

Basic information	
<p><b>1999/0253(CNS)</b></p> <p>CNS - Consultation procedure Directive</p>	Procedure completed
<p>Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Racial Equality Directive</p> <p>See also <a href="#">2007/2202(INI)</a></p> <p><b>Subject</b></p> <p>4.10.08 Equal treatment of persons, non-discrimination</p>	

Key players				
European Parliament	<b>Committee responsible</b>		<b>Rapporteur</b>	<b>Appointed</b>
	<b>LIBE</b>	Citizens' Freedoms and Rights, Justice and Home Affairs	<a href="#">BUITENWEG Kathalijne Maria (V/ALE)</a>	24/02/2000
	<b>Committee for opinion</b>		<b>Rapporteur for opinion</b>	<b>Appointed</b>
	<b>AFET</b>	Foreign Affairs, Human Rights, Common Security, Defense	The committee decided not to give an opinion.	
	<b>BUDG</b>	Budgets	The committee decided not to give an opinion.	
	<b>JURI</b>	Legal Affairs and Internal Market	<a href="#">MCCARTHY Arlene (PSE)</a>	01/02/2000
	<b>ITRE</b>	Industry, External Trade, Research, Energy	<a href="#">MCAVAN Linda (PSE)</a>	28/03/2000
	<b>EMPL</b>	Employment and Social Affairs	<a href="#">HOWITT Richard (PSE)</a>	15/02/2000
	<b>CULT</b>	Culture, Youth, Education, Media and Sport	The committee decided not to give an opinion.	
	<b>FEMM</b>	Women's Rights and Equal Opportunities	<a href="#">MARTENS Maria (PPE-DE)</a>	23/02/2000
Council of the European Union	<b>Council configuration</b>		<b>Meetings</b>	<b>Date</b>
	Health		2281	2000-06-29
	Social Affairs		2269	2000-06-06

	Social Affairs	2259	2000-05-08
European Commission	Commission DG		Commissioner
	Employment, Social Affairs and Inclusion		

Key events			
Date	Event	Reference	Summary
25/11/1999	Legislative proposal published	COM(1999)0566 	<a href="#">Summary</a>
14/02/2000	Committee referral announced in Parliament		
13/03/2000	Debate in Council		
08/05/2000	Debate in Council		
15/05/2000	Vote in committee		
15/05/2000	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A5-0136/2000</a>	
18/05/2000	Decision by Parliament	<a href="#">T5-0236/2000</a>	<a href="#">Summary</a>
18/05/2000	Debate in Parliament		
31/05/2000	Modified legislative proposal published	COM(2000)0328 	<a href="#">Summary</a>
29/06/2000	Act adopted by Council after consultation of Parliament		
29/06/2000	End of procedure in Parliament		
19/07/2000	Final act published in Official Journal		

Technical information	
Procedure reference	1999/0253(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	See also <a href="#">2007/2202(INI)</a>
Legal basis	EC Treaty (after Amsterdam) EC 013 Rules of Procedure EP 050
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/12523

Documentation gateway			
European Parliament			

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0136/2000 OJ C 059 23.02.2001, p. 0066	15/05/2000	
Text adopted by Parliament, 1st reading/single reading		T5-0236/2000 OJ C 059 23.02.2001, p. 0138-0263	18/05/2000	Summary

#### European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(1999)0566  OJ C 116 26.04.2000, p. 0056 E	25/11/1999	Summary
Modified legislative proposal	COM(2000)0328  OJ C 311 31.10.2000, p. 0169 E	31/05/2000	Summary
Follow-up document	COM(2006)0643 	31/10/2006	Summary
Follow-up document	COM(2014)0002 	17/01/2014	Summary
Follow-up document	SWD(2014)0005 	17/01/2014	
Follow-up document	COM(2021)0139 	19/03/2021	
Follow-up document	SWD(2021)0063 	19/03/2021	

#### National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2014)0002	02/06/2014	

#### Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofR	Committee of the Regions: opinion	CDR0513/1999 OJ C 226 08.08.2000, p. 0001	12/04/2000	
EESC	Economic and Social Committee: opinion, report	CES0596/2000 OJ C 204 18.07.2000, p. 0082	25/05/2000	

#### Additional information

Source	Document	Date
European Commission	EUR-Lex	

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

1999/0253(CNS) - 17/01/2014 - Follow-up document

The Commission presents a report on the joint report on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive').

The report recalls that protection from discrimination is one of the areas in which EU law closely affects the everyday life of people in the EU. The comprehensive framework provided by the Directive in question and [Council Directive 2000/78/EC](#) establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive'), examined at the same time, has shaped the landscape of European anti-discrimination law for over a decade now.

