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

Non-discrimination and equal opportunities: A renewed commitment

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1. INTRODUCTION

The European Union is founded on the shared principles of liberty, democracy, respect for human rights and fundamental freedoms. Common to all our European societies is a fundamental recognition that every individual is of equal worth and should have fair access to the opportunities of life. Discrimination undermines these shared values.

European action to ensure equality among individuals has a long tradition. The Amsterdam Treaty has given new powers for European action against discrimination based on sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation. Discrimination in employment and occupational matters has been prohibited on all these grounds. As concerns racial or ethnic origin and gender, the prohibition of discrimination covers a wide range of areas beyond employment.

Today the European Union has one of the most advanced non-discrimination legal frameworks in the world. But while much progress has been made, many Europeans still feel that discrimination continues to be widespread: 15% say they experienced it personally in the last year, and 29% say they witnessed it¹.

In its Communication ‘A renewed social agenda: Opportunities, access and solidarity in 21st century Europe’², which the present Communication accompanies, the Commission renews its commitment to ensuring that everyone is given an equal chance to realise their potential.

Drawing on the successful implementation of the 2005 Framework Strategy against Discrimination³ and the 2007 European Year of Equal Opportunities for All, and the contributions received from the European institutions, civil society and the social partners, this Communication presents a comprehensive approach to step up action against discrimination and promote equal opportunities.

In particular, this Communication is accompanied by a proposal for a new directive prohibiting discrimination on grounds of age, disability, sexual orientation and religion or belief outside the employment sphere. This landmark proposal opens the way for the completion of the legal framework for Europe-wide action against all forms of discrimination as provided for in Article 13 TEC.

Better legislative protection against discrimination must be accompanied by an active strategy to promote non-discrimination and equal opportunities. So this Communication also proposes actions to give new impetus to the dialogue on non-discrimination policy and to make more effective use of the instruments available, both in general and with particular emphasis on promoting the social inclusion of Roma, given the particular discrimination problems they face.

¹ Special Eurobarometer Survey 296 (2008).

² COM(2008) 412 final.

³ COM(2005) 224 final.

2. STRENGTHENING THE FIGHT AGAINST DISCRIMINATION

The fight against discrimination cannot be won by legislation alone. First and foremost it depends on changing attitudes and behaviour. But there can be no doubt that an effective and properly-enforced legal framework outlawing discrimination and ensuring that its victims can have effective recourse is an essential precursor for delivering real change. The Commission is committed to ensuring that the existing legal framework is respected, whilst proposing that new legislation is needed to extend the scope of legal protection to all forms of discrimination in all areas of life.

2.1 *Implementing the existing legal framework*

Three Directives⁴ have already been adopted to give effect to Article 13 TEC, which allows for action to outlaw and combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation. These Directives prohibit discrimination on grounds of age, sexual orientation, disability and religion or belief in employment, occupation and vocational training, whilst protection from discrimination based on race and gender extends beyond the employment field to include social protection and access to goods and services.

The Commission is actively engaged in ensuring the proper implementation of the Directives. The overall picture is positive. National law transposing the Directives has had a tangible impact on combating discrimination. Several Member States have already gone further than the requirements of EU law in terms of providing protection from discrimination. In 2006⁵ and 2008⁶ the Commission reported on the implementation of the Directives on discrimination on the grounds of racial and ethnic origin and discrimination in employment and occupation. Where the Commission is not satisfied that Member States have properly respected their obligations, it has launched infringement proceedings. About half of the Member States are concerned. The problems mainly relate to failure to cover all the persons and areas covered by the Directives, definitions of discrimination that differ from the Directives and inconsistencies in provisions to help victims of discrimination. The Commission is also currently checking whether Member States have met their obligations to transpose the 2004 Directive on sex discrimination in access to goods and services properly. It will report in 2010 on implementation and, as stipulated in the Directive, may propose modifications where appropriate.

But properly transposing European rules into national law is only part of the story. Member States also need to ensure that their systems for redress for victims and their awareness-raising activities are effective on the ground⁷. Individuals need to know their rights and be able to use them.

⁴ Council Directives 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22), 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16) and 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37).

⁵ COM(2006) 643 final.

