

BRIEFING PAPER

Roma in Italy: Camp Segregation is Racial Discrimination

EXECUTIVE SUMMARY DECEMBER 2014

Italy's segregated housing of Roma continues to violate its obligations under European Union law, including ongoing infringements of Article 21 of the Charter of Fundamental Rights, the Race Equality Directive, the Data Protection Directive, and specific Structural Fund regulations.

Introduction

1. The Open Society Justice Initiative has provided four prior briefings to the European Commission – in May 2009¹, October 2010,² March 2012,³ and October 2012⁴ – describing how the treatment of Roma⁵ by the Italian authorities both during the “Nomad Emergency Decree” and after the end of the so-called emergency breaches Italy’s EU law obligations.
2. In September 2012, during an EU pilot procedure, the European Commission expressed concern regarding Italy’s discriminatory treatment of Roma as a result of the Nomad Emergency Decree. Following the government’s response, in April 2014 the Commission expressed again its concern about measures taken by Italian authorities to house Roma in “nomad” camps and to limit their access to social housing.
3. This follow-up briefing provides the Commission with new information about Italy’s continued failure to fulfil its obligations under EU law, and demonstrates ongoing infringements of Article 21 of the Charter of Fundamental Rights, the Race Equality

Directive, the Data Protection Directive, and specific Structural Fund regulations, *i.e.*, Regulation (EC) No 1828/2006 as amended by Commission Regulation (EU) No 832/2010 of 17 September 2010.⁶ We describe in particular:

- *A. Ongoing violations of the Race Equality Directive.* Regional and municipal regulations are currently being used to house Roma in permanent and temporary camps or precarious shelters on the margins of society. The living conditions within authorised “nomad” camps fail to meet required ECHR and EU standards, including obligations under the Race Equality Directive. Roma are effectively denied access to regular, unsegregated social housing, treating them differently to non-Roma as a result of their racial and ethnic origin. Italy continues to forcibly evict Roma from informal and authorised “nomad” camps without providing adequate housing alternatives.
- *B. Misuse of EU Regional Development Funds to build a “nomad” camp.* New information demonstrates the municipality of Naples plans to misuse more than € 7 million of EU Regional Development funds for the construction of a Roma-only camp outside Naples.
- *C. The Roma Census Data: Ongoing violations of the Data Protection Directive.* The data collected in the Roma Census in Rome and Naples have not been destroyed. This is contrary to representations made by the Italian Government, and despite a ruling of the Council of State that the Nomad Emergency Measures were unlawful and a ruling of a Civil Court in Rome that collection of the data was discriminatory.

Recommendations

4. In light of the above ongoing practices, the Commission should examine the following violations, and issue a letter of formal notice setting out the Commission’s position on Italy’s infringement of EU law in the following areas:
 - *Racial Discrimination in Housing.* The Commission should require Italy to take the necessary measures to avoid forced evictions and segregated housing of Roma communities in “nomad” camps, call on Italy to provide effective remedies for all the negative effects that followed the implementation of the Nomad Emergency Measures, and provide adequate long term, inclusive social housing. Italian authorities at the regional and municipal level enact and enforce regulations regarding the housing of Roma that ensure Roma are only offered housing in segregated camps. Italian municipal authorities continue to construct additional segregated camps despite the Italian Council of State’s ruling in November 2011 striking down the Nomad Emergency Measures. Most local authorities address Roma housing policy in emergency terms, without offering long-term remedies. Housing Roma in “nomad” camps prevents Roma families from being eligible for other non-segregated public housing. Italian municipal authorities continue to target Roma for forced evictions and transfer them to new temporary camps, while also failing to make provision for adequate long term social housing for those who are evicted. These government policies and actions constitute direct and indirect racial discrimination in the supply of public housing, in breach of Article 21 of the EU Charter of Fundamental Rights and Articles 2(a), 2(b) and 3.1(h) of the Race Equality Directive (2000/43/EC).
 - *Investment of EU funds in housing contributing to segregation.* The Commission should contact the Italian managing authority regarding its plans to use European Regional Development Funds for segregated camps and require it to stop using the funds for segregated camps and instead use the funds toward an inclusive housing plan. The Commission should remind the Italian managing authority of its obligations under Article 47 of Regulation 1828/2006 (as amended by regulation 832/2010)⁷ and the Charter of Fundamental Rights to ensure any investment in housing supports the

integration of Roma communities into mainstream society and does not contribute to their segregation, isolation and exclusion.

- *Lack of data protection.* The Commission should call on Italy to destroy the Roma Census Data, to inform persons who were included in the database that the data were destroyed, and to provide them reparations. The Commission should also review Italy's infringement of EU law by collecting, processing, using and storing Roma Census Data. The Commission has not yet addressed the significant violations of the Data Protection Directive (1995/46/EC) that were a critical element of the Nomad Emergency regime and that remain to be solved. Under the emergency regime, Italian authorities collected identification information, photographs and fingerprints of Roma residents of "nomad" camps into a Roma-only Census (the "Roma Census Data"). These data have not been deleted in Rome and Naples, despite the judgments of the Italian Council of State and the Supreme Court of Cassation striking down the Nomad Emergency Measures. Further, the Italian Data Protection Authority has neither addressed all individual petitions seeking destruction of individual data held by municipal authorities, nor ordered the deletion of all Roma Census Data. The collection, use and maintenance of the Roma Census Data violate Articles 6.1, 7, 8 and 10 of the Data Protection Directive (1995/46/EC).

