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Progress made in equal-opportunities and non-discrimination in the EU (transposition of Directives 2000/43/EC and 2000/78/EC)

European Parliament resolution of 20 May 2008 on progress made in equal opportunities and non-discrimination in the EU (the transposition of Directives 2000/43/EC and 2000/78/EC) (2007/2202(INI))

The European Parliament,

- having regard to the Commission communication on non-discrimination and equal opportunities for all - A framework strategy (COM(2005)0224),
- having regard to Article 13 of the EC Treaty,
- having regard to Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin¹,
- having regard to Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation²,
- having regard to the Commission communication on the application of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (COM(2006)0643),
- having regard to the Commission report on Developing Anti-Discrimination Law in Europe: The 25 EU Member States compared, of July 2007,
- having regard to the national reports on the implementation of anti-discrimination legislation and the thematic reports produced by the network of legal experts in anti-discrimination to support its work set up by the Commission in order to provide independent information and advice on relevant developments in the Member States,
- having regard to the UN International Convention on the Elimination of All Forms of Racial Discrimination,
- having regard to the UN Convention on the Rights of Persons with Disabilities,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol No12 thereto,
- having regard to the Commission's Special Eurobarometer Survey on Discrimination in the European Union, of January 2007,
- having regard to the designation of 2007 as European Year of Equal Opportunities for All and 2008 as European Year of Intercultural Dialogue,

¹ OJ L 180, 19.7.2000, p. 22.

² OJ L 303, 2.12.2000, p. 16.

- having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A6-0159/2008),
- A. whereas Article 6 of the Treaty on European Union provides that the European Union shall be founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States and it is important that political declarations on the fight against discrimination are matched by the progressive development and full and correct implementation of legislation and policies, notably as regards the directives prohibiting discrimination and projects promoting equality,
 - B. whereas Article 6 of the Treaty on European Union also provides that the European Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the promotion of equality and non-discrimination in accordance with Article 13 of the EC Treaty should be a priority of the European Union's laws and policies,
 - C. whereas employment is one of the basic requirements of social inclusion but levels of unemployment among many groups, in particular women, migrants, people with disabilities, ethnic minorities, older and younger people and those with isolated or unrecognised skills, remain unacceptably high; whereas unemployment among persons suffering from multiple discrimination is even higher,
 - D. whereas Community law does not currently cover discrimination in most areas of Community competence and whereas Directives 2000/43/EC and 2000/78/EC provide different levels of protection, which create gaps in protection against discrimination that impacts on employment,
 - E. whereas the Commission's mapping survey on Developing Anti-Discrimination law in Europe confirms that at Member State level there is a patchwork of legislation across Member States, protecting against discrimination in different ways and often lacking a common method of implementation, which has led to a lack of harmony in the implementation of directives and a situation in which people are not sufficiently aware of their rights,
 - F. whereas the inconsistent application of non-discrimination policies in Member States contributes to the lack of implementation in practice of Community directives prohibiting discrimination, as is reflected in reports such as that of the European Group of Experts on Combating Sexual Orientation Discrimination entitled "Combating sexual orientation discrimination in employment: legislation in fifteen EU member states",
 - G. whereas in its resolution of 5 December 2007 on the follow-up of the European Year of Equal Opportunities for All (2007)¹, the Council invited Member States and the Commission, in accordance with their respective competences, to sustain and reinforce the mainstreaming of disability issues into all relevant policies,
 - H. whereas the Commission has therefore justly commenced procedures against several

¹ OJ C 308, 19.12.2007, p. 1.