⁶ COM(2008) 225 final

⁷ A Eurobarometer survey showed that only 33 % of Europeans know their rights, should they be victims of discrimination http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm

The national equality bodies set up under the Directives to promote equal treatment and combat discrimination on grounds of racial or ethnic origin or sex play an important role in assisting victims of discrimination by providing information and support in pursuing their complaints. They can give guidance to service providers and other interested parties on how to meet their obligations, and encourage mediation and alternative dispute resolution. As a result, complaints can often be resolved without recourse to the courts. Through the Progress programme⁸, the Commission supports the development of cooperation between, and capacity-building of, equality bodies via the Equinet network⁹.

The Commission also organises regular exchanges of information with the equality bodies on recent legal developments and common problems in dealing with sex discrimination. On this basis, the Commission is examining the effectiveness of national penalties and time limits to bring actions before national courts. These are two fundamental issues for discouraging discriminatory behaviour and giving victims effective legal remedies. The Commission is also working with these bodies to review the effectiveness of equal pay legislation in tackling the persistent gender pay gap.

2.2 *Further developing the legal framework*

Despite these achievements, the fact remains that the European legal framework for tackling discrimination is not yet complete. In particular, whilst some Member States have taken action prohibiting discrimination on grounds of age, sexual orientation, disability and religion or belief outside the area of employment, there is no uniform minimum level of protection within the European Union for people who have suffered such discrimination.

Yet discrimination on these grounds is clearly just as unacceptable outside the employment sphere as it is within it. When it comes to protection against discrimination, there can be no hierarchy. That is why the Commission announced in its 2008 legislative and work programme that it would propose new initiatives to complete the legal framework, building on the results of an extensive public consultation process. This commitment also responded to the Council's calls to the Commission to examine any gaps that may exist in the current Community anti-discrimination legislative framework, and the European Parliament's repeated requests for the framework to be extended.

The proposal for a Directive, which accompanies this Communication, opens the way to completing the European legal framework on anti-discrimination. The Directive will ensure that in all 27 Member States all forms of discrimination, including harassment, on the grounds of age, sexual orientation, disability and religion or belief are prohibited and victims have effective redress. Once adopted, the Directive will complete the process of giving effect to Article 13 TEC on all grounds and will bring to an end any perception of a hierarchy of protection.

This ambitious objective implies a response which is wide-ranging in terms of scope but realistic and reflecting the specific characteristics of the areas concerned. National traditions and approaches in areas such as healthcare, social protection and education tend to be more diverse than in employment-related areas. These areas are characterised by legitimate societal choices in areas which fall within national competence.

⁸ Decision No 1672/2006/EC of 24 October 2006, OJ L 315, 15.11.2006, p. 1.

⁹ European Network of Equality Bodies <http://www.equineteurope.org>.

The diversity of European societies is one of Europe's strengths, and is to be respected in line with the principle of subsidiarity. Issues such as the organisation and content of education, recognition of marital or family status, adoption, reproductive rights and other similar questions are best decided at national level. The draft Directive does not therefore require any Member State to amend its present laws and practices in relation to these issues. Nor does it affect national rules governing churches and other religious organisations and their relationship with the state. So, for example, it will remain for Member States alone to take decisions on questions such as whether to allow selective admission to schools, whether to recognise same-sex marriages, and the nature of any relationship between organised religion and the state.

The various grounds of discrimination differ substantively, and each demands a tailored response. This is not a question of creating a hierarchy between the various grounds, but of delivering the most appropriate form of protection for each of them.

As concerns age, there are situations where treating someone differently simply because of their age can be justified in the general public interest. Examples include minimum age requirements for access to education or to certain goods and services, preferential tariffs for certain age groups using public transport or visiting museums. Furthermore, where insurers and banks use age as an actuarial factor to assess the risk profile of customers, this does not necessarily amount to discrimination, though this factor should only be used where relevant and where based on objective evidence. Similar considerations apply in relation to disability. The Commission intends to initiate a dialogue with financial service providers, together with other relevant stakeholders, in order to exchange and encourage best practice.

Disability also requires a specific and tailored response. Many Member States already have legislation providing for protection of people with disabilities, but there are significant differences concerning the type of protection ensured and the fields covered. Moreover, the adoption of the United Nations Convention on the Rights of Persons with Disabilities, which has been jointly signed by the European Community and its Member States, calls for common standards of implementation in national law of the rights that it provides.

