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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

Non-discrimination and equal opportunities for all - A framework strategy

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Non-discrimination and equal opportunities for all - A framework strategy

(Text with EEA relevance)

1. INTRODUCTION – THE POLICY CONTEXT

The European Union is committed to the promotion of fundamental rights, non-discrimination and equal opportunities for all.

For many years, the EU has been at the forefront of efforts to tackle sex discrimination and to promote equality between women and men. More recently, it has taken action to protect people against discrimination on grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation.

These efforts have produced results, including the development of some of the most comprehensive and far-reaching anti-discrimination legislation to be found anywhere in the world. However, further action is required in order to ensure the full and effective implementation and enforcement of this legal framework. Personal characteristics such as gender, ethnicity, age, sexual orientation or disability continue to prevent some people from realising their full potential. Discrimination blights individual lives. It is also bad for the economy and for society as a whole. Moreover, it undermines confidence in and support for the fundamental European values of equality and the rule of law.

The effective removal of obstacles to employment, training and other opportunities is vital. Indeed, it will be difficult for the EU to achieve the ambitious targets that it has set itself for economic and employment growth if some people are excluded from jobs and higher achievement on the basis of gender, disability, race, age or other grounds. The need to combat discrimination and to integrate disadvantaged groups into the labour market is reinforced by the demographic challenges facing the EU, which will see its working age population decline by over 20 million during the next 25 years.

It is clear that the implementation and enforcement of anti-discrimination legislation on an individual level is not enough to tackle the multifaceted and deep-rooted patterns of inequality experienced by some groups. There is a need to go beyond anti-discrimination policies designed to prevent unequal treatment of individuals. The EU should reinforce its efforts to promote equal opportunities for all, in order to tackle the structural barriers faced by migrants, ethnic minorities, the disabled, older and younger workers and other vulnerable groups.

The EU has a long experience of tackling sex discrimination and promoting gender equality. It will continue to develop specific measures in this area. The Commission has recently proposed the establishment of a new European Institute for Gender Equality to support the EU institutions and the Member States in promoting equality between women and men and combating sex discrimination[1]. It plans to come forward in 2006 with proposals for the follow-up to the current Gender Equality Framework Strategy (2001-2005). That

[1] COM(2005) 81, 8.3.2005.

Communication will constitute the roadmap for future activities in the field of gender equality.

In addition, the EU should consider how its experience of combating sex discrimination and promoting gender equality may be transferable to other grounds of discrimination. In line with the principle of gender mainstreaming, it should take into account the different ways in which women and men experience discrimination on grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation. In some areas, it may be appropriate to consider the development of an integrated approach to the promotion of non-discrimination and gender equality. This integrated approach should take into account the fact that some people may experience multiple discrimination on several grounds.

In addition to the implementation of policies to tackle discrimination and to promote equal opportunities, the EU will continue to promote specific activities in line with the multi-annual action plan in the field of disabilities proposed by the European Commission in 2003[2]. The EU's first biannual report on the situation of people with disabilities will be published in December 2005.

2. RESPONDING TO THE CONCERNS OF STAKEHOLDERS - OUTCOME OF THE GREEN PAPER CONSULTATION

This Communication follows on from the Green Paper on *Equality and non-discrimination in an enlarged EU* adopted by the European Commission on 28 May 2004[3]. It takes account of the comments and reactions submitted by national authorities, specialised equality bodies, non-governmental organisations, regional and local authorities, the social partners, experts and individual members of the public. (In total, over 1 500 contributions were received.)

The consultation confirmed the high level of interest in and support for EU action in this area, as well as for specific action to promote gender equality. An overwhelming majority of respondents considered that the Union should reinforce its efforts to combat discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation following enlargement.

The consultation exercise highlighted the need for further action in order to maximise the impact of current EC anti-discrimination legislation. This included action to complete the process of transposition into national law, as well as awareness-raising. Some respondents highlighted the need for additional measures to complement the current legal framework, including the possibility of further EC legislation based on Article 13 of the EC Treaty. Others felt that this was premature and underlined the need to take into account the principle of subsidiarity, as well as weighing up the potential economic costs and benefits of further legislative action.