Member States, and needs to continue doing so when necessary,

1. Calls on the Member States to take due account in their legislative practice of the various grounds for discrimination set out in Article 21 of the Charter of Fundamental Rights of the European Union;
2. Recalls that Directives 2000/43/EC and 2000/78/EC provide minimum requirements and should be the foundation on which a more comprehensive Community anti-discrimination policy is built;
3. Expresses concern about deficiencies in the transposition and implementation of Directives 2000/43/EC and 2000/78/EC by some Member States and the lack of information for EU citizens about possible remedies in cases of discrimination;
4. Regrets that Directives 2000/43/EC and 2000/78/EC do not cover differences in treatment of a discriminatory nature based on physical criteria such as height or complexion, particularly in relation to access to jobs where there is no direct link between those physical characteristics and the skills required to perform the jobs concerned;
5. Calls on the Member States to ensure that, following the transposition of all their provisions, Directives 2000/43/EC and 2000/78/EC are fully, correctly and effectively transposed and adequately implemented, and that, in accordance with their provisions, any exemptions are objectively justified;
6. Calls on the competent EU, national and local authorities to improve the coordination of their efforts of implementation; calls for a unified approach to combating discrimination which is inclusive of, and takes into account, all grounds for discrimination at the same time;
7. Emphasises that public authorities have a key role to play in promoting equality and preventing discrimination, through their policies, their provision of services and their employment practices;
8. Calls for a commitment by the Commission to carry out a substantial review of the implementation of Directives 2000/43/EC and 2000/78/EC as well as issuing interpretive guidelines for their implementation to ensure full and correct implementation by Member States; calls on the Commission, in particular, to assess the way in which Member States have interpreted the exemptions provided for in Articles 6 and 8 when transposing Directive 2000/78/EC into national law; recalls that the implementation of both Directives requires a range of mechanisms and strategies including compliance, proactive engagement and enforcement as well as effective exchanges of best practices;
9. Urges that sanctions applicable to infringements of national provisions adopted pursuant to the transposition of Directives 2000/43/EC and 2000/78/EC must be effective, proportionate and dissuasive;
10. Urges the Commission to monitor carefully the transposition of Directives 2000/43/EC and 2000/78/EC as well as compliance with legislation resulting from their transposition, and to continue to put pressure on the Member States, by way of infringement and non-compliance procedures, to respect their legal obligations in fully transposing those Directives as soon as possible; believes that Parliament's competent Committee should play a role in the ongoing monitoring of Member States' obligations under those Directives;

11. Reminds the Commission that Article 4 of Directive 2000/78/EC permits exceptions only to the extent that they are genuinely objectively necessary for the satisfactory performance of occupational activities; calls on the Commission to interpret that article strictly and to bring actions against Member States before the Court of Justice if they permit too broad a definition in their national legislation;
12. Asks for an annual evaluation of Member State implementation as part of the open method of coordination and an extended review of the implementation of such legislation every five years as part of the Social Agenda; believes that independent bodies concerned with non-discrimination issues, including the Commission's network of legal experts and non-governmental organisations (NGOs) representing potential victims of discrimination, should be involved in that annual evaluation and that concrete measures should be taken to build the capacity of NGOs in order to enable them to provide information and support to victims and to contribute constructively to the annual evaluation;
13. Believes that the absence of a provision in Directive 2000/78/EC indicating the necessity for broad definitions of disability has excluded some categories of disabled people from the legal protection of that Directive; therefore invites the Commission and the Member States to agree such broad definitions of disability urgently, in order to facilitate the harmonisation of anti-discrimination legislation, which could be based on the Convention on the Rights of Persons with Disabilities;
14. Believes that the lack of a provision establishing a time limit for bringing proceedings to challenge discrimination has led some Member States to set very short time limits, which might be an obstacle to bringing such proceedings;
15. Believes that exceptions linked to marital status in Directive 2000/78/EC has limited the protection against discrimination on the ground of sexual orientation offered by that Directive;
16. Urges the Member States to promote more effectively the application of the rights of EU citizens under Directives 2000/43/EC and 2000/78/EC, and urges the Commission, the Member States, trade unions, employers, as well as governmental and non-governmental stakeholders to do all in their power to improve awareness of rights under those Directives and to ensure that victims of discrimination have access to a range of advocacy support to enable them effective to exercise their rights thereunder; notes that the burden is often on the victim to challenge the alleged perpetrator of the discrimination, frequently with neither support from any public authority nor access to legal aid; urges Member States to empower concerned independent bodies to provide effective help to victims of discrimination;
17. Is concerned about the low level of awareness of anti-discrimination legislation among citizens in the Member States and calls on the Commission, the Member States, trade unions and employers to step up their efforts to raise that level of awareness; recalls that the Directives impose an obligation on Member States to disseminate information to the public on the relevant provisions of the Directives by all appropriate means;
18. Recommends that Member States undertake independent reviews of preventive and restitutive anti-discriminatory measures and the effectiveness of protection against victimisation and ensure that statutory and non-statutory bodies that participate in the prevention of discrimination and that support the victims of discrimination are adequately resourced; recommends also that the Commission include peer reviews in its ongoing

monitoring exercise;