Some Member States had hardly any legislation in this field before the transposition of the two Directives, and the Directives introduced novel elements like protection from age discrimination into the legislation of all Member States.

**Joint Report:** given that both of the anti-discrimination Directives have to be reported on regularly, the present document is a joint report because the regulatory approach and content of most of the provisions are identical. In addition, **most Member States have transposed the two Directives in a single national act.**

Today, all 28 Member States have transposed the Directives and gained experience in their application. The Court of Justice of the European Union (CJEU) has also developed the interpretation of the Directives through its case-law.

This report provides an opportunity to:

- examine the application of the Directives,
- take stock of the interpretation given by the CJEU and national courts,
- identify challenges ahead.

**Application of the Directives:** both Directives have been transposed into national law, but the review of national experiences reveals that there are still challenges to their implementation and application. These relate in particular to the following issues:

- **Indirect discrimination:** this concept is complex and many Member States had initial difficulties in transposing it correctly. It is now enshrined in law, but its application in practice remains a challenge due to its lack of clarity or lack of understanding in national courts;
- **Burden of proof:** this means that where a person claiming to be a victim of discrimination can establish facts from which it may be presumed that discrimination has occurred, it is for the respondent to prove that there has been no discrimination. Some Member States report that the correct application of the reversed burden of proof remains a challenge and is not sufficiently well known by national courts;
- **Discrimination by association, assumption and perception:** as suggested by existing national case-law, the Commission considers that the Directives also prohibit a situation where a person is directly discriminated against on the basis of a wrong perception or assumption of protected characteristics, for example, if a candidate for a job is not selected because the employer wrongly believes he/she is of a specific ethnic origin or homosexual;
- **Protection for everyone in the EU:** the two Directives make it clear that the prohibition of discrimination also applies to nationals of third countries, but does not cover differences of treatment based on nationality, and is without prejudice to provisions governing entry and residence. This is an important element of the Directives, underlining the fact that the prohibition of discrimination protects everyone in the European Union and not only EU citizens. Some problems, however, do not derive directly from legislation, but from how the relevant legislation is applied on the ground.

The report also deals with **aspects specific to the racial equality directive 2000/43/EC** such as:

- the prohibition of discrimination on the basis of racial or ethnic origin;
- material scope of the Directive;
- role of equality bodies;
- protection for the Roma under the Directive

and examines the difficulties relating to these specific aspects in terms of their implementation and their interpretation.

**Main findings:** all the Member States have taken the necessary measures to transpose the two Directives into their respective domestic legal orders and to set up the procedures and bodies that are indispensable for the implementation of these Directives.

According to the joint report, the main challenge now is to increase awareness of the already existing protection and to **ensure better practical implementation and application of the Directives**. The Commission will, together with the Member States and their equality bodies, make a concerted effort to realise the full potential of the Directives in terms of protection of the fundamental right to equal treatment in the EU. However, legislation alone is not enough to ensure full equality, so it needs to be combined with appropriate policy action. Funding for awareness-raising and training activities is already available under the European Union Programme for Employment and Social Solidarity (Progress), but this work needs to be further strengthened by the Commission in cooperation with Member States to ensure tangible improvements in the awareness of rights throughout the EU. Strengthening the role of the national equality bodies as watchdogs for equality can make a crucial contribution to more effective implementation and application of the Directives.

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

1999/0253(CNS) - 18/05/2000 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the resolution drafted by Kathalijne Maria BUITENWEG (Greens/ALE, Netherlands) amending the proposal for the equal treatment directive. The main amendments are as follows: -discrimination on the basis of racial or ethnic origin which is presented as a difference in treatment on the grounds of religion, conviction or nationality is covered by the scope of this directive. -behaviour consisting of incitement, instructions or pressure to discriminate shall fall within the definitions of direct and indirect discrimination irrespective of whether any specific victim of discrimination is identified. -the directive applies to conditions of access to voluntary work and public duties, health and safety conditions, housing, and the exercise by any public body, including police, immigration, criminal and civil justice authorities, of its functions. -public authorities and employers shall keep and monitor statistics on all aspects of the employment and training of persons covered by the directive, such information to be periodically submitted to the independent bodies set up by the directive. -Member States will set up penalties such as the payment of compensation to the victim. - Compliance with the directive may be taken into account when Member States award contracts and grants. In public procurement tenders, authorities may include demands that discriminate in favour of persons falling within the scope of the directive. -The Commission's report on the application of the directive will indicate measures adopted for the benefit of women of different racial or ethnic origin. -there are provisions for monitoring by the European Monitoring Centre on Racism and Xenophobia.

