

socialplatform

Equality and Non Discrimination: what role for the EU? Social NGOs recommendations for further actions

Common position adopted by the Steering Group on 23 October 2007

The Social Platform welcomes the open consultation launched by the European Commission on a new initiative to prevent and combat discrimination beyond employment. Many Social NGOs, and in particular anti-discrimination networks, are taking part in this consultation and bring a unique expertise from their sectors. The common position's objective is to make concrete proposals to EU institutions on how to reinforce their equality and anti-discrimination work and to communicate the solidarity and determination of Social NGOs in achieving equality for all in the European Union.

Social NGOs believe that the fight for more equality in Europe requires new initiatives from the Commission to ensure equality for each individual living in the EU and avoid any hierarchy of rights. Indeed there is no room for complacency in the EU efforts to promote the dignity of all women and men living in the EU.

Social NGOs have therefore decided to put forward three key messages to EU decision-makers.

THERE IS NO EQUALITY FOR ALL:

- ⇒ **without the same legal protection for all**
- ⇒ **without EU and Member States guaranteeing equality in practice**
- ⇒ **without building all EU policies upon equality and non discrimination principles**

In 2004, José Manuel Barroso - President of the European Commission - promised publicly a new initiative on equality and non discrimination: “[He intends to] *initiate work in view of a framework-directive on the basis of the Article 13 of the EC Treaty, which will replace the directives adopted in 2000 and enlarge them to all forms of discrimination. Currently, these directives have a limited scope.(...) Let me be very clear: I will personally ensure full control of our action in the fight against discrimination and the promotion of fundamental rights.*”

Since then, no European legislation on equality and non discrimination has been presented to the European Parliament. Social NGOs believes that time has come for an EU action on equality for all:

2007 is the European year for equal opportunities, it marked the 50th anniversary of the EU and finally, the long-awaited European Charter of Fundamental Rights will become legally binding.

Although Social NGOs understand that legislation alone is not enough to achieve equality, it is clearly one of the most powerful tools to raise awareness, mobilise actors and communicate the determination of public institutions to act for more equality. Legislation represents a very concrete expression of a Europe of values, close to its people and able to drive a community of Member States into positive change.

I. There is no equality for all without the same legal protection for all

Social NGOs believes that time has come for a strong European equality agenda grounded in EU legislation. In order to protect effectively against discrimination, **the Social Platform is convinced that the following rights should be legally protected:**

1) The right to be protected against discrimination on any grounds

- o Discrimination exists daily on many grounds other than the five mentioned in the article 13 of the EU Treaty¹. EU action should therefore be based on the open definition of Article 21 of the EU Charter of Fundamental Rights which will be legally binding. Its states that *“any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited”*.
- o Discrimination can be motivated by more than one ground. For instance a woman can be black, muslim, and with disabilities. Unfortunately, not all these grounds are legally protected in the same way at European level and these gaps may prevent an individual from the right to be treated equally before the law. Multiple discrimination is therefore another reason why we need to have the same level of protection for all types of discrimination.
- o Equality requires coherence in EU legislation. Even though there is room for improvement in the “Race equality directive²”, the current split between protection against discrimination on the ground of race and ethnicity and other grounds creates an unacceptable hierarchy of protection. The rights conferred to all grounds of discriminations should be upgraded to the same comprehensive level.

2) The right to be protected against discrimination in all areas of life

- o The lack of equality approach appears as a key factor for both economic and social exclusion. Beyond employment, discrimination still all too often occurs in the provision of goods, facilities and services that are key to an effective inclusion into society (such as minimum income, housing, education, transport, services of general interest, social and healthcare services, or social protection).

¹ Article 13 of the EC Treaty states that *“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”*.

² Council directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

Discrimination in these fields needs to be urgently tackled through specific legislative proposal with a scope covering all areas of life.

- o Consequently, Member States and the EU should ratify the Protocol 12 of the European Convention on Human Rights (ECHR) which states that *“the enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”* and that *“no one shall be discriminated against by any public authority on any ground”*.

3) The right to enlarged protection against gender discrimination

- o Gender equality constitutes a specific field of activity of the EU based on precise Treaty provisions. Because much progress still needs to be made to ensure that European societies are detrimental neither for women nor men, social NGOs call for EU legislation and action in the field of gender equality to be strengthened in order to address discrimination against women in all areas of life.

4) The right to be compensated for present and past disadvantages due to discrimination.

- o The EU and Member States should adopt compulsory positive action measures aiming at increasing the participation of women and particular groups in certain sphere of political, social or economic activity, in which they are underrepresented.

