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*Committee on Civil Liberties, Justice and Home Affairs hearing on*

*Unblocking the anti-discrimination directive*

20 March 2012

*The panel session will revisit the current state of EU law on equal treatment, equality, and non-discrimination, aiming for an appraisal of the scope and limitations across fields of application and grounds of discrimination, focusing on the grounds listed in Article 19 TFEU.*

Ladies and Gentlemen,

Thank you for inviting the Fundamental Rights Agency to contribute to your deliberations on how to improve the European Union's legal instruments that promote equal treatment and provide protection against discrimination in accordance to the fundamental right to non-discrimination, enshrined in Article 19 TFEU and in Article 21 of the Fundamental Rights Charter.

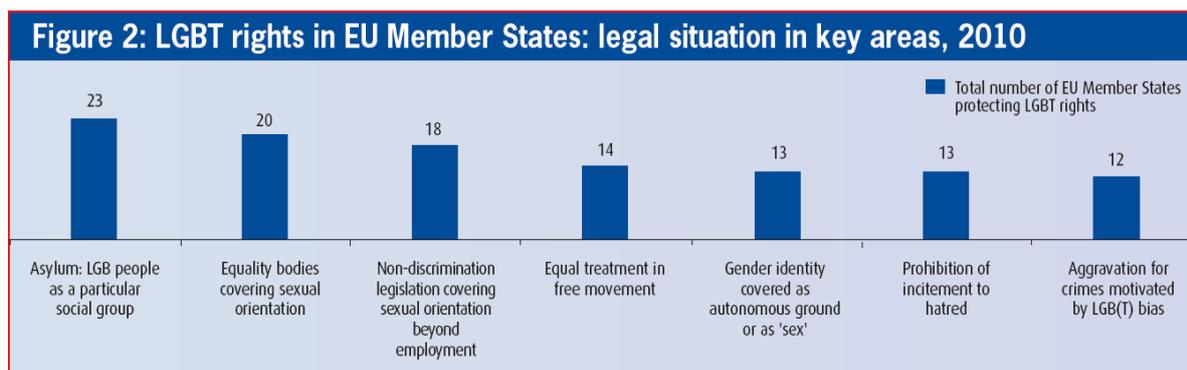
The Directives do not provide the same level of protection to all grounds of discrimination. Whereas people enjoy comprehensive protection against discrimination on grounds of racial and ethnic origin and of sex, discrimination on grounds of religion or belief, disability, age or sexual orientation is prohibited only in the context of employment. In 2008 the European Commission proposed a 'horizontal' directive extending comprehensive protection against discrimination on all grounds, similar to that of the Racial Equality Directive, in order to fully protect, promote and fulfil fundamental rights, in line with the Charter.

The FRA has collected a range of evidence to the need for more comprehensive protection against discrimination on all grounds. As an illustration, I will present briefly evidence in regard to three grounds: sexual orientation, disability and age.

In 2009, the Agency, responding to a specific request of the European Parliament, presented its report on the situation regarding discrimination on grounds of sexual orientation and gender identity. The results showed that many LGBT persons experience discrimination, bullying and harassment, not only in the workplace, but in many social settings, including schools and retirement homes, when seeking treatment for themselves or their partner. In Denmark, a study in 2009 found that 16% of LGBT persons had considered suicide and 11% had actually attempted suicide; twice the average of the general population. A survey among lesbian and bisexual women conducted in the United Kingdom in 2008 showed that nearly half of the respondents concealed their sexual orientation from health professionals. In the 2009 Stonewall report "Homophobic Bullying in Britain's Schools" some 90% of secondary school teachers said that pupils in their schools are bullied, harassed or called names for being or for being perceived to be homosexual; and half of the teachers who were aware of homophobic bullying in their school said that the overwhelming majority of incidents are never officially reported or even dealt with. In Finland, in a 2011 survey of 'sexual or gender minorities' on discrimination in education 36% of the respondents had at some point in their school life been the target of bullying because of their sexual orientation. Under these circumstances 'invisibility' becomes a survival strategy because of the perceived risks of

being exposed to discrimination. And this contributes to the low number of discrimination complaints on grounds of sexual orientation, gender identity or gender expression across the EU compared to complaints of discrimination on other grounds.

