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COMMISSION OF THE EUROPEAN COMMUNITIES

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Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions

on certain Community measures to combat discrimination

1. INTRODUCTION

The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and on the rule of law, principles which are common to the Member States.[1]

The right to equality before the law and the protection of all persons against discrimination constitutes a fundamental right and is essential to the proper functioning of democratic societies. It contributes to the objectives of promoting economic and social progress and a high level of employment through the strengthening of economic and social cohesion. In Amsterdam in June 1997, the Heads of State and Government recognised that it has never been more important to underline these principles. They agreed to strengthen the European Union's capacity to act in this area by introducing Article 13 of the Treaty establishing the European Community which provides the Community with specific powers to take action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation. Action to promote equal treatment and combat discrimination is important for the sake of citizens and their commitment to the ideals of the Union. But it is also important, including in the context of enlargement, to make clear that these principles must be more than simple words .

The purpose of the proposals presented under the cover of this Communication is to give effect to the new powers bestowed upon the Community by Article 13.

2. BACKGROUND : THE INTERNATIONAL, NATIONAL AND COMMUNITY CONTEXT

The right of individuals not to be discriminated against on arbitrary grounds has long been recognised by International Organisations, the European Union and its Member States.

2.1. The International context

The right to non-discrimination is recognised as an autonomous right or associated with the exercise of other fundamental rights by, inter alia, the UN Covenants on Civil and Political Rights, Economic, Social and Cultural Rights; the UN Conventions on the elimination of all forms of discrimination against women and against racial discrimination; the European Convention on Human Rights and Fundamental Freedoms; and, limited to employment and occupation, by the ILO Convention N° 111[2].

Although all EU Member States are either signatories to, or have ratified, these international agreements, with the exception of the UN Convention on racial discrimination and ILO Convention n° 111, this does not mean that individuals have a legally enforceable right to redress. It means that the State has made a commitment to guarantee respect for the right to non-discrimination within its jurisdiction.

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[1] See Annex I regarding EU Declarations and other relevant documents adopted by the European Community Institutions and the Member States concerning Human Rights and Fundamental Freedoms

2 See Annexes III and IV on UN and Council of Europe Human Rights Instruments and ILO Conventions.

2.2. The national dimension

There is considerable diversity in the constitutional and ordinary laws of the Member States on the right to equality and the prohibition of discrimination.[3]

2.2.1. Constitutional Provisions

All Member States, except one, have Constitutional provisions outlawing various forms of discrimination. The United Kingdom does not have a written Constitution, but its unwritten constitution prohibits discrimination.

The wording of these constitutional provisions varies from Member State to Member State. In some cases, they explicitly mention a closed list of factors of discrimination which are prohibited. In other Member States, the Constitutions establish an open-ended list, with residual clauses forbidding discrimination in general terms, referring to matters such as "any other condition or personal or social circumstance" or "any other consideration".

The Constitutions of most Member States explicitly cover the following grounds of discrimination: race or ethnic origin; religion or belief; and, increasingly include discrimination on the basis of disability[4]. Although many Member States have developed ordinary legislation prohibiting age discrimination, only one Member State refers to age explicitly in its Constitution, whilst the Constitutional Court of another Member State has declared this ground to be implicit within its Constitution.[5] The courts of three Member States[6], have interpreted their national Constitutions to prohibit discrimination on the basis of sexual orientation.

The "anti-discrimination or equality" Constitutional clauses are legally enforceable by individuals in most Member States. In the other Member States individuals cannot fully rely on Constitutional equality provisions when appearing before national tribunals: those provisions are , however, principles which should inspire public action and, in certain cases, could be invoked to justify a challenge to ordinary law on grounds of constitutionality.

2.2.2. Ordinary legislation

As far as ordinary legislation is concerned, all Member States' legal systems have regulations governing equal treatment and non-discrimination in many facets of the employment relationship, for example in the areas of access to employment, remuneration and working conditions during employment.

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3 See Annexes V and VI on Member States constitutional and ordinary provisions to combat discrimination on grounds of racial and ethnic origin, religion or belief, disability age and sexual orientation

4 Belgium, France, Luxembourg, Sweden do not have Constitutional provisions dealing with these grounds; Spanish courts have interpreted Article 14, which provides that "Spaniards are equal before the law, without any discrimination for reasons of birth, race, sex, religion, opinion, or any other personal or other social condition or circumstance" to include disability; Italian courts have implied such a ground from Articles 3, 4 and 38 of the Constitution; and the Dutch Courts have interpreted Article 1 of the Netherlands' Constitution, "All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on grounds of religion, belief, political opinion, race or sex or any other grounds whatsoever shall not be permitted", to include disability.

5 Article 14 of the Spanish Constitution.

6 The Constitutional provisions of all three provide for an implied right against discrimination : Spain – Article 14; The Netherlands – Article 1; and Finland - S5(2), as referred to in the Preamble.

In many Member States, equal treatment and non-discrimination are established by general or residual clauses referring to "all phases of employment", "all working conditions" or "the other conditions". In some cases, they mention specific matters such as working time pay or promotion. Some Member States' systems also render void or ineffective certain clauses or regulations if their effect is discriminatory or results in discriminatory treatment.

In more general terms, a number of Member States do not have comprehensive legislation (other than isolated provisions contained in various labour or criminal codes) to combat discrimination on the grounds of racial or ethnic origin, religion or belief, age and sexual orientation.

Specific anti-discrimination legislation in two Member States does not cover age and sexual orientation; legislation in two other Member States does not cover age and disability and legislation in another Member State does not cover age.