Real equality for persons with disabilities cannot be delivered simply through prohibiting discrimination. Instead, it depends on positive actions, including responding to the needs of persons with disabilities. Lack of accessibility is being increasingly recognised as inadmissible in European societies. Empowering people with disabilities to actively contribute has real economic and social benefits. As was the case for the 2000 Directive in the area of employment, measures to accommodate their needs should be reasonable – proportionate to the needs of the customer or user and in terms of costs for the body or business concerned. Member States will continue to be able to provide education for persons with disabilities in either mainstream or specialised facilities.

The future Directive will be applied in very diverse situations across the European Union. It is therefore appropriate to leave a margin of flexibility to the Member States. For example, rules which seem neutral but which could in practice have a disadvantageous impact upon a group might be permissible if they are reasonable and pursue a justifiable aim. In monitoring the application of the Directive, the Commission will pay particular attention to the use of this possibility.

The draft Directive applies to the provision of all goods and services. It would be disproportionate to submit individuals acting purely privately to all the obligations of the draft Directive. The proposal therefore draws on practice in several Member States and includes provisions limiting its application to the commercial provision of goods and services. Private individuals are covered only in so far as they are performing their commercial activity.

In terms of key concepts and mechanisms, the proposed Directive adopts the same successful model used in the existing Directives. The Directive therefore reflects the current legislation as concerns the definitions of direct and indirect discrimination, harassment and instructions to discriminate. Provisions on the role of equality bodies and the obligation for Member States to provide for proper redress against discrimination before the national courts are the same as those in the current legislation. These concepts and mechanisms are therefore already familiar to public and private organisations in the Member States, which should make the new instrument easier to transpose and apply. At the same time, by complementing the existing Directives, the proposed approach avoids reopening discussion and creating uncertainty as concerns the existing *acquis*. The Commission believes that this proposal offers a balanced and realistic way forward to complete the European anti-discrimination framework and calls on the Council and the European Parliament to take forward discussions as a matter of priority.

3. STRENGTHENING POLICY TOOLS FOR ACTIVE PROMOTION OF EQUAL OPPORTUNITIES

Advancing non-discrimination and equal opportunities for all grounds relies both on a sound legislative basis and on a range of policy tools. These include awareness-raising, mainstreaming, data collection and positive action. The Council Resolution on the follow-up to the 2007 European Year underlined the importance of taking full account of and further developing these policy tools.

3.1 Stronger policy tools

Non-discrimination mainstreaming

Mainstreaming principles should apply across all grounds covered by Article 13 EC if the inequality and discrimination suffered by all groups are to be reduced. Two of the grounds are already the subject of specific EU policies comprising a well-developed set of mainstreaming actions. First, the EU's disability strategy is based on the Disability Action Plan for 2003-10, and more specifically the European Action Plan 2008-09¹⁰. Implementation by the Community and the Member States of the UN Convention on the Rights of Persons with Disabilities will provide the basis for closer cooperation in this area. Second, the Roadmap for equality between women and men for 2006-10¹¹ provides the framework for action in the gender equality field. Special attention will be given to mainstreaming the gender perspective in the activities proposed.

The Commission will build on these achievements by promoting the systematic incorporation of non-discrimination and equal opportunity concerns on all Article 13 grounds into all policies, in particular within existing coordination mechanisms for employment, social

¹⁰ COM(2007) 738 final.

¹¹ COM(2006) 92 final.

inclusion, education and training. For its part, the Commission will step up screening of impacts regarding non-discrimination and equal opportunity issues of new Commission proposals, and will encourage NGOs with experience of particular non-discrimination strands to participate in consultations.

It urges Member States to utilise the various mainstreaming tools, good practice and methodologies already available at Community and national level¹². Equal opportunities, non-discrimination considerations and accessibility requirements will be covered in the planned guide on socially responsible public procurement in order to raise awareness in the Member States of how to promote non-discrimination and equal opportunities through procurement policy and practice.

The Commission will also continue to promote the values of non-discrimination and equal opportunities in other policies, such as the rights of the child¹³ and enlargement, and more generally in the EU's external relations, including at multilateral level. Special attention will be paid to the rights of persons belonging to minorities in non-member countries.

Measuring discrimination and evaluating progress

Accurate data is essential for assessing the scale and nature of discrimination suffered and for designing, adapting, monitoring and evaluating policies. There is considerable demand for data on all grounds of discrimination. Available data vary considerably by ground and by Member State¹⁴, which makes comparability of data difficult if not impossible.

