

Procedure file

Basic information		
INI - Own-initiative procedure	2007/2094(INI)	Procedure completed
Application of the principle of equal treatment between persons irrespective of racial or ethnic origin		
Subject		
1.20.02 Social and economic rights		
4.10.08 Equal treatment of persons, non-discrimination		
4.15.08 Work, employment, wages and salaries: equal opportunities women and men, and for all		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	LIBE Civil Liberties, Justice and Home Affairs		19/12/2006
		Vers/ALE BUITENWEG Kathalijne Maria	
	Committee for opinion	Rapporteur for opinion	Appointed
	EMPL Employment and Social Affairs		22/11/2006
		ALDE TOIA Patrizia	
	FEMM Women's Rights and Gender Equality		22/03/2007
		PPE-DE JÁRÓKA Livia	
European Commission	Commission DG Justice and Consumers	Commissioner FRATTINI Franco	

Key events			
31/10/2006	Non-legislative basic document published	COM(2006)0643	Summary
26/04/2007	Committee referral announced in Parliament		
27/06/2007	Vote in committee		Summary
06/07/2007	Committee report tabled for plenary	A6-0278/2007	
27/09/2007	Results of vote in Parliament		
27/09/2007	Debate in Parliament		
27/09/2007	Decision by Parliament	T6-0422/2007	Summary
27/09/2007	End of procedure in Parliament		

Technical information	
Procedure reference	2007/2094(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 54
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/46956

Documentation gateway					
Non-legislative basic document		COM(2006)0643	31/10/2006	EC	Summary
Committee opinion	EMPL	PE386.284	11/05/2007	EP	
Committee draft report		PE388.716	16/05/2007	EP	
Amendments tabled in committee		PE390.520	12/06/2007	EP	
Committee opinion	FEMM	PE388.548	15/06/2007	EP	
Committee report tabled for plenary, single reading		A6-0278/2007	06/07/2007	EP	
Text adopted by Parliament, single reading		T6-0422/2007	27/09/2007	EP	Summary
Commission response to text adopted in plenary		SP(2007)5401	18/10/2007	EC	
Commission response to text adopted in plenary		SP(2007)5763	06/12/2007	EC	

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

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

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

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

This report aims to flag up certain aspects of the Directive that are particularly problematic or important and to identify good practice. It concentrates on the **impact of the Directive, transposition-related problems, dissemination of information, the enforcement of rights, the role of equality bodies, the social partners and NGOs, positive action and recommendations for the future.**

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

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

The new legal framework has been in force for just over three years, which is not really long enough to evaluate its full impact or potential. Thus far, no cases have been referred by national courts to the European Court of Justice under the preliminary ruling procedure. It is only the ECJ that could give definitive guidance on how to interpret the provisions of the Directive. Future judgments will help the Member States to provide clear and uniform protection against discrimination throughout the EU.

Article 17 of Directive 2000/43/EC states that the European Commission's report on the application of the Directive "shall include, if necessary, proposals to revise and update this Directive". **The Commission does not currently see a need to come forward with such proposals.** It has reached this conclusion on the basis of the lack of experience with implementation of the Directive since its entry into force and the lack of case law from the ECJ.

The challenge for the coming years will be to ensure the full and effective transposition, implementation and enforcement of Directive 2000/43/EC. This will entail the establishment of mechanisms and methods for observing and reporting on the impact of national implementing measures. In this context, it will be important to develop the **statistical basis** and other **indicators**. Yet the scarcity of ethnic data in most Member States might hinder proper monitoring of the application of Community legislation.

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

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

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

The Committee on Civil Liberties, Justice and Home Affairs adopted an own-initiative report drawn up by Kathalijne Maria BUITENWEG (Greens/EFA) on the application of Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. It reiterated the importance of the Directive, recalling that it was a minimum standard and should therefore act as the foundation on which a comprehensive anti-discrimination was built. It welcomed the Commission Communication (please see the summary of 31/10/2006) on the application of Directive 2000/43/EC, but stated that it would also have been useful to have been provided with a detailed description of the way in which the provisions of Directive 2000/43/EC have been incorporated into national law. It went on to make a series of recommendations to the Commission and Member States, and placed some emphasis on adequate and reliable data collection.

Whilst most Member States had taken action in order to implement the Directive, the Committee was disappointed that only a few had adequately transposed all of its provisions fully. A number of provisions, such as the definitions of direct and indirect discrimination, harassment and the burden of proof had not been correctly transposed in many countries. The Committee called, in particular, for strict monitoring of the application of the rule on the partial reversal of the burden of proof, which was particularly effective in the case of employment-related disputes. It expressed concern that Member States had exempted more areas of activity from the scope of the Directive than justifiable.

