



Bureau Position Paper

European Union anti-discrimination policies and the transposition of Council Directives into national legislation by Member States

Bureau Meeting, 2 November 2003 - Brussels (Belgium)

Background

In the consolidated version of the Treaty Establishing the European Community, Article 2 stipulates that one of the Community's tasks is to promote equality among men and women. In the field of anti-discrimination, one of the first areas to be addressed was that of preventing discrimination on the basis of gender. This took the form of a series of Council Decisions and Resolutions to promote equal opportunities in employment, training and social security. In 1996 the European Commission submitted a Communication to the Council on: "Incorporating equal opportunities for women and men into all Community policies and activities"¹ which introduced the mainstreaming of gender into all Community policies and the Commission currently has a Community Framework Strategy on Gender Equality which will run until 2005. Article 23 (1) of the Charter of Fundamental Rights of the European Union states that "Equality between men and women must be ensured in all areas, including employment, work and pay."

The Treaty which emerged from the Amsterdam Summit in 1997 took the fight against discrimination further and provided new powers to ensure the suspension of the rights of a Member State which is found to be in breach of the principles of liberty, democracy, respect for human and fundamental freedoms and the rule of law. In addition, article 13 of the Amsterdam Treaty included a general non-discrimination clause and thus gives to the Community a firm legal base on which to take further action. With this Article, the Council can "take appropriate action to combat **discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation** on the basis of the proposals by the Commission". For the first time, the Community has the means to combat discrimination on a wider range of grounds than before and in areas outside employment.

More recently, in the draft Constitutional Treaty prepared by the Convention on the Future of Europe and submitted to the European Council in Thessaloniki on 20th June, equality and non-discrimination were included in Article 2 on the Union's Values. Moreover, in Article 3, which defines the Union's Objectives, the third point includes the following paragraph:

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights.

In the field of anti-discrimination, the Council of Ministers adopted two directives in 2000 in order to combat discrimination in employment and on the basis of race. These directives support the implementation of article 13, and

¹ (COM(96)67final). The Communication defines *gender mainstreaming as involving 'not restricting efforts to promote equality to the implementation of specific measures to help women, but 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 possible effects on the respective situation of men and women (gender perspective).'*

should be transposed into national legislation by the Member States. The two directives are the ***Council Directive 2000/43/EC prohibiting racial and ethnic discrimination*** in employment, education, social security and healthcare, access to goods and services and housing (also referred to as the ***Race Directive***), and ***Council Directive 2000/78/EC, prohibiting discrimination in employment on grounds of religion and belief, disability, age and sexual orientation*** (also referred to as the employment directive).

The issue of discrimination is an important one for young people. Young people suffer discrimination on the basis of sex, racial or ethnic origin, religion or belief, disability or sexual orientation in similar ways to any other section of the population. However, there is evidence to indicate that this discrimination is often compounded also by the fact of their youth. In the European Union, young people's unemployment levels are approximately twice the level of the rest of the adult population, indicating that they are the subject of indirect discrimination in the employment market. Similarly, there is often a higher level of discrimination shown to young people of certain religions.² Furthermore, it is important to tackle issues of discrimination among the young in order to prevent prejudices emerging and persisting into adulthood. Human Rights education and intercultural learning in the context of youth organisations plays, and given more resources could play an even more significant role in challenging the attitudes which promote discrimination.

1. European Youth Forum position on the European Union legal basis for anti-discrimination

The European Youth Forum welcomes the developments over the last few years towards strengthening the legal basis of the European Union to combat all forms of discrimination, and would like to stress the following points in particular:

- The European Youth Forum very strongly supports the continuing development of this European framework to combat discrimination on any grounds and actively seeks to ensure that all measures are comprehensively implemented both at the National and European levels.
- In relation to article 13 of the Treaty of Amsterdam, the European Youth Forum would like to highlight the fact that discrimination on the basis of age should not be considered only in terms of the elderly, as young people suffer from many forms of discrimination on the basis of their age and are therefore also more likely to suffer from multiple discrimination.

² This point was made in relation to the discrimination shown towards young Muslims in a seminar on 'Muslim youth in Europe - Enrichment of society?!' organised by the Forum of European Muslim Youth and Student Organisations and the European Youth Forum in September 2003 in the European Parliament. The report from this event is available on the European Youth Forum web site: www.youthforum.org.

- The Youth Forum welcomes the stronger and more detailed approach towards combating all forms of discrimination included in the Draft Constitutional Treaty and calls on the Intergovernmental Conference to include all the articles relating to anti-discrimination.

2. The European Youth Forum position on the implementation of Directives on anti-discrimination

The European Youth Forum recognises the importance of the adoption and of the implementation of *European Directives*³, as a *first step towards the effective protection of people's rights in practice*. Therefore, the European Youth Forum would like to stress the following specific recommendations on the recent and forthcoming European Directives aimed at combating discrimination, as a basis for the development of comprehensive anti-discrimination policies:

- The European Youth Forum deplors the slow progress made in the transposition at the national level of **Directive 2000/43/EC prohibiting racial and ethnic discrimination** in employment, education, social security and healthcare, access to goods and services and housing and **Council Directive 2000/78/EC, prohibiting discrimination in employment**. It urges the Member States who have not introduced comprehensive legislation at the national level to do so as quickly as possible.
- On the draft gender equality directive to be adopted by the European Commission in November 2003, the European Youth Forum urges the European Commission to adopt this new Directive with a wide scope of application and strong positive implications for women across Europe. The European Youth Forum also stresses that the EC Treaty provides a very strong mandate for such a new European legal instrument. Article 13 of the Treaty will be the formal legal basis, but equality of women and men is defined as a mission and an objective of the Community (articles 2 and 3.2 TCE). Implementation of article 13 in relation to equality of women and men should therefore aim at eliminating discrimination, it should support the effective and comprehensive implementation of measures to achieve full equality between women and men and thus ensure *de facto* equality of women and men.

Furthermore, the Member States should reassess their national legislation to ensure that it genuinely tackles the problems of gender discrimination in their countries with a view to achieving full equality between women and men in practice.

³ A Directive is a European Legislative Act, which, once fully adopted by the European Institutions, has to be integrated into the national legislation of Member States of the European Union.

3. The European Youth Forum position on developing clear legal frameworks at the national level to prevent discrimination

The European Youth Forum also calls for Member States to develop clear and comprehensive legal frameworks for implementing anti-discrimination measures relating to all spheres of life. These shall ensure an efficient judicial system to protect individuals who are victims of discrimination, and should facilitate the understanding of anti-discrimination legislation and how individuals can take legal action to defend their rights. To this end, the European Youth Forum recommends:

- that national anti-discrimination legislation introduces a concept similar to the one established in the European Directives on Race and Employment⁴
- the inclusion of the definition of indirect discrimination as established in the European Directives⁵ in a comprehensive law covering all spheres of life
- the consideration of harassment as a form of discrimination⁶, and to extend it beyond the employment field, in all spheres of life, such as education, housing, and provision of goods, facilities and services.
- To consider instruction to discriminate as an aspect of the concept of discrimination⁷.

⁴ Art 2.2a) of both Directives define direct discrimination as “direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation’.

⁵ Art 2.2b) of the Race Directive states: “Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put a person of a racial or ethnic origin at a particular disadvantage compared to with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”.

⁶ Art 2.3 of both Directives establishes: “Harassment shall be deemed to be discrimination within the meaning of paragraph one when an unwanted conduct [related to any of the grounds referred to in the Directives] takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment”.

⁷ Both Directives state: “An instruction to discriminate against persons on [any of the grounds referred to in the Directives] shall be deemed to be discrimination”.