Background: Domestic Legal Challenges to the Nomad Emergency Measures

5. Approximately 150,000 Roma live in Italy, representing 0.25% of the population.⁸ About 70,000 Roma are Italian nationals. In 2008, the Italian government claimed that the presence of Roma created emergency conditions, and issued a Nomad Emergency Decree that took effect on 21 May 2008 and was extended twice. The last extension would have kept the Nomad Emergency in place until 31 December 2011, a total of more than three and a half years, but for the decision of the Council of State (see below). Prior briefings provided by the Open Society Foundations set out the effects of the "Nomad Emergency Measures" which lead to increased hostility toward Roma, including an upswing in violence against Roma, continued evictions, ongoing segregated housing in Roma only camps, and the non-consensual collection of personalized data as part of a Roma Census.⁹
6. On 6 November 2011, the Italian Council of State struck down those aspects of the Nomad Emergency Measures which appointed an extraordinary commissioner to address the so-called Nomad Emergency and gave special powers to local authorities (Prefects) to monitor formal and informal camps, conduct a census to identify people present in the camps, expel and remove Roma with irregular status, take measure to clear nomad camps and evict their inhabitants, and open new nomad camps.¹⁰ The Council of State held that the underlying declaration of a state of emergency on which the Nomad Emergency Measures were premised was illegal because there were insufficient grounds to grant extraordinary powers to address the "nomad" camps. The Council of State also held unlawful some regulations restricting access to and movement within the camps on the grounds that they were disproportionate response to isolated incidents of disorder within "nomad" camps.
7. The Council of State, however, did not find that the Nomad Emergency Measures were racially or ethnically discriminatory or that the collection and retention of census data on the basis of ethnic identity was itself unlawful. It further failed to order compensation to the victims, destruction of the Roma census database, or any other remedies.
8. In February 2012, the Italian Government appealed the Council of State decision to the Supreme Court of Cassation, arguing that the Nomad Emergency Measures were a lawful

response to a legitimate emergency and seeking to continue them. The Government maintained that the mere presence of “nomads”, *i.e.* Roma, around the main city centers in 2008 was so dangerous that it amounted to an emergency that should be addressed by extraordinary measures, including by evicting residents of temporary camps, housing Roma in Roma-only camps, and forcing camp residents to be fingerprinted and to provide other personal data in what amounted to a Roma census.¹¹ The government further requested, and the Council of State granted, that the ruling be stayed pending appeal thereby allowing authorities to continue their discriminatory housing policies and data collection.¹²

9. In May 2013, the Supreme Court of Cassation upheld the Council of State decision striking down the Nomad Emergency Measures.¹³ However, the Supreme Court, like the Council of State, rejected claims that the Nomad Emergency Measures constituted direct or indirect discrimination. The court accepted the government’s argument that because the measures extended to all persons residing in “nomad” camps, rather than being expressly directed to Roma, they could not be considered discriminatory. The court failed to recognize that the term “nomad” is a term that is commonly used by authorities to refer to Roma communities. The court also failed to consider whether the measures amounted to indirect discrimination, thereby requiring the applicants to prove discriminatory intent rather than discriminatory effect.
10. As the following sections show, despite the formal ending of the “Nomad Emergency” and the adoption in February 2012 of the Italian National Roma Integration Strategy, Italian legislation continues to provide for the segregated housing of Roma in “nomad” camps. Since 2012, Italian authorities have continued to build or refurbish segregate housing for Roma and to restrict their access to regular social housing. In at least one documented case, local authorities intend to use EU funds for the purpose of perpetuating segregation. Italian authorities also continue to store and use Roma Census Data collected under the Nomad Emergency, as explained below.

A. Ongoing Violations of the Race Equality Directive

11. Italy continues to violate the Race Equality Directive despite nullification of the Nomad Emergency Measures. Contrary to the Race Equality Directive which proscribes discrimination on the basis of race or ethnicity in the provision of services available to the public, including housing,¹⁴ regional and municipal authorities continue to place Roma in Roma-only camps or shelters that are on the margins of large urban districts, where they live in substandard conditions with limited access to services and are subject to heightened coercive controls on access and movement.¹⁵ Unlike non-Roma, Roma are effectively prevented from accessing regular social housing.

Italian Regional Laws Provide the Legal Basis for Segregated Housing

12. Regional laws regulating housing for Roma are based on an outdated understanding of Roma as exclusively “nomads”, leading to a discriminatory policy that treats Roma differently from non-Roma, and relegates them to sub-standard housing.
13. The Italian NGO Associazione 21 Luglio documented the Italian regional laws concerning public policy toward Roma. Their survey covers the laws of eleven regions and one autonomous province.¹⁶
14. The survey indicates that some regional authorities adopted the regulations with the purported intent to protect Roma identity and culture. The Italian authorities assume nomadism is a principal identifying characteristic of Roma, and they seek to support Roma to maintain their nomadic lifestyle.¹⁷ The natural consequence of this policy is the

creation of “nomad” camps to accommodate the nomad culture. As a result, regional authorities consider that the construction of “nomad” camps protects Roma.

