

Annual report on equality and non-discrimination 2003

Towards diversity

Fundamental rights & anti-discrimination



Employment & social affairs



European Commission

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PREFACE

BY ANNA DIAMANTOPOULOU
Commissioner for Employment and Social Affairs

The European Union has come a long way since 1997, when Heads of State or Government gave it the power to take action to combat discrimination on a whole new range of grounds. We have adopted strong and innovative legislation, which the Member States are in the process of transposing into their national laws. We have put in place a solid framework of supporting action, looking at the mechanisms we need to deliver equality objectives, developing thinking in sensitive areas such as data collection and public procurement, and reaching out to the new Member States to help them on their path to EU membership. We have put in place structures to exchange ideas and good practices between people fighting discrimination in the different Member States. And we have supported civil society at European level in its work to promote the values of equality and non-discrimination in everyday life.

The primary responsibility for fighting discrimination lies within the Member States – with national, regional and local authorities, with civil society organisations and with us all as individual citizens. But Europe can give – and has given – a strong push in the right direction. This report provides an overview of what Europe is doing to support efforts in the Member States.

We have much to be proud of. But there is still a long way to go. Nearly 30 years after the directive on equal treatment of women and men in employment, we still cannot say that we have achieved real equality, even though we have made a lot of progress. It is important that we learn from our experience of striving for gender equality to make our progress in fighting discrimination on other grounds as quick as possible.

It is a serious challenge. Equality is simple in principle, but delivering it is complex in practice. I hope that this report will give readers a clear idea of some of the steps being taken right across the Union.



For Diversity



Against Discrimination

Introduction > The anti-discrimination framework

A concerted effort is being made in the European Union to stamp out discrimination and to make the basic principle of respect for fundamental human rights a reality. New laws will soon come into force in all EU countries to protect the right of everyone in the EU to be treated equally and fairly no matter where they are from or where they live and work.

European laws – called directives – banning discrimination on grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation were agreed in 2000. Governments in every country must now modify their own national laws to bring them into line with these directives before the end of 2003. Each country can decide how best to do this according to their national traditions and legal systems.

One of the two directives concerned is about achieving racial equality. It prohibits discrimination against anyone because of their racial or ethnic origin and covers most areas of everyday life in which unfair treatment might occur. These areas include access to jobs, conditions at work, rates of pay and the rights and benefits linked to a job. They also include access to education and training, social security benefits and healthcare and equal rights to buy or rent goods and services, including housing.

Governments have agreed to introduce the measures necessary to comply with this directive by 19 July 2003. In some countries, this means passing new laws, in others amending existing ones. In all countries, governments also have to designate a body to provide practical and independent support and guidance to victims of racial discrimination, to help them follow up their complaints and get a just settlement. This means creating a body to perform this role if one does not already exist.

The second directive is about establishing equal rights and equal opportunity for people

in employment and training, which is key to what people achieve in life and how well they live. The directive, therefore, outlaws discrimination on grounds of a person's religion, disability, age or sexual orientation. In this case, governments have agreed to make the necessary changes to their national laws by 2 December 2003, although they can ask for an additional period of up to three years to make the changes needed to deal with disability and age discrimination. But if they do this, they have to report each year on the steps they are taking to tackle discrimination on these grounds and the progress they are making to bring their laws fully into line with the directive.

Establishing an effective set of laws against discrimination is an essential part of stamping out unfair treatment. It not only gives protection to those discriminated against but it creates a climate in which people are discouraged from treating minority groups unfairly. But laws by themselves are not enough. If discrimination is to be eliminated, attitudes and behaviour have to change. This was recognised when the directives were agreed. An action programme aimed at helping to bring about these kinds of change was therefore launched at the same time. Its purpose is to support activities which combat discrimination and its underlying causes and which raise awareness of the problem and the measures being taken across the Union to tackle it.

The action programme runs until 2006. It finances studies aimed at improving our understanding of discrimination and at assessing the effectiveness of measures to promote equal treatment. It funds networks of people and organisations from across the EU to share information, especially about good practice, between one another. And it supports activities to raise the awareness of people, to inform them of their new rights and obligations under the law and to challenge discriminatory attitudes and behaviour.



BACKGROUND TO THE DIRECTIVES ON RACIAL EQUALITY AND EQUALITY IN EMPLOYMENT

The EU directives* combating discrimination follow directly from the Treaty of Amsterdam and were unanimously agreed by the EU governments within 18 months of the Treaty entering into force in May 1999. The Treaty, which sets out the principles and objectives of the European Union, affirms that:

'The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms [...] principles which are common to the Member States.'

It emphasises the fundamental importance of non-discrimination and extends this principle to other areas in addition to nationality and equal pay for men and women, which were dealt with before. In particular, it gave the European Union powers to take action against discrimination on a range of grounds. These powers are set out in Article 13:

'Without prejudice to the other provisions of this Treaty, and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission, and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.'

Outline of the report

The publication of this report is one of the awareness-raising activities of the action programme. The first part of the report explains the main features of the directives and the measures they identify as being necessary to combat discrimination effectively. It also reviews what governments across the European Union are doing to put the directives into practice. It describes the legal changes being made to outlaw discrimination and the supporting action being taken to ensure that victims have somewhere to go for help and suitable means of redress. The purpose is both to indicate what is happening and to draw attention to particular measures being introduced which can serve as examples of good practice to other governments trying to achieve the same objectives.

The second part looks at the action programme. It describes some of the cooperation projects being undertaken by people in different EU countries to tackle discrimination and its root causes. Again the purpose is to highlight practical examples of the kind of action which can be taken to reduce discrimination and to increase the chances of people being treated equally and fairly irrespective of their personal characteristics. It also reviews the activities of the networks of non-governmental organisations (NGOs) financed by the programme which link up bodies across the EU active in fighting discrimination in its various forms.

MOTIVATION BEHIND THE DIRECTIVES ON RACIAL EQUALITY AND EQUALITY IN EMPLOYMENT

The basic principle underlying the directives is that everyone should be entitled to be treated equally and fairly. A primary responsibility of the EU is to defend this fundamental human right. As both directives make clear, this is essential if the EU is to develop as 'an area of freedom, security and justice'. It is also essential if the parallel principle of ensuring equality of opportunity is to be maintained and if everyone is to be given an equal chance of realising their potential and of achieving what they are capable of.

This, in turn, is important if the wider aims of the EU are to be achieved. According to the directives, discrimination can 'undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity'. It can also jeopardise the aims of the European employment strategy which are to foster 'a labour market favourable to social integration' and to support 'older workers, in order to increase their participation in the labour force'.

* Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (27/11/00) and Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (29/06/00).

Part I > The directives on racial equality and equality in employment

This part of the report is divided into two sections. The first explains the main features of the two directives on equality, the one dealing with racial discrimination and the other with discrimination in employment. The second section describes what national governments across the European Union are doing to put the directives into effect.

Main features of the directives

Scope of the directives

The two directives outlawing discrimination cover everyone living or working in an EU country, whether they are officially resident there or not. Protection, therefore, is not confined to EU nationals but extends to people from outside the EU who might be visiting for a period, whatever their nationality. (The directives do not, however, affect rules on immigration and do not cover differences in treatment on grounds purely of nationality.)

Both directives prohibit discrimination in employment and training, areas in which equality of opportunity is vital if people are to have a fair chance of fulfilling their potential, of attaining the standard of living they are capable of achieving, and of playing their full part in the economy and in social life. Under the two directives, therefore, everyone has the right to the same 'conditions of access' to jobs as other people, irrespective of their racial or ethnic origin, their religion or belief, their disabilities, their age or their sexual orientation.

This means that whatever their personal characteristics in these respects everyone has to be treated equally and fairly when they apply for jobs, seek promotion or set up in business for themselves. They also have the right to the same terms and conditions of employment as everyone else when they are in work, including, in particular, the same rates of pay and the same protection against dismissal. They have a similar right too to be trained, to gain work experience and to get career guidance. And they have the same right as everyone else to become members of trade unions or professional bodies (such as associations of lawyers, doctors or architects) and the same entitlement to any benefits and privileges.

The ban on discrimination in employment and training applies universally, to people in the private sector as well as the public sector, no matter what size of firm or organisation they work in or apply for a job in. It applies to all 'occupations', which means every job which someone might be doing whether they are counted as being an employee or self-employed. It applies to people working part-time as well as full-time and whatever the contract of employment they have (including fixed-term contracts and those covering a period of training). It applies to employment agencies as well as other businesses and to bodies responsible for awarding qualifications, licences or permits which are required to do a particular job or undertake a particular activity (such as driving a taxi or trading from a market stall). And it also covers all



forms of vocational training, whether at the place of work or in colleges, universities or specialist institutes, including the training needed to do different types of job or follow particular professions and including degree courses as well as lower level ones.

At the same time, the directives make clear that they do not force employers to take on anyone who is not competent to do a particular job or is incapable of undergoing the training needed to do the work involved.

The racial equality directive also covers other areas of possible discrimination, giving people from all ethnic backgrounds comprehensive protection against unfair treatment in their daily lives. According to the directive, therefore, someone's racial or ethnic origin should not affect their entitlement to social security and healthcare and to what are called 'social advantages' or their access to education and goods and services.

