cf.* Smismans, 2010) has no concrete bearing on the plight of vulnerable groups such as the Roma. How the EU envisages the rights of its citizens in relation to economic integration is crucial, particularly given the various crisis and ‘creeping decay’ (Offe and Preuss, 2016) faced by the EU recently: by showing that the socio-economic inclusion of vulnerable groups and, more generally of European citizens, does not only serve the EU's economic integration ends, but it is also an end in itself, could bolster the legitimacy of the European project.

This section has illustrated that the economic investment myth – according to which the EU can address rights violations as long as they are instrumental to the common market – in relation to the EU Roma policy, is indeed merely a myth. It was revealed that this myth is based on factual errors: the post-Lisbon context would have allowed the EU, legally and policy-wise, to adopt a policy framing of the Roma issue not connected to the EU's economic objectives. How can we explain the emergence of this economic investment myth in the first place? What transpires from the above is that the EU could have prioritized *anti-*

³⁵ This endorsement is illustrated by the Treaty provisions (see Art.2 and Art. 3 TEU, Lisbon Treaty), as well as the rhetorical endorsement by the EU institutions.

discrimination along with socio-economic inclusion, yet with respect to the former, the EU could not have linked it to its economic growth objectives. As discussed above, the Member States were reluctant to support an anti-discrimination focused Roma policy: this shows that the economic framing of the Roma policy, and the accompanying myth, constituted a sensible choice for the Commission. From the perspective of Roma's effective integration, the Commission compromised addressing Roma's discrimination for the sake of Member States' support of the EU Roma policy. In essence, the Commission traded-off the adoption of a meaningful and substantive EU policy approach to addressing Roma's situation – namely by combining the socio-economic inclusion with a strong anti-discrimination focus – for the Member States' approval of an EU Roma policy in the first place. As the Roma case demonstrates, addressing the violation of rights is conceived as a means to an end, rather than an end in itself and this suggests that the EU lacked the political will to advance the human rights dimension (such anti-discrimination) – of the Roma in our case – for their own sake.

Conclusion

The EU has come a long way in addressing the plight of the Roma in Europe. As most Roma stakeholders rightly admit, having an EU Roma policy was 'unthinkable' back in the early 2000s. Indeed, having a set of EU policy and financial tools targeting the key challenges faced by the Roma community in the EU is a significant achievement. However, as shown above, the economic framing of the Roma policy and the economic investment myth undermine the role and significance that the EU attaches to the inclusion of vulnerable groups, such as the Roma, for the Union. For instance, the Commission Recommendation 'Investing in Children: Breaking the Cycle of Disadvantage' (2013)³⁶ follows a similar pattern of intervention: namely improving children's access to early childhood education and services, as well as the parents' access to the labour market, can help with the attainment of Europe 2020 economic growth objectives.

³⁶ See http://ec.europa.eu/justice/fundamental-rights/files/c_2013_778_en.pdf.

As the analysis above demonstrates, the inclusion of the Roma at the national level is framed as a market-investment policy that would benefit the objectives of economic integration and growth. On the face of it, this instrumental and pragmatic approach, meant to render the EU Roma policy appealing to the Member States, would not have undermined the EU's legal and constitutional commitment to human rights protection if it had been bolstered by a strong, anti-discrimination approach, whereby the rights of the Roma were targeted for their own sake. I have argued here that the economic perspective adopted by the EU would still have been worth-pursuing if it had been supported by an anti-discrimination dimension that advanced Roma's rights as ends in themselves. In essence, this shows that the EU's 'fundamental rights narratives' still wield the myth-making power (*cf.* Smismans, 2010) in the post-Lisbon context, yet not in a manner that would ascribe them an intrinsic value, but rather via their association with the EU's economic growth targets.

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