Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Racial Equality Directive

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This report focuses on Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, which was adopted under the new Article 13 of the Treaty establishing the European Community. Rather than give a detailed account of the transposition of the provisions of Directive 2000/43/EC in the Member States, this report flags up certain aspects that are particularly problematic or important and to identify good practice. It concentrates on the impact of the Directive, transposition-related problems, dissemination of information, the enforcement of rights, the role of equality bodies, the social partners and NGOs, positive action and recommendations.

The impact of the Directive: the report points to the ways in which this directive was an innovative one, since it extended the scope of protection against discrimination well beyond the traditional area of employment into fields such as social advantages, health care, education and, crucially, access to goods and services which are available to the public, including housing. It obliged the Member States to create a body for the promotion of equal treatment (if they did not already have one). All Member States, even those with long-standing race discrimination legislation, had to make some changes to national law to comply with the Directive (for example, the UK amended its definitions of indirect discrimination and harassment). The problems identified include fundamental issues such as definitions of direct and indirect discrimination and harassment in national law, which in some cases differ considerably from those given in the Directive. It appears that some Member States allow exceptions to the principle of non-discrimination which are wider-ranging than those permitted under the Directive. There is a series of problems related to the enforcement of rights of victims of discrimination, such as incorrect transposition of the rules on the burden of proof, the right of associations to help victims of discrimination, and sanctions and remedies. The Commission is examining the national legislative measures notified by the Member States, in order to assess their conformity with the Directive and to ensure that victims of discrimination can exercise the rights given to them.

Key Issues

-Right of redress: it is clear from the information provided that many victims of discrimination do not proceed to court with their complaints because of the cost and for fear of victimisation, and are more likely to turn to an NGO or an equality body, from which they can usually obtain information and advice free of charge. In most Member States, associations are able to help victims or represent them in court, but some countries have laid down strict rules governing the activities of associations in this area. It appears from the statistics provided by the Member States and equality bodies that most complaints of discrimination before national courts and/or equality bodies involve employment, followed by the provision of goods and services and housing. In the majority of the EU 10, statistics showed the Roma as the group most represented in complaints. The number of cases taken up by the Roma indicates that the Directive is being successfully used to challenge discrimination against that group.

-Equality bodies: the equality bodies give legal advice to individual victims of discrimination, but they only support a small number of cases before the courts. Supporting only strategic litigation is a clear aim of a number of equality bodies. In some Member States, the emphasis is on promotion of equal opportunities and prevention of discrimination, rather than legal support for individual complainants. The capacity of an equality body is directly linked to the way it is funded. Another issue is specific to Member

States which have federal and regional governmental structures. If the equality body only exists at one of these levels, it may be powerless to act on matters falling within the other spheres of competence.

Dissemination of information: there is insufficient information about the way in which this obligation has been fulfilled. However, a number of interesting initiatives were undertaken, and these are detailed in the report.

The role of the social partners & NGOs: the obligation requiring Member States to promote dialogue between the two sides of industry to foster equal treatment, including through collective agreements, codes of conduct and the exchange of good practice, is met in different ways. The ETUC notes a trend among governments to favour dialogue on discrimination issues with NGOs rather than the social partners, although from the information received from the Member States the picture is somewhat mixed.

Gender mainstreaming and multiple discrimination: the Commission is aware of the problem of multiple discrimination and has launched a study on the subject as part of its work programme for 2006, which will look at what is being done in the Member States in this area and make recommendations.

Positive action: the Commission refers toArticle 5 of the Directive and stresses the difference between positive action measures, which are allowed, and so-called "positive discrimination" measures, which are not compatible with the Directive. On the one hand, positive action measures aim to ensure full equality in practice by preventing or compensating for disadvantages linked to having a certain racial or ethnic origin. These measures may include, for example, providing specific training to people belonging to groups that do not usually have access to such training, or taking particular steps to ensure that certain racial or ethnic groups are fully informed about job advertisements. On the other hand, "positive discrimination" measures give an automatic and absolute preference (for example in access to employment) to members of a particular group over others. Attitudes towards positive action vary hugely across the Member States, and the report gives instances of different practices.

Conclusion: Directive 2000/43/EC is a major step forward in the fight against racial discrimination across the EU. Although all the Member States already had some sort of legal requirement in respect of equality and non–discrimination, for most of them the transposition of Directive 2000/43/EC required fairly extensive changes to existing legislation, or whole new Acts. This may explain the lateness with which many of the Member States transposed the Directive, but most of them have now done so.

The new legal framework has been in force for just over three years, which is not really long enough to evaluate its full impact or potential. So far, no cases have been referred to the European Court of Justice under the preliminary ruling procedure, and it is only the ECJ that can give definitive guidance on how to interpret the provisions of the Directive. Future judgments will help the Member States to provide clear and uniform protection against discrimination throughout the European Union. The Commission does not currently see a need to come forward with proposals for amending the legislation. It has reached this conclusion on the basis of the lack of experience with implementation of the Directive since its entry into force and the lack of case law from the ECJ.

The challenge for the coming years will be to ensure the full and effective transposition, implementation and enforcement of Directive 2000/43/EC. This will entail the establishment of mechanisms and methods for observing and reporting on the impact of national implementing measures. In this context, it will be important to develop the statistical basis and other indicators. Yet the scarcity of ethnic data in most Member States might hinder proper monitoring of the application of Community legislation. The Commission also recognises that legislation alone is not enough to prevent discrimination and to promote equality, and this paper details further action in this area.