This means that no one should be discriminated against because of their racial or ethnic origin when it comes to pensions and other social benefits, as well as the full range of social advantages. These cover things like housing benefits, concessionary fares or fees, subsidised meals, grants for education or training, free prescriptions, reduced charges for services and so on. It also means that they have an equal right to attend school and undertake particular courses of study and to buy or rent all kinds of goods and services which are available to the public at large, including housing and entry to pubs and clubs.

Defence of rights and the right of redress

The directives make clear that everyone who is a victim of discrimination or who considers that they have been unfairly treated because of their personal characteristics should have adequate means of legal protection and an effective right of redress (i.e. they should be

able to get things put right). It is open to the government in each country to decide whether this is through judicial procedures – i.e. through the system of criminal or civil justice – or through administrative arrangements, such as tribunals. Governments can also choose to encourage conciliation and set up a system for sorting out cases of unfair treatment voluntarily through discussion instead of through the legal route.

The directives impose an obligation on governments to ensure that people bringing complaints of unfair treatment have the right to be supported and represented by their trade union or by specialist associations or organisations. At the same time, they have to make sure that the sanctions to be applied in cases where discrimination has occurred are '*effective, proportionate and dissuasive*'. In other words, the penalties for discrimination should bear some relationship to the harm done and should act as a deterrent against behaviour of this kind.

To strengthen protection further, governments are required to introduce legislation under which the burden of proof in civil cases (i.e. where criminal charges are not involved) is shared between the person claiming to have been treated unfairly and the person against whom the complaint is being made. This means that the responsibility for proving or disproving the case is divided between the two. The person making the complaint has first to show that the facts are consistent with discrimination having occurred (that there is *prima facie* evidence of this) and that there is therefore a case to answer. The person accused of discrimination then has to demonstrate that they did not act unfairly and that there was a legitimate reason for what they did. The onus is, therefore, on the accused to convince the court or tribunal that they did not behave in a discriminatory way. And the person claiming discrimination is not expected to produce conclusive proof of this, something which they are unlikely to be in a position to do.



SHARING THE BURDEN OF PROOF

An example shows why sharing the burden of proof in discrimination cases is important. A number of people of non-European origin working in a company in the EU apply for promotion each time a more senior job becomes vacant. Each time they are overlooked and the job goes to someone of European origin. If the people being promoted seem no better qualified than those being rejected all the time, then there is *prima facie* evidence of racial discrimination. But it would be difficult to prove this conclusively without being able to make a detailed comparison of the qualifications of those being promoted and those not being and of their suitability for the job.

If, in fact, there are reasons why particular people were promoted which have nothing to do with their ethnic origin, the person best placed to know this is the person making the decision – that is the manager of the company concerned. Indeed, he or she might be the only one who knows what the real reasons are, so it is arguably only right that they should have to demonstrate that they did not behave in a discriminatory way.

Governments are obliged, in addition, to ensure that people complaining about discrimination are adequately protected from victimisation or retaliation, which if unchecked could deter them from exercising their right to equal treatment. This also goes for witnesses in discrimination cases who need to receive the same protection from victimisation to encourage them to give evidence. Governments are, therefore, required to put measures in place to dissuade those accused of discrimination from reacting in this way. These measures, in particular, need to protect employees against the possibility of dismissal if they lodge a complaint or take legal action against their employers or if they give evidence in cases of unfair treatment (see Box).

Bodies for the promotion of equal treatment

To increase the level of protection against discrimination even more, the racial equality directive requires governments to designate an independent body, or bodies, to help people suffering racial discrimination to pursue their complaints. Governments have to give these bodies the power to conduct independent surveys on discrimination and to publish independent reports on the subject, so that they can help increase understanding of the problem and contribute to finding solutions as well as providing practical assistance to victims.

Positive action

The directives recognise explicitly that outlawing discrimination will not necessarily be enough by itself to ensure genuine equality of opportunity for everyone in society. Specific measures might be called for to compensate for disadvantages arising from a person's racial or ethnic origin, age or other characteristics which might lead to them being treated unfairly. For example, ethnic minorities may need special training and specific help to have a reasonable chance of finding a job. Putting on training courses or making different arrangements especially for them are ways of improving their chances.



EXAMPLE OF VICTIMISATION

An employee working in a company gives evidence against the personnel manager accused of discrimination because of the way job applicants are questioned to find out about their sexual orientation. If the employee is subsequently dismissed for no substantive reason, then he or she has the right to take legal action against the company on grounds of victimisation.



The directives allow positive action of this kind to be undertaken and do not regard it as infringing the principle of equal treatment.

Reasonable accommodation

While positive action to compensate for the disadvantages of particular groups is optional, accommodating the needs of people with disabilities is a compulsory part of the directive on equality in employment. The reason is the same as the argument for positive action, only stronger. Without measures to accommodate their needs, people with disabilities could be so disadvantaged that they are unable to work at all. The directive, therefore, requires employers throughout the EU to take whatever steps are 'reasonable' to enable people with disabilities to work, advance in their careers and participate in training, so long as this does not involve excessive financial and other costs.

Specific provisions on age discrimination

In a similar way, the directive also recognises that it is sometimes justifiable to treat people in particular age groups differentially. It, therefore, gives the go-ahead for governments, for example, to limit access to jobs or training programmes to those above a certain age if these are specially designed for older people who are disadvantaged on the labour market. The same goes for measures aimed at helping young people get into work. It also allows employers to specify that people need to have a certain number of years experience to be considered for particular jobs or to be below a certain age if the job requires a long period of training (see Box). But, in all cases, not only does there have to be a good reason for treating people differentially in this way but it has to be necessary to achieve the end-objective.



REASONABLE ACCOMMODATION FOR PEOPLE WITH DISABILITIES

The equality in employment directive contains an explicit provision for people with disabilities to ensure that they enjoy equal rights to employment and training:

'In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.'

For employers to meet their legal obligation under the directive and to accommodate the needs of people with disabilities does not necessarily involve large expense. Indeed, many of the measures which they can introduce to make it easier for people with disabilities to work often entail little or no cost.

Examples include relocating people who have difficulty climbing stairs to a ground floor office or providing special computer software for those who are partially sighted to enable them to read computer screens better. Work or training can also be reorganised to accommodate people with disabilities, often with little or no adverse effect. For example, flexi-time arrangements can be introduced for people who have frequent need of time off for treatment or oral rather than written tests can be held at the end of a training course for those who have physical difficulty to write.



JUSTIFICATION OF DIFFERENCES OF TREATMENT ON GROUNDS OF AGE

The equality in employment directive allows governments to exempt differences in treatment on grounds of age from the coverage of anti-discrimination legislation if *'they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary'*.

These differences include:

- (a) *the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;*
- (b) *the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;*
- (c) *the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.*

This means, for example, that it is justifiable for an employer to require someone to have a number of years of experience of management at a lower level before considering them for a senior managerial position. It also means that it would be justifiable for a hospital not to employ someone in their late 50s as a trainee doctor if the retirement age for doctors is 65 and it takes several years of training to qualify. But the directive also makes clear that employers must demonstrate that any differences in the way they treat people are reasonable and can be justified objectively by the facts of the case.

Dissemination of information and encouragement of dialogue

Governments are obliged by the directives to publicise the legislation introduced against discrimination *'by all appropriate means'* and of making sure that everyone is aware of its contents and the protection it gives, as well as the penalties for infringement.

At the same time, they are required to take steps to encourage dialogue between *'the two sides of industry'* – i.e. employer and employee organisations – as well as with NGOs in order to spread the principle and practice of equal treatment. Governments



should, therefore, encourage working practices, codes of conduct and collective agreements to be adopted which emphasise the importance of non-discrimination and which are firmly based on the principle of treating everyone equally and fairly.

The definition of discrimination

The definition adopted in the directives of what counts as direct discrimination is a common sense one: it occurs whenever someone is treated less favourably than someone else *'is, has been or would be treated in a comparable situation'* on grounds of racial or ethnic origin, age, religion or belief, disability or sexual orientation. Unfair treatment is most likely to occur because of a person's own characteristics but it also might be because of their association with someone, for example, of a particular ethnic origin. This is equally covered by the directives (see Box for examples).

The directives also ban 'indirect' discrimination. This is where *'an apparently neutral provision, criterion or practice'* results in people with particular characteristics, in terms of their ethnic origin, age and so on, being unfavourably treated compared to others. Indirect discrimination is outlawed unless it can be shown to be both *'objectively justified by a legitimate aim'* and the means to achieve this legitimate aim are *'appropriate and necessary'* (see Box for examples).



CASES OF DIFFERENT FORMS OF DISCRIMINATION

Direct discrimination

A shop owner who refuses to hire suitably qualified people as shop assistants simply because they are of a particular racial or ethnic origin and, in his view, might lose him customers is guilty of direct discrimination.

An employer who specifies in a job advert that only young people should apply even though the job in question can be done perfectly well by an older person is also guilty of discrimination.

The manager of a hotel who refuses admittance to the bar to someone whom he believes to be associated with gypsies, or members of the Roma or 'travelling' community, and for no other reason than this, is equally guilty of discrimination.

Indirect discrimination

A translation company insists that all those applying for jobs as translators have driving licences because there is an occasional need to deliver or collect work from clients. Since this bars some people with disabilities from applying and since driving is not a core requirement for doing the job, the company is effectively discriminating against this particular group of people, unless it can demonstrate that there is an objective and justifiable reason for the ban.