Legislation on privacy and data protection lay down criteria for collecting and processing data¹⁵. Broadly speaking, the European public are willing to provide personal information anonymously in censuses with a view to combating discrimination¹⁶. The Commission is exploring the possibilities of: (i) collecting statistics regularly on the scale and impact of discrimination in conjunction with the Member States' statistical authorities under the Community Statistical Programme, in particular on grounds of racial and ethnic origin, religion/belief and sexual orientation, where there is still a lack of information, and (ii) setting up an EU-survey module on discrimination. It is also working closely with Equinet to develop a system for gathering information on complaints handled by national equality bodies.

Positive action

Identical treatment may result in formal equality, but cannot suffice to bring about equality in practice. EU non-discrimination legislation does not prevent any Member State from maintaining or adopting specific measures to prevent, or compensate for, disadvantages linked to discrimination on grounds where there is provision for protection.

¹² *Non-discrimination mainstreaming: instruments, case studies and the way forwards*, European Commission, April 2007

¹³ *Communication Towards an EU Strategy on the Rights of the Child* (COM(2006) 367 final).

¹⁴ See Conceptual Framework Study Report, European Commission, January 2008:
http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/measprog08_en.pdf.

¹⁵ See *Measuring discrimination: Data collection and EU equality law*, European network of legal experts in the non-discrimination field, February 2007:
http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/07measdis_en.pdf.

¹⁶ 75% of Europeans are ready to state their racial background, 74% their religion and 65% their sexual orientation: see Special Eurobarometer 263, January 2007.

There is a rapidly growing appreciation of the role positive action can play to redress the lack of substantive equality in societies¹⁷. Some Member States¹⁸ have introduced provisions making it a duty for public authorities to promote equality as a core objective of all their activities. The Commission will use the permanent dialogue with Member States to promote the full utilisation of the possibilities for positive action, in particular in access to education, employment, housing and health care.

Awareness-raising and training activities

Information on existing legislation is a precondition for real use to be made of it by potential victims and for awareness of duties among employers, service-providers and administrations. But as noted earlier, awareness of non-discrimination legislation remains low¹⁹. If further progress is to be achieved, the biggest changes — and those hardest to achieve — involve fighting stereotypes and prejudice in all its forms. The EU information campaign ‘For Diversity — Against Discrimination’ will be pursued in close cooperation with national working groups bringing together representatives of civil society, government officials, social partners and other stakeholders. The Commission will also provide further support for training activities on existing legislation and targeting key stakeholders, including equality bodies, judges, lawyers, NGOs and social partners.

Promoting the benefits of diversity at the workplace

Recognising that legislation is more effective when it goes hand in hand with progressive and innovative strategies implemented by employers to manage an increasingly diverse workforce, the Commission²⁰ and Member States²¹ support the development of diversity management, in both larger companies and SMEs²².

The Council has called on the Member States and the Commission to promote workforce diversity further and to foster the development of suitable business tools, including voluntary charters²³. In response, with the support of business and employers’ organisations, the Commission will encourage voluntary EU-wide initiatives. It also promotes cooperation between business, business schools and universities on possibilities for closer cooperation in research and training on diversity-related topics. Furthermore, it will promote diversity and improved diversity management in public administrations at EU and national level²⁴.

3.2 Developing the dialogue on non-discrimination and equal opportunities

In 2007 the European Year of Equal Opportunities for All opened new avenues for promoting non-discrimination and equal opportunities by involving all actors in cross-ground dialogue at

¹⁷ *Beyond Formal Equality: Positive Action under Directives 2000/43/EC and 2000/78/EC*, European Commission, October 2007:

http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/bfe07_en.pdf.

¹⁸ UK and Finland.

¹⁹ Special Eurobarometer 263 / TNS Opinion and Social

²⁰ The Business Case for Diversity – Good practices in the workplace, European Commission, 2005: http://ec.europa.eu/employment_social/fundamental_rights/pdf/events/busicase_en.pdf.

²¹ France, Belgium (Brussels-Capital Region) and Germany.

²² *Diversity at work: 8 steps for small and medium-sized businesses*, European Commission, 2007: http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/broch/8steps07_en.pdf.

²³ Council Resolution 2007/C 308/01 of 5 December 2007.

²⁴ For example, by launching a mapping study on public employers' practices in fighting discrimination and promoting diversity.

