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GREEN PAPER

Equality and non-discrimination in an enlarged European Union

(presented by the Commission)

Foreword

The principles of equal treatment and non-discrimination are at the heart of the European Social Model. They represent a cornerstone of the fundamental rights and values that underpin today's European Union.

We can be proud of our recent achievements in the field of equal treatment and non-discrimination. Much has been done in the short space of time since Member States agreed on the need for concerted action at European level to tackle discrimination on grounds of racial or ethnic origin, religion or belief, age, disability and sexual orientation. Action in this area has built upon the EU's considerable experience of dealing with sex discrimination.

European legislation has significantly raised the level of protection against discrimination across the EU. It has acted as a catalyst for the development of a more coherent, rights-based approach to equality and non-discrimination.

However, further efforts will be needed to ensure that the principle of non-discrimination is implemented effectively across the European Union. Discrimination continues to be a daily reality for millions of people who live and work in the EU. In addition, new challenges have emerged since the adoption of the current instruments for combating discrimination at European level.

These challenges include enlargement of the EU, particularly the need to step up efforts to address the situation of Roma and other ethnic minorities. Our objective should be to ensure that the EU's framework for combating discrimination on all of the relevant grounds is effectively implemented and enforced across the enlarged Union.

Anti-discrimination policy is an important part of the EU's approach to immigration, inclusion, integration and employment. By clarifying rights and obligations and highlighting the positive benefits of diversity in a multicultural society, it can help to guide a process of change based on mutual respect between ethnic minorities, migrants and host societies.

Anti-discrimination policy must continue to form an effective part of the EU's response to a number of issues of public concern. It must support efforts to combat all forms of racism and xenophobia, including recent manifestations of anti-Semitism and Islamophobia.

The vast majority of Europeans continue to oppose all forms of discrimination, as confirmed by the recent Eurobarometer opinion poll on *Discrimination in Europe*. This provides a strong mandate for the EU's continuing efforts in the field of anti-discrimination and equal treatment.

The development of EU policy in this area has been made possible by support and joint action from a wide range of stakeholders. I hope that all of these stakeholders will play an active role in the consultation exercise based on this Green Paper.

Odile Quintin, Director General, Employment and Social Affairs, European Commission

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1. INTRODUCTION

Five years ago, huge impetus was given to the fight against discrimination in the European Union when new powers were granted to tackle discrimination on grounds of sex, racial or ethnic origin, religion or belief, age, disability and sexual orientation.

This Green Paper sets out the European Commission's analysis of the progress that has been made so far. It seeks views about how the EU can continue and reinforce its efforts to combat discrimination and to promote equal treatment. In so doing, it responds to calls from the European Parliament and others to organise a public consultation on the future development of policy in this area.

The European Parliament and civil society organisations have played a pivotal role in advancing the EU's anti-discrimination agenda to date. National authorities have also been of crucial importance in defining and delivering this policy agenda. Other stakeholders include specialised bodies responsible for the promotion of equality in the Member States, regional and local authorities, employers, trade unions, experts and academics.

The Commission hopes that all of the relevant stakeholders will play an active role in the consultation exercise launched by this Green Paper. Given the importance of anti-discrimination policies for everyone living in the European Union, the Commission would also welcome reactions from members of the public.

Section 2 of this Green Paper takes stock of what the EU has done during the last five years to combat discrimination and to promote equal treatment. It looks at how these initiatives relate to other policy developments at European and international levels.

Section 3 examines new challenges that have emerged in recent years, including those linked to the enlargement of the EU. It assesses the implications of this changing context for policy development in the field of non-discrimination and equal treatment.

Responses to this Green Paper will be collected principally using an on-line questionnaire.[1] The public consultation period begins on 1 June 2004 and ends on 31 August 2004. Further instructions about how to participate in the consultation process are set out in Section 5 of the Green Paper.

The results of the consultation exercise will help to shape the European Commission's future policy strategy with regard to non-discrimination and equal treatment. They will feed into the reflections of the new Commission that will take office in November 2004. They will be taken into account in the drafting of the EU's new Social Policy Agenda, which should be approved during 2005. The Commission will also take account of the outcome of this public consultation in reports that it is required to submit to the European Parliament and the Council during 2005 and 2006 on the implementation of the anti-discrimination Directives and Programme.

[1] Web page reference.

2. PROGRESS TO DATE

2.1. The emergence of non-discrimination as a European Community competence

A considerable body of European legislation has been put in place over the last thirty years, in order to tackle sex discrimination related to pay, working conditions and social security. Over the years, the case-law of the European Court of Justice has helped to clarify and reinforce this legal framework. Today, equality between women and men is recognised as one of the EU's core objectives and efforts are made to mainstream the gender dimension in all the Union's activities.

Building on the EU's experience of dealing with sex discrimination, a consensus emerged in the mid-1990s concerning the need for the European Community to tackle discrimination on a number of additional grounds. Civil society organisations and the European Parliament were instrumental in driving this debate forward.

The result of this process was the inclusion of a new Article (number 13) in the EC Treaty, following the entry into force of the 1997 Amsterdam Treaty. Article 13 represented a quantum leap forward in the fight against discrimination at EU level in that it empowered the Community to take action to deal with discrimination on a whole new range of grounds, including racial or ethnic origin, religion or belief, age, disability and sexual orientation.

This Article was subsequently further modified by the Nice Treaty, in order to allow for the adoption of incentive measures by qualified majority voting rules in the Council. Legislative action continues to require unanimous approval by the Council, despite proposals from the Commission to move towards qualified majority voting in the context of the European Convention.

Article 13

Treaty establishing the European Community (as amended by the Amsterdam and Nice Treaties)

1. Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

2. By way of derogation from paragraph 1, when the Council adopts Community incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1, it shall act in accordance with the procedure referred to in Article 251.