A department store introduces a ban on its employees wearing hats when serving customers. The effect of this is to bar people whose religious beliefs require them to cover their heads, such as Muslim women, from working in the shop. The store is guilty of indirect discrimination, unless it can demonstrate that there is an objective and justifiable reason for the ban.

Instruction to discriminate

A dentist who instructs her receptionist not to register any patients from a particular part of the city where the large majority of residents belong to an ethnic minority community is guilty of discrimination in the same way as if she had directly turned away these patients herself.

Harassment

Someone with mental health problems is constantly taunted by fellow workers because she has spent a short time in a psychiatric hospital. If she informs her superiors of what is happening and nothing is done about it, then she is entitled to bring a case of discrimination against her employer because of the harassment suffered.

A gay office worker is subjected to continuous verbal abuse about his sexual orientation from other people in the office. If his complaints to the office manager are ignored, then he too is entitled to bring a case of discrimination against his employer.

The extension of protection to cover indirect discrimination is an important addition to the laws which at present exist in many countries. It means that people are protected against unfair treatment even when this is unintentional, when those responsible for introducing a particular practice, for example, did not realise the effect it would have on different people. What matters, therefore, is not the intention but the consequences.

The directives ban, in addition, *'instruction to discriminate'*, which is where someone orders someone else to act in a discriminatory way, and *'harassment'*, where someone behaves *'with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment'* (see Box for examples).



Special exemptions

While the directives are intended to outlaw discrimination across the Union in respect of all aspects of employment and training, they also give governments the option of excluding specific cases where differences in treatment can be justified by special circumstances. These cases are very much the exception. They are limited to a small number of jobs where one of the grounds for discrimination – racial or ethnic origin, religion or belief, disability, age or sexual orientation – is actually *'a genuine and determining occupational requirement'*, or, in other words, an essential characteristic of being able to do the job. Even then, the directives emphasise that the reason for treating people differently must be *'legitimate'* and the requirement *'proportionate'*, in the sense that it must not go any further than what is strictly necessary to do the job

Examples include acting roles or modelling jobs, where the need for authenticity or realism might require someone, for example, of a particular ethnic origin or age. But it is difficult to think of too many examples in other areas. The directive on equality in employment, however, does enable governments to allow churches or similar organisations to employ people who share their religion or beliefs in cases where this is *'a genuine, legitimate and justified occupational requirement'*. They might, therefore, be allowed to restrict some positions involving contact with the public to people with the same religious beliefs but not necessarily other jobs, such as catering or general office work. The directive also enables governments to exclude the armed forces from the scope of legislation relating to disability and age discrimination.

Implementation of the directives on equality in EU Member States

Governments in all EU countries are taking steps to comply with the directives on equality. This is as true in countries where legislation outlawing discrimination was already fairly extensive before the directives were agreed as in those where it was more limited. Even in countries where arrangements for combating discrimination were well established, these did not meet the requirements of the directives in every respect and needed some modification. This was particularly so as regards the directive on equality in employment which outlaws discrimination on grounds of religion, age, disability and sexual orientation. While laws had been introduced in several countries to protect people with disabilities and particular religious beliefs, this was much less the case as regards age and sexual orientation.

The steps taken so far vary a lot between countries. Differences in the legislation already in place and in the arrangements which exist for protecting and assisting the victims of discrimination mean the responses to the directives also differ. In a number of countries, including Belgium, Denmark, Ireland, the Netherlands, Sweden and the United Kingdom, a fairly extensive system of protection against racial and ethnic discrimination in particular has been in operation for some years. In others, the arrangements in place were more limited at the time the directives were agreed. Even though the right of people to be treated equally in these countries is included in their constitutions, this right has not always been fully guaranteed by more detailed legislation and by effective arrangements for protecting people against discrimination.

Partly because of these differing situations, there are also differences in the timetable adopted for making the legal and other changes to provide the protection required by



the directives. In some countries, moves were already under way to extend the system of protection before the directives were agreed. In a number of them, new laws have already been introduced and existing ones modified to provide the level and extent of protection required. In Belgium, in particular, a new law was passed on 6 January 2003 prohibiting all forms of discrimination and going beyond the minimum requirements of the directives in a number of respects. In other countries, changes in legislation and the other measures required are still under consideration.

The purpose here is not to examine in detail what is happening in each Member State and to list the changes made or being considered in any exhaustive way. Instead, it is to describe selected measures introduced, or being introduced, in particular countries in order to illustrate the kind of action being taken. These measures and the arrangements adopted for putting them into place might also serve as examples to governments still in the process of deciding how best to meet their obligations under the directives.

This review of the action being taken begins with the process of consultation taking place to ensure that the views and interests of those most likely to be affected are taken into account before new laws are passed. This includes organisations representing those vulnerable to discrimination as well as employers and trade unions. It then considers the main features of the new laws which have been introduced or are planned as well as the measures taken to support them.

Process of consultation to prepare the legislation

The extent of consultation before deciding the details of the new laws has varied greatly between countries. In many of them, a concerted effort has been made to publicise the contents of the directives and to seek the views of interest groups, employers, trade unions and others who might have useful views on the subject. Moreover, in a number of countries, these organisations have also been directly involved in the process of drafting the legislation or in reporting on the measures needed to provide the protection required (see Box).



THE CONSULTATION PROCESS IN DIFFERENT COUNTRIES

In Denmark, various ministries, local authorities, the Centre for Human Rights, the Council for Ethnic Minorities and employer and trade union representatives were all included as members of an expert committee to consider new legislation on racial equality following the publication of the directive. The report produced by the committee was then widely circulated for comment. On the basis of the report, two bills were presented to parliament in January 2003, between them aiming to provide the protection required by the two directives.

In Finland, the government set up two working groups to examine the changes in legislation required to comply with the two directives. The group on racial equality was made up of the Ombudsman for Minorities and the Ombudsman for Equality, employer and employee representatives and two NGOs (the Finnish League for Human Rights and the Refugee Advice Centre) as well as representatives from relevant ministries. In addition, representatives of ethnic minorities and migrant groups were given a chance to comment on its

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proposals. Following this, a single bill on equality covering all grounds of discrimination was submitted to parliament at the end of 2002.

In Sweden, laws prohibiting discrimination in employment on grounds of ethnic origin, disability and sexual orientation came into force in 1999. These laws, however, need to be modified and extended to provide the protection required by the directives, and a report was produced by a committee of inquiry on how best to do this. Organisations representing the groups affected as well as employer and employee representatives, the ombudsmen against discrimination, universities and churches were given the opportunity to comment on this report.

There was equally wide consultation in the Netherlands of new legislative proposals for tackling the various forms of discrimination covered by the directives. The draft bill on equal treatment of people with disabilities was sent for consideration to 25 organisations, including employer and trade union associations, education establishments as well as organisations representing people with disabilities themselves. The draft bill outlawing age discrimination in employment involved the Equal Treatment Commission, the Foundation of Labour and the council for civil servants and employees in the consultation process.

There has been extremely wide consultation in the UK. The government has made considerable efforts to publicise the issues involved and to get the views of the organisations, companies and people affected on how existing legislation should be modified to provide the protection required by the directives. Consultation in Great Britain (i.e. in England, Wales and Scotland – there are separate legislation and procedures in Northern Ireland) was initiated by the publication of *Towards equality and diversity*, setting out the government's general approach and explaining in simple language the main features of the directives and the various issues involved. This process resulted in over 850 submissions by individuals, businesses, voluntary organisations and representative bodies. It was followed up by the publication of *Equality and diversity – The way ahead* which set out the government's proposals for new regulations and offered a further opportunity for people to give their views. It was accompanied by a third consultative document, *Equality and diversity – Making it happen*, aimed at getting views about the arrangements and the specialised bodies best suited to supporting legislation. All of these consultative documents were published in a number of languages other than English, including Hindi, Chinese and Arabic, to reach ethnic minorities, as well as in a form readable by people with disabilities. They were also combined with a series of events around the country, including round table discussions between ministers and representative organisations, to get more people involved and widen the range of views expressed on the proposals.

A separate consultation on similar lines has been carried out in Northern Ireland. *Promoting equality of opportunity – A Single Equality Bill for Northern Ireland* (May 2001) consulted on general principles and *Promoting equality of opportunity – Implementing EU obligations in Northern Ireland* sought views on proposed draft legislation.

Extent of protection provided

Governments in all Member States are in the process of taking action to conform to the directives. A few have already completed the process or have almost done so, such as Belgium, Denmark, France, the Netherlands, Finland and Sweden. In a number of countries, the extent of protection against discrimination either goes further than specified in the two directives or will go further once the planned legislation has been put into place. In particular, the ban on discrimination extends explicitly to nationality, or national origin, as well as racial or ethnic origin and, in some cases, to other grounds as well (see Box).

In some countries too, legislation outlawing discrimination on other grounds apart from racial or ethnic origin does not apply only to employment and related areas but extends to access to goods and services – or at least to particular kinds of goods or services (see Box).



EXTENDING THE GROUNDS FOR DISCRIMINATION

In Belgium, under the new federal law passed at the beginning of 2003, discrimination on grounds of physical characteristics, marital status, place of birth and health is outlawed as well as discrimination because of ethnic origin, religion or belief, disability, age or sexual orientation.