There was overwhelming support for further action in the area of data collection, in order to improve understanding of discrimination and to be able to design and monitor effective policies in this area. However, concerns were also expressed regarding the need to protect personal privacy and to exercise caution about what data should be collected and how it is processed.

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2 *Equal opportunities for people with disabilities – a European Action Plan* - COM(2003) 650, 30.10.2003.

3 COM(2004) 379. Text of the Green Paper and details of contributions received available at : http://europa.eu.int/comm/employment_social/fundamental_rights/policy/aneval/green_en.htm.

The vast majority of written responses to the Green Paper highlighted the added value of EU funding in supporting policy development and implementation of anti-discrimination legislation. The three main priorities identified for future EU funding were information and awareness-raising, analysis and monitoring of the impact of anti-discrimination legislation and networking between groups involved in the fight against discrimination. Responses also underlined the importance of involving all of the relevant stakeholders in policy development at the European, national, regional and local levels.

The Green Paper highlighted a number of other EU policy areas, which could make a contribution to the implementation of the principle of non-discrimination. Responses to the Green Paper appeared to reflect an emerging consensus that it would be useful to begin to "mainstream" equality and non-discrimination considerations across a range of EU policies.

There was also widespread agreement that the EU should promote joint efforts to promote equality and to tackle discrimination on all of the grounds set out in Article 13 of the EC Treaty. However, respondents also underlined the need to maintain a specific focus on the promotion of gender equality.

3. A FRAMEWORK STRATEGY FOR NON-DISCRIMINATION AND EQUAL OPPORTUNITIES

3.1. Ensuring effective legal protection against discrimination

It is now almost five years since the adoption of EC legislation[4] prohibiting direct and indirect discrimination on grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation. The two Directives adopted in 2000 have complemented the considerable body of EC law in the field of sex discrimination. The Directives include detailed definitions of direct and indirect discrimination, as well as harassment. They also allow for certain exceptions to the principle of equal treatment, which may be considered legitimate ina limited number of circumstances.

The last few years have witnessed significant changes in national law across the EU as a direct result of EC anti-discrimination legislation. However, the Commission is concerned to note that some important provisions have not yet been fully transposed into national law in all Member States.

The lack of effective and properly resourced Equality Bodies, able to give independent assistance to victims, in some Member States is particularly worrying. Also of concern is the lack of attention paid to disseminating information about new anti-discrimination rights. It is extremely difficult for victims of discrimination to enforce their rights without information and specialised help.

The Commission has already launched infringement procedures against a number of Member States and will continue to monitor progress with transposition closely. The Commission is due to report in 2006 on the state of transposition of Directives 2000/43/EC and 2000/78/EC including, if necessary, proposals to revise and update the Directives.

It is also clear that, in addition to legislative transposition, further measures will continue to be required for some time in order to ensure that anti-discrimination legislation is effectively implemented and enforced across the EU. Priority areas for action include:

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[4] Directive 2000/43/EC of 29 June 2000 (OJ L 180, 19.7.2000, p 22) implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC of 27 November 2000 (OJ L 303, 2.12.2000) p 16) establishing a general framework for equal treatment in employment and occupation.

- targeted training and capacity-building actions for specialised equality bodies, judges, lawyers, NGOs and the social partners;
- networking and exchanges of experience between relevant stakeholders;
- awareness-raising and dissemination of information concerning the provisions of European and national anti-discrimination law.

In order to be effective, such measures will require concerted efforts by all of the relevant stakeholders at the European, national and regional levels. EU support will be made available, where appropriate, through the Community action programme to combat discrimination and, after 2007, through the PROGRESS programme.

Furthermore, the Commission hopes that the Council will soon be able to reach agreement on its 2001 proposal for a Framework Decision establishing common standards for combating racial crime, including anti-Semitism and offences against other religious minorities.