2.3. EU context

2.3.1. Community Law

The European Community has a long-standing commitment towards equal opportunities and equal treatment between women and men. It has also consistently shown its commitment to eliminating all other forms of discrimination through a variety of instruments – joint declarations, resolutions, directives and action programmes[7]. The 1989 Community Charter of the Fundamental Social Rights of Workers recognises the importance of combating every form of discrimination in order to ensure equal treatment for all.

However, the Community was often criticised for not going further and in particular for the lack of a specific legal base for action going beyond equal treatment for men and women in the employment field.

In order to ensure the non-discriminatory application of Community legislation pending the outcome of the IGC, the Commission, in its Communication on racism, xenophobia and antisemitism of 13 December 1995, promised to propose the insertion, where appropriate, of anti-discrimination clauses, both in new community instruments and when revising and up-dating Community legislation.

Following this, general non-discrimination clauses were introduced in a number of Commission's proposals, in particular in the amended revision of Regulation 1612/68 on freedom of movement for workers.

Moreover, as a matter of principle, Article 1 a) of Staff Regulations of officials of the European Communities as modified in 1998 establish a non-discrimination clause on grounds of race, political, philosophical or religious belief, sex or sexual orientation.

In the Intergovernmental Conference in June 1997, the Heads of State and Government included a new Article 13 in the Amsterdam Treaty providing the Community with specific

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[7] See Annex II on relevant documents made by European Union institutions concerning disability, racial or ethnic origin, age and sexual orientation.

- A Communication on crime victims in the European Union[9] was adopted in July 1999. It focuses mainly on the person who becomes a victim in another Member State that his own. The purpose of the Communication is to initiate discussion on concrete measures to improve the situation of crime victims. It proposes measures on prevention, assistance, compensation and the standing of victims in the criminal procedure. The particular vulnerability of certain categories of victims such as victims of foreign origin would justify special attention being paid to the assistance which can be afforded to them and in the accessibility to these services. The Conclusions of the Tampere European Council of 15-16 October 1999 underline the importance of improving the protection of victims and their access to justice.

- In the framework of the training and exchange programmes in the field of judicial and police co-operation, namely the Grotius and OISIN programmes, the Commission already funded some projects which are relevant in preventing and combating racism and xenophobia. These projects aim at facilitating judicial co-operation by improving awareness of law, procedures and institutions of the Member States' systems; at improving the way police officials are trained to deal with ethnic minorities, and at contributing to the development of new policies in the field of recruiting police officers, with a view of having police forces reflecting the different communities and minorities more accurately.

  On the basis of the results of these projects, the Commission is willing to support further activities to strengthen judicial co-operation, the role of the law enforcement authorities and police training in the field of the fight against racism and xenophobia.

3. CONSULTATIONS

Long before the signature of the Amsterdam Treaty, various institutions and interested parties – notably the European Parliament and NGOs – had called for European legislation to combat discrimination. In particular, the need for racial legislation was widely acknowledged during the 1997 European Year against Racism and, in its Social Action Programme 1998-2000, the Commission announced that it would launch a broad debate on the implementation of Article 13, including the possibility of a framework programme to combat all forms of discrimination. Following the signature of the new Treaty, the Commission held extensive consultations about the scope of such legislation with civil society including the social partners, the Member States and the European Parliament.

This consultation took place in a formal series of seminars and conferences in Oxford, Manchester, Innsbruck, Vienna and Berlin and in the Second Social Policy Forum in Brussels in June 1998. A large number of representatives from the European institutions, the Member States, civil society and the social partners discussed issues related to the fight against all the forms of discrimination cited in Article 13 of the Treaty. Further discussions also took place with the European Platform of Social NGOs and in the framework of the social dialogue. In addition, the European Parliament adopted two Resolutions in January and December 1998, which expressed clear views on the use of Article 13 in the field of racism and its Committee on Employment and Social Affairs adopted a Working Document in March 1999 which gives general support for a horizontal binding instrument to fight against discrimination. Finally,

[9] COM(1999)349 final.

ANNEX III

Principal United Nations and Council of Europe Human Rights Instruments to which EU Member States are not parties (taken from "Leading by Example: A Human Rights Agenda for the European Union for the Year 2000"[11])

	A	Be	Dk	FIN	F	De	GR	IRL	IT	Lux	NL	P	E	S	UK	
UN																UN
1																1
2																2
3																3
4																4
5		x						X								5
6								X								6
7															x	7
8		x			x										x	8
CoE																CE
9																9
10																10
11													x		x	11
12		x	X												x	12
13		x				x		X			X	x	x		x	13
14					x		x						x		x	14
15					x		x						x			15
16																16
17							x									17

[11] A projeet of the European University Institute funded by the European Commission, marking the 50[th] anniversary of the Universal Declaration of Human Rights – October 1998

powers to take action to combat discrimination based on sex, race or ethnic origin, religion or belief, disability, age and sexual orientation. At the Cardiff European Council in June 1998, Heads of State and Government looked forward to further proposals for common action following the Commission's Communication on an Action Plan against Racism.The Union's commitment to the fight against discrimination was clearly confirmed by the European Council of Tampere of October 1999.

2.3.2. Provisions on fundamental rights

Article 6(2) of the Treaty on European Union states that the Union respects fundamental rights as guaranteed by the European Convention on Human Rights. Article 14 of the European Convention sets forth a general principle of non-discrimination. However, this provision is significantly more limited than the proposed measures implementing Article 13 of the EC Treaty. Although it prohibits discrimination, Article 14 of the Convention does not create any independent rights and, furthermore, it only imposes obligations on Governments. In addition, Article 14 refers to the principle of non-discrimination in very broad terms. In contrast, the proposals to implement Article 13 of the Treaty lay down a legislative framework to be implemented by the Member States and provide for directly enforceable judicial remedies before national courts.