15. While the Italian government continues to refer to Roma as nomads, more recently it has recognized that Roma are in fact very unlikely to live a nomadic lifestyle. From 2011, the Italian Ministry of the Interior has taken the view that only 2-3% of the Roma, Sinti and *Camminanti* travel by caravan and could be described as nomadic.¹⁸ In February 2012, the National Strategy for Inclusion of Roma, Sinti and *Camminanti* Communities went so far as to acknowledge that the term “nomad” is “outdated both linguistically and culturally, since it does not portray correctly the current situation.”¹⁹
16. Most of the regional laws were enacted prior to government statements that Roma are not nomadic. However, regulations enacted after the Nomad Emergency continue the policy of developing securitised “nomad” camps as the main form of public housing provided for Roma. The United Nations High Commissioner for Human Rights expressed concern at the policy of treating migrants and Roma as a security problem rather than as one of social inclusion.²⁰
17. In November 2012, the municipal government in Milan adopted a resolution titled, “Guidelines for Roma” (“Milan Guidelines”), describing general measures and objectives concerning regular and irregular camps around Milan.²¹ These new guidelines would appear to (i) call for the creation of a *new* Roma census; (ii) provide local police with the power to frequently monitor compliance with the camp regulations, leading to increased police presence in the camps and disproportionate policing of Roma; and (iii) treat the provision of public housing for Roma as a form of emergency aid, as a result of which housing is provided by organizations typically involved in aid and protection rather than regular housing services.²²
18. In November 2014, the municipal councilor for social affairs of the city of Rome proposed a new regulation for the operation of camps and shelters where the Roma population is concentrated in Rome.²³ The text consists of 14 articles covering existing camps and reception centres, and also new facilities for Roma families which the Municipality will eventually set up. The proposed regulation sets up criteria and rules that are peculiar to camps and facilities housing Roma and have no parallel in the regulations for social housing.
19. According to the new regulation, “villages” (*i.e.* camps) and shelters must meet requirements of habitability, accommodation, health and safety similar to that prescribed for other public accommodations such as hotels, camping sites, schools, hospitals. However, none of the existing camps and reception centers meet these requirements. The Department of Social Affairs would monitor compliance with the Regulations providing even for the expulsion of families in case they were found not to send their children to school. Articles 4 and 5 of the Regulation set out the role of the settlement’s managing authority, which includes monitoring compliance with a pact of legality that residents are required to sign, registering residents in an updated database, operating video-surveillance at the entrance and public areas at all times, and monitoring the access of guests to the “villages” including by use of Roma Census Data.
20. In 2009 the Administrative Tribunal of Lazio, referring to art. 2.4 of the then Regulation of the Lazio Region in force during the period of “Nomad Emergency”, struck down similar articles as being in clear breach of freedom of movement, beyond non-discrimination law.²⁴

Segregated Housing in New or Refurbished “Nomad” Camps

21. Since 2012, Italian authorities have continued to develop authorised “nomad” camps as a parallel, inferior, segregated system of housing for Roma. The camps are far from facilities such as schools and hospitals, and provide housing in temporary units that are typically metal pre-fabricated containers.
22. This alternative to the regular social housing system has been widely criticized by human rights monitoring bodies, including the UN Committee on the Elimination of Racial Discrimination (CERD), the European Committee on Social Rights (ECSR), and the European Commission against Racism and Intolerance (ECRI).²⁵ In March 2012, CERD described the negative effects on Roma brought about by the Nomad Emergency Measures and called on Italy to provide reparations to Roma, including by providing them with appropriate housing rather than the segregated camps they are required to live in.²⁶ In 2011, the ECSR found numerous violations of the right to housing under Article 31 of the European Charter of Social Rights on the ground that Italian authorities had not taken adequate measures to improve the substandard housing conditions of most Roma. The ECSR observed that the same conditions, still unaddressed by the government, had led to its prior findings of violations in *ERRC v. Italy* and *COHRE v. Italy*.²⁷ In February 2012, ECRI observed the housing segregation suffered by Roma and called on the government to ensure housing solutions that promote integration rather than cutting Roma off from the rest of society. ECRI found that Italy based its policies on Roma on the preconceived and erroneous notion that they live a nomadic lifestyle, and strongly recommended that Italy respect the right to housing of all Roma, including by ensuring that evicted persons enjoy the full protection of safeguards under international law.²⁸
23. Human rights groups have recently reported on the construction of new Roma-only camps and temporary shelters, and the refurbishment of old camps, in a submission to the United Nations High Commissioner for Human Rights as part of Italy’s 2014 Universal Periodic Review.²⁹ As a matter of law and in practice, such camps and shelters are typically the only housing option available to Roma, who are effectively excluded from non-segregated housing.
24. In Rome, for example, the system of “nomad” camps predates the adoption of the Nomad Emergency, including the Roma-only authorised camps in Lombroso (established in 2000), Candoni (established in 2000), Gordiani (established in 2002), Cesarina (established in 2003),³⁰ Camping River (established in 2005), Castel Romano (established in 2005) and Salone (established in 2006).³¹ According to the “Nomads’ office” of the Municipality of Rome, the nomad camps in Rome “hosted” 4,391 Roma in 2013, approximately 900 of whom are concentrated in the Salone camp.³²
25. Italian authorities are also building new camps and refurbishing old camps, even after adoption of the National Roma Integration Strategy, which took a firm position on the need to overcome this obsolete housing solution.³³
26. “La Barbuta” camp in Rome, opened in July 2012, is one of several segregated “authorised” camps recently built by Italian authorities. La Barbuta camp has recently come under threat of forced closure, with residents relocated to another segregated camp. In early 2014 the international company Leroy Merlin sought to purchase the land where the camp stands from the Municipality of Rome.³⁴ Leroy Merlin and the Municipality negotiated an agreement that would entail moving the camp to a new site several hundred meters away, in the Municipality of Fiumicino, where a new segregated camp would be built by the company for €10,000,000 to house 500 individuals. Before protests by local advocates blocked the plan, the Municipality had had not considered providing integrated housing.³⁵