Other initiatives taken by the EU complement the legal framework in the field of anti-discrimination by creating more favourable conditions for those who might be exposed to discrimination or otherwise disadvantaged. These initiatives include EU legislation setting out the rights of long-term residents from third countries[5], as well as legislation extending EU rules on coordination of social security to third country nationals[6].

✓ Annual comprehensive report on national implementing measures transposing the provisions of Directives 2000/43/EC and 2000/78/EC (legal experts group)

✓ Publication in early 2006 of Commission reports to the Council and Parliament analysing the state of transposition of Directives 2000/43/EC and 2000/78/EC

✓ EU funding for accompanying measures through the Community action programme to combat discrimination and, after 2007, through PROGRESS

3.2. Assessing the need for further action to complement the current legal framework

Under the current EC legal framework, racial discrimination is prohibited in the areas of employment, training, education, social protection, social advantages and access to goods and services (Directive 2000/43/EC). The scope of protection against discrimination on grounds of religion or belief, age, disability and sexual orientation is limited to employment, occupation and vocational training (2000/78/EC). Directive 2004/113/EC extends protection against sex discrimination to the area of goods and services, but not to certain other areas covered by Directive 2000/43/EC.

The Commission acknowledges the demands from certain stakeholders to take action to address the differences in the level and scope of protection against discrimination on different grounds. Given the need for additional efforts to ensure the proper functioning of the existing legal framework, as well as the economic and political concerns highlighted in some responses to the Green Paper consultation, the Commission is not proposing to come forward at this stage with further legislative proposals based on Article 13 of the Treaty.

However, the Commission will undertake an in-depth study into the relevance and feasibility of possible new measures to complement the current legal framework. This study will

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5 Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44).

6 Council Regulation (EC) No 859/2003 of 14 May 2003 (OJ L124, 20.5.2005).

examine national provisions, which go beyond the requirements of the EC Directives, in Member States and in some third countries. It will consider the relative merits of legislative and non-legislative measures. It will also produce a synthesis of cost/benefit analyses of different policy options carried out at the national level. The results of the study will be made available in autumn 2006. On the basis of this material, the Commission will assess the feasibility of possible new initiatives to complement the current legal framework.

✓ Feasibility study concerning possible new initiatives to complement the current legal framework

3.3. Mainstreaming non-discrimination and equal opportunities for all

Anti-discrimination legislation relies heavily on the willingness and capacity of disadvantaged individuals to engage in complex adversarial litigation. Legal protection of individual rights is clearly important, and high-profile cases may help to bring about social and cultural change over time.

However, it is difficult for legislation alone to tackle the complex and deep-rooted patterns of inequality experienced by some groups. Positive measures may be necessary to compensate for long-standing inequalities suffered by groups of people who, historically, have not had access to equal opportunities.

The EU's experience in the field of gender equality strongly suggests that protection of individual rights must be backed up by accompanying measures in order to bring about lasting change and to promote genuine equal opportunities for all. This is confirmed by the experiences of Member States that already have several years or, in some cases, decades of experience in implementing national anti-discrimination legislation.

In the gender field, based on Article 3(2) of the EC Treaty, this has led to the development of the practice of "mainstreaming"[7] the objective of promoting equality between women and men into all relevant EU policies. The EU also has some experience in developing a mainstreaming approach in connection with combating racism[8] and promoting the integration of people with disabilities[9].

Subject to its ratification, the Constitutional Treaty for Europe, in its Article III-118, could provide a new basis for developing a mainstreaming approach to all of the grounds of discrimination covered in the former Article 13 of the EC Treaty. It is also worth noting in this regard Article II-111 of the Constitutional Treaty, which reaffirms that the rights and principles set out in the Charter of Fundamental Rights (including non-discrimination) should be respected by EU institutions, as well as Member States when implementing EU law.

The Commission has committed itself to ensuring that EU legislative and regulatory proposals are consistent with the provisions of the EU Charter of Fundamental Rights[10]. One vehicle for this "screening" is the "impact assessment" to which all new proposals must undergo before

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7 Gender mainstreaming is described in COM(96) 67 as "The systematic integration of the respective situations, priorities and needs of women and men in all policies and with a view to promoting equality between women and men and mobilising all general policies and measures specifically for the purpose of achieving equality by actively and openly taking into account at the planning stage, their effect on the respective situation of women and men."

