

Contributions to OHCHR on relevant legislation, good practices and reports related to child protection against racism, racial discrimination, xenophobia and related intolerance, and examples of relevant legislation, good practices and other pertinent information related to non-discrimination in the area of employment.

Contribution by the European Commission/European External Action Service

(a) All pertinent information, i.a. relevant legislation, good practices and reports related to child protection against racism and xenophobia and related intolerance:

The Charter of Fundamental Rights of the European Union prohibits in its Article 21 any discrimination 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, sexual orientation or nationality. As stated in Article 51 of the Charter, its provisions apply to the EU institutions, bodies, offices and agencies and to Member States only when they are implementing Union law.

Article 10 of the Treaty on the Functioning of the European Union (TFEU) states that, 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.

Article 19 of the TFEU (former Article 13 of the Treaty Establishing the European Community (TEC)) enables the EU Council of Ministers to take action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation within the limits of the powers conferred on it by the Treaty (see Directives 2000/43/EC and 2000/78/EC below).

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin is not specifically targeted for the protection of children, but protects all, including children, from discrimination on the basis of racial or ethnic origin in a number of fields. The Directive applies also outside the workplace in such areas as education, social protection (including social protection and healthcare), social advantages and access to and supply of goods and services (including housing).

The European Commission adopted, on 2 July 2008, a **proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside the labour market**. This proposal, which is based on Article 19 TFEU, is currently being discussed in the Council. On 2 April 2009, the Parliament adopted its opinion broadly supporting the proposal, while suggesting several amendments. This instrument would also contribute to the fight against racism and xenophobia as discrimination and other manifestations of intolerance are often based both on ethnic and religious motives.

Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law aims to ensure that racist and xenophobic offences are sanctioned in all Member States by effective, proportionate and dissuasive criminal penalties. The offences include the public incitement to violence or

hatred against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin, which shall also be punishable if committed by public dissemination or distribution of tracts, pictures or other material. The public condoning, denial and gross trivialization of Nazi crimes, crimes of genocide, crimes against humanity and war crimes, when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or member of such a group, are also to be punished. These conducts are to be punished at national level by criminal penalties of a maximum of at least 1 to 3 years of imprisonment. Furthermore, for any other criminal offences than those covered by the Framework Decision, Member States are obliged to ensure that racist and xenophobic motivation is considered as an aggravating circumstance, or alternatively that such motivation may be taken into account in the determination of the penalties. The Framework decision also provides for the liability of legal persons. Member States were obliged to take the necessary measures to comply with the Framework Decision by 28 November 2010. The Commission is committed to monitoring the effective implementation of this Framework Decision as closely as possible. A group of Member States' experts has been created to this end.

The **Audiovisual Media Services Directive 2010/13/EU**, prohibits incitement to hatred on grounds of race, sex, religion or nationality in all audiovisual media services, both those broadcast or provided on-demand, whatever their means of delivery, including the Internet. This requirement also applies to third country providers, if they use an uplink situated in EU Member States or a satellite capacity appertaining to them. The competent authorities in the EU Member States are responsible for the application of the rules of the Audiovisual Media Services Directive, while respecting fundamental rights. In the light of freedom of expression and media pluralism, the interdiction of television channels cannot be justified except by very serious violations of the principles of democratic, pluralistic and open society acknowledged in the Directive (rules prohibiting hate speech and protecting minors against seriously harmful content). In addition, the Directive obliges Member States to ensure that audiovisual commercial communications (all forms of advertising) "shall not include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation".

On 5 April 2011, the European Commission put forward an **EU Framework for national Roma integration strategies**. The Framework will help guide national Roma policies and mobilise funds available at EU level to support integration efforts. It focuses on four pillars: access to education, jobs, healthcare and housing. Member States should set individual national Roma integration goals that reflect each of their population sizes and the current status of their integration policies. As set out in the EU Framework, Member States will have to submit national Roma strategies by the end of 2011. They will have to specify how they will contribute to achieving the overall EU level goals for Roma integration. The Commission will then assess the national strategies and report back to the Council and the European Parliament in spring 2012. This exercise will be repeated on an annual basis, thus launching a regular review of progress made at national level within the EU framework.

DG JUSTICE website contains additional information on relevant legislation and good practices:

- http://ec.europa.eu/justice/fundamental-rights charter/index_en.htm
- http://ec.europa.eu/justice/fundamental-rights/rights-child/index_en.htm
- http://ec.europa.eu/justice/fundamental-rights/racism-xenophobia/index_en.htm
- http://ec.europa.eu/justice/discrimination/index_en.htm

The EU Agency for Fundamental Rights has collected data and published reports on various issues of racism and xenophobia: http://www.fra.europa.eu/fraWebsite/home/home_en.htm

(b) Examples of relevant legislation, good practices and other pertinent information related to non-discrimination in the area of employment

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), consolidates in a single text all the rules and case law of the European Court of Justice relating to equal opportunities and equal treatment for men and women in employment and occupation. It replaces and repeals directives 75/117/EEC on equal pay, Directive 76/207/EEC (amended by Directive 2002/73/PC) on equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, Directive 86/378/PC (amended by Directive 96/97/EC) on occupational social security schemes and Directive 97/80/PC (amended by Directive 98/52/PC) on the burden of proof in cases of sex discrimination. The Directive provides definitions for direct and indirect discrimination, as well as for harassment. It also provides implementation measures and requires the setting up of an equality body at national level in order to supervise the implementation of the principle of non-discrimination.

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin implements the principle of equal treatment between persons irrespective of racial or ethnic origin, sets out a binding framework by prohibiting racial discrimination throughout the EU in the areas of employment, education, social protection (including social security and health care), social advantages and access to goods and services (including housing). The Directive bans direct and indirect discrimination, harassment and instruction to discriminate. All EU Member States have now transposed this Directive into national legislation. The European Commission ensures correct implementation of this instrument, and has issued a report on the implementation of this so-called "**Racial Equality Directive**".

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation establishes a general framework for equal treatment in employment and occupation. This Directive covers direct and indirect discrimination, as well as harassment and instruction to discriminate, in employment and training on the grounds of religion or belief, age, disability and sexual orientation. It includes specific requirements on reasonable accommodation for disabled persons. The European Commission ensures correct implementation of this so-called "**Employment Equality Directive**" or "**Employment Framework Directive**".

For **EU Framework for national Roma integration strategies** see point (a) above.

DG JUSTICE website contains additional information on relevant legislation and good practices: http://ec.europa.eu/justice/discrimination/index_en.htm