This is also the case in France, where the law relating to discrimination in respect of employment passed in November 2001 covers all these grounds plus discrimination on grounds of political belief and trade union activity. These latter two grounds are also included in the proposed Labour Code in Portugal.

All of the possible grounds for discrimination listed above are covered in Finland as well under the Employment Contract Act of July 2001, which in addition prohibits discrimination on grounds of language. The proposed Equality Act due to come into force this year with the aim of meeting the requirements of both directives in a single piece of legislation is also intended to cover all these grounds.

WIDENING THE SCOPE OF PROTECTION

In Belgium, the federal law passed in January 2003 bans discrimination in respect of access to goods and services on grounds of religion, disability, age and so on as well as on grounds of ethnic origin. Moreover, it also stipulates that everyone should have an equal right to participate in social, cultural and political activities as well as economic ones.

In France, the law passed at the beginning of 2002 outlaws discrimination in access to housing on a wide range of grounds, including nationality, physical appearance, political belief, health and trade union activities as well as ethnic origin and the grounds specified in the employment equality directive.

In the Netherlands, the bill before parliament establishing the right of people with disabilities to be treated equally includes their right to have equal access to public transport as well as to employment and training.

In Sweden, the government bill published in March 2003 covering ethnic origin, religion or belief, sexual orientation and disability provides for equal access to goods and services, including housing, in addition to jobs and the related areas specified in the employment equality directive. In addition, provisions relating to religion or belief cover entitlement to social protection and social advantages as well.

In Great Britain, protection against racial discrimination extends to unequal treatment in carrying out public functions. It also specifies that everyone, whatever their race, has an equal right of access to facilities as well as goods and services. This ensures that protection applies to the use of premises or amenities, such as a park, a swimming pool or any kind of space to which there is public access as well as to services as generally understood. Similar protection exists in Northern Ireland.

Defence of rights and the right of redress

Countries differ in their legal systems and institutions as well as the point from which they start in meeting the requirements of the directives. These differences affect the way in which legislation is being changed to provide the protection required against discrimination as well as the arrangements being established to deal with cases of unfair treatment. What matters is not so much the specific detail of these arrangements and legislative changes, but that they are effective in protecting people from being unequally and unfairly treated and give them suitable means of redress. This means that the arrangements have to be accessible to people needing to make use of them. They also need to offer them a realistic possibility of bringing the discrimination to an end in a satisfactory way as well as reasonable compensation for the distress caused and any financial loss suffered.





ARRANGEMENTS FOR DEALING WITH CASES OF DISCRIMINATION

In Austria, under the draft amendments to legislation, people complaining of discrimination will be able to bring their case before the equality body and/or the civil courts. The equality body will have the power to begin conciliation procedures and make non-binding decisions.

In the Netherlands, victims of discrimination can take their complaint to the Equal Treatment Commission (ETC) without having to pay anything. The ETC cannot award damages and its decisions are not legally binding, but they are generally followed. It can, however, bring legal action itself if its recommendations are not followed.

In Italy, under the present Immigration Act, which might be amended to provide the protection required by the directives, a special effort is made to avoid 'all unnecessary formality' when hearing cases of discrimination. The judge in such cases has the power to issue an interim order to stop the discrimination from occurring.

In Ireland, those suffering discrimination can take their case to the Director of Equality Investigations (ODEI, the equality tribunal) and, in relation to employment, either to the ODEI or the Labour Court. Both can refer the case to mediation by an equality mediation officer of the ODEI, unless either party objects. After investigation, an equality officer or the Labour Court can require compensation and/or order a specific course of action to be taken.

In Sweden, victims of discrimination can take their case either to the Labour Court or, where employment issues are not involved, to a district court. Both make efforts to mediate between the parties and reach a voluntary settlement.

In Great Britain, cases of discrimination relating to employment are heard by employment tribunals where procedures are relatively informal with few restrictions on representation, where, for the most part, no fees are payable to begin a case and where usually no costs are awarded against the applicant if unsuccessful. A central aim of policy on resolving disputes is to help the two sides involved reach a settlement and there is an independent conciliation service, ACAS, to assist if necessary. A similar system exists in Northern Ireland, where complaints on grounds of sex, race and disability are heard by industrial tribunals and those relating to religious belief and political opinion by the Fair Employment Tribunal.

To meet these objectives, governments in many countries have established special tribunals for dealing with cases of discrimination, especially in respect of employment. These tend to be less formal and legalistic as well as less costly than normal civil courts and therefore more accessible to those suffering discrimination. They can not only order the discriminatory behaviour to stop and award compensation to the victim, but, in a number of cases, provide mediation between the two sides (see Box). This may lead to the case being settled by agreement rather than by compulsion, which may mean that relations between the two parties involved do not break down completely. As a result, the person bringing the case might, for example, experience less resentment of the action they have taken and may, therefore, feel more able to continue working at the same place.



PROVIDING HELP AND SUPPORT FOR VICTIMS OF DISCRIMINATION

In both Belgium and France, under the recent legislation introduced, trade unions and other organisations which have been in existence for at least five years are allowed not only to represent the person complaining of discrimination but also to take legal action themselves on their behalf.

Also in France, a free telephone service (the 114 number) was introduced in May 2001 enabling people suffering racial discrimination or who have witnessed this to call for information on their rights and advice on what to do and how to get help. Callers can remain anonymous if they wish. A similar service has been introduced in Belgium by the Centre for Equal Opportunities and Opposition to Racism (CECLR).

In the Netherlands, anti-discrimination bureaux have been set up in over 40 cities and in Sweden in 13 cities so that people who are victims of racial discrimination can go to get information on what they can do to prevent it and on the legal action they can take to seek redress.

Supporting victims of discrimination

As recognised by the directives, for arrangements to be effective, they also have to include sufficient help and support for people suffering discrimination to give them the possibility and confidence to take action. Victims of discrimination need, therefore, to be able to call upon specialist organisations for assistance under the law and to have these represent them in court or tribunal hearings. Their right to do so is explicitly included in the legislation being introduced across the EU (see Box).

In the case of discrimination on racial or ethnic grounds, governments are required to designate an independent body not only to assist people being unequally treated but also to carry out a number of other functions. These include raising awareness of the problem, increasing understanding of it and helping to find ways of combating discrimination. In a number of Member States, independent bodies have already been established to fulfil this role or are on the point of being so (see Box).





ESTABLISHING INDEPENDENT BODIES TO ASSIST IN COMBATING DISCRIMINATION

In Great Britain, the Commission for Racial Equality was established in 1976. Its functions include eliminating discrimination, promoting equality of opportunity and good relations, issuing guidance and advice to individuals and businesses about their legal rights and obligations and monitoring the effectiveness of legislation. More recently, the Disability Rights Commission was set up in 2000 with similar responsibilities following the passing of legislation to protect people with disabilities. In Northern Ireland, a single Commission for Equality was established in 1999. The government is exploring the possibility of moving towards a single commission for Great Britain in the longer term and is consulting widely about the merits of this.

In Belgium, the Centre for Equal Opportunities and Opposition to Racism (CECLR) was set up in 1993 to help combat racial discrimination. Its activities include carrying out surveys, publishing reports, submitting recommendations on discrimination issues to government, organising training and coordinating dialogue with NGOs. Under the new laws, it was given responsibility for dealing with all the other forms of discrimination covered in addition to that based on ethnic origin. Its role was also extended by enabling it to take up complaints from the victims of discrimination, mediate between the parties involved and monitor the implementation of the two new laws banning discrimination.

In the Netherlands, the Equal Treatment Commission was set up in 1994 as an independent body to deal with complaints of discrimination on grounds of religion, sexual and political orientation, nationality and marital status as well as ethnic origin. Its responsibilities will be extended to cover age and disability once the two bills being considered at present are adopted. It can undertake investigations on its own initiative to see whether there is systematic discrimination in particular public services or parts of the private sector and it can take legal action, if necessary, to bring these to an end. It is required to publish annual reports on its activities and to report every five years on the way legislation is working.

In Ireland, the Equality Authority was established in 1999 as an independent body under the Employment Equality Act. Its mandate includes working for the elimination of discrimination and promoting equality of opportunity. It is also required to publicise the features of the legislation which exists against discrimination. An additional organisation, Comhairle, was set up in June 2000, as a network of citizen information centres, to advise disadvantaged groups, such as ethnic minorities, on how to exercise their rights to social services. It also provides information on equipment and the design of buildings to ease the problems of people with disabilities.

In Sweden, the Ombudsman for Ethnic Minorities was established in 1986 to give advice and assistance to people suffering discrimination, to help them take cases to court and to monitor compliance with legislation. The Ombudsman for Disability was set up in 1994 and that for sexual orientation in 1999 with the same functions.

In Finland, the Ombudsman for Minorities was established in January 2001 with similar functions as in Sweden. It is proposed to strengthen the powers of the office and create an additional body, the Board of Discrimination, with the ability to enforce decisions of the Ombudsman and forbid discriminatory action.

In Luxembourg, the inter-ministerial committee responsible for proposing the legislative changes required to comply with the two directives has suggested creating a specialised body to deal with discrimination on all the grounds specified in them.