The adoption of Article 13 reflected the growing recognition of the need to develop a *coherent and integrated approach* towards the fight against discrimination. This approach seeks to make the most of joint efforts to combat discrimination and to benefit from transfers of experience and good practice across the various grounds. It provides a more effective basis for addressing situations of *multiple discrimination*. It allows for common legal and policy approaches covering the different grounds, including common definitions of discrimination.

While recognising the specific challenges faced by different groups, this integrated approach is based on the premise that equal treatment and respect for diversity are in the interests of society as a whole.

Measures to combat discrimination are also included amongst the fundamental objectives of the European Union in Article 3 of the draft constitution presented to the European Council by the European Convention in July 2003.

2.2. Building a legal framework

The European Commission moved swiftly to put into effect the powers set out in Article 13 and came forward at the end of 1999 with a package of proposals. This led to the unanimous adoption by the Council in 2000 of two ground-breaking Directives,[2] which aim to ensure that everyone living in the EU can benefit from effective legal protection against discrimination.

The first Directive (the "Racial Equality Directive") bans direct and indirect discrimination, as well as harassment and instructions to discriminate, on grounds of racial or ethnic origin. It covers employment, training, education, social security, healthcare, housing and access to goods and services.

The second Directive (the "Employment Equality Directive") focuses on discrimination in employment and occupation, as well as vocational training. It deals with direct and indirect discrimination, as well as harassment and instructions to discriminate, on the grounds of religion or belief, disability, age and sexual orientation. It includes important provisions concerning reasonable accommodation, with a view to promoting access of persons with disabilities to employment and training.

The Racial Equality and Employment Equality Directives draw inspiration from earlier EEC legislation on equality between women and men. Many of the definitions and legal concepts used in the two Directives have been inspired by gender equality legislation and/or the case law of the European Court of Justice in the field of gender equality. In turn, the further development of gender equality legislation in the EU has made use of some of the innovations introduced by the Racial Equality and Employment Equality Directives.

It is important to underline that these Directives have raised significantly the level of protection against discrimination across the EU. As a consequence, when it comes to legislation in this area, the EU has one of the most advanced legal frameworks to be found anywhere in the world. The Directives have required significant changes to national law in all Member States, even those that already had comprehensive anti-discrimination legislation.

In some countries, this has involved the introduction of an entirely new, rights-based approach to anti-discrimination legislation and policy. It is also important to note that Member States are in the process of updating their legislation on sex discrimination in the light of the Equal Treatment Amendment Directive 2002/73/EC, as well as transposing the Racial Equality and Employment Equality Directives. In several cases, this has led to the adoption of national legislation covering sex discrimination alongside the other grounds of discrimination.

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[2] Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (published in OJ L 180 of 19 July 2000) and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (published in OJ L303 of 2 December 2000).

The Directives have introduced protection against discrimination on certain grounds for the first time in many Member States. They have required the introduction of new definitions and legal concepts. They have also led to the establishment of new specialised equality bodies, as well as the reinforcement of the powers of certain existing bodies.

The deadlines for putting the Racial Equality and Employment Equality Directives into national law have now passed.[3] There have been delays in the transposition of these Directives in many Member States, although there have been some positive signs of progress in recent months. The Commission is taking the necessary legal action, with a view to ensuring that the Directives are transposed in all Member States.

More positively, it is worth noting that, in the process of transposing the Directives, some Member States have gone beyond the minimum standards set out in Community legislation. For example, they have banned discrimination outside of employment on grounds of religion or belief, disability, age and sexual orientation. Several Member States have put in place a single legal framework covering sex discrimination in addition to the grounds set out in the two EC Directives.

It is also positive to note the trend towards the establishment of single equality bodies dealing with all of the grounds of discrimination covered by the Directives. In many cases, these national bodies deal with sex discrimination alongside the other grounds covered by Article 13 of the EC Treaty. The Commission is concerned to ensure that equality bodies have the independence, resources and capacities necessary to function effectively.

It is important to stress that the effective implementation of non-discrimination legislation depends on the commitment of national authorities, the active support and involvement of civil society and complementary support for non-legislative measures to combat discrimination.

2.3 EU support for measures to combat discrimination

The Racial Equality and Employment Equality Directives are complemented by a Community action programme to combat discrimination.[4] This programme covers all of the grounds set out in Article 13 with the exception of sex, which is dealt with separately by the European Community's gender equality programme.[5]

The existence of the Community action programme is recognition of the fact that legislation is but one component of action to combat discrimination. Support for a range of positive measures is also necessary in order to challenge discriminatory behaviour and promote a change in attitudes over time. Specifically, the programme aims to:

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3 The deadline for the transposition of Directive 2000/43/EC was 19 July 2003. The deadline for the transposition of Directive 2000/78/EC was 2 December 2003, although some Member States have made use of the possibility to request an additional period of up to three years to implement the provisions concerning discrimination on grounds of age and disability.

4 Council Decision 2000/750/EC of 27 November 2000 establishing a Community action programme to combat discrimination (2001-2006), (published in OJ L303 of 2 December 2000)

5 http://europa.eu.int/comm/employment_social/equ_opp/fund_en.html

- improve the understanding of issues relating to discrimination through improved knowledge of this phenomenon and through evaluation of the effectiveness of policies and practice;

- develop the capacity to prevent and address discrimination effectively, in particular by strengthening organisations' means of action and through support for the exchange of information and good practice and networking at European level, while taking into account the specific characteristics of the different forms of discrimination;

- promote and disseminate the values and practices underlying the fight against discrimination, including through the use of awareness-raising campaigns.

The total budget allocated to the programme is €98.4 million for the period 2001-2006.

Three years after its launch in 2001, the programme has already made a valuable contribution to the efforts of the EU and Member States to tackle discrimination. The Programme has supported a total of around 100 projects and activities per year. Those activities have involved a wide variety of stakeholders, from national authorities to organisations representing people who are potentially exposed to discrimination, from social partners to equality bodies, from policy and decision-makers to legal practitioners.