27. According to the Roma rights NGOs, many Italian municipalities plan to establish new or refurbished Roma camps instead of planning for racially integrated housing. Segregated camps have been built in: the Municipality of Milan (Villaggio Martirano camp);³⁶ Naples (Giugliano, Masseria del Pozzo, and Cupa Perillo camps (see *infra*, section B.); Modena (Carpi camp);³⁷ Latina (Al Karama camp);³⁸ Lecce (Nuovo Panareo camp);³⁹ and Bolzano (Bolzano Merano camp).⁴⁰ In the area of Cesarina, the municipality is considering setting up a new segregated camp called “Nuova Cesarina” to house approximately 150 Roma.⁴¹

Poor Conditions of Housing in Camps

28. *Associazione 21 Luglio* has documented the housing conditions in the “authorised” camps in Rome, Naples, Turin, Pisa, Lecce, Cosenza, and Palermo.⁴² They show that Roma are housed in temporary housing units – metal containers, mobile trailers or bungalows – that are overcrowded, in an extremely poor state of repair with deteriorating hygienic and sanitary conditions, and which fail to provide adequate protection from the elements. Residents describe the units as very cold in the winter and unbearably hot in the summer.⁴³ The “nomad” camps further lack adequate access to drinking water, sanitation facilities, and heating systems.⁴⁴

29. The *La Barbuta* camp near Rome, like four other Roma-only camps in Rome, is surrounded by fences and entry through guarded gates is restricted to those who have government authorization or by invitation of a resident. Activities at the camp are monitored by video-surveillance equipment and the security personnel that control access to the camp.⁴⁵

30. Many camps are situated next to railway tracks, orbital roads, airport runways, or garbage dumps. In Giugliano (Naples), the Roma camp for 450 individuals (half of whom are children) is placed in a “no-food/no water zone”, within five meters of an illegal toxic garbage dump site in Masseria dal Pozzo.⁴⁶

Forced Evictions of Roma

31. The Italian authorities continue to evict Roma from their houses. Evictions targeting Roma are carried out without the procedural protections prescribed in international law, but are carried out without formal notice or advance notification, often in the absence of any consultation. Evictions often render Roma homeless because no alternative social housing is provided.⁴⁷

32. Roma living in informal settlements are most frequently forcibly evicted. However, residents of authorised camps have also been targeted, as evidenced by the eviction of 350 residents of the Tor De’ Cenci camp in Rome in September 2012.⁴⁸

33. In Rome alone, a report by Italian NGOs found that from 31 July 2009 to 31 January 2014, 556 forced evictions were carried out against Roma families. These evictions concerned 500 Roma families, with the effect that, in some cases, the same family was evicted several times.⁴⁹ Amnesty International has further documented forced evictions from settlements and “authorised” camps in Rome since 2010. In September 2013, Amnesty described the serial evictions of about 120 Roma from several camps including so-called “tolerated” camps.⁵⁰ The Human Rights Commissioner of the Council of Europe, Nils Muiznieks, addressed a letter to the mayor of Rome in December 2013 questioning the ongoing use of forced evictions.⁵¹

34. The authorities in Milan evict Roma families who live in irregular camps, and place them in a Center for Temporary Accommodations (“CTA”).⁵² On 11 August 2014, the Milan authorities evicted all of the residents at the *San Dionigi* camp.⁵³ Although 120 Roma lived

in the camp, press reports indicate that only between 15 and 35 of those who were evicted were subsequently provided housing at a CTA.⁵⁴

35. For those Roma provided housing at a CTA, the law says that families are only permitted to stay there for up to 200 days. However, because they are unable to move into regular social housing, families often stay in beyond the permitted period.⁵⁵
36. According to Roma rights NGOs based in Milan⁵⁶, reliance on the CTA to house Roma families poses several problems, as (i) the CTA cannot accommodate all evicted families, (ii) the accommodation is intended to be temporary but has become a long term solution for some families, and (iii) access to the CTA and life within them are strictly regulated.
37. In Rome, several Roma-only shelters have been set up to receive evicted Roma families. The *Centro di raccolta Best House Rom*, opened in January 2013 to house 320 Roma, and hosts those who have been forcibly evicted from the informal camp of *La Cesarina* and others. The shelter is an industrial building without windows, neither suitable nor officially permitted for use as housing.⁵⁷ Although Roma only shelters like “*Centro di raccolta Best House Rom*” are often described as temporary solutions they can become long lasting, as is the case with the *Cartiera* shelter, set up in 2009 after other forced evictions performed in the context of the Nomad Emergency⁵⁸ and still in operation.⁵⁹