Similarly in Austria, the draft amendments to legislation propose extending the responsibilities of the Commission for Equal Treatment (*Gleichbehandlungskommission*) and the Office for Equal Treatment (*Gleichbehandlungsanwaltschaft*) to cover all the grounds of discrimination. The Commission mainly examines general issues relating to discrimination but can pass decisions which are non-binding in individual cases of dispute between employers and employees. Its general concern is to settle cases through mediation. The Office for Equal Treatment advises and assists victims of discrimination.



SHARING THE BURDEN OF PROOF

In Belgium, the federal law passed in January 2003 banning all forms of discrimination states explicitly that statistical data (or 'situation tests') can be used to establish the fact that there *is prima facie* evidence of unequal treatment in cases of discrimination. (A 'situation test' compares the way someone behaves in different circumstances, when, for example, they are confronted by a person of an ethnic minority or by someone of European origin.) Once the fact is established, the onus shifts to the person accused of unfair treatment to demonstrate that there are valid reasons for their behaviour.

In Denmark, Spain, the Netherlands and Sweden, it is planned to include the same provisions on the sharing of the burden of proof in legislation banning discrimination on various grounds as those incorporated in gender equality laws.

Sharing the burden of proof

People suffering discrimination also need to feel that they have a reasonable chance of being successful if they decide to take action against the person or organisation responsible, that the odds are not stacked against them in any case they might bring. For this reason, the requirement in the directives for the burden of proof to be shared between the two sides involved is of major importance. It is not a common aspect of the legal system in EU Member States and so requires a departure from established practice. At the same time, it has already been introduced as a feature of gender equality legislation in many countries.

Preventing victimisation

It is equally important that those suffering discrimination are protected against victimisation or reprisals being taken against them if they take action to defend their right to be treated equally and fairly. This again is a new concept in many countries. Nevertheless, it is being included in the legislation being introduced across the Union.



OUTLAWING VICTIMISATION

In Belgium, the federal law passed in January 2003 protects workers from retaliatory action on the part of employers. Workers have the right to be reinstated in their jobs if they have been dismissed, with the same terms and conditions as before. The same is the case in France, where if the worker concerned does not wish to remain in the same job, they have the right to compensation (of not less than six months wages). Victimisation is also outlawed under existing legislation in Ireland.

In the Netherlands, the draft bill amending the Equal Treatment Act and those on equal treatment as regards disability and age extend the definition of victimisation to include witnesses (as required by the directives) as well as those bringing a case of unfair treatment. In addition, it extends the coverage to include reprisals taken against those claiming discrimination in areas other than employment, which is also true of existing legislation in Sweden.

In Great Britain, existing legislation on racial equality and disability makes it clear that victimisation of those bringing discrimination cases and witnesses is outlawed.



POSITIVE ACTION THROUGH LABOUR MARKET POLICIES

In France, four government bodies responsible for labour market policy and immigration (ANPE – the National Employment Agency; FASILD – Action and Support Funds for Integration and Fighting Racism; DGEFP – General Directorate for Employment and Vocational Training; and DPM – Population and Migration Department) concluded a three-year agreement in 2002 to reinforce the fight against discrimination by improving the access of migrants to public employment services, jobs and training.

In Sweden, efforts have been made for some time to increase the participation of ethnic minorities in labour market programmes, while in Finland, the government launched an action programme in March 2001 with the aim among others of increasing the employment of ethnic minorities in public authorities.

In Portugal, the national employment plan for 2002 contained measures for increasing the participation of people with disabilities in labour market programmes by 25%.

In a number of countries, quota schemes are in force to oblige companies to employ people with disabilities or pay a penalty. In France, for example, a system has existed since 1987 requiring that people with disabilities make up at least 6% of the workforce of firms with 20 or more employees. Failure to do so means paying money into a fund. A similar scheme operates in Germany, where since 2000, firms have to have at least 5% of their workforce made up of people with disabilities. If the policy objective of reducing unemployment among people with disabilities is not met, the intention is to raise the requirement to 6%.

Positive action to improve the position of disadvantaged groups

The directives allow governments and organisations to take action to improve the position of disadvantaged groups without infringing the principle of equal treatment. In many EU Member States, governments have been pursuing positive action of this kind for some years, especially to help those disadvantaged on the labour market find a job or get a place on a training programme. In some cases, action has been intensified since the publication of the directives (see Box).





ACCOMMODATING PEOPLE WITH DISABILITIES

Making reasonable accommodation for people with disabilities

Whereas positive action to help disadvantaged groups is voluntary, making reasonable accommodation for people with disabilities is compulsory. Legislation in every country, therefore, has to include a clause requiring employers to take reasonable measures to make it possible for those with disabilities to work or train (see Box).

In the UK, employers have been obliged since the Disability Discrimination Act of 1995 to make 'reasonable adjustments' to working arrangements and premises for people with disabilities. The act includes a long list of the kinds of measure which they may need to take, such as modifying premises and equipment, assigning the person to a different place of work, allocating some of their duties to someone else and altering working hours. It also defines the meaning of 'reasonable' in terms of the benefits to the person concerned relative to the cost and disruption involved. New regulations due to come into force in October 2004 will strengthen protection by making clear that employers have a duty to take all reasonable steps to ensure that any 'provision, criterion or practice' or any 'physical feature' of their premises does not put people with disabilities at a substantial disadvantage. The regulations will apply to all employers, including those with under 15 employees now exempt, and will extend to occupations such as barristers, police officers and fire-fighters at present not covered. They will also extend to service providers.

In Ireland, employers are also required to accommodate the needs of those with disabilities under the Employment Equality Act of 1998, though in this case they are not obliged to take action if the cost is more than nominal. This will be changed in the new legislation to be introduced which will include wording similar to that in the directive. A special body, the National Disability Authority, set up in 2000, undertakes or commissions research and other activities relating to disability and helps collect statistical information for planning, delivering and monitoring programmes and services for people with disabilities.

In Belgium, the federal law of January 2003 states explicitly that failure to make reasonable accommodation for people with disabilities amounts in itself to discrimination. Moreover, this applies not only to employment but also to access to goods and services.

In Sweden, the 1999 act prohibiting discrimination in employment against people with disabilities requires employers to introduce reasonable support measures as regards their employment, promotion and training. The possibility of extending this legislation further is under consideration.

In Spain, the Netherlands and Finland, draft bills on equal treatment all contain reference to an obligation on employers to make reasonable accommodation for workers with disabilities.





CODES OF CONDUCT FOR EQUALITY OF TREATMENT

In France, employers and trade unions have concluded a number of agreements at regional and local level aimed at raising awareness of racial discrimination. In addition, the law passed in November 2001 includes an article aimed at encouraging anti-discrimination working practices to be included in collective agreements.

In the Netherlands, government agencies and NGOs have made efforts since the National Declaration against Discrimination in 1992 to encourage the adoption of codes of practice in favour of equal treatment and have helped companies and other organisations to develop these.

In Ireland, as part of agreements between government and the social partners, a 'Framework for the development of equal opportunities policies at the level of the enterprise' has been established to encourage companies to adopt such policies on a voluntary basis and to provide information and support in this regard. Grants are available to employers for adapting work places to accommodate people with disabilities and to provide training.

Introducing codes of conduct to ensure equality of treatment

The directives require governments to encourage employers and employee representatives to introduce working practices and codes of conduct which incorporate the principle of treating all workers equally and fairly. There are a number of examples of this (see Box).





Defining indirect discrimination

The directives require the legislation introduced across the EU to cover indirect as well as direct discrimination. While the concept of direct discrimination poses few problems, that of indirect discrimination is new in many EU countries, largely because it focuses on the effect of actions rather than on the intention behind them. The tendency so far is to follow the definition included in the directives when incorporating the concept into national laws (see Box).

Defining harassment

The concept of harassment included in the directives as a form of discrimination is also new in many Member States, although in a number of countries it has been incorporated into gender equality legislation. Again, in all Member States, the concept has been included in legislation or in draft proposals for legislation introduced following the directives, often defined with much the same wording as used in the directives (see Box).

DEFINING INDIRECT DISCRIMINATION

The federal law in Belgium passed in January 2003 contains an explicit definition of both direct and indirect discrimination, the latter being defined in terms of behaviour or practices which are seemingly neutral but which have an adverse effect on particular people. In Spain, Luxembourg, Finland and Sweden, the draft legislation which has been prepared contains a definition of indirect discrimination which is the same, or virtually the same, as that included in the directives.

In the UK, indirect discrimination is already outlawed under the Race Relations Act, but the definition adopted is slightly narrower than the one in the directive. The proposal, after consultation, is to amend the act by widening the definition and using similar wording to the directive. The effect will be to increase the extent of protection by covering more potential cases. The same definition will be used in the new legislation on religion and sexual orientation discrimination. The argument for this uniform approach is that it will make it easier both for employers to identify and change unfair practices and for people treated unfairly on more than one ground to take action.

In Ireland, indirect discrimination is also already prohibited under existing laws but the definition will be amended to be in line with the directives.

COMBATING HARASSMENT

In Belgium, the January 2003 law against discrimination explicitly prohibits harassment, defined in much the same way as in the directives. This is also the case in respect of draft legislation in Spain, the Netherlands, Finland and Sweden. In Sweden, existing laws already include an obligation on employers to investigate cases of harassment and take the necessary steps to stop it.