A number of Member States recognising the need for more comprehensive protection against discrimination have already improved their equal treatment legislation: 18 MSs have already extended their legislation to cover sexual orientation, and in 20 MSs Equality Bodies now cover also sexual orientation.



Disability is another frequent ground of discrimination that affects millions of EU citizens. The European Commission’s Academic Network of European Disability Experts (ANED) and the FRA have collected a significant body of evidence showing that there is a need for better legal protection against disability discrimination across the EU. The 2011 ANED report on ‘Inclusive Education For Young Disabled People In Europe’ found that disabled students tend to have lower success rates in upper-secondary education compared to their non-disabled peers; in the United Kingdom, only 15% of students with disabilities attained five or more GCEs compared to 80% of those without disabilities. In Austria, students with disabilities, especially those with intellectual impairments, tend to drop out or switch to a special school after the eighth grade. Students with disabilities may also leave upper-secondary education without the academic requirements for entry to higher education, where entry depends on success in standard admission tests, for example in the Czech Republic. The Bulgarian Ombudsman’s 2010 Annual Report pointed to lack of accessibility, both physical and in terms of administrative processes, in hospitals, social assistance departments, the homes of persons with disabilities and public transport. In 2010, the Bulgarian Supreme Administrative Court upheld a decision by the Commission for the Protection against Discrimination that the Education Ministry had discriminated on grounds of disability by not ensuring effective and equal access to education for children with special educational needs. Recently, the Romanian National Council for Combating Discrimination began legal procedures against a night club that denied access to a woman because she was a wheelchair user and issued the highest administrative fine it has ever issued.

In the course of 2011 a number of Member States introduced changes in legislation and new policy initiatives to tackle discrimination on the grounds of disability. Much of this occurred as a result of their efforts to implement fully the Employment Equality Directive and in preparation for the ratification of the Convention on the Rights of Persons with Disabilities.

For example, Spain adopted new legislation in August 2011 to bring national law and policy into line with the requirements of the CRPD, which includes the regulation of transport,



information society and civil protection. Slovenia also adopted legislation at the end of 2010 stipulating the prohibition of discrimination on the grounds of disability by public bodies when exercising their powers. This legislation also prohibits discrimination in access to goods and services available to the public and lays down an obligation for the provision of reasonable accommodation and the removal of physical, information and communication barriers that prevent access to goods and services. The Swedish Ministry of Integration and Gender Equality issued a memorandum proposing to amend the Discrimination Act by July 2012 by extending the prohibition on discrimination against persons with disabilities resulting from inadequate accessibility to all other areas beyond employment, such as access to goods and services, health and medical care and social services.

Age is another important ground of discrimination that often intersects with other grounds, such as disability, race or ethnic origin, gender and sexual orientation to increase vulnerability to discrimination. In its 2011 European report on preventing elder maltreatment, The World Health Organization notes that “elder maltreatment is pervasive in all countries in the European Region”, with at least 4 million people a year experiencing elder maltreatment. A recent analysis of the findings of the European Social Survey found that old age is the most widely experienced source of discrimination in Europe: around 64% of the survey’s respondents in the United Kingdom and an average of 44% across the EU consider old-age discrimination to be a serious problem.

Ladies and gentlemen, in closing allow me to add an important, but often neglected, form or dimension of discrimination, multiple or intersectional discrimination. Despite progressive acknowledgement of the social impact and the extent of multiple discrimination, the law has been slow to recognise and respond to it. The relatively few cases addressing discrimination on more than one ground is evidence of the law lagging behind in this area, and of the limitations imposed on addressing multiple discrimination through the application of the ‘comparator’ approach in discrimination cases in a number of jurisdictions. Recent research by the Agency provides additional evidence of the particular vulnerability of minority ethnic women, such as Roma or immigrant women, in accessing healthcare. It would be therefore important that in your deliberations on the anti-discrimination directive you also consider the need for effective legal protection against multiple discrimination.

Thank you for your attention.