At the Cologne European Council meeting in June 1999, the Heads of State and Government decided that a Charter of fundamental rights of the European Union should be drawn up. The elaboration of a Fundamental Rights Charter, even if this is a parallel exercise, has in this respect considerable significance. However, it is not clear at this stage whether the Charter will provide for directly enforceable judicial remedies. It would not be appropriate to make the Article 13 proposals dependent upon the final adoption of the Charter.

2.3.3. Other EU initiatives

- A Joint Action[8] on the basis of Article K.3 of the Treaty of European Union concerning action to combat racism and xenophobia was adopted by the Council on 15 July 1996. The main objective of the Joint Action was to ensure effective judicial co-operation between Member States in the fight against racism and xenophobia. In that context the Joint Action refers to the need to prevent perpetrators of these offences from exploiting the fact that these activities are classified differently in different Member States by moving from one country to another in order to escape criminal proceedings.

  A report on the assessment of the implementation of the Joint Action prepared in April 1998 showed that the conduct listed in the Joint Action are already punishable as offences by Member States' legislation or that Member states are reviewing legislation in order to ensure that the activities listed in the Joint Action can be dealt with as criminal offences. However, it was noted that additional steps could be taken, for example in the area of contact points to develop the effectiveness of the Joint Action. A further review of the implementation should be undertaken by the Council before the end of June 2000.

  The Commission will assess the necessity of further initiatives in this field, taking into account the new types of legal instruments introduced by the Treaty of Amsterdam, and taking into consideration the report on the Joint Action due for June 2000.

[8] OJ L185 of 24.7.96, page 5.

Representatives of the Governments of the Member States were consulted in the framework of the High Level Group on Non-Discrimination.

During these consultations, the key actors involved confirmed the importance of four principles:

- The need to move forward on a broad front: Community action addressing discrimination across the board was considered necessary, taking account of the specificities but also the similarities of discrimination on the different grounds;

- The need to take account of the varying levels of progress made in the Member States: while some Member States have relied on constitutional clauses alone to assert rights to non-discrimination, others have developed very specific legislation in certain areas;

- The need to make full use of the available momentum and political will to secure greater progress where this was possible in specific areas;

- The need to contribute to the development of practical policies on the ground as well as to the establishment of the right not to be discriminated against: dual approach based on binding legislation accompanied and reinforced by an action programme.

4. THE COMMISSION'S PACKAGE OF PROPOSALS

The Commission has taken full account of these views, and of the more detailed comments it has received, in developing its package of proposals. It has also drawn on the experience of the Community in combating gender discrimination. This has shown that, while legislation to outlaw discrimination is an essential part of an effective strategy to change attitudes and behaviour, sending clear signals about what society regards as acceptable or unacceptable, it is not sufficient on its own. Legislation must be underpinned by concrete action which enables people to learn from the successes and failures of others and to build those lessons into their own action to tackle discrimination at local level – where it is often most effective.

The Treaty provides the Council with the power to take appropriate action to combat discrimination. Experience in the field of gender discrimination has shown that one of the most effective ways to combat discrimination is through promoting equal treatment, while at the same time allowing the possibility for Member States to adopt positive action to compensate for long-standing inequalities suffered by groups of people who, historically, have not been afforded equal treatment.

The Community is already active in the fight against discrimination in particular in the employment and social fields. The Commission has taken this experience into account in proposing a range of initiatives based on a mix of legal instruments, which builds on these efforts while recognising that discrimination goes beyond the labour market and calling for an integrated approach. Taken together, this package will contribute to combating discrimination, including through the promotion of equal treatment.

The draft directives proposed by the Commission do not affect the principle of equality enshrined in national Constitutions and in Common Law. They simply intend to supplement and reinforce national legislative measures implementing the principle of equality.

First, the Commission proposes a directive to combat discrimination in the labour market on all grounds referred to in Article 13, with the exception of sex, which has been covered by important Community legislation going back as far as the 1970s and which has a specific legal basis for action in the employment field (Article 141 of the TEC). This proposal will tackle the area in which discrimination on all grounds is most evident and where it is frequently most damaging to individuals' chances of success in society.

Second, the Commission proposes a directive to combat discrimination on grounds of racial and ethnic origin which goes beyond the labour market .This takes account of the experience of the Community during the European Year against Racism and, in particular, of the strong political will which exists to take action to combat as many aspects as possible of racial discrimination.In formulating these proposals, the Commission has taken account of past action in related fields, in particular the experience of fighting discrimination on grounds of sex embodied in Directives 76/207/EEC (Equal Treatment) and the following directives, including Directive 97/80/EC (Burden of Proof). It has also taken into consideration international legal instruments in the field of discrimination.

It is important to underline that the material scope of the two draft directives overlaps to the extent that both cover discrimination based on racial or ethnic origin in employment. The reason for this is that the proposals, while similar in design, are intended to be independent pieces of legislation that could stand alone. If one directive were adopted by the Council before the other, the remaining proposal would be amended accordingly.

Third, the Commission proposes a programme of action, designed to complement the legislative proposals by supporting and supplementing the Member States' efforts to combat discrimination. This will address all grounds of discrimination covered by Article 13 of the Treaty, except sex discrimination. In the light of the Community's experience in previous action in this field and of the specific importance attached to the principle of equality between women and men by other Treaty provisions – notably Articles 2, 3 and 141 EC – discrimination on grounds of sex will be included within a new programme on gender equality, that the Commission is currently preparing. However, according to the new provisions of Articles 2 and 3 EC, the Commission will ensure that a gender perspective is effectively included in all actions and activities addressed in the programme to combat all other grounds of discrimination.