In France, under the 'Law on social modernisation' passed in January 2002 which modified the Labour Code, workers have the right to be protected against 'moral harassment', the purpose or effect of which is to cause a worsening of working conditions in a way likely to affect their dignity, damage their physical or mental health or harm their careers.

In the UK, harassment is already outlawed under existing legislation and case-law has established a slightly wider definition than the one in the directives. In order not to reduce the extent of protection provided, the proposal is to define harassment as occurring if either a person's dignity has been violated or they have been subject to 'an intimidating, hostile, humiliating or offensive environment'. The 'either-or' therefore replaces the 'and' in the directives.

In Ireland, where harassment is also outlawed under equality legislation, a statutory 'Code of practice on sexual harassment and harassment at work' was issued in 2002. This gives practical guidance on what is meant by harassment, how it might be prevented and the steps to take if it does occur.

Part II > The action programme to combat discrimination

The European Union strategy for combating discrimination extends beyond the introduction of legislation outlawing discriminatory behaviour. It also includes an action programme which is intended to change attitudes and behaviour and so support the new legal rights. If the law is to be fully effective, it needs to be accompanied by practical action to improve understanding of the factors giving rise to discrimination, to develop better ways of combating them and to help create the conditions for a fairer society.

The action programme has three main objectives:

- to get a better understanding of discrimination and discriminatory behaviour through research studies and by assessing the policies and practices in operation in different parts of the EU;

- to increase the capacity to tackle discrimination by encouraging and supporting exchanges of information about the measures being adopted in different countries and their effectiveness;
- to raise public awareness about the importance of combating discrimination and about the steps being taken to protect people against unfair and abusive treatment.

To try to achieve these objectives, the programme supports a range of activities. They include studies on specific issues to do with discrimination and international projects to develop practical means of tackling discrimination, involving people and organisations from across the EU. The programme provides funding for European networks of organisations representing groups vulnerable to discrimination in different countries. And it helps to put on events and mount campaigns publicising people's rights as well as to exchange ideas about how to combat discrimination more effectively.

A distinctive feature of the programme is to encourage different forms of discrimination to be considered together rather than separately. In this way, it draws attention to the similarities as well as the differences which exist between discrimination on grounds of ethnic origin, religious belief, age and sexual orientation. This opens up the possibility of using similar means to tackle these different forms. It equally makes it possible for the lessons learned in one area to be applied to others. The experience gained in tackling racial discrimination, for example, can therefore be used when tackling religious, age or other forms of discrimination.



PRIORITY THEMES

The action programme for the period 2001–06 has a number of priorities. In the first stage, it is concentrating on:

- (1) stamping out discrimination by public authorities towards both the people they serve and those they employ;
- (2) working with the media on how to avoid publishing or broadcasting material which is discriminatory or encourages discrimination and from discriminating in their employment policies;
- (3) increasing the possibility of everyone, whatever their personal characteristics, to participate on an equal basis in decision-making, whether in politics, business or society in general;
- (4) ensuring that everyone has the same level of access to goods and services.

A selection of the activities being supported are described below in order to illustrate the different parts of the action programme and how they fit together.

Raising public awareness about discrimination and the means of combating it

A central part of the action programme is making sure that people understand the harm that discrimination can do not only to the individuals affected but also to society in general and to let them know about the range of measures being introduced to combat it. Information campaigns are being launched across the EU to publicise the new laws being brought in to protect people against unfair treatment, the arrangements for helping them defend their rights and the activities being carried out as part of the action programme itself (see Box).

Improving statistics on discrimination

The action programme is aimed among other things at improving our understanding of issues relating to discrimination by increasing the information available in this area and by evaluating the effectiveness of policies and practice. The programme is, therefore, supporting the development and dissemination of comparable statistical series on the scale of discrimination in EU countries.



INFORMATION CAMPAIGNS

A major objective of the action programme is to raise public awareness about the importance of combating discrimination and the means available to victims to protect themselves from unfair treatment and to seek redress. The European Union provides support to national governments to organise publicity campaigns and events publicising the features of the steps being taken to stamp out discrimination and the activities being carried out under the programme.

A central aim of the campaigns is to inform public authorities, organisations representing people vulnerable to discrimination, employers and trade unions about the strategy for tackling discrimination and the various kinds of action being taken. The campaigns this year focus on the application of equality principles in the labour market. In the future, after governments around the EU have introduced legislation complying with the two directives on equality, the campaigns will also provide information about other aspects of equality.



SUPPORTING PROJECTS AIMED AT COMBATING DISCRIMINATION

The European Commission published a call for proposals for projects covering the four priority themes for action in 2001. To be eligible, proposals had to involve people and organisations from at least three EU Member States, the aim being to exchange ideas between countries and to encourage common approaches to similar problems. In July 2002, 27 projects were selected for funding and given finance for the first year of just over EUR 4.4 million in total. A similar amount will be allocated in the second year.

The full list of the projects funded under the action programme is available in English, French and German at http://www.europa.eu.int/comm/employment_social/fundamental_rights/prog/projects_en.htm

At present, there is little quantitative evidence on the extent of discrimination in different parts of the EU, in different aspects of social and economic life or in different sections of the population. As a result, it is hard to know whether discrimination is rising or falling and how it affects disadvantaged groups. Collecting a wide-ranging set of data on discrimination, covering employment, education, housing, transport and so on, would help to raise public awareness of the way that discrimination affects the daily lives of people in a more powerful manner than studies of individual aspects and help policy-makers target the measures more effectively.

The intention is therefore, first, to carry out a public opinion survey across the EU on discrimination in employment, education and access to goods and services; secondly, to see with the Commission Statistical Office (Eurostat) how to make use of existing data sources to collect statistics relating to discrimination; and, thirdly, to capitalise on the data already collected by the European Monitoring Centre on Racism and Xenophobia.

Monitoring the measures being taken against discrimination

An important part of the action programme is to monitor the legal and other steps being taken by governments around the EU to outlaw discrimination and to protect the victims of unfair treatment. The Union has set up networks of independent experts to report on what governments are doing in this regard. The purpose is not simply to check that the measures being introduced provide an effective level of protection against discrimination. It is also to create a source of information about the measures themselves to help governments in other countries design the features of their own legislation and the arrangements for enforcing it. This can be particularly important for governments in countries where there is less experience of legislation against discrimination.

In a similar vein, the Commission has also launched a study to review the measures against discrimination which exist in the 10 countries due to join the EU on 1 May 2004 and the three candidate countries. Legislation in these countries has to comply with the directives on racial equality and equality in employment by the time they become EU members. The study is scheduled to be completed in the summer of 2003 and will help the EU and governments in the new Member States identify the steps they need to take to provide the required level of protection against discrimination.



INTRODUCTION OF ANTI-DISCRIMINATION TRAINING METHODS IN PUBLIC AUTHORITIES

Stamping out discrimination by public authorities

Governments have a key role to play in combating discrimination not only by introducing effective legislation but also by setting an example in the way they treat both the public and their employees. This applies as much to local and regional authorities as to the government at national level. These authorities are responsible in all EU countries for providing a range of services from social welfare, healthcare and education to policing and refuse collection which directly affect people's daily lives. It is, therefore, especially important for them to behave and operate in a non-discriminatory way. The fact that they also tend to be large employers makes it equally important that their working practices and recruitment policies do not involve discrimination, especially as they can also have a big influence on how private employers behave.

Of the 27 projects chosen for funding under the action programme 14 are concerned with tackling actual or potential discrimination by local and regional authorities, emphasising the importance attached to this by those involved.

As an example, one of the projects is concerned with training education and healthcare officials on how to avoid discrimination in the way they work and treat minority groups (see Box).

The project is being carried out by two specialist organisations, the European Jewish Information Centre (CEJI) and the Northern Ireland Council for Ethnic Minorities (NICEM). They are working with local authorities in Spain, Northern Ireland and Germany to develop training programmes for local officials in education and health services. The programmes address different forms of unequal treatment and focus on tackling multiple discrimination. The training is intended to emphasise the importance of taking account of cultural and ethnic diversity in policy design, working practices, recruitment and promotion and of establishing better community relations.

A parallel aim is to produce a training manual which can be used by local authorities across Europe to develop their own programmes adapted to the local situation and needs.

'We are trying to create a model for training that is transferable across national borders,' says Patrick Yu, European project coordinator for NICEM.

Local communities suffering discrimination are encouraged to become involved in the project. These, together with NGOs, are seen as being of key importance in helping to identify issues as well as participating in focus groups and training. A collaborative partnership has also been established between the local authorities and the NGOs. *'This is a cornerstone of this project,'* says Pascale Charhon, European project coordinator for CEJI, *'and will help ensure what we have initiated will be sustained over time.'*

For information, visit <http://www.ceji.org> (in English), <http://www.nicem.org.uk> (in English) or contact Pascale Charhon at ceji@ceji.org or tel. (32 2) 344 34 44.