5) The right to be protected against any form of violence

- o Violence and abuse of women, and all people of vulnerable groups is widespread in society. Any form of violence and abuse is a fundamental barrier to the achievement of equality and is a violation of human rights. There is therefore a need for coherent and comprehensive EU policies and legislation, notably to support victims and prosecute offenders.

6) The right to benefit from the protection of international human rights instruments

- o The European Union should play a leading role in reinforcing a “human rights culture” by promoting and ensuring the signature, ratification and implementation by Member States of key international human rights conventions and principles such as the *UN International Covenant on Political and Civil Rights*; the *UN International Covenant on Economic, Social and Cultural Rights*; the *UN Convention on the Elimination of All Forms of Discrimination against Women*; the *UN International Convention on the Elimination of All Forms of Racial Discrimination*, the *UN Convention on the Rights of the Child*; the *UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, the *UN Convention on the Rights of People with Disabilities*, the *Revised European Social Charter*, and by encouraging the adoption of the Yogyakarta principles³.

³ The Yogyakarta principles address a broad range of human rights standards and their application to issues of sexual orientation and gender identity. See <http://www.yogyakartaprinciples.org/>

II. There is no equality for all without EU and Member States guaranteeing equality in practice

According to the Eurobarometer *"51% of Europeans think that not enough effort is made in their country to fight discrimination"*⁴. People need to see that European and national public authorities are committed to bring real change when promoting equality and fighting against discrimination.

Therefore, legislation must not remain a mere catalogue of best wishes. In order to become a tool for greater equality in Europe, it must be implemented with the aim to benefit all women and men living in the EU. Therefore the following duties should lie with European and national public authorities:

1) The duty to ensure the active participation of civil society organisations -representing the interests of discriminated people - in the drafting, enacting, implementation and evaluation of equality and non discrimination legislations

- o Policy making should not only be done for people but with people. Equality and anti-discrimination NGO networks have a key role to play and need to be effectively supported.
- o The importance of anti discrimination NGOs must be valued and they should be supported both politically and financially.

2) The duty to ensure effective implementation of EU legislation at national level

- o Through infringement and non compliance procedures, the European Commission should pressure Member States to respect their legal obligations to fully transpose and implement the directives on equal treatment between persons, irrespective of racial or ethnic origin and on establishing a general framework for equal treatment in employment and occupation. These infringement procedures should be made public⁵.
- o Access to justice is key to effectively implement non-discrimination legislation. Victims of discrimination need to have easy and affordable access to a fair and efficient justice to enable them to defend their rights successfully. The EU and Member States need to push in favour of facilitated access and more efficient procedures for victims of discrimination and violence.

3) The duty to lead effective information and awareness raising campaigns ensuring that all women and men living in the EU are able to use their rights

- o People in the EU are not aware of their rights! 64% of Europeans believe that discrimination is widespread but only one third of EU citizens claim to know their rights should they be victims of discrimination. Seven years after the adoption of the EU anti-discrimination directives, only four out of ten persons know that discrimination on the ground of sex, ethnic origin, religion or beliefs, age and sexual orientation is prohibited by law!⁶

⁴ Eurobarometer on "Discrimination in the European Union" of 23 January 2007.

⁵ Cf European Parliament resolution of 4 September 2007 on Better Regulation in the European Union ([2007/2095\(INI\)](#)): "(53.) [The Parliament] Requests the Commission to improve the provision of information about transposition and infringement proceedings, and to make this information public and easily accessible on the Commission's website."

⁶ Eurobarometer on "Discrimination in the European Union" of 23 January 2007.

- o Anti-discrimination NGOs should be involved in the design of these awareness raising campaigns.
- o The media (e.g. television, internet) have a key role to play in conveying a positive message eliminating stereotypes, prejudice and violence. This is particularly crucial to advance towards equality and non-discrimination. We therefore ask decision-makers to strengthen their activities in this area and propose that media representatives be involved in equality and non discrimination activities.

4) The duty to establish in each Member State an independent body with powers and adequate human and financial resources to assist victims of discrimination, promote awareness, and ensure compliance on issues of equality and non-discrimination.

- o Victims of discrimination cannot be left alone without any Member state support. There are a range of models emerging in the different Member States: single bodies, specialist bodies or independent statutory bodies supported by the state or bodies led from the independent sector. Governments should make sure that all grounds are properly covered in order to effectively cope with multiple discrimination faced by many individuals. It is also crucial to guarantee an effective co-ordination between bodies, or the sections of a single body, dealing with the various equality grounds.