Public interest in the EU's activities to combat discrimination has increased considerably since the launch of the programme. One indication of the level of public interest in the programme is provided by the high number of visits to the European Commission's anti-discrimination web pages, which makes this site one of the most visited on the Europa server. Recent surveys have indicated that, in a relatively short space of time, anti-discrimination has become one of the most widely known areas of EU employment and social policy.

Examples of some of the projects supported through the programme so far are included in the box on this page. Further information is available on the Commission's website.[6]

Examples of activities supported through the Community action programme to combat discrimination:

Strand 1 (Analysis and Evaluation)

The European Commission published the results of a Eurobarometer opinion survey[7] in May 2003. This showed that most Europeans believe that a person's ethnic origin, religion, disability or age can be an obstacle in finding a job, even where qualifications are equal. Most were opposed to discrimination in all circumstances, although they had less faith in the opposition of others.

Strand 2 (Capacity-building)

The Racial Equality Directive requires Member States to designate a specialised Equality Body to provide assistance to victims and to issue reports and recommendations. Under

6 http://europa.eu.int/comm/employment_social/fundamental_rights/prog/index_en.htm
7 http://europa.eu.int/comm/employment_social/fundamental_rights/prog/studies_en.htm

Strand 2 of the programme, funding has been provided to allow a network of existing and new Equality Bodies to be established and to promote exchanges of experience and good practice between these bodies.

Strand 3 (Awareness-raising)

The European Commission launched a five-year, EU-wide Information Campaign "For Diversity – Against Discrimination"[8] in June 2003. This Campaign is designed to inform people about their rights and obligations under European and national anti-discrimination law, as well as promoting the positive benefits of diversity for business and for society as a whole.

Projects designed to tackle discrimination in employment have also benefited from EU funding through the EQUAL Community Initiative, as well as through mainstream European Social Fund expenditure. Some projects supported through the Community's gender equality programme have also touched on discrimination on other grounds covered by Article 13 (e.g. women from ethnic minorities). The Community action programme to combat social exclusion has looked at related issues from a social inclusion perspective.

EU Programmes in the field of education, training and youth have also supported activities in favour of ethnic minorities, people with disabilities and other disadvantaged groups. Research projects on discrimination-related issues have also been supported under the EU's Fifth and Sixth Framework Programmes for Research and Technological Development. Information about rights to protection against discrimination and other issues will be made available on the new version of the EU's Dialogue with Citizens website[9].

Example of an EQUAL transnational cooperation project

"Diversity Wins": This campaign brings together partners from Greece, Spain, Germany and the Netherlands. It aims to improve migrants' integration into the labour market and to demonstrate to employers that diversity management is of benefit to their companies and for society as a whole.

For further information, see EQUAL database (http://europa.eu.int/comm/equal)

2.4. The principle of non-discrimination and fundamental social rights

The European Union's commitment to the principle of non-discrimination was reaffirmed by the proclamation in December 2000 of the Charter of Fundamental Rights. [10] Article 20 of the Charter sets out the general principle of equality before the law and Article 21 deals with the principle of non-discrimination.

EU Charter of Fundamental Rights, Article 21:

1. 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 shall be prohibited.

8 http://www.stop-discrimination.info/

9 http://europa.eu.int/citizensrights

10 http://europa.eu.int/comm/justice_home/unit/charte/index_en.html

2. Within the scope of application of the Treaty establishing the European Community and the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 21 of the Charter covers all of the six grounds listed in Article 13 of the EC Treaty, as well as seven additional grounds (social origin, genetic features, language, political or other opinion, membership of a national minority, property and birth).

The European Convention has proposed integrating the Charter into a new Constitutional Treaty for the European Union. It has also proposed that the new Treaty should include non-discrimination amongst the central objectives of the EU. These proposals have not yet been approved by Member States, pending the outcome of the Intergovernmental Conference and the adoption of the new Treaty.

Incorporation of the Charter of Fundamental Rights into the Treaty would not provide a new legal basis for further Community legislation in the field of non-discrimination. However, many of the additional grounds included in the Charter raise important and sensitive issues (for example, discrimination on grounds of genetic features). It will be necessary to consider how to take the debate on such issues forward at EU level.

In accordance with Article 51 of the Charter, the principles it sets out should guide the development of policy in the EU and the implementation of these policies by national authorities. The European Court of Justice (ECJ) has consistently held that fundamental human rights, derived from the international instruments to which all the Member States are signatories, form part of the general principles of Community law, the observance of which it ensures.[11] The Charter has already become an important reference document for the ECJ in its interpretation of Community law.[12]

The principle of non-discrimination on grounds of sex or nationality has been held on numerous occasions by the ECJ to be a fundamental right under Community law, any exceptions to which must be narrowly interpreted.[13] This jurisprudence will, no doubt, influence the ECJ when it comes to examine the Racial Equality and Employment Equality Directives for the first time.

2.5 Non-discrimination and the EU's agenda for growth, jobs and social cohesion

At the March 2000 Lisbon European Council, the EU defined a comprehensive 10-year strategy aimed at long-term economic growth, full employment, social cohesion and sustainable development. This strategy is underpinned, in particular, by the European Employment Strategy and the EU's Social Inclusion Process.

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11 E.g. Case 29/69, Stauder v City of Ulm, Case 4/73 ECR [1969] 00419, Nold v Commission, Case C-60/00 ECR [1974] 00491, Case C-60/2000, Mary Carpenter v Secretary of State for the Home Department ECR [2002] I-006279

12 E.g. Case C-245/01 - RTL Television GmbH v Niedersächsische Landesmedienanstalt für privaten Rundfunk ECR [2003] 0000, Cases T-116/01 & T-118/01 - P & O European Ferries (Vizcaya) & SA v and Diputación Foral de Vizcaya v Commission of the European Communities ECR [2003] 0000.

13 E.g. Case C-13/94, P v S and Cornwall County Council ECR [1996] I-02143, Case C-55/00, Gottardo ECR [2002] I-00413

One of the aims of the so-called 'Lisbon agenda' is to raise the employment levels of groups that are currently under-represented in the labour market. Targets include raising the employment rate of older workers and women, as well as achieving a significant reduction in the unemployment gaps for people at a disadvantage, such as people with disabilities, ethnic minorities and migrants, by 2010.