19. Recommends that Member States adequately resource and empower independent bodies that promote equality so that they can perform their role effectively and independently, including providing sound expertise on all forms of discrimination and appropriate assistance for victims of discrimination; encourages the Member States to ensure that the remit of those bodies covers all forms of discrimination, and calls on the Commission to establish standards against which to monitor and ensure the effectiveness and independence of those bodies;
20. Recommends that Member States and the Commission resource and empower those NGOs that represent discriminated groups, and those that are active in informing citizens and providing legal aid, as regards matters of discrimination;
21. Calls on the Member States to work together with the relevant social partners to monitor the correct implementation of Community legislation;
22. Stresses that in any event Member States should ensure that victims of discrimination are automatically assisted in legal proceedings, if necessary by public funding through legal aid schemes;
23. Calls upon the Commission practically and effectively to support the adoption of measures by Member States through the Progress programme and the European Social Fund in order to support programmes promoting equal opportunities and the eradication of discrimination;
24. Recommends that, in order to provide a more effective level of protection, Member States should empower associations, organisations and other legal entities to engage in legal proceedings, including on behalf or in support of any victim;
25. Urges the Member State governments to ensure equal treatment and opportunities under employment and social inclusion policies, and, in particular, to address the serious barriers raised by discrimination in recruitment procedures;
26. Recommends that Member States ensure that associations, organisations and other legal entities may engage on behalf of one or more complainants in any judicial proceedings for the enforcement of the Directives;
27. Calls on the Member States, in cooperation with the EU Agency for Fundamental Rights and the Commission, to collect, compile and publish comprehensive, accurate, comparable, reliable and separate statistics on discrimination at regular intervals and to publish them in such a way that they can be easily understood by the public and enable a more effective exchanges of best practices; stresses the need for the availability of sufficient funds to achieve this and the importance of developing ways of gathering data on discrimination in line with data protection legislation;
28. Calls for the establishment of national integrated action plans against all forms of discrimination;
29. Welcomes the Commission's interest in collecting equality data, including the publishing of the European handbook on such data; asks the Commission to study carefully the various legal questions and parameters regarding the issue of data collection and to put forward

proposals to improve the recording of cases of discrimination and look at common standards for data collection; recommends that the Commission continue to provide legal training for judges, lawyers, trade unions and NGOs in order to enhance the long-term impact of the Directives, and also conduct more research and analysis of the impact of legislation transposing the Directives;

30. Welcomes the Commission's interest in multiple discrimination, including its launch of a study on this subject; calls on the Commission to adopt a balanced broad concept of multiple discrimination and for the Commission to examine and supply data on multiple discrimination and hate crimes; calls on the Commission to include provisions explicitly designed to combat multiple discrimination in any future legislation adopted under Article 13 of the EC Treaty, which can be invoked on either one or a combination of more than one of the grounds;
31. Stresses the importance of networking between groups active in combating discrimination at European, national, regional and local level;
32. Calls on Member States to review their national legislation and consider repealing acts that are incompatible with Article 13 of the EC Treaty;
33. Regards Directive 2000/43/EC as the foundation upon which to base a comprehensive anti-discrimination framework for measures relating to the prohibition against discrimination on the basis of race or ethnic origin; stresses, however, that account must be taken of problematic aspects which have already been identified and of the difficulties encountered by Member States in effectively transposing and implementing the provisions of that Directive;
34. Stresses that the Commission must produce a common, EU-wide definition of, or at least work towards a consensus about, the meaning of positive action, thereby dispelling the myths surrounding its meaning and its application in some Member States, particularly given its effectiveness for successfully tackling discrimination and producing equality of outcomes in some Member States;
35. Notes that the Commission may intend now to put forward only legislation to outlaw discrimination in access to goods and services on some, but not all grounds; reminds the Commission of its commitment to put forward a comprehensive directive covering disability, age, religion or belief and sexual orientation to complete the package of anti-discrimination legislation under Article 13 of the EC Treaty as provided in its 2008 work programme; reiterates the political, social and legal desirability of putting an end to the hierarchy of protection against the different grounds of discrimination; strongly believes that it does not make sense to prohibit discrimination in one area while allowing it in another;
36. Awaits with interest the development of the Community definition of disability which will allow disabled people from all over the European Union to enjoy the same rights wherever they are situated within the European Union;
37. Believes that any new proposed directive designed to combat discrimination as referred to in Article 13 of the EC Treaty will have to prohibit all forms of discrimination, including direct and indirect discrimination, in all areas already covered by Directives 2000/43/EC and 2000/78/EC, discrimination by association, discrimination linked to perceived

membership of a protected group and harassment; believes that an instruction to discriminate should be deemed to constitute discrimination, and that an unjustified failure to make a reasonable accommodation should be regarded as a form of discrimination; believes that the Directives should make clear that there is no hierarchy between the different forms of discrimination and that they must all be combated in equally strong measure; insists that any new proposed legislation duly reflects all the specificities of the different respective grounds;