Access to social housing

38. Local and regional regulations governing eligibility for regular social housing effectively exclude Roma families. For example, regulations in the Lombardy region require applicants to have registered residency in a municipality (e.g., Milan) and to have continuously resided or worked in the region of Lombardy for five years before applying for regular social housing.⁶⁰ Residency registration requires an address with a street name and house number, but Roma families in the greatest need of social housing often live in informal settlements with no street number, and few are regularly employed for five years due to employment discrimination against Roma. In Milan as well as in other cities, a notification of eviction is one of the criteria taken into account in order to prioritize access to social housing. However, Roma living in spontaneous, tolerated and even authorized camps do not receive notification of evictions from public authorities.
39. In the city of Rome, the municipal government introduced a new rule that excluded residents of “nomad” camps from the highest criteria for eligibility to social housing.⁶¹ In January 2013, the then-deputy mayor explained that the administration “from the outset and today, has never envisaged preferential or direct access to social housing for Romani citizens.” He went on to explain that the “essential requirements” for eligibility for social housing “are not currently attainable by Roma.” These declarations concerned the adoption of a circular by the municipality of Rome according to which the residence in Roma camps could not constitute entitlement for the category A1 of public housing, given that nomad camps were considered to be permanent structures.⁶²
40. In June 2014, the department of housing of the City of Rome announced another change to its policy concerning access to social housing.⁶³ This most recent change of policy does not repeal its January 2013 circular, but instead provides only an “interpretative note” on the assignment of public housing. The June 2014 note does not discuss the discriminatory nature of Rome’s policy of housing Roma in in Nomad camps instead of regular social housing.⁶⁴ In addition, the government has not sought communicate to the general public or the affected Roma communities that there has been any change in its policy on Roma access to social housing. As a consequence, camp residents, social assistants, and housing unions do not know that Roma may be eligible for social housing, if they applied, and as a result Roma remain effectively excluded from regular social housing.

41. Camp residents face further barriers in access to regular social housing. Roma living in camps frequently lack necessary permits of stay and often lack the identity documents necessary for them to file an application for a permit to stay. Research indicates there are approximately 15,000 *de facto* stateless Roma in Italy, most living in “nomad” camps.⁶⁵

B. Misuse of European Regional Development Funds to Build a “Nomad” Camp

42. Municipalities around Naples continue to build segregated camps for Roma instead of providing integrated social housing. As described in a joint NGO letter to the Commission in June 2014, the Municipality of Scampia (Naples) has adopted plans to build a new segregated temporary camp for Roma at *Cupa Perillo*⁶⁶ with the use of €7,015,995.96 from the EU’s European Regional Development Fund 2007 – 2013 (“ERDF”).⁶⁷ The plan was adopted by the City Council of Naples in May 2014.⁶⁸ If the plan goes forward, ERDF funds will be directly providing for the segregated housing of Roma in conditions that fall below minimum standards for social housing. This would place the Commission in the position of funding a project that falls far short of the requirements imposed by Commission Regulation (EU) No 832/2010, which states that “expenditure for housing in favour of marginalized communities shall be eligible only if ... the physical location of such housing ensures spatial integration of these communities into mainstream society and does not contribute to segregation, isolation and exclusion.”⁶⁹ Furthermore, it also contradicts the EU’s fundamental values as expressed in the Charter on Fundamental Rights and the Race Equality Directive.
43. In a letter dated 12 August 2014, DG REGIO agreed that the plan adopted for the *Cupa Perillo* Camp in Scampia did not appear consistent with the objectives of the ERDF.⁷⁰ The municipal government plans in fact to resettle in the new segregated camp only 400 out of the 800 Roma (among them some 300 children) who are currently living in the existing informal settlement at *Cupa Perillo*, which has existed for about twenty years, but will be dismantled. Even after receiving the letter of DG REGIO, in November 2014, the mayor of Scampia called for the closure of the existing camp.⁷¹ The municipality reportedly continues to plan to begin building the new camp imminently.
44. Like Italy’s other Roma-only camps, the new segregated camp in Scampia will not meet the minimum standards for social housing. It will be constructed as a temporary facility, located next to a motorway and isolated from other public services, although documents prepared by the Municipality do not explain what the “temporary nature” of the camp entails.⁷² The housing standards for the new camp approved by the Municipality of Scampia contravene the minimum requirements of the national law regulating social housing. Residents will be prevented from obtaining a housing suitability certification which is needed to obtain additional documents such as family reunion visas and certain residence permits, thereby undermining their social inclusion. It will also only provide accommodation for up to half of the population of the existing *Cupa Perillo* camp. The local authorities have not explained what will happen to the remaining approximately 400 people evicted from *Cupa Perillo*.
45. The use of ERDF funds in this manner is neither in line with the objectives of the ERDF⁷³ nor with international and national policies aimed at the inclusion of Roma.⁷⁴ The obligations under Article 21 of the Charter of Fundamental Rights, and other antidiscrimination provisions, apply to the Commission and to the Member States whenever they implement EU law, within the meaning of Article 51(1) of the Charter. The Commission must ensure that ERDF funds are not disbursed in a manner that would violate the Charter, and Italy must adhere to EU law, including the Charter, when it is

implementing a programme pursuant to Regulations Nos 1828/2006, 1083/2006 and 1080/2006.⁷⁵ According to the principle of shared management, Italy is responsible for the first examination of its compliance with the Charter when it disburses ERDF funds. However, the Commission is ultimately responsible for ensuring compliance with the Charter.