It is important to note that low participation and employment rates of certain groups result from a variety of economic and social factors. Social participation and labour market measures are of course vital in improving the situation of disadvantaged groups. In addition, non-discrimination legislation and policies can clearly play a key role in supporting the Lisbon agenda. They are designed to tackle barriers that prevent members of certain groups from accessing jobs and training. They can also help to challenge stereotypes and prejudices concerning the capacities of older workers, people with disabilities, ethnic and religious minorities and migrants.

The importance of taking action to promote the integration of disadvantaged groups and the link with non-discrimination has recently been reaffirmed within the framework of the EU's European Employment Strategy, which includes a Guideline highlighting the need to integrate disadvantaged groups in the labour market.[14] The Employment Taskforce chaired by Mr Wim Kok has recently urged Member States (and social partners) to do more to promote the integration of migrants and non-EU nationals in the labour market, including measures to combat discrimination in the workplace.[15]

European Employment Guidelines (approved by the Council on 22 July 2003)

Guideline 7

Member States will foster the integration of people facing particular difficulties on the labour market, such as early school leavers, low-skilled workers, people with disabilities, immigrants, and ethnic minorities, by developing their employability, increasing job opportunities and preventing all forms of discrimination against them.

The revised common objectives for the EU's Social Inclusion Process were approved at the Copenhagen European Council in December 2002.[16] These highlighted "the high risk of poverty and social exclusion faced by some men and women as a result of immigration" and encouraged Member States to address the situation of ethnic minorities and migrants in their National Action Plans for social inclusion. The Social Inclusion Process also looks at strategies to promote the access of people with disabilities to employment, training, education, the information society, health care, housing, transport and other services.

The European Employment Strategy and Social Inclusion Process are backed up by the European Social Fund (ESF). Financial support for measures to promote the integration of disadvantaged groups is available through the ESF, including the EQUAL Community Initiative, which is specifically aimed at combating all forms of discrimination and inequalities in connection with the labour market. Support for disadvantaged groups,

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14 Council Decision 2003/578/EC of 22 July 2003 on guidelines for the employment policies of the Member States.

15 Report of the Employment Taskforce, November 2003 – http://europa.eu.int/comm/employment_social/employment_strategy/task_en.htm.

16 Reference.

including ethnic minorities and the disabled, has been confirmed as a priority for future funding under the EU's Structural Funds in the European Commission's Third Report on Social Cohesion, which was adopted on 18 February.[17]

2.6. Non-discrimination – the international context

The right to non-discrimination is recognised *inter alia* by the Universal Declaration of Human Rights, the UN Covenant on Civil and Political Rights, the UN Convention on Economic, Social and Cultural Rights, the UN Convention on the elimination of racial discrimination, and ILO Convention No 111. In addition, a general principle of equality is set out in the Universal Declaration of Human Rights and the UN Covenant on Civil and Political Rights. The provisions on non-discrimination covered by the European Convention on Human Rights and Fundamental Freedoms were recently reinforced by the agreement of a new Protocol 12 to that Convention, which will provide a free-standing right to equal treatment.

The European Union has actively supported recent efforts by the international community to reinforce respect for the principle of non-discrimination.

The EU played an active role in the 2001 World Conference against Racism and Xenophobia (WCAR), which took place in Durban, South Africa. It has continued to follow the work of the Council of Europe's European Commission against Racism and Intolerance (ECRI). It has participated in a series of events on tolerance and non-discrimination organised by the OSCE as part of its work on the "human dimension".

Discussions have been launched in the UN context concerning a new Convention to promote and protect the human rights of people with disabilities. The European Commission has expressed its support for the development of such an instrument in a Communication approved in January 2003.[18] Mindful that such a Convention on the rights of disabled people could touch upon Community competence, and most likely in the non-discrimination field, the Commission presented its Recommendation with a view to obtaining a negotiating mandate from the Council on 31 January 2003 (SEC(2003)116) which is still pending in the Council.

There has also been considerable international interest in recent developments within the EU, whose anti-discrimination legislation is among the most advanced in the world and is widely regarded as an effective model. In addition to the new Member States and candidate countries (see section 3.1 on EU enlargement) there have been calls on the European Commission to launch a dialogue on anti-discrimination with the countries of the western Balkans and the countries covered by the Commission's new neighbourhood policy.[19] The principle of non-discrimination is reaffirmed in the Cotonou Agreement [20] between the EU and 78 African, Caribbean and Pacific countries and is one of the subjects covered in the political dialogue underpinning cooperation with these countries.

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17 http://europa.eu.int/comm/regional_policy/index_en.htm

18 *Towards a United Nations legally binding instrument to promote and protect the rights and dignity of persons with disabilities* COM(2003) 16 final of 24 January 2001.

19 *Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours* COM(2003)104 final of 11 March 2003.

20 Article 13 of the ACP EU Partnership Agreement signed in Cotonou on 23 June 2000

3. CHALLENGES FOR THE FUTURE

3.1. Dealing with issues linked to the enlargement of the EU

The publication of this Green Paper comes shortly after the enlargement of the European Union to include ten new Member States. As for the old Member States, non-discrimination is relevant to these ten countries, and others that have applied to join the EU, for three main reasons:

- The principle of non-discrimination forms part of the bedrock of fundamental rights on which the EU is based. As such, it is one element of the so-called "political criteria" for membership agreed by Member States at the 1993 Copenhagen European Council. New Member States have made substantial efforts in order to comply with the political criteria, which was a prerequisite for the opening of accession negotiations.

- New Member States are expected to have transposed the two anti-discrimination Directives before joining the EU, as part of the Community legislative acquis[21]. New Member States who miss this deadline will be treated in the same way as other Member States who are late with transposition and will consequently face infringement proceedings for being in breach of Community law.

