Application of the principle of equal treatment between persons irrespective of racial or ethnic origin

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PURPOSE: presentation of a report on the application of Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

CONTENT: Directive 2000/43/EC was adopted with a view to tackling discrimination on the grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation. This legislation has had a major impact in raising the level of protection against discrimination for people throughout the EU. However, there have been delays in transposing these rules into national law in some Member States, and additional efforts are needed to ensure effective implementation and enforcement of the legislation.

To recall, Directive 2000/43/EC was the first adopted unanimously by the Council under the new Article 13 of the Treaty establishing the European Community which entered into force on 1 May 1999.

This report aims to flag up certain aspects of the Directive 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 for the future.**

In accordance with Article 17 of the Directive, the Member States had to communicate to the Commission the information necessary for this report by 19 July 2005. Despite a reminder in May 2005, many Member States missed the deadline, and some did not respond at all. By December 2005 Austria, Poland, the UK, France, Germany, Lithuania and Portugal had provided no information to the Commission, nor had the social partners, apart from the ETUC.

Main conclusions: Directive 2000/43/EC represents 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. Thus far, no cases have been referred by national courts to the European Court of Justice under the preliminary ruling procedure. It is only the ECJ that could 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 EU.

Article 17 of Directive 2000/43/EC states that the European Commission's report on the application of the Directive "shall include, if necessary, proposals to revise and update this Directive". **The Commission does not currently see a need to come forward with such proposals.** 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.

There have been objections to the collection of such data on the grounds that it would breach the provisions of the EU Data Protection Directive. The Commission feels that this does not reflect the true situation. It is for the Member States to decide whether or not ethnic data should be collected to produce statistics for combating discrimination, provided that the safeguards set out in the Data Protection Directive are respected.

The Commission also recognises that **legislation alone is not enough to prevent discrimination and to promote equality.** It has set out a number of proposals for further action in this area in its Communication entitled "A Framework Strategy on Non-Discrimination and Equal Opportunities for All",adopted in June 2005. (Please see INI/2005/2191). In particular, 2007 has been designated as the European Year of Equal Opportunities for All, a very effective way of raising awareness of the right to nondiscrimination, and a catalyst for action at national level. The Commission concludes by stating that legislation that is properly implemented and enforced, combined with complementary policy measures at national and EU level, is the key to reducing discrimination on grounds of racial and ethnic origin.