5) The duty to reflect the diversity of the population in national and EU decision-making bodies and public administrations

- o Article 141 paragraph 4 of EC Treaty⁷ lays the legal foundations for positive actions in favour of women in the area of employment. This opportunity should be used by Member States and introduced for other discriminated people.
- o The EU and Member States must lead the way in proposing concrete actions, such as positive actions, to address the under-representation of women and minority groups. Such a process will ensure representation of their interest at all levels of public institutions. This should cover issues such as equal access to employment and training for all, positive actions to improve recruitment of women and people from discriminated groups, accessibility of information and of premises.

⁷ Article 141 Paragraph 4 of the Treaty (Article 119 formerly) provides that “to practically ensure full gender equality at work, the principle of equal treatment does not exonerate a Member State from maintaining or taking steps that provide for specific advantages intended to facilitate the practice of a trade by the underrepresented sex or to avoid or compensate for hurdles in the professional career”.

III. There is no equality for all without building all EU policies upon equality and non discrimination principles

Non-discrimination has traditionally belonged to the realm of social affairs but is in fact much wider than that. The mainstreaming of gender equality and equality for all in all EU activities needs to become more effective. Taking into account the legally binding status of the EU Charter of Fundamental Rights and the transversal clause on non-discrimination⁸, European institutions have the following duties:

1) The duty to develop ambitious and universal social policies

- o Disadvantaged groups are among the first to bear the negative consequences of the current dismantlement of social rights throughout the EU. Any strong equality policy must be rooted in an ambitious and universal vision of social policies and social rights, aiming at supporting access of all to goods, services and facilities.

2) The duty to develop European policies to compensate for social and economic disadvantages linked to inequality and discrimination

- o People living in poverty cannot fully exert and benefit from their basic human rights, and notably their rights to equality and non discrimination. Living with no or limited social and economic means due to several reasons (eg illness, disability, unemployment, living in a deprived area) constitute a factor of discrimination per se. EU decision makers should take into account socio-economic conditions when defining non-discrimination policies. The Structural Funds, for instance, should contribute to support people living in the EU to exercise those rights.
- o The effective promotion of equality requires a pro-active approach targeting specific groups. Beyond legislation, the tools to be used are for instance positive action, mainstreaming and action plans.

3) The duty to screen all EU policies for compliance with EU equality and non-discrimination principles

- o The screening should involve anti-discrimination NGOs and encompass policies such as those dealing with internal market freedoms, justice and home affairs, transport, social inclusion and social protection, health, services of general interest, the European Alliance for Families, demographic change, or education. Increasing inclusion of different grounds in these areas will help bring about a greater awareness and wider recognition of the lived realities of women and these groups in our society.
- o In addition, Member States should complement an EU screening with an equality and non discrimination proofing of all national instruments, in particular those relating to the implementation of Structural Funds and public procurement.

⁸ Article 10 of the Treaty on the Functioning of the European Union: *“In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”*

4) The duty to ensure the effective use of the Article 11 of the General Regulation on Structural Funds, which obliges Member States to engage in partnership with civil society organisations

- o Women and other disadvantaged groups remain aside the process of planning and spending Structural Funds, given that they are not equally represented in the decision making bodies. These funds must be more strategically focused on the needs of women and other disadvantaged groups. This will be achieved thanks to an adequate level of representation of NGOs and maximum level of participation possible at every stage.

5) The duty to address the contradiction between the prominent position of Article 13 TEC and the fact that it is still one of the few provisions where the rule of unanimity applies

- o Social NGOs have on several occasions expressed their disappointment to maintaining the unanimity rule for the article 13 of EC Treaty. This creates confusion and misleads people across Europe: On one hand, the EU Charter on Fundamental Rights has been given the same legal value as the Treaties. In addition, achieving equality is valued as one of the key objectives of the EU. On the other hand, the unanimity principle makes any legislation on equality unlikely to be adopted in an enlarged EU. We regret that Member States have intentionally paralysed any further legislative move to reach one of the key objectives of the EU and a commitment of their citizens.

6) The duty to ensure that the Commission's impact assessment incorporates clear guidelines on gender equality, equality for all and non-discrimination, including a requirement to consult with potentially affected groups

7) The duty to involve education actors in equality and non discrimination

- o Social NGOs believe that education must become a key focus of the non discrimination awareness raising campaigns and has an important role to play in changing mentalities. Raising awareness in school is certainly one of the best ways to tackle discrimination at its roots.

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The Platform of European Social NGOs (the Social Platform) is the alliance of representative European federations and networks of non-governmental organisations active in the social sector, promoting social justice and participatory democracy by voicing the concerns of its member organisations. The Social Platform and its members are committed to the advancement of the principles of equality, solidarity, non discrimination and the promotion and respect of fundamental rights for all, within Europe and in particular the European Union.

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