8 Action Plan Against Racism - COM(1998) 183, 25.3.1998.

9 Equal opportunities for people with disabilities – a European Action Plan - COM(2003) 650, 30.10.2003.

10 SEC(2001) 380.

adoption by the Commission. A methodology for the monitoring of compliance with the Charter of Fundamental Rights has been set out in a recent Commission Communication[11].

As well as providing greater visibility and coherence, mainstreaming and the development of an integrated approach should help to focus on situations of multiple discrimination, as well as the positive benefits of promoting equal opportunities for all.

✓ Development of tools to promote mainstreaming of non-discrimination and equal opportunities for all in relevant EU policies
✓ Biennial reports on the situation of people with disabilities (first report 2005)

3.4. Promoting and learning from innovation and good practice

In line with the mainstreaming approach outlined in section 3.3, the Commission will aim to ensure that a range of EU funding instruments contribute to the promotion of non-discrimination and equal opportunities for all. In particular, it will seek to promote exchanges of good practice, cooperation and networking between national authorities, specialised equality bodies, organisations working with victims of discrimination, and other stakeholders.

Building on the innovative approaches to preventing labour market discrimination developed through the EQUAL Community Initiative[12], the European Social Fund should play an increasingly important role in this area. The Commission's proposals for European Social Fund assistance during the new programming period 2007-2013 include a specific focus on reinforcing social inclusion of people at a disadvantage and combating discrimination[13].

The PROGRESS programme[14] will complement the work of the ESF in the fields of gender equality and anti-discrimination by financing studies, awareness-raising, exchanges of good practice, networking, monitoring and evaluation. The PROGRESS proposal has taken due account of the lessons learned through the Community action programmes to combat discrimination[15] and to promote Gender Equality[16].

Following on from the current Socrates, Leonardo and Youth Programmes, the new generation of programmes[17] in the area of education, training and youth can make a valuable contribution to the promotion of non-discrimination and equal opportunities for all. These are also areas that could benefit from further comparative research and study in the framework of the EU's sixth and seventh research framework programmes[18]. EU financial support in the area of fundamental rights and in the field of immigration and asylum, including the European Fund for Refugees and the INTI and ARGO programmes, can help to support efforts to tackle discrimination and to promote equal opportunities for all[19].

Improving the collection of data related to discrimination will be essential for the monitoring the implementation of EC anti-discrimination legislation. The Commission will work with national authorities and other stakeholders to develop better statistical tools to evaluate the incidence of discrimination. It will publish a handbook setting out practical guidance on the collection of data related to discrimination in 2006.

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11 COM(2005) 172, 27.4.2005.
12 http://europa.eu.int/comm/employment_social/equal/index_en.cfm
13 COM(2004) 493, 14.7.2004.
14 COM(2004) 488, 14.7.2004.
15 http://europa.eu.int/comm/employment_social/fundamental_rights/policy/prog_en.htm
16 http://europa.eu.int/comm/employment_social/equ_opp/fund_en.html
17 COM(2004) 474 and COM(2004) 471, 14.7.2004.
18 http://europa.eu.int/comm/dgs/research/index_en.html
19 http://europa.eu.int/comm/justice_home/funding/intro/funding_intro_en.htm

Since its establishment in 1997, the European Union's Monitoring Centre on Racism and Xenophobia (EUMC)[20] has played an important role in supporting efforts by the EU and Member States to fight racism and xenophobia. Building on the EUMC's work, the Commission will soon come forward with proposals to establish a new Fundamental Rights Agency. The Agency's tasks are expected to include information and data collection concerning a broad range of issues, advice to policy-makers, cooperation with civil society and awareness-raising.