The Community has considerable experience in supporting practical measures to assist other groups which are frequently victims of discrimination – visible minorities, the elderly and people with disabilities. Much of this experience has focused on measures designed to integrate individuals into society rather than to combat at source the discrimination which they suffer. Nevertheless, this experience has been taken into account in the design and structure of the proposed action programme and, in particular, in the emphasis it places on the involvement of discriminated groups in its implementation.

Together, these three proposals will constitute a comprehensive basis for action, providing a minimum level of legal rights not to be discriminated against, supported by practical action to promote the effective application of those rights on the ground.

But they are not the Community's only response. It is vital that the fight against discrimination is carried through all relevant activities at Community and national levels. The Community has launched a range of actions which take account of this need.

First, the Employment Guidelines commit Member States to make the fight against discrimination against women a priority for all their actions in the labour market. They also require them to give special attention to the needs of the disabled, ethnic minorities and other groups and individuals who may be disadvantaged in the labour market, including by discrimination.

Second, these groups can benefit from the ordinary assistance of the Structural Funds. In addition, the European Social Fund will, through the new Community Initiative EQUAL, address issues linked to exclusion, discrimination and inequality, to the extent that they interact with employment. It will focus on thematic priorities agreed between the Member States and the Commission, which relate to the four pillars of the European Employment Strategy. The Community Action Programme will not provide support for actions which are eligible for funding under EQUAL.

Third, the new Education, Training and Youth programmes will continue to promote, , the integration of disadvantaged groups, including people exposed to discrimination on various grounds, as one of their horizontal priorities.

Fourth, as noted above, the Commission is preparing a new Community Action Programme for Equality between Women and Men to build on the valuable gains of the current Community Programme which comes to an end on 31 December 2000.

Finally, the Commission is also preparing a programme of action to combat social exclusion under Article 137. Discrimination can, of course, be a contributory factor leading to social exclusion. The Inclusion Programme will promote policy-oriented co-operation at Community level to underpin Member States' efforts to prevent and combat social exclusion. It will focus on measures to support Member States' efforts to promote the integration of groups which are excluded or are at risk of exclusion, while the programme included in this package based on Article 13 will concentrate on supporting and improving the effectiveness of Member States' measures to combat discrimination.

Beyond this, the Commission intends to turn to good account the new opportunities given by the coming into force of the Amsterdam Treaty and made clear by the conclusions of the extraordinary European Council of Tampere. In fact, the rejection of all forms of discrimination particularly of racism and xenophobia, is an essential condition for the maintenance and development of the European Union into an area of freedom, security and justice as foreseen in Article 2 of the TUE.

Already taken up by the Commission in its communication of July 1998[10], repeated in the letter by President Prodi to the Finnish Prime Minister Lipponen dated 23rd September 1999 and supported by the European Parliament resolution dated 16th September 1999, this fundamental principle was confirmed by the Heads of State and Government without ambiguity, and what is needed now is its implementation.

Moreover, it will also be up to the Commission to continue it's action in the fight against discrimination by using the right of initiative in respect to new measures coming under Title VI TUE wherein Article 29 contains an express reference to the prevention of racism and xenophobia, and of Title IV TCE especially in the fields of asylum and immigration.

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[10] COM(98)459 final dated 14.07.1998.

5. ECONOMIC IMPACT

Evidence from the Member States shows that groups of people who are most frequently the victims of discrimination are likely to experience the greatest difficulties in terms of social integration and, in particular, of access to the labour market. The two draft directives, by combating discrimination in a variety of situations, will promote wider social participation and, in particular, employability, thus supporting people's ability to fulfil their potential in economic and social terms. At the same time, they will ensure that society and enterprises are able to make best use of their human resources. To achieve this gain, some enterprises in Member States which currently have no or limited non-discrimination provisions will experience temporary costs associated with adjusting to the new requirements (such as training relevant staff).

This point is explored in greater detail for the two directives in the impact assessment forms which are attached to each proposal.

6. SUBSIDIARITY AND PROPORTIONALITY: JUSTIFICATION AND ADDED VALUE

In introducing the new Article 13 into the Treaty, Heads of State and Government recognised that there is a need for the Community to take action to combat discrimination. Nevertheless, the fight against discrimination is not an area of exclusive Community competence and, in accordance with Article 5, the Community must therefore act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

This test is met by the three proposals annexed to this Communication.

Subsidiarity

Most Member States have included in their constitutional and/or legal order provisions which assert the right not to be discriminated against. However, the scope and the enforceability of such provisions – and the ease of access to redress – vary greatly from one Member State to another.

The draft directives would lay down a set of principles on equal treatment covering key issues, including protection against harassment, the possibility for positive action, appropriate remedies and enforcement measures. These principles would be applied in all Member States, thus providing certainty for individuals about the common level of protection from discrimination they can expect. Common standards at Community level can only be achieved through co-ordinated action.

Proportionality

If European legislation is necessary to reach the objectives of the Treaty, it must nevertheless go no further than is necessary to reach those objectives.

In light of the differences that still exist in the ordinary legislation of the Member States, it is necessary to define common principles in order to give effect to Article 13.

However, during the extensive consultations with all interested parties, both the Member States and the NGOs emphasised how important it was to respect the different traditions of the

Member States, both to enable flexibility in implementation and to avoid interfering with the good practices which already exist in some Member States. Therefore, the proposals intend to set a limited number of requirements based on a number of general principles, allowing Member States considerable discretion in how they choose to implement them. This takes account of the different traditions and circumstances of Member States and, furthermore, it does not prevent Member States going further. Moreover, this approach is not new since it was already taken by Community legislation on equality between men and women.