JOIN! JOINT PROMOTION OF ANTI-DISCRIMINATION AT LOCAL LEVEL

For national policy against discrimination to have a real impact on people's lives, it needs to be implemented locally. The objective of the JOIN project is to develop policies and working practices in cities and local neighbourhoods for combating discrimination in education, healthcare and policing. This is done through local sub-projects in Finland, Germany and Ireland, which bring together the different authorities concerned in order to encourage them to coordinate policy and the way they work. At the same time, it involves organisations representing people vulnerable to discrimination – in this case ethnic minorities, including of 'Roma' origin (known as gypsies, Travellers or Cinti in different parts of Europe), religious minorities and people with disabilities – so that they can make the authorities aware of their needs and concerns. One of the aims of the project is also to initiate a process under which different parts of the administration can learn from each other. As Katriina Teittinen, project coordinator, says, *'Instead of the "one ground and one authority" approach, we need joint effort between the various authorities, with full involvement and consultation of the different groups vulnerable to discrimination.'*

Moreover, according to the participants, the fact that they come from different countries and have differing experiences adds to the value of the exercise by bringing home to them the common nature of problems and by enabling them to swap ideas about how to tackle them.

For information, visit <http://www.join.fi> (in English, Finnish and German) or contact Ms Katriina Teittinen (project coordinator) at katriina.teittinen@kuntaliitto.fi or tel. (358 40) 719 73 70.

Another project being funded has a related aim. This involves the Association of Finnish local and regional authorities and a local police force in Finland together with NGOs from Germany, Finland and Ireland representing different minority groups. By putting together people who provide local services with those who understand the needs and concerns of particular social groups, the aim is to identify common forms of discrimination and to develop ways of eliminating them.

Making policing and law enforcement more equitable

The police are in a particularly sensitive position. Since they are the most visible aspect of the legal system, it is especially important that they are seen to behave in a fair and impartial way. Several of the projects being funded include police forces from different countries among the participants. Their intention is to improve the training of police officers, to identify the possible discriminatory effects of their actions, and to help them develop new approaches to policing which take account of the differing and changing needs of different communities.

A possible result of this work could be to make it easier for people from minority groups to join the police force and so make it more representative of different sections of the population. One of the projects being funded under the action programme is aimed at achieving just this objective. The aim of the 'Minority representation in police forces' project is to increase the number of people from ethnic minorities and from the lesbian and gay communities in the police by reducing the barriers to their recruitment and promotion (see Box).



It is equally important that the laws on discrimination which are being introduced across the EU are applied in a fair and effective way and that the people who enforce them receive adequate training on the new provisions. The action programme is funding seminars on the legislation for judges and lawyers. These are being organised by the Academy of European Law (ERA) in Trier in 2003, the aim being to inform a 'core' group of judges and lawyers who can then pass on what they learn to their colleagues. The programme is also funding a seminar on the same theme for lawyers working for trade unions, employers' associations, companies and other organisations affected by discrimination issues.

Promoting non-discrimination through public procurement

Public authorities tend to be large purchasers of goods and services. The policies they apply when buying goods and services give them a means of influencing behaviour towards minority groups in the country at large in addition to setting a good example in the way they operate and treat their own workforce. They can therefore insist that companies behave in a non-discriminatory way towards both the people they employ and those they sell to before they are eligible to bid for contracts. Public authorities can also make sure that the companies which win contracts follow equitable codes of conduct when producing the goods or services they supply. The Commission's communication of October 2001 sets out the kinds of measure which can be applied in this regard (*Interpretative communication on the Community law applicable to public procurement and the possibilities for integrating social considerations into public procurement*; COM(2001) 566 final of 15.10.2001). Under the action programme, a study due to be completed in autumn 2003 is examining how far public authorities across the EU include non-discriminatory conditions in their purchasing arrangements and how effective they are in promoting equality and diversity.



MINORITY REPRESENTATION IN POLICE FORCES

This project brings together a Swedish public body (the National Institute for Working Life), a Greek non-governmental organisation, a Dutch consultancy, a specialist police centre in the Netherlands and the Stockholm County Police. Its long-term aim is to increase the representation of minority groups in the police by introducing anti-discrimination policies in recruitment and promotion as well as by changing internal working practices. The groups specifically targeted are ethnic minorities and the gay community. *'These groups are under-represented in police forces throughout Europe, not so much because of their lack of suitability for police work, as is often claimed, but',* says Maritta Soininen, project coordinator, *'at least in part because of direct and indirect discrimination practices by police forces themselves'.*

For information, visit <http://www.arbetslivsinstitutet.se> (in English and Swedish) or contact Maritta Soininen, project coordinator, at Maritta.soininen@statsvet.su.se



EUROPEAN BEST WORKPLACES

In March 2003, the Commission formally recognised 100 workplaces where employers have created an especially favourable working environment as part of an initiative to raise standards of places of work in Europe. A special prize was awarded to Intel Ireland for demonstrating outstanding achievement in promoting diversity.



For more details see <http://www.eu100best.org> (in English, French and German)



A COMPARATIVE STUDY ON BARRIERS TO ACCESSING ASSISTIVE TECHNOLOGIES IN THE EU

The employment equality directive states that employers need to make reasonable accommodation for employees with disabilities. One of the ways of doing this is to make use of 'assistive technologies'. These technologies can help compensate for people being limited in what they can do, make it easier for them to live independently and enable them to perform a job and participate in training. Assistive technologies, therefore, have a potentially important role in equalising opportunities for people with disabilities.

One of the studies funded under the action programme and due to be completed in 2003 is concerned with comparing the availability and efficiency of assistive technologies in eight Member States (France, Denmark, Germany, Italy, the Netherlands, Spain, Sweden and the UK), to identify the main barriers to their adoption and to make recommendations on ways of increasing their use.

MEDIA AND DIVERSITY IN AN AGEING SOCIETY

This project aims to bring 'age into focus', and is using this expression as a working title for its website and other publications. Journalists and programme-makers often reinforce negative or stereotypical images of older people through habit rather than because of prejudice. This project involves leading public service broadcasting companies from Italy, the Netherlands and Austria working together to produce training material which can be used by programme-makers across Europe. The kit will consist of two videos and CDs. *'Because of the wide range of cultural differences across Europe'*, says Katrina Webster, project coordinator, *'we want to produce a practical training kit which can be used in the most flexible way possible, since what works in one country may not work in another'*. The kit will, therefore, be a resource which trainers can *'dip into'* as they need, selecting issues and modules which are relevant at the time, and choosing the best way of using them for their own broadcasts.

The draft material will be presented to elderly people and NGOs at a series of specially organised focus group meetings in the UK, the Netherlands and Austria, in order to get feedback from them and to try to make sure that the issues of most concern to older people are addressed.



For information, visit <http://www.ageintofocus.net> (in English) or contact ageintofocus@npoe.nl or Katrina Webster at skwebster@yahoo.co.uk or Tatiana van Lier at tvulier@npoe.nl

Assessing the benefits to business of non-discriminatory practices

There are benefits to businesses of the diversity which comes from operating in non-discriminatory ways. Although some companies may need to be encouraged to treat the people they employ or who apply for jobs equally and fairly, the gains from having a diverse workforce are potentially significant. These gains come from hiring and promoting people on merit rather than because of their personal characteristics. This can lead to increased efficiency and greater creativity. A more diverse workforce can also make it easier for companies to widen their markets and reach new customers.

These benefits are difficult to measure and often neglected. They are, however, important to recognise because they can encourage both wider acceptance of laws against discrimination and greater efforts by businesses to adopt a more diverse approach. As part of the action programme, the EU is funding a study into the methods of measuring the benefits to businesses of greater diversity in the way they operate. The study is due to be completed in September 2003.

Encouraging the media to promote equality and diversity

The media have an important part to play in combating discrimination and have a special responsibility for doing so. Television, radio and newspapers have a big influence on attitudes towards ethnic minorities and other sections of the community vulnerable to discrimination. The action programme provides funding for four projects to increase awareness in the media of the importance of not 'stereotyping' people – i.e. representing them in ways which conform to popular prejudices irrespective of the reality. Instead of reinforcing such prejudices, the intention is to encourage the media to recognise and take account of the importance of cultural diversity.



DIVERSITY IN DIALOGUE

The project is being undertaken by NGOs from Denmark, Ireland, Portugal and the UK and by Inclusion Europe, an organisation representing people with learning disabilities across Europe. The aim is to increase the opportunities for people with learning disabilities to participate in politics. *'With very few exceptions, the participation of people with learning disabilities in political or social life, even within the disability movement, is very limited'*, says project manager Dan Schimmell, *'and with our project we want to achieve both political and practical goals'*.

The project is developing a comprehensive training programme, which will be tested on 40 young people with a learning disability to acquire confidence and know-how to represent their peers in the political arena at European, national and local level. It involves workshops and placements so that the people concerned can get practical experience of political life. And it includes producing a range of information, both on the Internet and in printed form, for people with learning disabilities across Europe. In the final stages of the project, a hearing will be held in Brussels where those who have undergone training will have a chance to meet politicians and policy advisers, to discuss what they have learned and to draw lessons for the future.

For information, visit <http://www.lev.dk> (in Danish, English, French and German) or contact Dan Schimmell (project leader) at drs@lev.dk or tel. (45) 36 35 96 96.

One of the projects, for example, is concerned specifically with media discrimination towards older people as reflected in both the way they are portrayed in entertainment programmes and the tendency for them to be under-represented among programme-makers.

