**Observations of the Secretariat of the European Commission against Racism and Intolerance (ECRI) on Draft GR N° 36 on preventing and combating racial profiling**

1. Section II (§ 5) mentions “international human rights mechanisms” which may provide scope for highlighting relevant developments of regional mechanisms. An important “European” benchmark is the case law of the **European Court of Human Rights** (ECtHR). On 16 April 2019, in its judgment ***Lingurar v Romania*** (no. 48474/14), the Court held, for the first time, that the applicants had been targeted because the authorities had perceived the Roma community in general as criminal, which had amounted to **ethnic profiling** and had been discriminatory.
2. In addition to the ECtHR, **ECRI’s General Policy Recommendation (GPR) GPR No. 11 on combating racism and racial discrimination in policing** (2007) provides a definition of racial profiling and the reasonable suspicion standard, which ECRI continues to promote in its country monitoring reports where relevant. The GPR also has a very detailed and comprehensive explanatory memorandum.
3. In § 23 concerns could be raised about **lack of transparency** behind how the algorithms function. As AI systems become more sophisticated, it will become increasingly difficult for even the engineers who created these systems to explain the choices they made. That opaque decision-making, with little accountability, also makes it harder to discover discrimination.
4. In § 24, the notion of **predictive policing** could be used. It is becoming a generic term now.
5. In § 34, it could be made clear that a complaints mechanism should be independent not only of the police but also of the **prosecution service** (see ECRI’s GPR No. 11 § 10). Victims are reluctant to report cases of police misconduct to institutions which cooperate closely and on a daily basis with the police, such as the prosecution authorities. It is necessary to create a system where victims can bring a complaint in full confidence to an independent body whose main task is to control the activities of the police (§ 58 of the explanatory memorandum).