C. Ongoing Violations of the Data Protection Directive

46. The Italian authorities also continue to violate the Data Protection Directive by maintaining and using the Roma Census Data collected under the Nomad Emergency Measures in Rome and Naples.
47. In the summer of 2008 Italian Central Operative Service of the State Police, apparently under an order of the Ministry of Interior, coordinated with police departments to conduct a census of all “settlements of nomad communities” in the prefects of Milan, Naples and Rome.⁷⁶ According to the Minister of Interior, as of 22 October 2008, 12,346 Roma (including 5,436 minors) lived in a total of 43 authorized and 124 illegal camps in Rome, Milan and Naples.⁷⁷ All of these residents were included in the Roma Census.⁷⁸ During the census, police officials checked the identity documents of all residents of the camps. They also photographed each resident, forcing them to hold a sheet of paper just below their face containing their name, surname and identity number, and collected their fingerprints.⁷⁹ More than 12,000 Roma fled their housing to avoid being included in the census.⁸⁰ The census data were collected, in part, for the express purposes of dismantling the Roma camps and expelling Roma from the country.⁸¹ Roma camp residents did not freely consent to participate in the census. Instead, they felt they were required to subject themselves to the census in order to be allowed to access the camps where they lived.
48. There is no evidence that authorities in Rome and Naples have taken any steps to destroy the Roma Census Data held by those municipalities.⁸² Although the lawfulness of the collection, use, and maintenance of Roma Census Data have been challenged in courts and to the Italian Data Protection Authority (*Garante per la protezione dei dati personali*), no Italian authority has ordered destruction of the Roma Census Data as a whole.
49. In 2013, an Italian Roma resident of a Roma camp, Elvis Salkanovic, joined by the Open Society Justice Initiative and three other NGOs filed a case in the *Tribunale Civile di Roma* claiming the Nomad Emergency Measures amounted to discrimination and violations of privacy rights. Mr. Salkanovic claimed the Nomad Emergency Measures and the Roma census amounted to direct and indirect discrimination and harassment, as defined in Article 2 of the Race Equality Directive and Italian law. He also claimed the Roma census violated the Data Protection Directive for the following reasons: (i) the purported justification for the collection of census data exceeded the limited grounds for the processing of sensitive personal data under the directive; (ii) the census data was not collected for a legitimate purpose; (iii) Italian authorities did not obtain the consent of Mr. Salkanovic or other subjects of the census; and (iv) the data was collected without safeguards required by the directive.
50. On 24 May 2013, the *Tribunale Civile di Roma* recognized the discriminatory nature of the Roma Census and other Nomad Emergency Measures. The court ordered the Minister of the Interior to delete Mr. Salkanovic’s data that had been collected during the census, ordered the Prime Minister’s Office and the Ministry of Home Affairs jointly to pay non-pecuniary compensatory damages of €8,000 to Mr. Salkanovic, and ordered the Minister of the Interior to publish the judgment in the national Italian newspaper *Il Corriere della Sera*.⁸³

51. In May 2013, three days after the *Salkanovic* case was decided, a second victim of the Roma Census was awarded relief by a Rome court. The anonymous Italian Roma claimant from Rome had obtained a court order to allow him access to his data collected in the Roma Census, including his fingerprints and family pictures. In January 2012, the claimant had brought an access to information claim against the Ministry of the Interior and the Police Headquarters of Rome, who had denied him access to his census data.⁸⁴ In July 2012, after being unable to obtain any further information regarding the processing of his data, he applied to the Rome Tribunal claiming that the database of sensitive information and the continued processing of his personal data – including fingerprints and family pictures – were racially discriminatory and violated the Race Equality Directive. He also argued that the collection and processing of such data by the Prefecture violated Article 6, 7, 8 and 10 of the Data Protection Directive as it was not necessary for the purpose of identification, particularly where he, as an Italian citizen, was able to simply show his identity documents.⁸⁵ The Rome Civil Court held that the collection of Roma Census Data was discriminatory on grounds of ethnic origin, because Roma, including those holding an Italian identity document, are for no reason identified through fingerprinting and photographing as part of an operation that was *de facto* directed to the Roma community.⁸⁶ Notably, even the Guidelines for the Roma Census did not foresee fingerprinting except in cases where identification was not otherwise possible.⁸⁷
52. No court, however, has addressed the collective character of the discrimination and ordered destruction of all of the Roma Census Data. In *Salkanovic*, the three NGOs that supported Mr. Salkanovic's complaint advanced this argument but the court denied their standing to raise the claim. Thus, while the Rome court recognized that the Nomad Emergency Measures violated antidiscrimination and data protection laws, and recognized the harms suffered by Mr. Salkanovic, it failed to recognize the same harms suffered by thousands of similarly situated Roma, and it left in place the Roma Census Data, the collection, maintenance and use of which it had found violated the law. The judgment in *Salkanovic* represents the only instance in which an Italian Court found the Nomad Emergency Measures were discriminatory and violated data protection laws, but its relief is limited to a single individual. As a result, the Roma Census Data in Rome remains in place for use by local and national authorities.
53. The Italian Data Protection Authority has similarly not called for destruction of the data. The Justice Initiative has written to the Data Protection Authority four times since March 2014, but the Data Protection Authority has not answered our requests to order the deletion of the data. Nor has the Data Protection Authority provided its official position relative to the maintenance of the Roma Census Data by the Italian Ministry of the Interior.
54. In Naples, the census data still exists and no court has ruled that the government should delete the data. In contrast, in Milan, a formal request was filed with the Prefect by the NGO Roma Council, and in July 2013 the Prefect ordered the destruction of the Roma Census Data covering the territory of Milan. The Prefettura expressly recognized that in light of the Council of State and Court of Cassation decisions, the collection, storage and use of the data is unlawful.⁸⁸