The draft Decision on the Action Programme enables multi-lateral co-operation between actors in the Member States leading to an improvement in the effectiveness of policies and practices to combat discrimination across the Community. Such co-operation requires co-ordination at European level both to ensure efficiency and to avoid overlap with other Community initiatives. The programme was designed following an extensive evaluation *ex ante* to identify the ways in which Community support could best add value to Member States' existing practices.

CONCLUSION

The Commission has prepared this package over a long period, as a result of extensive consultations with the Member States, NGOs, the social partners and the European Parliament. The issues raised are particularly sensitive because they directly affect society's conceptions.

The Commission is taking a reasonable, progressive and pragmatic approach. The Action Programme aims to raise awareness about discrimination in general, which affects a significant number of people either directly or indirectly. The two directives lay down a limited number of requirements, while leaving the necessary margin of discretion to the Member States in how they choose apply them.

The two proposed directives are intended to give effect to Article 13 of the Treaty. The first directive establishes a general framework for equal treatment in the employment field, by prohibiting discrimination on the various grounds set forth in Article 13. The second directive is a response to the many calls to combat racism in fields beyond employment, prohibiting discrimination in other areas which fall within the competence of the Community. For these reasons, following the call for action by the Tampere European Council, and without prejudice to the preparation of a European Charter of fundamental rights, the Commission considers that it is necessary to move forward now.

Community action is a clear signal that discrimination is not acceptable within the European Union.

ANNEX I

EU declarations and other relevant documents of the European Community institutions and Member States concerning Human Rights and Fundamental Freedoms

- Paris Summit Declaration (19 and 20 October 1972).
- Document on the European Identity (Copenhagen Summit, 14 Deeember 1973).
- Joint Declaration on Fundamental Rights (European Parliament, Council and Commission, 5 April 1977).
- Declaration on Demoeracy (Copenhagen European Council, 8 April 1978)
- Single European Act (February 1986).
- Statement on Human Rights (Foreign Ministers meeting in the framework of European political cooperation, and Council, 21 July 1986).
- Declaration of Fundamental Rights and Freedoms (European Parliament, 12 April 1989).
- Declaration on Human Rights (Luxembourg European Council, 28 and 29 June 1991).
- Resolution on Human Rights, Democracy and Development (Council and Member States meeting within the Council, 28 November 1991).
- Treaty on European Union (Preamble, common provisions and specific provisions on citizenship of the Union, development cooperation, a common foreign and security policy, and cooperation in the fields of justice and home affairs).
- Resolution of 10 February 1994 on the Constitution of the European Union (European Parliament). (OJ 1994 C 61/155). (There is an annex to this resolution: Draft Constitution of the European Union of 1994, adopted by the institutional committee of the EP).
- Resolution of 6 May 1994 on violations of the freedoms and fundamental rights of women (European Parliament).
- Commission Communication on the inclusion of respect for democratic principles and human rights in agreements between the Community and Third Countries (COM (95) 216 of 23 May 1995).
- Commission Communication" The European Union and the External dimension of Human Rights Policy: From Rome to Maastricht and Beyond" (COM (95) 567 of 22 November 1995).
- Report from the Commission on the implementation of measures intended to promote observance of human rights and democratic principles (for 1995) COM/96/0672 final.
- Resolution of 12 December 1996 on human rights throughout the world in 1995-96 and the Union's human rights policy (European Parliament).
- Resolution on the Commission report on the implementation of measures intended to promote observance of human rights and democratic principles (for 1995) (European Parliament) (C4-0095/97).
- The Amsterdam Treaty (for instance Article 2, 6, 7, 11, 46 and 49 of the TEU and Articles 12, 13, 17, 136, 141).
- Resolution of 19 December 1997 setting up a single co-ordinating structure within the European Commission responsible for human rights and democratisation (European Parliament) (A4-0393/97).
- Conclusions of the Luxembourg European Council of 12-13 December 1997.
- Resolution on respect for human rights in European Union (1996) (European Parliament (A4-0034/98).
- Conclusions of the Cardiff European Council of 15-16 June 1998.
- Communication from the Commission to the Council and European Parliament of 12 March 1998: 'Democratization, the rule of law, respect for human rights and good governance: the challenges of the partnership between the European Union and the ACP States' COM (98) 146 final.
- Common Position of 25 May 1998 defined by the Council on the basis of Article J.2 of the Treaty on European Union, concerning human rights, democratic principles, the rule of law and good governance in Africa.

ANNEXES

I. Declarations and documents from EC Institutions and Members States on Fundamental Rights and Freedoms

II. Documents from EC Institutions on disability, racial or ethnic origin, age and sexual orientation

III. Table: UN and Council of Europe Human Rights Instruments to which EU Member States are not parties

IV. Table: ILO Conventions

V. Table: Constitutional provisions to combat discrimination

VI. Table: Statutory provisions to combat discrimination

- Declaration of the EU adopted on 10 December 1998 on the Occasion of the 50th Anniversary of the Universal Declaration of Human Rights.
- Council Regulation EC N° 975/1999 of 29 April 1999 laying down the requirements for the implementation of development cooperation, which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms OJ L 120/8 of 8.5.99.
- Council Regulation EC N° 976/1999 of 29 April 1999 laying down the requirements for the implementation of Community operations, other than those of development cooperation, which, within the framework of Community cooperation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that or respecting human rights and fundamental freedoms in third countries OJ L 120/8 of 8.5.99.
- Barros Moura Report on human rights in the world (1997-1998) and the policy of the EU in the field of human rights A4-0410/98 (European Parliament).
- Schaffner Report on respect for human rights in the EU in 1997. A4-0468/98 (European Parliament)
- Conclusions of the Cologne European Council (3/4 June 1999) and more particularly Decision on the drawing up of a Charter of fundamental rights of the European Union.