✓ Independent evaluation of the Community action programme to combat discrimination (2005)
✓ Publication of Handbook on the collection of data related to discrimination (2006)

[20] http://eumc.eu.int/eumc/index.php

3.5. Raising awareness and cooperating with stakeholders

In order to drive forward the agenda outlined in this Communication for a more positive approach to equality, the Commission is proposing to designate 2007 as European Year of Equal Opportunities for All. The European Year will help to raise awareness, focus political attention and mobilise key stakeholders. The Year will focus on four main priority objectives:

- Rights
- Recognition
- Representation
- Respect

The Year will aim to: inform people of their rights to protection against discrimination under European and national law; celebrate diversity as an asset for the EU; and to promote equal opportunities for all in economic, social, political and cultural life. Complementarity and coordination with the European Year of Intercultural Dialogue in 2008 will be particularly relevant, in order to ensure that both Years are mutually supportive in terms of their scope and the actions supported. Where relevant, some of the key messages and themes of the European Year of Equal Opportunities for All may be carried over into the European Year of Intercultural Dialogue.

The Commission is convinced of the need to involve all of the relevant European and national-level stakeholders in order to ensure the effective implementation of the principle of non-discrimination across the EU. It proposes, therefore, to organise an annual, high level "Equality Summit" involving Ministers, heads of national Equality Bodies, Presidents of European-level NGOs, the European social partners and representatives of international organisations. This Equality Summit would take place for the first time in early 2007, to coincide within the launch of the European Year of Equal Opportunities for All.

The Commission is particularly keen to work with employers in order to encourage and support the development of workplace non-discrimination and diversity policies. As an employer itself, the European Commission is well aware of the challenges posed by the development of an effective policy to combat discrimination and promote equal opportunities. It is currently implementing the Fourth Action Programme for Equal Opportunities for Women and Men in the European Commission, and has also more recently launched specific initiatives to promote employment of people with disabilities and ethnic minorities.

✓ European Year of Equal Opportunities for All (2007)
✓ Annual, High-Level Equality Summit bringing together key stakeholders

3.6. A special effort to tackle discrimination and social exclusion faced by disadvantaged ethnic minorities

One of the key challenges facing the enlarged European Union is the need to develop a coherent and effective approach to the social and labour market integration of ethnic minorities. Enlargement has increased the EU's diversity in terms of culture, language and ethnicity. This trend is set to continue with the accession of Bulgaria and Romania in 2007, as well as the planned opening of negotiations for membership with Croatia and Turkey.

One issue of particular concern is the situation of the Roma. The Commission has repeatedly highlighted the difficult conditions faced by Roma communities in Member States, candidate countries and acceding countries. Substantial amounts of financial assistance have been provided from the EU budget, including over €100 million through the PHARE programme for projects specifically targeting Roma. However, the Roma continue to experience particularly severe forms of exclusion and discrimination in education, employment, housing, healthcare and other areas. Furthermore, the EU needs to develop appropriate responses to the different needs of new migrants, established minorities of immigrant origin and other minority groups.

A wide range of existing EU policy and funding instruments can help to support the efforts of national authorities and civil society to promote the integration of minorities. The challenge for the future will be to promote concerted efforts by all of the relevant stakeholders in order to maximise the impact and effectiveness of these instruments.

EC anti-discrimination legislation prohibits direct and indirect discrimination on the basis of racial or ethnic origin, as well as religion. In the context of the European Employment Strategy, Member States are encouraged to develop measures to promote the labour market integration of minorities in the framework of their National Action Plans. The EU's open method of coordination on social inclusion also targets poverty and exclusion experienced by ethnic minorities, migrants and other disadvantaged groups. EU financial support is available to address these challenges through the European Social Fund, including the EQUAL Community Initiative.

In order to support policy development in this area, the Commission plans to establish a high-level advisory group on social and labour market integration of disadvantaged ethnic minorities.. This group, which should meet for the first time in early 2006, will bring together a limited number of eminent personalities from the world of politics, business, civil society and the international community.