The Commission was asked to submit a specific action plan on the mechanisms and methods of observation and description of the impact of the national implementation measures and to lay down common standards for data. The Committee went on to ask the Commission to do the following:

- to request Member States to analyse the effectiveness of anti-discrimination legislation in combating patterns of systematic segregation of minorities and women, particularly in the education sector and as regards access to the labour market, healthcare and goods and services, and further to incorporate a gender equality perspective into the reports;
- to step up efforts to raise level of awareness of anti-discrimination legislation;
- to facilitate the exchange between Member States of best practices in the field of action to combat discrimination on the labour market, including on training courses, and with regard to anonymity in job applications. The Committee considered that the Roma community, together with other recognised ethnic communities, need particular social protection, particularly further to enlargement, since the problems of exploitation, discrimination and exclusion have become more acute in their regard;
- to adopt a set of minimum standards under the open coordination method, so as to guarantee access for children from ethnic minorities – particularly girls – to high-quality education and equal conditions, and to adopt positive legislation making it compulsory to end segregation in schools and lay down detailed plans to put an end to the provision of separate, lower quality education for ethnic minority children;
- to monitor the independent functioning of equality bodies, for which purpose it can use as a reference the Principles relating to the Status of National Institutions ('the Paris Principles');

The Committee urged Member States to do the following:

- to ensure that all persons from ethnic minorities – particularly women – have access to primary, preventive and emergency healthcare services;
- to ensure equal treatment under employment and social inclusion policies, to address the extremely high unemployment rates recorded particularly among women from ethnic minorities and, in particular, to address the serious barriers raised by direct discrimination in recruitment procedures;
- to collect accurate and gender-disaggregated statistics relating to the following: the labour market, housing, education and training, health and social benefits, public access to goods and services, the criminal justice system, and civic and political participation, and to set clear, quantitative targets and indicators within the employment and social inclusion guidelines that enable them to measure progress in the situation of migrants and/or minorities.

With regard to equality bodies, Member States were asked to resource and empower their equality bodies properly so that they could perform their important function effectively, and so that where equality bodies do have substantial powers, they exercise these fully. Member States should resource the NGOs active in informing citizens and providing legal aid in matters of discrimination. In informing citizens and providing legal aid, NGOs carry a disproportionate share of the burden without enjoying corresponding status and funding from the Member State authorities. Independent bodies must have adequate financial resources at their disposal in order at least to be able to guarantee that complaints will be dealt with free of charge in the case of those who are not in a position to contribute financially themselves. The Committee recommended that Member States make use of the best practices of other Member States, such as allowing equality bodies to initiate legal proceedings on behalf of victims or participate as *amicus curiae* in legal proceedings. Such bodies should also be given the necessary powers to investigate cases.

Lastly, the Committee asked the Commission to monitor attentively disguised discrimination based on 'genuine and determining occupational requirements?', on the interaction between discrimination based on the application of this exemption on religious grounds in the framework of the Directive on employment and its consequences for race and ethnicity, and to pay particular attention to discrimination in the field of education.

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

The European Parliament adopted by 500 votes in favour, 46 against and 24 abstentions a resolution based on the own-initiative report drafted by Kathalijne Maria BUITENWEG (Greens/EFA) on the application of Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Parliament believed that more needed to be done to implement the directive in full, notably on issues such as legal redress, the burden of proof in racial discrimination cases, awareness-raising, data collection and the independence of equality bodies.

The Directive, known as the Racial Equality Directive, was due to be implemented by all Member States by 19 July 2003. It does not limit protection against discrimination to the area of employment but also covers social security, education and access to housing.

Parliament reiterated the importance of the Directive, recalling that it was a minimum standard and should therefore act as the foundation on which a comprehensive anti-discrimination was built. It welcomed the Commission Communication, but stated that it would also have been useful to have been provided with a detailed description of the way in which the provisions of Directive 2000/43/EC have been incorporated into national law.

Whilst most Member States had taken action in order to implement the Directive, Parliament was disappointed that only a few had adequately transposed all of its provisions fully. A number of provisions, such as the definitions of direct and indirect discrimination, harassment and the burden of proof had not been correctly transposed in many countries. Parliament called, in particular, for strict monitoring of the application of the rule on the partial reversal of the burden of proof, which was particularly effective in the case of employment-related disputes. It expressed concern that Member States had exempted more areas of activity from the scope of the Directive than justifiable.