RACIAL OR ETHNIC ORIGIN

Resolution

Resolution of the Council and the Representatives of Governments of the Member States, meeting within the Council of 29 May 1990 on the fight against racism and xenophobia *(Official journal No C 157 of 27 June 1990)*

Resolution on racism and xenophobia *(European Parliament B4-0261/94).*

Resolution on racism, xenophobia and anti-semitism *(European Parliament B4-1239/95).*

Resolution of the Council and the representatives of the governments of the Member States, meeting within the Council of 5 October 1995 on combating racism and xenophobia in the field of employment and the social field.

Resolution of the Council and the Representatives of the Governments of the Member States of 23 July 1996 on the European Year against racism (1997) *(Official Journal C 237 of 15 august 1996).*

Resolution by the European Parliament on racism, xenophobia and anti-Semitism and the result of the European Year Against Racism (1997) *(Official Journal C 056 of 23 February 1998)*

Declarations

The 1986 Joint Declaration against Racism and Xenophobia of the European Parliament, the Council and the Commission *(Official Journal C 158 of 25 June 1986)*

Declaration on Anti-semitism, Racism and Xenophobia *(Dublin European Council, 25 and 26 June 1990).*

Declaration on Racism and Xenophobia *(Maastricht European Council, 9 and 10 December 1991).*

Joint Declaration of The Social Partners on the Prevention of Racial Discrimination and xenophobia and the Promotion of Equal Treatment at the Workplace *(October 1995)*

Declaration by the Council and the Representatives of the Governments of the Member States, meeting within the Council of the 24 November 1997 on the fight against racism, xenophobia and anti-Semitism in the youth field *(Official Journal C 368 of 5 December 1997)*

Declaration by the Council and the representatives of the Governments of the Member States, meeting within the Council of the 16 December 1997 on respecting diversity and combating racism and xenophobia *(Official Journal C 001 of 3 January 1998)*

Regulations

Council regulation (EC) No 1035/97 of 2 June 1997 establishing a European Monitoring Center on racism and Xenophobia *(Official Journal L 151 of 10 June 1997)*

European Council Conclusions

Conclusions of the Corfu European Council of 24-25 June 1994 on racism and xenophobia.

Conclusions of the Essen European Council of 9-10 December 1994 on racism and xenophobia.

Conclusions of the Cannes European Council of 25-26 June 1995 on racism and xenophobia.

Conclusions of the Madrid European Council of 15-16 December 1995 on racism and xenophobia.

Conclusions of the Florence European Council of 21-22 June 1996 on racism and xenophobia

Conclusions of the Dublin European Council of 13-14 December 1996 on racism and xenophobia.

Communications

Communication from the Commission on racism, xenophobia and anti-semitism and proposal for a Council Decision designating 1997 as European Year against Racism *(COM(95) 653 final.)*

Commissions Communication, An action plan against Racism *(COM (98) 183 FINAL)*

Others

Joint Action of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning action to combat racism and xenophobia.

Reports of the Consultative Committee on Racism and Xenophobia (the Kahn Committee) drawn up for the meetings of the European Council in Essen, Cannes, Madrid and Florence.

ANNEX II

Relevant Documents of European Union institutions concerning disability, racial or ethnic origin, age and sexual orientation

DISABILITY

Resolutions

Council Resolution of the Representatives of the Governments of the Member States of the European Communities meeting within the Council on the 21 December 1981 concerning on the social integration of handicapped people at Community level (*Official Journal No. C 347 of the 31 December 1981*)

Resolution of the Council and the Ministers of Education meeting within the Council on the 31 May 1990 concerning integration of children and young people with disabilities into ordinary systems of education (*Official Journal No. C 162 of 3 July 1990)*

Resolution of the European Parliament of 14 December 1995on the human rights of disabled people *(OJ No C 17 of 22 January 1996)*

Resolution of the European Parliament on the rights of disabled persons *(A4-0391/96)*

Resolution of the European Parliament on the equality of opportunities for people with disabilities *(A4-0044/97)*

Resolution of the Council and the representatives of the Governments of the Member States meeting within the Council of 20 December 1996 on Equality of opportunity for people with disabilities *(Official Journal C 012 of 13 January 1997)*

Council Resolution of 17 June 1999 on equal employment opportunities for people with disabilities (*Official Journal C 186 of 2 july 1999).*

Decisions

Council decision (88/231/EEC) of 18 April 1988 establishing a second Community action program for disabled people (HELIOS) *(Official Journal L 104 of 23 April 1988)*

Council decision (93/136/EEC) of 25 February 1993 establishing a third Community action program to assist disabled people (HELIOS II 1993-1996) *(Official Journal No. L234 of 17 September 1993)*

Council decision (93/512/EEC) of 21 September 1993 on a Community technology initiative for disabled and elderly people (TIDE) (1993 to 1994) *(Official Journal L 240 of 25 September 1993)*

Recommendations

Council recommendation (86/379/EEC) of the 24 July 1986 on the employment of disabled people in the Community (*Official Journal No. L 225 of the 12 December 1986*)

Reports

Report by the Commission to the European Parliament and the Council on the implementation and the results of the HELIOS program (1988-1991) *(SEC/92/1206 FINAL)*

Report from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the regions on the evaluation of the third Community action program to assist disabled people (HELIOS II 1993-1996) *(COM/98/0015 FINAL)*

Conclusions

Conclusions of the Council on the employment of disabled people in the Community *(OJ No C 173 of 12 June 1989*

Communications

Communication of the Commission on Equality of opportunity for people with disabilities – A new European Community Disability Strategy *(COM (96) 406 FINAL)*

AGE

Recommendation

Council recommendation of 10 December 1982 on the principles of a Community policy with regard to retirement age *(Official Journal No. L 357 of 18 December 1982)*