✓ High-Level Advisory Group on Social and Labour Market Integration of Disadvantaged Ethnic Minorities

3.7. Enlargement, relations with third countries and international cooperation

In the context of EU enlargement, human rights principles, including respect for and protection of minorities, are an integral part of the so-called "political criteria" for membership of the EU. These principles are central to the EU's pre-accession strategy with the acceding and candidate countries (Bulgaria, Romania, Turkey and Croatia) as well as to the stabilisation and association process with the other countries of the Western Balkans (Albania, Bosnia & Herzegovina, FYROM, Serbia & Montenegro) In addition, future Member States are required to comply with the EU legislative *acquis* in the field of anti-discrimination and equal opportunities.

The current and future pre accession financial instruments[21] will continue to provide EU funding to promote non-discrimination and equal opportunities in countries that are preparing for membership of the EU. EU funding is also a key tool for developing the necessary institutional and administrative capacity for the implementation of the EU *acquis*.

Anti-discrimination and human rights concerns are also reflected in the European Neighbourhood Policy (ENP) and the first wave of Action Plans covering relations with Jordan, Moldova, Morocco, Tunisia, Ukraine, Israel and the Palestinian Authority. The 23 June 2000 Cotonou Agreement between the EU and 78 African, Caribbean and Pacific (ACP) countries sets out the signatories' obligation to ensure respect for human rights, which are an essential element of the Agreement[22], and to eliminate all forms of discrimination based particularly on origin, sex, race, language and religion[23]. Non-discrimination is the subject of regular political dialogue between the EU and its ACP partners[24].

Non-discrimination issues, particularly the situation of minorities, are frequently raised in the EU's human rights dialogues with third countries, as well as with international organisations. EU financial support for non-discrimination and equal opportunities is made available for projects implemented by NGOs and international organisations in third countries through the European Initiative for Democracy and Human Rights, as well as certain cooperation programmes with countries in Asia, Latin America, and the ACP and MEDA regions.

The EU will pursue cooperation with relevant international organisations, including the UN, the Council of Europe and the OSCE. The framework of international treaties and declarations dealing with non-discrimination and equal opportunities form an important reference framework for ongoing work within the EU, as well as for the Union's relations with third countries.

The European Commission plays an active role in promoting the principle of non-discrimination and equal opportunities within the UN. It is actively involved in the follow-up to the 1995 Beijing Conference on gender equality. It contributed to the 2001 World Conference Against Racism in Durban. It currently participates on behalf of the EU in negotiations concerning a new UN Convention on the Rights of Persons with Disabilities. The EU also supports the efforts of the International Labour Organisation to promote the decent work agenda, which includes the principles of equality and non-discrimination.

✓ Promotion of non-discrimination and equal opportunities for all in the context of enlargement, as well as relations with third countries

✓ Cooperation with international organisations, with a view to ensuring coherence, complementarity and a clear division of labour

4. CONCLUSION

This Communication sets out a forward-looking strategy to promote non-discrimination and equal opportunities for all in the EU. The Commission will present a communication dealing in more detail with gender equality in 2006.

Ensuring effective legal protection against discrimination across the EU is a central part of this strategy. This involves ensuring the full transposition of EC anti-discrimination

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21 http://europa.eu.int/comm/enlargement/financial_assistance.htm

22 Article 9 of the Cotonou Agreement

23 Article 13 of the Cotonou Agreement

24 Article 8 of the Cotonou Agreement

legislation by all Member States. It also requires a range of complementary measures, particularly in order to ensure that people are aware of their rights and are able to get access to justice.

In addition to the legal protection of individual rights, this Communication sets out a strategy for the positive and active promotion of non-discrimination and equal opportunities for all. The effective implementation of this strategy will mean moving forward on a broad front, with the participation of all the relevant stakeholders as well as the public at large. This new approach is reflected in the proposal, which accompanies this Communication, to designate 2007 European Year of Equal Opportunities for All.

The Commission will closely monitor the implementation of the framework strategy and the initiatives set out in this Communication. It will call on external expertise, where appropriate, in order to evaluate progress made and the impact of specific activities. In the interests of transparency, the Commission will organise regular meetings with key stakeholders, including national authorities, specialised equality bodies, civil society organisations and the social partners in order to seek their views and to encourage their active involvement in the promotion of non-discrimination and equal opportunities for all.