38. Believes strongly that the material scope of the new proposal for a directive to combat discrimination within the meaning of Article 13 of the EC Treaty must be broad, covering all the areas that fall within the Community's competence as well as education, life-long learning, social protection including social security, housing and healthcare, images of discriminated groups in the media and advertising, physical access to information for people with disabilities, telecommunication, electronic communication, transport modes and public spaces, social advantages and access to and supply of goods and services which are available to the public; further believes that the new directive should also develop the scope of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions¹ to make it is consistent with the protection of discrimination against the other groups;
39. Is firmly convinced that in combating discrimination, a holistic approach to raising public awareness must be developed, beginning with school programmes;
40. Calls on the Commission to investigate how future legislation based on Article 13 can incorporate further provisions promoting the implementation of the principles of non-discrimination and equality which are not dependent on complaints being made by individual victims; believes that that investigation should consider how future legislation can create obligations to introduce positive action and/or positive duties to promote equality, and link obligations related to non-discrimination and equality to national public procurement policy;
41. Takes the view that differences in treatment based on nationality or language, which are neither objectively and reasonably justified by a legitimate aim nor achieved by appropriate and necessary means, may constitute indirect discrimination on the grounds of racial or ethnic origin contrary to Directive 2000/43/EC;
42. Considers that discrimination must also be seen as interfering with the four fundamental freedoms - particularly the freedom of movement for persons - and as such constitutes an obstacle to the functioning of the internal market; calls on the Commission to encourage the Member States to review their transitional provisions regulating access to their labour markets in order to eliminate differentiation between European citizens in this respect;
43. Considers that minority communities, and in particular the Roma community, need specific social protection, since their problems of exploitation, discrimination and exclusion have become even more acute in the areas of education, health, housing, employment and women's rights following recent enlargements of the European Union;
44. Recommends that, as regards access to high-quality education for disadvantaged and Roma

¹ OJ L 39, 14.2.1976, p. 40.

children and their unjustified classification as disabled, special attention be paid to fighting all forms of discrimination encountered in the field of education;

45. Emphasises, that legislation is effective only when citizens are aware of their rights and have easy access to the courts; therefore believes that the new proposal for a directive to combat discrimination within the meaning of Article 13 of the EC Treaty must also address remedies and enforcement and recommends the establishment by Member States of one or more independent and effective bodies for the promotion of equal treatment and for combating the various forms of discrimination, with a remit to cover all grounds of discrimination under Article 13, and all areas covered by Directive 76/207/EEC; believes that the competence of those bodies should include providing independent assistance to the victims of discrimination in order to enable them to pursue their complaints about discrimination, conducting independent surveys about the application of non-discrimination legislation and making recommendations on any issue relating to such discrimination;
46. Calls for an obligation to be included in any future legislation under Article 13 of the EC Treaty to consult and include NGOs, independent specialised equality bodies, and representative national organisations, in regard to the drafting, the transposition process and the monitoring of its implementation;
47. Believes that the new directive should include a requirement that Member States implement equality mainstreaming in all planning, policy making and programme development in the areas covered by the directive, that service providers be organised and systematic in their approach to equality, and that service providers make adjustments and provide special treatment to ensure that members of minority groups that are experiencing inequality can access and benefit from the services provided;
48. Notes with concern that while 19 Member States have signed Protocol No12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, only 5 have ratified that Protocol;
49. Calls for the continuation of the process of signature, conclusion and ratification of the Convention on the Rights of Persons with Disabilities, including its Optional Protocol, and recalls that, following ratification of the Convention by the Community, any proposed Community non-discrimination legislation must comply with its requirements in full; reminds the Council about its call on the Commission, made at the informal ministerial conference on disability in June 2007, to launch a European strategy for the effective implementation of the Convention; calls upon the Commission, within that framework, to evaluate the need to amend secondary Community legislation or adapt relevant policies;
50. Stresses the importance of horizontal implementation and mainstreaming of the non-discrimination clause of the Treaty of Lisbon after it comes into force, which commits the European Union to aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in defining and implementing its policies and activities;
51. Calls on the Commission and the Member States to mainstream equal opportunities and non-discrimination in the Lisbon Strategy for growth and employment, the guidelines for the open method of coordination on social inclusion, and national reform programmes and the regulations governing the structural funds; calls on the Commission and the Member States, therefore, to revise the Integrated Guidelines for Growth and Jobs and, in particular,

the Employment Guidelines in order to ensure and improve the integration and visibility of the social dimension in the next cycle of the Lisbon Strategy; emphasises that in order to be effective equality and non-discrimination policies need to be strongly linked to social policies with an important role for social partners;

52. Calls on the Commission and the Member States to end all discrimination based on the employment contract by ensuring equal treatment for all workers, health and safety protection, provision for working and rest time, freedom of association and representation, protection against unfair dismissal, collective bargaining and collective action; emphasises the importance of access to training as well as the continued protection of acquired rights by covering periods of education and training, improved care opportunities, the maintenance of essential social rights such as pension rights, training rights and the right to unemployment benefits during changes in a person's occupational situation, between employment contracts and between dependent and autonomous employment;
53. Instructs its President to forward this resolution to the Council, the Commission and the parliaments and governments of the Member States and candidate countries.