- Non-discrimination legislation and policies can support these countries' efforts to promote the inclusion and participation of minorities and disadvantaged groups. New Member States will also benefit from EU financial support for the development of their strategies to promote employment and social inclusion.

Enlargement should be used as an incentive for all Member States to step up their efforts to address the challenges faced by minorities. This relates in particular to the Roma, who will collectively form the largest ethnic minority group in the enlarged EU and who continue to face situations of exclusion and discrimination in a number of old and new Member States. This is a multidimensional problem that requires a coherent policy approach. Anti-discrimination legislation and policy can form one element of this approach. Other EU policy and funding instruments may also support the efforts of national authorities and civil society organisations to address these issues.

New Member States have faced many of the same challenges as old Member States when transposing EC anti-discrimination legislation. The introduction of legal protection against discrimination for the first time on some grounds (disability, sexual orientation and age) has been particularly challenging for a number of new Member States. The Commission has stressed the importance of taking action to tackle discrimination on the basis of all of the grounds covered by the EC anti-discrimination legislation, and the fact that all grounds must be mentioned specifically in national implementing legislation.

The rights-based approach to disability reflected in EU anti-discrimination policy is still a relatively new concept, both for public authorities and non-governmental organisations in many of the new Member States. The transposition of anti-discrimination provisions on sexual orientation has proved controversial in several of the new Member States.

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[21] See report on *Equality, Diversity and Enlargement* (available at: http://europa.eu.int/comm/employment_social/fundamental_rights/prog/studies_en.htm)

In new Member States, employment rates of older workers are generally very low (only 30.5% on average in the ten new Member States) and older workers who have been affected by economic restructuring often find it difficult to access training and new employment opportunities. Age discrimination is currently a relatively unfamiliar concept in many of the countries concerned, but it would seem that the measures to tackle discrimination in access to employment and training required by Community law could usefully form part of a broader policy approach to raising labour participation rates of older workers.

It is also important to note that enlargement will change the political and institutional context for policy-making on non-discrimination and equal treatment. In the absence of an amendment to Article 13 of the EC Treaty, the adoption of Community legislation in this area continues to require unanimous agreement by Member States in the Council. This will clearly be more difficult to achieve in an EU of 25 or more Member States. Further legislative action in this area will require the existence of a strong and shared political will on the part of all Member States. However, this should clearly not preclude action at the national level to ensure that the current legal framework is fully implemented and enforced across the enlarged EU.

Finally, enlargement will oblige the European Union to prioritise its allocation of financial resources. The Commission's proposals for the EU's financial perspectives after 2007 are set out in a Communication adopted on 10 February 2004.[22]

3.2. Implementing the legal framework

The EU has put in place a strong legal framework to combat discrimination. The immediate challenge will now be to ensure the full and effective implementation of this framework. It will be vital to address the gap between the legal provisions agreed at EU level in 2000, the state of implementation in some Member States and the continued existence of discrimination on the ground. Indeed, there is evidence that racist acts and racial discrimination have increased in recent years.[23]

The European Commission is expected to report to the Council and the Parliament during 2005 and 2006 on the state of implementation of the Racial Equality and Employment Equality Directives. This report "shall include, if necessary, proposals to revise and update" the Directives. It is too still too early to form a definitive view as to whether the new legal framework is operating effectively in all Member States. However, it is already possible to identify a number of shortcomings.

The Commission is concerned to note that many Member States do not seem to have made the best use of the three years since the adoption of the Directives to introduce the necessary provisions. It is also aware of the criticisms from representatives of civil society about the lack of consultation in some Member States during the process of implementation.

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22 *Building our common Future - Policy challenges and Budgetary means of the enlarged EU (2007-2013) – COM(2004) 101 final*

23 See, for example, the reports produced by the European Union Monitoring Centre on Racism and Xenophobia concerning Islamophobia and anti-Semitism and the Eurobarometer survey on "Discrimination in Europe".
http://europa.eu.int/comm/employment_social/fundamental_rights/prog/studies_en.htm.

The Commission is extremely concerned to note the delays in transposition of the Directives in several Member States. In some countries, draft legislation is still under discussion or has not yet even been formally tabled. In other cases, legislation does not yet cover all of the territory of the Member State or all of the relevant levels of government.

Where national legislation has been adopted, there is often evidence that this does not fully transpose all of the detailed provisions of the Directives. Old and new Member States, as well as candidate countries, have faced similar challenges in this respect. They have had to introduce new definitions of direct and indirect discrimination, as well as harassment. They have had to deal with new legal concepts, such as the sharing of the burden of proof in discrimination cases. They have had to take action to ban racial discrimination in areas outside employment, like education, social security, health care, housing and access to goods and services. It is far from clear that all of these requirements are reflected in national legislation in all Member States.

Clearly, much remains to be done in order to ensure the full and effective implementation and enforcement of the Racial Equality and Employment Equality Directives. This will require further action by public authorities to complete the process of transposition into national law. Further efforts will also be required with regard to awareness-raising, training and cooperation with civil society.

Despite these considerable challenges within the current legal framework, demands have emerged since 2000 to further extend and reinforce the scope of protection offered by Community law in respect of some of the grounds covered by Article 13.

The European Commission has already come forward with a proposal based on Article 13 for a new Directive on equal treatment between women and men in the provision of goods and services,[24] which is currently under discussion in the Council.

Organisations representing people with disabilities advocated further action to tackle discrimination on grounds of disability outside of the employment field during the European Year of People with Disabilities in 2003. The European Commission has set out its overall approach for pursuing its efforts in support of people with disabilities in a European Action Plan adopted in October 2003.[25] This Action Plan sets out a number of initiatives to promote access of people with disabilities to employment, lifelong learning, development of new technologies and accessibility to the built environment.

Interest groups and experts are actively lobbying for a number of additional initiatives. These include, for example, action to tackle age discrimination in the provision of goods and services, to broaden the level of protection with regard to sexual orientation, or to address the specific needs of certain minorities, such as the Roma.