Parliament went on to make a series of recommendations to the Commission and Member States, and placed some emphasis on adequate and reliable data collection. The latter was essential in the fight against discrimination, and ethnically disaggregated statistical data could be essential in demonstrating indirect discrimination, informing policy and developing positive action strategies, but at the same time raises several ethical and legal questions. Parliament asked the Commission to study the various legal questions and parameters regarding the issue of data collection and to come forward with proposals to improve the recording of cases of discrimination, including to ensure that such data collection does not infringe personal privacy by revealing individuals' identities or serve as a basis for ethnic or racial profiling. Provision should be made for comparable sets of data to be available from all the Member States. At present, these data are not available for all Member States and comparable data are critical to give a solid platform on which to build policy. Parliament called on Member States implementing national action plans to combat racism and discrimination to include components covering the gathering, checking and monitoring of data in key policy areas such as non-discrimination and equality, social inclusion, Community cohesion, integration, gender, education and employment.

The Commission was asked to submit a specific action plan on the mechanisms and methods of observation and description of the impact of the national implementation measures and to lay down common standards for data. Parliament went on to ask the Commission to do the following:

- to request Member States to analyse the effectiveness of anti-discrimination legislation in combating patterns of systematic segregation of minorities and women, particularly in the education sector and as regards access to the labour market, healthcare and goods and services, and further to incorporate a gender equality perspective into the reports;
- to step up efforts to raise level of awareness of anti-discrimination legislation. Parliament considered that the Roma community, together with other recognised ethnic communities, need particular social protection, particularly further to enlargement, since the problems of exploitation, discrimination and exclusion have become more acute in their regard;
- to adopt a set of minimum standards under the open coordination method, so as to guarantee access for children from ethnic minorities – particularly girls – to high-quality education and equal conditions, and to adopt positive legislation making it compulsory to end segregation in schools and lay down detailed plans to put an end to the provision of separate, lower quality education for ethnic minority children;
- to monitor the independent functioning of equality bodies, for which purpose it can use as a reference the Principles relating to the Status of National Institutions ('the Paris Principles');
- Parliament urged Member States to do the following:
- to ensure that all persons from ethnic minorities – particularly women – have access to primary, preventive and emergency healthcare services;
- to ensure equal treatment under employment and social inclusion policies, to address the extremely high unemployment rates recorded particularly among women from ethnic minorities and, in particular, to address the serious barriers raised by direct discrimination in recruitment procedures;
- to collect accurate and gender-disaggregated statistics relating to the following: the labour market, housing, education and training, health and social benefits, public access to goods and services, the criminal justice system, and civic and political participation, and to set clear, quantitative targets and indicators within the employment and social inclusion guidelines that enable them to measure progress in the situation of migrants and/or minorities.

Parliament also felt that it was vitally important that officials receive training on the subject of the aims and provisions of the Directive, in order to remove all risks of institutional racism within government bodies themselves. Member States were asked to invest in such training. Parliament asked them and the Commission to set up European programmes for exchanges between the various national administrative bodies.

With regard to equality bodies, Member States were asked to resource and empower their equality bodies properly so that they could perform their important function effectively, and so that where equality bodies do have substantial powers, they exercise these fully. Member States should resource the NGOs active in informing citizens and providing legal aid in matters of discrimination. In informing citizens and providing legal aid, NGOs carry a disproportionate share of the burden without enjoying corresponding status and funding from the Member State

authorities. Independent bodies must have adequate financial resources at their disposal in order at least to be able to guarantee that complaints will be dealt with free of charge in the case of those who are not in a position to contribute financially themselves. The Committee recommended that Member States make use of the best practices of other Member States, such as allowing equality bodies to initiate legal proceedings on behalf of victims or participate as *amicus curiae* in legal proceedings. Such bodies should also be given the necessary powers to investigate cases.

Parliament asked the Commission to monitor attentively disguised discrimination based on 'genuine and determining occupational requirements', on the interaction between discrimination based on the application of this exemption on religious grounds in the framework of the Directive on employment and its consequences for race and ethnicity, and to pay particular attention to discrimination in the field of education.

Lastly, Parliament reiterated the political, social and legal desirability of putting an end to the hierarchy of protection against the different grounds of discrimination, and welcomed the Commission's intention to put forward a proposal for extending the scope of Directive 2000/43/EC to all other grounds of discrimination, as stated in its Annual Legislative Programme for 2008.