EU and national level. Member States and civil society have acknowledged the value of putting this dialogue on a more permanent footing. Such exchanges will be based on the annual equality summits, which bring together stakeholders at the highest level to take stock and give impetus and direction.

The Commission has set up a non-discrimination governmental expert group²⁵ to examine the impact of national and EU-level non-discrimination measures, validate good practice through peer learning and develop benchmarks to evaluate the effectiveness of non-discrimination policies. For example, the Commission intends to work with this group to follow up the findings of the comparative study on homophobia and discrimination on grounds of sexual orientation in the EU carried out by the European Agency for Fundamental Rights. The group will meet regularly with civil society, the social partners and Equinet. The Community could use the Progress programme to support the identification of innovative practice through this process. The Commission will report to the equality summits on the results of this work.

The Commission intends to use these new governance mechanisms to address the issue of multiple discrimination building on established practice in some Member States providing for a single legal procedure for victims of such discrimination to submit complaints and treating evidence that discrimination has occurred on more than one ground as an aggravating factor. The Commission will raise awareness of multiple discrimination through financing activities and providing funding for smaller networks of NGOs representing intersectional groups.

3.3 Applying better tools to advancing the social inclusion of the Roma

While boosting the fight against discrimination through both legislative and policy tools will benefit all potential stakeholder groups, it remains important to address particular concerns of specific groups. The situation of the Roma is of particular concern at the present time characterised by persisting individual and institutional discrimination and far-reaching social exclusion. The marginalisation of millions of people is unacceptable above all from the perspective of equality and effective enjoyment of human rights. It is indefensible too from the perspective of social cohesion. Last but not least, the widespread unemployment and poverty of such a large group of people is a waste in economic terms. Addressing this urgent problem is a joint responsibility of the European Union and Member States.

The Commission has repeatedly condemned all manifestations of anti-Gypsyism as a specific form of racism that is incompatible with the EU's principles. The application of EU discrimination legislation in the Member States is the fundamental starting point for Roma inclusion. The Commission will remain vigilant in this area and will step up its work with national equality bodies to improve their capacity to tackle cases of discrimination against Roma. The Commission will continue to support capacity-building among Roma civil society and to promote their involvement at all levels of policy development and implementation.

The situation of Roma has been acknowledged by the European Council, which called on the Commission in December 2007 *'to examine existing policies and instruments and to report to the Council on progress achieved.'* The accompanying Staff Working Paper responds to that request. It demonstrates that there is a powerful framework of legislative, financial and policy coordination tools available and that these are increasingly used, but that more can be done to make them work more effectively.

²⁵ C(2008)3261.

The impact on the ground of these tools depends however on the commitment of Member States and the capacity of all actors involved to use them in full. The June 2008 European Council asked the Council to treat this as a matter of urgency. The Commission will use all the means at its disposal to support this process looking forward to a clear commitment from the European Council at the end of the French Presidency.

In order to support and promote a joint commitment by the Member States, the EU institutions and civil society, the Commission will organise an EU Roma Summit of all stakeholders in September 2008 in the context of the European Year of Inter-Cultural Dialogue; the conclusions of the Summit will be submitted to the French Presidency for further consideration in the Council of Ministers ahead of the December 2008 European Council. In addition, building on the extensive research already accomplished, the Commission will undertake a comprehensive study of existing policies and institutional mechanisms and their links with programmes and projects targeting Roma people with the aim of identifying successful transferable practices to make better use of Community and national instruments.

4. CONCLUSION

The Commission is strongly committed to fighting all forms of discrimination under Article 13 EC and will continue to monitor the transposition of the existing Directives carefully. In order to complete the EU legal framework, it is presenting a proposal for a directive prohibiting discrimination on grounds of age, disability, sexual orientation, religion or belief outside the employment sphere. The Commission calls on the Council and the Parliament to take forward discussions on the proposal as a matter of priority.

Successful legal protection of individual rights must go hand in hand with the active promotion of non-discrimination and equal opportunities. The Commission is committed to achieving further progress at EU and national level in key areas, such as awareness-raising, non-discrimination mainstreaming, positive action and data collection. More robust governance of non-discrimination policy should facilitate the exchange of good practice, peer learning and benchmarking between the Member States and encourage the development of new approaches for example to address multiple discrimination.

The Commission, in cooperation with civil society and the social partners, will monitor the implementation of the initiatives set out in this Communication. It will evaluate progress and the impact of specific activities.