While acknowledging these demands for further action, the Commission is conscious of the need to ensure effective implementation of the current legal framework. It is also important to note that legislation is not the only tool available at European, national or regional level to address discrimination. In practice, support for non-discrimination requires full use to be

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[24] COM(2003) 657 final.

[25] Equal opportunities for people with disabilities : a European Action Plan, COM(2003)650 final of 30.10.2003.

made of a wide range of policy and funding instruments. Concerted action by the various stakeholders will also be crucial to the success of these efforts.

3.3. Improving data collection, monitoring and analysis

The lack of mechanisms to collect data and to monitor trends and progress in Member States currently makes it difficult to assess the real extent of the challenges that exist and to measure the effectiveness of legislation and policies to tackle discrimination.

This situation partly reflects an understandable concern to respect personal privacy and data collection rules. Nevertheless, greater availability of quantitative and qualitative data could help to support the development of anti-discrimination policies. by establishing baseline positions, identifying where results of inequalities lie and analysing their dimensions. It would also be useful to obtain data in order to track the impact of policy and funding.

Such data should be sex-disaggregated, as inequalities may impact differently on women and men. Collecting comparable data over a period of time would also help to establish trends and to verify changes that are taking place in workplaces and other arenas.

The European Commission fully recognises the sensitivity of this issue. At the same time, it believes that the future development of policy in the field of anti-discrimination could benefit from a dialogue with national authorities and other stakeholders on possible ways to improve data collection in this area.

3.4. EU support for practical measures to tackle discrimination

The Community action programme to combat discrimination has already helped to raise awareness and support training and other practical measures to promote equal treatment. The challenge now will be to decide on the strategic priorities for future EU funding to promote non-discrimination, particularly following enlargement. The Commission is required to report to the Council and Parliament at the end of 2005 on progress with the implementation of the programme. An ongoing, independent evaluation of the programme will feed into this report.

Without wanting to prejudge the results of the evaluation or the contents of the Commission report, it is already possible to highlight some preliminary results and a number of questions, based on experience with the implementation of the programme during the last three years.

The integrated approach to the five grounds of discrimination covered by the programme has proved a useful basis for transfers of experience and good practice (see Section 2.1). However, it is clear that some organisations that have a tradition of working with particular target groups have found the transition to this approach challenging.

There has been a high level of demand for the products of the programme in what is a relatively new area of policy at EU level and in many Member States. This has applied in particular to the various studies, reports, seminars and conferences supported through the programme. The Commission would welcome inputs on the thematic focus of future activities under the analysis and evaluation strand of the programme, in accordance with the EU's broader equality and non-discrimination agenda.

A considerable proportion of the human and financial resources available under the action programme have been devoted to transnational projects, bringing together a range of groups and organisations. Although there has been a high level of demand for funding under this

strand of the programme, the broader impact of these projects and their relevance for the future development of anti-discrimination policies at EU and national level remains questionable in some cases.

In addition, a significant amount of core funding has been provided through the programme to the European Disability Forum (EDF), the European Network Against Racism (ENAR), the European Older Persons Platform (AGE) and ILGA-Europe (International Lesbian and Gay Association) as well as a number of smaller networks in the disability field. This funding is intended to allow these organisations to tackle discrimination, promote equality and involve their members in a range of activities. The added value of EU funding to these networks will be assessed as part of the external evaluation of the programme.

Finally, awareness-raising activities at EU and national level have received support through the programme. Although these efforts have begun to produce results, the need to promote changes to behaviour and attitudes is clearly a long-term process. Future awareness-raising activities could benefit from a more specific focus on particular target groups and key messages. They will also have to take account of the very different national contexts across the enlarged EU.

In conclusion, there appears to be a clear need for continued EU funding to support positive measures in this relatively new area of policy. In order to obtain maximum benefit from the limited funding available, the Commission would welcome views concerning the priorities and focus of future activities.

3.5 Reinforcing cooperation with stakeholders

A range of stakeholders have played an active role in the development of the EU's anti-discrimination agenda. The challenge for the future will be to reinforce their involvement in the implementation of this agenda, and to promote networking and exchanges of experience between the key stakeholders.

National authorities are vital partners in the development of anti-discrimination legislation and policy. The Commission has built up a close partnership with the relevant government ministries and agencies during the process of transposition of the Racial Equality and Employment Equality Directives, as well as in connection with the implementation of the Community action programme to combat discrimination.

The **European Parliament** has played an important role in the development of EU anti-discrimination policy and the Commission looks forward to continuing cooperation with the Parliament in this field after the June 2004 elections.

The important role of the **social partners** and **non-governmental organisations (NGOs)** with regard to the implementation and enforcement of anti-discrimination legislation is mentioned specifically in the Racial Equality and Employment Equality Directives.

At European level, the social partners adopted a declaration during the European Year of People with Disabilities in 2003. They plan to update their 1995 Declaration on Racism during 2004. The ETUC has developed a project on non-discrimination with its members, with the support of the Community action programme to combat discrimination.

Trade union action against racial and religious discrimination

The European Trade Union Confederation has been awarded funding under the Community action programme to combat discrimination for a project with its affiliates concerning discrimination based on race and religion at the workplace. The project aims to examine the extent to which this issue is covered in collective agreements, as well as providing an overview of the number of people from religious and racial minorities who are involved in the decision-making process of trade unions.

European anti-discrimination legislation affects public and private sector **employers**. It concerns both large and small companies, as well as the self-employed. Beyond compliance with the requirements of the law, progressive employers in Europe are beginning to recognise the positive benefits of diversity. This fits in with the EU's broader agenda of promoting Corporate Social Responsibility. Research has been undertaken on behalf of the Commission into the costs and benefits of diversity for employers, and the Commission has also sought to recognise the efforts made by some employers in this field in the framework of a company awards scheme.