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

1999/0253(CNS) - 25/11/1999 - Legislative proposal

PURPOSE : to give effect to the principle of equal treatment between people of different racial origins in the European Union in accordance with Article 13 of the Treaty establishing the European Community. CONTENT : Whilst the prime responsibility for combating racism lies with the Member States, the scope and enforceability of such provisions - and the ease of access to redress - vary greatly from one Member State to another. European legislation is required in order to ensure a common minimum level of legal protection, including rights of redress, for the fundamental right not to suffer racial discrimination. The principal objectives of the proposal are: - To provide a Community-wide definition of discrimination on grounds of racial and ethnic origin, on the basis of which equal treatment can be assured. This includes a concept of indirect discrimination, which should be read in conjunction with the provisions relating to burden of proof. The Commission proposes shifting the burden to the defendant in certain circumstances, as has already been done in the case of sex discrimination. The burden of proof will revert to the defendant once the plaintiff has established factual evidence of less favourable treatment caused by apparent discrimination. - To define a minimum number of areas of life, within the scope of the Treaty, in which the principle of equal treatment must be ensured: - conditions of access to employment and occupation, including selection criteria and recruitment conditions, - access to vocational training, - membership of workers' or employers' organisations, - social protection and social security, - social advantages, - education and training, - access to goods and service. There is no discrimination if racial or ethnic origin constitutes a genuine occupational qualification. To provide a minimum level of redress for people who have suffered discrimination - To ensure arrangements for the monitoring of discrimination in enterprises and in wider society. The proposal includes a study of the probable impact of the legislation. Member States must introduce laws to comply with the Directive by 31 December 2002.

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

1999/0253(CNS) - 29/06/2000 - Final act

PURPOSE: to implement the principle of equal treatment between persons irrespective of racial or ethnic origin. COMMUNITY MEASURE: Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. CONTENT: The Directive is part of a set of three measures implementing the new Article 13 of the EC Treaty, introduced by the Treaty of Amsterdam, aimed at combating discrimination in Member States. For the purposes of this Directive, the principal of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin. Within the limits of the powers conferred upon the Community, the Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to: - conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion; - access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; - employment and working conditions, including dismissals and pay; - membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided by such

organisations; - social protection, including social security and healthcare; - social advantages; - education; - access to and supply of goods and services which are available to the public, including housing. This Directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third country nationals and stateless persons on the territory of the Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned. Other provisions in the Directive relate to genuine and determining occupational requirements, positive action, and minimum requirements. Moreover, remedies and the enforcement of obligations under this Directive are considered as well as the burden of proof in relation to determining whether direct or indirect discrimination has occurred. Member States are requested to introduce measures into their national legal systems to prevent victimisation and they have the responsibility for the dissemination of information in relation to the Directive. Member States are also requested to promote social dialogue between the two sides of industry with a view to fostering equal treatment. Dialogue with non-governmental organisations is also promoted and Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. Finally, Member States shall communicate to the Commission by 19.07.2005, and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive. ENTRY INTO FORCE: 19.07.2000. TRANSPOSITION INTO NATIONAL LEGISLATION: 19.07.2003.

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

1999/0253(CNS) - 31/05/2000 - Modified legislative proposal

On 25 November 1999, the Commission adopted a package of proposals, under Article 13 TEC, to combat discrimination. The Committee of the Regions adopted its opinion on the package on 12 April 2000 and the Economic Social Committee on 25 May. The European Parliament adopted its opinion on the draft directive on 18 May 2000. In light of those opinions, the Commission has now modified its original proposal. The Commission has clarified that the Directive can apply to legal as well as natural persons by replacing the term 'individuals' by 'persons' throughout the text. Also, the definition of indirect discrimination has been brought closer to the jurisprudence of the European Court in the O'Flynn case. Incitement to discriminate has been clearly deemed to be discrimination. On the material scope, the text has been amended to make clear that it applies in the public and private sectors, including public bodies, and additions have been made to clarify the coverage of unpaid and voluntary work, practical work experience, healthcare and housing. The provision on positive action has been brought more closely into line with Article 141.4 of the Treaty. The value of conciliation procedures to the defence of rights has been highlighted. The article on information has been supplemented to tackle the problem of differences of treatment based on nationality, religion or belief being a disguised form of discrimination on grounds of racial or ethnic origin. The article on social dialogue has been extended to cover non-governmental organisations. Furthermore, the activities of the independent bodies have been clarified. The reporting system has been strengthened, with account being taken of the role of the European Monitoring Centre on Racism and Xenophobia. Finally, the recitals have been modified to bring them into line with the changes in the body of the text, to refer to past acts of the Council and the European Parliament and to highlight the importance of integrating the fight against discrimination on grounds of gender.

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

1999/0253(CNS) - 31/10/2006 - Follow-up document

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 to Article 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.