Increasing the participation of minority groups in decision-making

Achieving a more balanced representation of different sections of the community among people responsible for deciding policy or taking decisions is an important means of combating discrimination. It is equally important as a demonstration of progress towards a more equal society. This is not only the case in the media or the police as already noted, but applies generally. Whether or not this improves the decisions made or the policies adopted, it is important that people from all sections of the community, whatever their characteristics, should have an equal right to be involved in decision-making in all areas of society. This goes for government and politics as much as other areas.

One of the projects being funded as part of the action programme challenges popular views about people with learning difficulties. It consists of a training programme to increase their ability and confidence to participate in political life and to act as representatives for others with similar difficulties.

Supporting victims of discrimination more effectively

The action programme is an explicit recognition that legislation is not enough on its own to stamp out discrimination. The directive on racial equality also recognises this by requiring national governments to designate specialised bodies to provide independent help and support to victims of discrimination. The action programme is, in turn, helping to make

this requirement more effective in two ways. It has already funded a study of the bodies operating in Member States before the directive. The study, completed in 2002, identified the features which made the bodies most effective, therefore helping governments in other countries to set up bodies themselves. The action programme is also currently funding a project to enable specialised bodies in different countries to exchange information and know-how, something which is likely to be particularly valuable given the differing experience of these bodies across the EU.



STRENGTHENING COOPERATION BETWEEN SPECIALISED BODIES FOR THE IMPLEMENTATION OF EQUAL TREATMENT LEGISLATION



Jenny Goldschmidt

The project involves equal treatment bodies in six Member States (Austria, Belgium, Ireland, the Netherlands, Sweden and the UK,) and the Migration Policy Group (Brussels). The objective in the short term is twofold: to try to ensure a uniform interpretation of EU anti-discrimination legislation by equal treatment bodies and to explore the benefits of national provisions that go further in providing protection against discrimination than required by the directives. *'In an increasingly integrated Europe, it is in the interest of all in society, not least the victims of discrimination, that these objectives are realised. It is equally important that the protection offered is the same regardless of the ground of discrimination'*, says Jenny Goldschmidt, Chair of the Dutch Equal Treatment Commission. In the longer term, the project aims to establish an information system on equal treatment legislation and a means of exchanging information on legal concepts, enforcement, remedies, policy advice and so on. While initially confined to the present participants in the project, the intention is to make it available in the future to the new specialised bodies which will be established in the present and future Member States.

For information, visit <http://www.migpolgroup.com> (in English) under the programme section or e-mail info@migpolgroup.com

STUDY ON SPECIALISED BODIES TO PROMOTE EQUALITY AND/OR COMBAT DISCRIMINATION



The study published in September 2002 reviewed the activities of 21 specialised bodies operating at the time in different parts of the EU (in all countries apart from Greece, Spain and Austria). Most are concerned with racial discrimination, though two (in Sweden and the UK) were set up to help people with disabilities, one (in the Netherlands) to deal with age discrimination and one (in Sweden) to help victims of discrimination on grounds of sexual orientation. Four of the bodies (the Equality Authority and Office of the Director of Equality Investigation in Ireland, the Equality Commission in Northern Ireland and the Equal Treatment Commission in the Netherlands) cover different forms of discrimination.

The study identified a number of key features for the specialised body to be effective:

- independence from government in terms of its status and what it can do (its mandate) and also of its board members, and the financial resources to ensure independence and continuity;
- easy access to support and advice to both those affected by discrimination and those trying to avoid behaving in a discriminatory way (employers especially) in both physical terms (the building, telephone lines, opening hours) and 'relational' terms (approachable and reliable staff);
- provision of free assistance;
- a clear and significant role in the political process.

The full report in English and an executive summary in English, French and German are available at:

http://www.europa.eu.int/comm/employment_social/fundamental_rights/prog/studies_en.htm



AGE

The European Older People's Platform (AGE) was set up in January 2001 in order to give a voice to older people across the EU, promote their interests and strengthen cooperation between national representative organisations. AGE is involved in a range of activities aimed at putting the issues affecting older people on the policy agenda as well as in monitoring EU initiatives in this area and trying to influence the policies introduced.

Among AGE's activities is the organisation of a series of national seminars on age discrimination, aimed at informing NGOs around the EU of policy initiatives in this area, encouraging them to take an active interest in policy and strengthening cooperation between them. The seminars also involve policy-makers, trade unions and representatives of NGOs in other areas.

See <http://www.age-platform.org> (in English and French).

Networks

'Civil society' organisations or NGOs set up to represent the interests of specific groups in society have an essential role in the fight against discrimination. This is not least because they act as a bridge between people vulnerable to discrimination and governments and employers taking decisions which affect them. By providing a voice for people they can help to change public attitudes towards them and by exchanging information with similar organisations in other countries help to improve policies and working practices. Since the interest is the same in this respect, a major aim of the European Union is to encourage NGOs to establish links with their counterparts in other parts of Europe.

The action programme provides financial support for four European umbrella networks of NGOs: the European Older People's Platform (AGE), the European Disability Forum (EDF), the European Network Against Racism (ENAR) and the International Lesbian and Gay Association (ILGA). It also supports five smaller European-level organisations: Action européenne des Handicapés (for people with disabilities), Autism-Europe, the European Blind Union, the European Union of the Deaf and Inclusion Europe, for people with learning difficulties.

EDF

The European Disability Forum (EDF) is a European umbrella organisation with 106 members representing the interests of people with disabilities in Europe. It was created in 1996 to promote issues of common concern and to be an independent and strong voice for people with disabilities at EU level. A primary aim is to ensure that their interests are taken into account in all policy areas. A particular success is in transport, where EDF efforts over many years helped to get the EU directive on 'Buses and coaches' adopted. This requires ramps or lifts to be fitted on all buses operating in towns and cities in the EU and stipulates that there should be priority seating for people with reduced mobility, space for guide dogs and colour contrasting for people who are partially sighted. EDF is also active in monitoring implementation of the directive on equality in employment in EU Member States.

See <http://www.edf-feph.org> (in English and French).



ENAR

The European Network Against Racism (ENAR) is a product of the 'European year against racism', which drew attention to the need for a common structure of NGOs across the EU. ENAR's associated organisations are largely grassroots organisations representing ethnic minorities and migrants, voluntary organisations supporting victims of discrimination, trade unions, churches and welfare organisations. The aim of ENAR is to influence policy at EU level, in part through campaigns in Member States for equal rights for everyone living in the EU. In 2002, implementation of the racial equality directive was one of the top priorities, ENAR's role being to ensure its members were both informed of the importance of implementation and engaged in the process. A seminar, for example, was organised in Leeds by the UK Race and Europe Network, which coordinates ENAR activities in the UK, to give local black and ethnic minority groups an opportunity to listen to legal experts on the main features of the directives and to participate actively in the government's consultation process.

See <http://www.enar-eu.org> (in English, French and German).

ILGA-EUROPE

ILGA-Europe, the European branch of the International Lesbian and Gay Association, is an umbrella organisation with more than 130 national and local member organisations in 38 European countries. Its mission is to work towards a Europe free from discrimination and to represent the interests of the lesbian and gay communities in the European Union and the Council of Europe.

Work with member organisations in EU Member States and in applicant countries to ensure full and effective implementation of the directive at national level has been one of the priorities of the last year. This includes monitoring developments in the countries, explaining to member organisations the significance of the employment directive and the opportunities for national governments to adopt protective measures that are in line with or go beyond the directive. This was the topic of a seminar organised in July 2002 attended by 30 NGOs and government representatives from all the applicant countries. ILGA-Europe is currently working to establish a European discrimination and best practice information centre as a comprehensive resource for all those concerned with sexual orientation issues.

See <http://www.ilga-europe.org> (in English).

FIVE EUROPEAN ORGANISATIONS

The action programme also funds five smaller networks concerned with disability. These deal with specific aspects of discrimination which present particular difficulties for the people they represent. They are supported because of the importance of taking proper account of the specific interests and needs of particular groups within the disabled community. The needs and concerns of blind people, for example, differ markedly from people in wheelchairs or with learning difficulties. Organisations representing those with specific forms of impairment, therefore, play an important role in EU-level discussions and in ensuring that their needs are taken into account in the decisions that are made.

Inclusion Europe represents organisations for people with learning disabilities and their families in 29 European countries. Its activities over the past two years have included a successful series of training seminars held in all Member States for teaching parents, teachers and other professionals how to inform people with learning difficulties about their rights and responsibilities as consumers. Inclusion Europe also publishes material produced especially for people who have difficulty reading. See

<http://www.inclusion-europe.org> (in English and French).

Action européenne des Handicapés (AEH) brings together 22 organisations representing people with disabilities in the Member States, the main concern being with the problems they experience in getting a job.

See <http://www.vdk.de> (in German).

Autism-Europe coordinates the activities of 77 national and regional associations of parents of children with autism in 30 European countries, See <http://www.autismeurope.org> (in English and French).

The *European Blind Union* defends and promotes the interests of blind and partially sighted people in Europe.

See <http://www.euroblind.org> (in English).

The *European Union of the Deaf* brings together the national associations of people with hearing difficulties in each of the EU Member States.

See <http://www.eudnet.org> (in English).



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Unit D 4
B-1049 Brussels

Or consult our internet site :

http://europa.eu.int/comm/employment_social/fundamental_rights/index_en.htm

www.stop-discrimination.info