The costs and benefits of diversity for employers

The European Commission published independent research in November 2003 concerning the "emerging business case" for diversity.[26] *Based on a survey of over 200 small and large companies, the study identified a number of important benefits relating to workforce diversity. These included corporate reputation, human capital and avoidance of costs related to workplace discrimination and harassment. Challenges highlighted by the report included lack of awareness, resistance to organisational change and difficulties linked to data collection.*

NGOs continue to be key advocates for the development of non-discrimination policies in the EU. Many of them have benefited from funding under the Community action programme to combat discrimination, allowing them to work together with their partners at European level. They have an important role to play at national level in supporting the transposition of EC anti-discrimination legislation, raising awareness about new rights and obligations and providing assistance to victims.

The integrated approach to anti-discrimination based on Article 13 of the Treaty has encouraged NGOs that have a tradition of working with particular groups to cooperate and join forces. This has been a challenging process for some organisations. Funding made available to NGOs under the Community action programme to combat discrimination has also helped to focus attention on the new EU anti-discrimination policy framework and the need to deliver results in accordance with this framework.

The Racial Equality Directive requires Member States to set up **specialised bodies** to promote equality, particularly by providing assistance to victims of discrimination and producing independent reports and recommendations. A similar requirement to set up a body dealing with gender equality is included in the 2002 amended equal treatment directive[27] and in the proposal for a Directive on equal treatment for men and women in access to goods and services presented by the Commission in November 2003.[28]

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26 http://europa.eu.int/comm/employment_social/fundamental_rights/prog/studies_en.htm

27 http://europa.eu.int/comm/employment_social/equ_opp/rights_en.html

28 COM(2003) 657 final of 5 November 2003.

In fact, a number of Member States have taken this opportunity to establish equality bodies, whether combined or separate, covering all of the grounds of discrimination set out in Article 13. This is a positive development, as it demonstrates that some Member States are willing to go beyond the minimum standards set out in Community law. The Equality Bodies will certainly be key partners in the future development of anti-discrimination policy in the EU.

Regional and local authorities are also vital partners in the EU's non-discrimination and equal treatment agenda. They can help to set a positive example, in their role as employers and service providers. They are also well placed to raise awareness and to promote dialogue with local communities. The **Committee of the Regions** has been a firm supporter of Community policy in the field of anti-discrimination.

Academic **experts** have also contributed to the debate on the EU's anti-discrimination agenda. An important body of academic literature has emerged since the adoption of the Racial Equality and Employment Equality Directives.

The **European Union Monitoring Centre on Racism and Xenophobia** in Vienna continues to support the development of EU policy in this area. Following the conclusions of the December 2003 European Council, discussions are now underway concerning the broadening of the Vienna Centre's mandate to cover the full range of human rights questions. It will be necessary to see how the new human rights agency can continue its work on racial discrimination and extend this to cover other forms of discrimination.

3.6 Integrating the principle of non-discrimination in other policy areas

The Racial Equality and Employment Equality Directives, together with the Community action programme to combat discrimination, form part of the EU's broader strategy to promote the inclusion and participation of disadvantaged groups. One of the key challenges for the future will be to reinforce the contribution of other EU policy and funding instruments to the fight against discrimination.

In the context of the European Employment Strategy, some Member States have begun to use their National Action Plans for employment to develop a more comprehensive strategy, combining measures to promote the integration of disadvantaged groups with measures to tackle discriminatory attitudes, behaviour and practices. However, the merits of this dual approach are only beginning to be recognised and implementation could usefully be reinforced.

Analysis of the 2003 Social Inclusion National Action Plans showed that only a minority of Member States make an explicit link between measures to combat social exclusion and efforts to combat discrimination, including anti-discrimination legislation. This link could also be strengthened by Member States and groups involved in the fight against social exclusion.

With regard to migrants and ethnic minorities, national measures in the employment and social inclusion field continue to place the main emphasis on the need for migrants and members of ethnic minorities to adapt, most notably through integration measures, such as language courses. While these initiatives are important, they should be accompanied by measures that address the potentially discriminatory behaviour, attitudes or practices of the *majority* of the population, which can prevent a migrant or member of an ethnic minority from accessing a job or service or training course irrespective of his or her qualifications, experience or language ability. Member States could be encouraged to make greater use of the

European Social Fund to tackle discrimination, as well as more traditional integration measures such as the provision of training.

Rather than specific measures, many Member States attempt to target vulnerable groups through their mainstream initiatives, with the general focus on improving employability, access to housing and educational performance, with only a few countries providing clear and specific objectives and targets for disadvantaged groups. The lack of reliable and comparable data is an obstacle to the development and monitoring of effective policies in this area at both national and European level.

The Commission notes the growing trend at national level in some Member States to deal with gender equality alongside measures to combat discrimination on the other grounds set out in Article 13 of the EC Treaty. This trend applies particularly to legal measures and the establishment of single equality bodies dealing with different grounds of discrimination at national level. The development of an integrated approach is intended, in particular, to respond to situations of multiple discrimination and the desire to develop effective approaches to the promotion of equal treatment. The Commission is also aware that many employers tend to deal with these questions together in their policies to promote diversity and tackle discrimination.

The Commission would, therefore, be interested to hear views concerning the possibilities for strengthening the integrated approach to anti-discrimination covering all of the grounds mentioned in Article 13 of the EC Treaty, including sex. This should not replace the particular focus on specific institutional arrangements and initiatives targeting all forms of gender discrimination, as this is part of the existing gender mainstreaming approach.

4. CONCLUSION

This Green Paper is being put forward with a view to raising a wide number of issues linked to the future of equality and non-discrimination policy in an enlarged European Union.

Enormous progress has been made at EU level during the last five years to develop a legal and policy framework for tackling discrimination and promoting equal treatment. However, it is important to acknowledge that much remains to be done in order to ensure the full and effective implementation of this framework across the enlarged EU. It is also important to acknowledge that legislation is but one tool in the fight against discrimination. Changes to attitudes and behaviour require sustained effort and action to back up legislation with concrete measures.

This Green Paper highlights a number of areas where further efforts are required. Many of these efforts imply action at national and regional level, as well as the active involvement of civil society and other stakeholders. The EU will continue to support and monitor this process.