Reports

Report from the Commission to the Council on the application of the Council recommendation of 10 December 1982 on the principles of a Community policy with regard to retirement age *(COM(86) 0365 FINAL)*

Report from the Commission on the application in Member States of the Council Recommendation 82/857/EEC of 10 December 1982 on the principles of a Community policy with regard to retirement age *(SEC/92/2288 FINAL)*

SEXUAL ORIENTATION

Resolutions

Resolution by Parliament on sexual discrimination at the workplace *(Official Journal No C 104 of 16 April 1984*

Resolution by Parliament on discrimination against transsexuals *(Official Journal No. C 256 of 9 October 1989)*

Resolution by Parliament on equal rights for homosexuals and lesbians in the EC *(Official Journal No. C 061 of 28 February 1994)*

Declarations

Council declaration of 19 December 1991 on the implementation of the Commission recommendation on the protection of the dignity of women and men at work, including the code of practice to combat sexual harassment *(Official Journal No C 027 of 4 February 1992)*

	A	Be	Dk	FIN	F	De	GR	IRL	IT	Lux	NL	P	E	S	UK	
18	x	x		x	x	x	x	X		x		x	x	x	x	18
19																19
20									X							20
21									X			x				21
22																22
23	x	x			x	x		X		x		x	x		x	23
24		x	X			x				x			x		x	24
25	x	x	X		x	x		X		x	X		x		x	25
26	x	x	X	x	x	x	X	X	X	x	X	x	x		x	26
27	x	x	X		x	x	X	X	X	x		x	x	x	x	27
28		x			x		X	X		x	X	x		x		28

24) The Protocol amending the ESC (ETS No. 142, containing measures designed to improve the supervisory machinery).

25) Additional protocol to the ESC providing for a System of Collective Complaints (ETS No. 158).

26) European Social Charter (Revised) (ETS No. 163).

27) European Charter for Regional or Minority Languages (ETS No. 148).

28) Framework Convention for the Protection of National Minorities (ETS 157).

ANNEX III

United Nations:

1) The International Covenant on Economic, Social and Cultural Rights.

2) The International Covenant on Civil and Political Rights (ICCPR).

3) The Convention on the Elimination of All Forms of Discrimination against Women.

4) The Convention on the Rights of the Child.

5) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

6) The Convention on the Elimination of All Forms of Racial Discrimination

7) The Optional Protocol to the ICCPR.

8) The Second Optional Protocol to the ICCPR.

Council of Europe:

9) The Convention for the Protection of Human Rights and Fundamental Freedoms (ETS no. 5) as complemented by Protocol No. 2 (ETS No. 44) of 6 May 1963 and amended by Protocol No. 3 (ETS No. 45) of 6 May 1963, Protocol No. 5 (ETS No. 55) of 20 January 1966 and Protocol No. 8 (ETS No. 118) of March 1985 (the ECHR.

10) The Protocol to the ECHR (ETS No. 9, dealing inter alia with the right to peaceful enjoyment of possessions, the right to education, freedom of expression and opinion through free elections, the application of the ECHR to Member State territories.

11) Protocol No. 4 to the ECHR, securing certain rights and freedoms other than those already included in the Convention and the first protocol thereto (ETS No. 46)

12) Protocol No. 6 to the ECHR concerning the Abolition of the Death Penalty (ETS No. 114)

13) Protocol No. 7 to the ECHR (ETS No. 117, dealing inter alia with rights of lawfully resident aliens, and rights arising in criminal proceedings.

14) Protocol No. 9 to the ECHR (ETS No. 140, on matters concerning the jurisdiction of the European Court of Human Rights).

15) Protocol No. 10 to the ECHR (ETS No. 146, amending Article 32 of the ECHR with a view to reducing the two-thirds majority mentioned therein.)

16) Protocol No. 11 to the ECHR (ETS No. 155, restructuring the control machinery established thereby).

17) The European Agreement relating to persons participating in Proceedings of the European Commission and Court of Human Rights (ETS No. 67, concerning certain immunities and facilities for persons participating in legal proceedings).

18) European Agreement relating to persons participating in proceedings of the European Court of Human Rights (ETS No. 161 concerning certain immunities and facilities for persons participating in proceedings in the European Court of Human Rights, having regard to Protocol 11).

19) The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) (ETS No. 126.)

20) Protocol No. 1 to the ECPT (ETS No. 151, concerning the accession of non-member states of the Council of Europe).

21) Protocol No. 2 to the ECPT (ETS No. 152, on matters concerning renewal of membership of members of the European Committee for the Prevention of Torture).

22) The European Social Charter (ESC) (ETS, No. 35)

23) The Additional Protocol to the ESC (ETS No. 128, concerning the extension of social and economic rights provided in the ESC).

ANNEX IV

Some relevant ILO Conventions

	A	Be	Dk	FIN	F	DE	GR	IRL	IT	Lux	NL	P	E	S	UK
ILO															
111	X	x	x	x	x	x	x		X		x	x	x	x	
142	X		x	x	x	x	x	x	X		x	x	x	x	x
159			x	x	x	x	x	x			x		x	x	

ILO CONVENTIONS

- Convention 111 concerning discrimination in respect of employment and occupation, 1958.
- Convention 142 concerning vocational guidance and vocational training in the development of human resources, 1975.
- Convention 159 concerning vocational rehabilitation and employment (disabled persons), 1985.