Conclusion

55. The Commission's communication with respect to the EU pilot concerning Italy's 'emergency treatment' of Roma expressed concern regarding the discriminatory nature of the Nomad Emergency Measures. Although the measures have been declared unlawful, Italy's regional and local authorities continue the discriminatory housing practices

regional and municipal regulations. Roma remain segregated to an alternative social housing system that entails living in “nomad” camps, in substandard conditions, at the physical and social margins of society. In addition, Italian authorities continue to maintain and use the Roma Census Data collected under the Nomad Emergency Measures. In light of these ongoing violations, the Commission should issue a letter of formal notice setting out Italy’s infringement of the Race Equality Directive and the Data Protection Directive.

List of Annexes:

- Annex 1: Municipality of Milan, *Guidelines for Roma*, November 2012
- Annex 2: Municipality of Rome, Regulation for the functioning of equipped villages and reception centres, November 2014
- Annex 3: Municipality of Rome, Note of the Director for Housing Rome to the Grading Commission, 11 June 2014
- Annex 4: Municipality of Rome, *Response to EU pilot Director for Housing Rome*, 13 June 2014
- Annex 5: Joint NGO Letter of Concern regarding Cupa Perillo camp (Naples), 25 June 2014
- Annex 6: European Commission DG Regional and Urban Policy, Letter on social housing in Scampia for Rome people, 12 August 2014

¹ “Violations of EC Law and the Fundamental Rights of Roma and Sinti by the Italian Government in the Implementation of the Census in ‘Nomad Camps’”, 4 May 2009, submitted by the European Roma Rights Centre (ERRC), the Open Society Justice Initiative (OSJI) and OsservAzione, available at

<http://www.opensocietyfoundations.org/sites/default/files/memorandum-to-the-european-commission-20090504.pdf>.

² “Roma in Italy: Briefing to the European Commission”, 18 October 2010, available at

<http://www.soros.org/initiatives/justice/litigation/ec-v-italy-20100910/memorandum-italy-ec-20101018.pdf>.

³ “Roma in Italy: Updated Briefing to the European Commission”, 15 March 2012, available at

http://www.opensocietyfoundations.org/sites/default/files/italy-briefing-ec-march-10192012_o.pdf.

⁴ “Roma in Italy: A Continued Emergency. Briefing to the European Commission”, 19 October 2012, available at

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⁵ This briefing note uses the term Roma to refer to people of Roma, Sinti, and Camminanti ethnic origin.

⁶ European Union, Legal Texts, Structural Funds Regulations 2007-2013, available at

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⁷ Article 47 of Regulation 1828/2006 (as amended by regulation 832/2010) provides,

“Having regard to Article 7(2) of Regulation (EC) No 1080/2006, expenditure for housing in favour of marginalized communities shall be eligible only if the following conditions are fulfilled:

(a) such housing investment is part of an integrated approach and support for housing interventions for marginalized communities takes place together with other types of interventions including interventions in the areas of education, health, social inclusion and employment;

(b) the physical location of such housing ensures spatial integration of these communities into mainstream society and does not contribute to segregation, isolation and exclusion.”

⁸ Ufficio Nazionale Antidiscriminazioni Razziali, “Strategia di Inclusione/Integrazione dei

Rom, dei Sinti e dei Caminanti 2012-2020, page 14, available at <http://www.unar.it/unar/portal/wp-content/uploads/2014/02/Strategia-Rom-e-Sinti.pdf>

⁹ See para. 1, above.

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See “Roma in Italy: Updated Briefing to the European Commission”, 15 March 2012, available at

http://www.opensocietyfoundations.org/sites/default/files/italy-briefing-ec-march-10192012_o.pdf

¹¹ T.A.R. Lazio, n. 6352/2009, Sez. I, 24 June 2009; Consiglio di Stato, sez.IV, n.6050, 16 November 2011, available at

<http://www.leggioggi.it/allegati/consiglio-di-stato-sez-iv-16-novembre-2011-n-6050/>.

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- ¹⁵ See in particular selected video testimonies of the conditions of Roma camps in Italy, infra notes 46, 58, and 66.
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- ²³ Municipality of Rome, ‘Regulation for the functioning of equipped villages and reception centres’, November 2014, Annex No 2.
- ²⁴ T.A.R. Lazio, n. 6352/2009, Sez. I, 24 June 2009; Consiglio di Stato, sez.IV, n.6050, 16 November 2011, available at <http://www.leggioggi.it/allegati/consiglio-di-stato-sez-iv-16-novembre-2011-n-6050/>
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⁶² Municipality of Rome, Department of Housing Policies, Circular No EL 4277 of 18 January 2013.

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⁶⁴ Document numbered EL/12279 by the Director of the Department of Housing states “on the need to avoid difference of treatment in the process of applying the afore mentioned grading ... the wording of Circular No EL 4277 of 18 January 2013 need to be interpreted so as to avoid any discrimination based on the belonging to the Roma ethnicity, in consideration of the fact that the concept of ‘permanent structure’ - when referred to nomad camps - appears to be a concept of difficult definition.”