Suggestions of possible courses of action which could be explored at the European level are put forward in the Green Paper. These are intended to stimulate feedback and are not meant to be exhaustive. This also applies to the on-line questionnaire annexed to this document, which is designed to facilitate reactions from a wider section of the public than that which traditionally has the capacity to provide input into EU policy. All interested parties are welcome to contribute to this debate and put forward their options for the future. The

Commission looks forward to hearing your views to help shape the EU's future non-discrimination and equal treatment agenda.

5. HOW TO TAKE PART IN THIS CONSULTATION

The public consultation period begins on 1 June and ends on 31 August 2004.

We invite you to send us your replies using the online answer form, which you will find on the European Commission's website at:

All data concerning natural persons will remain anonymous. Organisations are invited to identify themselves.

We encourage you to use the online answer form. This will make it easier for us to include your views in the consultation process. However, you may also send us a short written contribution to the following address:

Green Paper
DG EMPL/D/3
J37 2/23
European Commission
B-1049 Bruxelles

ANNEX

Green Paper on equality and non-discrimination in an enlarged EU

QUESTIONNAIRE

1. MEETING THE CHALLENGE OF ENLARGEMENT

How important do you think that it will be for the EU to reinforce its efforts to combat discrimination on grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation following enlargement?
Very important – important – not important – don't know

2. IMPLEMENTING THE PRINCIPLE OF NON-DISCRIMINATION IN LAW AND IN PRACTICE

What impact do you think that European legislation has had on the level of protection in the EU against discrimination on grounds of racial or ethnic origin, religion or belief, disability age and sexual orientation?
Very strong impact – strong impact – limited impact – no impact – don't know

What do you consider to be the main remaining obstacles to the effective implementation of European anti-discrimination legislation? (Maximum 3 responses)

- *National implementing legislation incomplete*
- *Lack of information/awareness about rights and obligations under anti-discrimination legislation*
- *Continued existence of discriminatory attitudes and behaviour*
- *Difficulties experienced by victims of discrimination in accessing law courts or tribunals*
- *Insufficiently effective sanctions and remedies*
- *Different levels of protection for different grounds of discrimination*
- *Overlap/conflicts between provisions on different grounds of discrimination*
- *Capacity of non-governmental organisations and trade unions to defend victims*
- *Effectiveness of specialised equality bodies*
- *Other (Free text – maximum number of words)*

Do you consider that there are serious problems which are not currently covered by European anti-discrimination legislation? *(Yes/No)*

- *If so, please specify the problem. (Free text – maximum number of words)*

- *In your view, how effective would the following tools be in addressing this problem? (Maximum 3 responses)*

  – Awareness-raising

  – Training

  – Voluntary codes of practice

  – Agreements between the social partners

  – Further legislation

  – Public procurement/contract compliance

  – Positive action

- *Assess the importance of taking action at the following levels:*

  – Local

  – Regional

  – National

  – European

Should the EU stimulate debate on additional grounds of discrimination covered by the Charter of Fundamental Rights[29]? (Maximum 3 responses)

- *Social origin*
- *Genetic features*
- *Language*
- *Political or other opinion*
- *Membership of a national minority*
- *Property*
- *Birth*

3. IMPROVING DATA COLLECTION, MONITORING AND ANALYSIS

How important do you think the collection of data is to the development of effective policies to promote equality and tackle discrimination?
Very important – Important – Not important – Don't know

[29] See Article 21 of the EU Charter of Fundamental Rights.

Do you agree that the EU should cooperate with national authorities and other stakeholders in order to explore possible ways of collecting data related to discrimination and the integration of disadvantaged groups?
Strongly agree – agree – disagree – strongly disagree – don't know

4. MAKING FULL USE OF EU FUNDING

Which of the following areas should be a priority for EU funding? (Maximum 3 responses)

- *EU-wide studies comparing experience of discrimination and measures to tackle discrimination*
- *Analysis and monitoring of the impact of anti-discrimination legislation*
- *Information and awareness-raising activities*
- *Training on diversity and discrimination*
- *Networking between groups involved in the fight against discrimination*
- *Vocational training and work experience for members of disadvantaged groups*
- *Other (free text)*

On which thematic areas should future activities concentrate? (Maximum 3 responses)

- *Employment and the workplace*
- *The business case for diversity*
- *Public procurement*
- *Discrimination outside of the employment field (education, social security, health care, access to goods and services, housing)*
- *International comparisons in the field of anti-discrimination*
- *The economic impact of anti-discrimination legislation*
- *Other (free text)*

5. REINFORCING COOPERATION WITH STAKEHOLDERS

Do you believe that any of the following stakeholders should be involved to a greater extent in the EU's efforts to tackle discrimination? (Maximum 3 responses)

- *National authorities*
- *Regional and local authorities*
- *Organisations working with potential victims of discrimination*

- *European-level networks of NGOs*
- *Trade unions*
- *Employers organisations*
- *Large companies*
- *Small and medium-sized companies*
- *Service providers*
- *Specialised equality bodies*
- *Judges and legal practitioners*
- *Other (free text)*

6. ENSURING COMPLEMENTARITY WITH OTHER AREAS OF EU POLICY

Which of the following instruments do you feel could be used in a more effective way to support the EU's efforts to tackle discrimination? (Maximum 3 responses)

- *European Employment Strategy*
- *European Social Inclusion Strategy and Programme*
- *European Social Fund*
- *EQUAL Community Initiative*
- *Social dialogue*
- *Corporate Social Responsibility*
- *Education, training and youth*
- *Other (free text)*

Do you agree that efforts to tackle sex discrimination in the EU should be linked more closely to efforts to tackle discrimination on grounds of racial or ethnic origin, religion or belief, age, disability and sexual orientation?
Strongly agree – agree – disagree – strongly disagree – don't know

Do you agree that it remains necessary to tackle specifically sex discrimination and the promotion of gender mainstreaming?
Strongly agree – agree – disagree – strongly disagree – don't know