ANNEX V

CONSTITUTIONAL PROVISIONS TO COMBAT DISCRIMINATION ON GROUNDS OF RACIAL OR ETHNIC ORIGIN, RELIGION OR BELIEF, DISABILITY[12], AGE OR SEXUAL ORIENTATION

Member State	Constitutional provision	Grounds covered	Legally enforceable right
Belgium	Article 10, 11 and 191 of the Constitution.	General principle of equality.	Full effect.[13]
Denmark	Article 70 of The Constitution.	Racial or ethnic origin and religion or belief.	Full effect.
Germany	Article 3 of the Constitution.	Racial or ethnic origin, religion or belief and disability.	Full effect.
Greece	Article 4.1, 5.1 and 5.2 of the Constitution.	Racial or ethnic origin and religion or belief.	Full effect.
Spain	Article 14 of the Constitution.	Racial or ethnic origin and religion or belief. [14]	Full effect.

[12] Most Member States have general constitutional provisions on the integration of disabled people but these are not mentioned in this table.

[13] Full effect means that the provision is legally binding and gives rise to judicial redress

[14] The wording of the article is comprehensive and for that reason it could be argued that the article also covers discrimination on grounds of disability, age and sexual orientation.

Member State	Constitutional provision	Grounds covered	Legally enforceable right
France	Article 2 of the Constitution.	Racial or ethnic origin and religion or belief.	Full effect.
Ireland	Article 40 of the Constitution.	General principle of equality.	Full effect.
Italy	Article 3 of the Constitution.	Racial or ethnic origin and religion or belief .[15]	Full effect.
Luxembourg	Article 11 of the Constitution.	General principle of equality.	Limited effect.[16]
The Netherlands	Article 1 of the Constitution.	Racial or ethnic origin and religion or belief.[17]	Full effect.
Austria	Article 7.1 of the Constitution.	Racial or ethnic origin, religion or belief and disability	Limited effect.

[15] See footnote 8.

[16] Limited effect means that general principles may be deduced from the constitutional provision.

[17] See footnote 8

Member State	Constitutional provision	Grounds covered	Legally enforceable right
Portugal	Article 13 of the Constitution.	Racial or ethnic origin and religion or belief.	Full effect.
Finland	Section 5 of the Constitution.	Racial or ethnic origin, religion or belief, disability and age[18].	Limited effect.
Sweden	Chapter 2 article 1.6, 15 and 20.6 of the Constitution.	Racial or ethnic origin and religion or belief.	Limited effect.
The United Kingdom	Does not have a written Constitution.		

[18] Discrimination on grounds of sexual orientation is implicitly covered.

ANNEX VI

STATUTORY PROVISIONS, OTHER THAN PENAL PROVISIONS, TO COMBAT DISCRIMINATION ON GROUNDS OF RACIAL OR ETHNIC ORIGIN, RELIGION OR BELIEF, DISABILITY[19], AGE OR SEXUAL ORIENTATION

Member State	Laws or collective agreements	Grounds covered	Scope
Belgium	Collective agreement of 6 December 1983 concerning the recruitment and selection of workers.	Racial or ethnic origin, religion or belief and age.	Employment.
Denmark	Act 459 of 12 June 1996 on prohibition against discrimination in respect of employment and occupation etc.	Racial or ethnic origin, religion or belief and sexual orientation.	Employment.
Germany	Civil Service codes and the Works Constitution Act (Betr VG)	Racial or ethnic origin, religion or belief.	Employment
Greece	No anti-discrimination law.	-	-
Spain	The Workers Statute Act ("Estatuto de los Trabajadores")[20].	Racial or ethnic origin, religion or belief and age.	Employment.

[19] Only legislation which makes it unlawful to discriminate against disabled people are mentioned in the table. Concerning the integration of the disabled people several Member States have systems of compulsory employment or quota schemes (Germany, Greece, Spain, Italy, Luxembourg, the Netherlands and Austria) while others rely on subsidies to employers.

[20] Revised text approved by the Royal Legislative Decree N° 1/1995 of 25 March 1995.

Member State	Laws or collective agreements	Grounds covered	Scope
France	The Labour Code.	Racial or ethnic origin, religion or belief, disability and sexual orientation.	Employment.
Ireland[21]	Employment Equality Act, 1998.	Racial or ethnic origin, religion or belief, disability, age and sexual orientation.	Employment.
Italy	Law no. 300 of may 20, 1970 (Workers Statute) and law no. 40 of 6 march 1998.	Racial or ethnic origin and religion or belief.	Employment (Workers Statute) and the provision of services and goods (law no 40).
Luxembourg	No anti-discrimination law.	-	-
The Netherlands[22]	The Equal Treatment Act(1994)	Racial or ethnic origin, religion or belief and sexual orientation.	Employment, Advice regarding choice of education or career and provision of goods and services.

[21] Legislation prohibiting discrimination on the same grounds as The Employment Equality Act in education, the provision of goods and services and the disposal of property and accommodation (Equal Status Bill) was presented to the National Parliament on 15 April 1999.

[22] Proposals for legislation prohibiting discrimination on grounds of age and disability is currently being prepared

Member State	Laws or collective agreements	Grounds covered	Scope
Austria	The Introductory Act to the Administrative Procedures Code (*Verwaltungsverfahrengesetze*).	Racial or ethnic origin and religion or belief.	Provision of public service and admission to public places.
Portugal	No anti-discrimination law.	-	-
Finland	The Act on Contracts of Employment.	Racial or ethnic origin, religion or belief, age and sexual orientation.	Employment.
Sweden	The Employment Protection Act (1982), The Ethnic Discrimination Act (1999), Act on Discrimination of people with disabilities (1999), Act on discrimination on grounds of sexual orientation(1999)	Racial or ethnic origin, religion or belief, handicap and sexual orientation.	Employment.
The United Kingdom	The Race Relations Act 1976 and The Disability Discrimination Act 1995.	Racial or ethnic origin, religion or belief and disability.	Employment, training, education, the provision of goods, facilities and services, or the management and disposal of premises.