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⁶⁷ Associazione 21 Luglio, Chi rom e... chi no, European Roma Rights Centre and OsservAzione, Joint Letter to the European Commission, 25 June 2014. Annex No. 4

⁶⁸ See Delibera Giunta del Comune di Napoli n.174 del 21.03.2013, Delibera Giunta del Comune di Napoli n.1091 del 27.12.2013, Delibera Giunta del Comune di Napoli n. 159 del 11.03.2014, Delibera Giunta del Comune di Napoli n. 24 del 15.05.2014, 2 project plans, all referred in Annex No. 5.

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⁷⁰ DG REGIO, Recent developments in the Municipality of Scampia (Naples), Italy on camps for Roma people, 12 August 2014. Annex No. 6.

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⁷³ Commission Regulation (EU) No 832/2010.

⁷⁴ Joint NGO Letter to the European Commission, 25 June 2014, Annex No. 4.

⁷⁵ Commission Regulation (EC) No 1828/2006 of 8 December 2006 setting out rules for the implementation of Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and of Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund (OJ L 371, 27.12.2006, p. 1); See *Liivimaa Lihaveis MTÜ v Eesti-Läti programmi 2007-2013 Seirekomitee*, Judgment of the Court of Justice of the European Union, Case no. C-562/12, 17 September 2014, paras 57-66 (holding that actions taken pursuant to obligations under Regulations Nos 1083/2006 and 1080/2006 governing the spending of European Regional Development funds amount to implementing EU law.)

⁷⁶ The census was also carried out in the provinces of Padua, Treviso, Venice, Verona, and Vicenza. See “Violations of EC Law and the Fundamental Rights of Roma by the Italian Government in the Implementation of the Census in ‘Nomad Camps’”, 4 May 2009, submitted by the European Roma Rights Centre (ERRC), the Open Society Justice Initiative (OSJI) and OsservAzione, available at: <http://www.opensocietyfoundations.org/sites/default/files/memorandum-to-the-european-commission-20090504.pdf>

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⁷⁸ Ministry of Interior, Census of Roma Camps, available at

http://www.interno.gov.it/mininterno/export/sites/default/it/sezioni/sala_stampa/speciali/censimento_nomadi/index.htm

⁷⁹ “Violations of EC Law and the Fundamental Rights of Roma by the Italian Government in the Implementation of the Census in ‘Nomad Camps’”, 4 May 2009, submitted by the European Roma Rights Centre (ERRC), the Open Society Justice Initiative (OSJI) and OsservAzione, available at: <http://www.opensocietyfoundations.org/sites/default/files/memorandum-to-the-european-commission-20090504.pdf>.

⁸⁰ Ministry of Interior, Census of Roma Camps (quoting the Interior Minister as stating, “Almeno altrettanti nomadi rispetto a quelli censiti, circa 12.000, si sono allontanati dai campi dall’inizio di giugno”), available at http://www.interno.gov.it/mininterno/export/sites/default/it/sezioni/sala_stampa/speciali/censimento_nomadi/index.htm

⁸¹ See “Violations of EC Law and the Fundamental Rights of Roma by the Italian Government in the Implementation of the Census in ‘Nomad Camps’”, 4 May 2009, submitted by the European Roma Rights Centre (ERRC), the Open Society Justice Initiative (OSJI) and OsservAzione, available at: <http://www.opensocietyfoundations.org/sites/default/files/memorandum->

[to-the-european-commission-20090504.pdf](#); “Roma in Italy: Updated Briefing to the European Commission”, 15 March 2012, available at http://www.opensocietyfoundations.org/sites/default/files/italy-briefing-ec-march-10192012_o.pdf.

⁸² Interviews carried out by the Open Society Justice Initiative with staff from NAGA, Consulta Rom e Sinti and ERRC. Records on file with the Open Society Justice Initiative.

⁸³ *Salkanovic et al., v. Presidenza del Consiglio del Ministri, et al.*, Tribunal Ordinario di Roma, Seconda Sezione Civile, No. 49444 of 2012, Order, 24 May 2013.

⁸⁴ *XXX v Ministry of the Interior, Prefecture of Rome and Rome Police Headquarters*, Administrative Tribunal of Latium, N. 05170/2011, 23 November 2011.

⁸⁵ *XXX v Ministry of the Interior, Prefecture of Rome and Rome Police Headquarters*, filing to the Rome Tribunal, 26 July 2012, RG 49444/2012. Cf. Annexes No. 5 and 6.

⁸⁶ *Salkanovic et al., v. Presidenza del Consiglio del Ministri, et al.*, Tribunal Ordinario di Roma, Seconda Sezione Civile, No. 49444 of 2012, Order, 24 May 2013, p. 7.

⁸⁷ “Guidelines to implement the President’s Ordinances nos. 3676, 3677 and 3678 of 30 May concerning the encampments of nomadic communities in the regions of, Lazio, Lombardy and Campania,” 17 July 2008. In its November 2011 decision, the Council of State found that the Guidelines had no clear legal value and were not sufficient to remedy the illegitimate character of the census order made under the Nomad Emergency Measures (at page 22).

⁸⁸ See Upre Roma, La Consulta Rom e Sinti ottiene un primo risultato contro l'emergenza nomadi del 2008, 11 October 2013, available at <http://www.upreroma.it/index.php/notizie/69-un-primo-risultato-della-consulta-rom-e-sinti-di-milano>.

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