

ADVISORY COMMITTEE ON EQUAL OPPORTUNITIES FOR WOMEN AND MEN

OPINION ON THE GENDER DIMENSION OF THE INCLUSION OF ETHNIC MINORITIES¹

November 2007

The rights of all individuals to equality before the law and to protection from discrimination are fundamental rights which are essential in order to allow any democratic society to function properly. It helps to achieve the objectives of promoting economic and social progress and a high level of employment by increasing economic and social cohesion.

Many provisions of the EC Treaty or the EU Treaty could be listed², insofar as they allocate to the Community or the Union certain powers which may be used in order to implement the principles of the Council of Europe Framework Convention for the Protection of National Minorities (hereafter: Framework Convention)³.

Certain soft law mechanisms of coordination in the employment or social inclusion fields have been relied upon in order to encourage the EU Member States to improve the integration of minorities. The European Employment Strategy which was launched in 1997 includes a specific focus on tackling discrimination in employment in order, in particular, to improve access to employment by ethnic minorities. The revised Employment Guidelines provide that the Member States should seek to make their employment markets more inclusive, and that 'Combating discrimination, promoting access to employment for disabled people and integrating migrants and minorities are particularly essential' in this regard. Likewise, the streamlined objectives of the social inclusion strand in the Open Method of Coordination in Social Inclusion and Social Protection underline the need for a decisive impact on the eradication of poverty and social exclusion by ensuring equal access for all to the resources, rights and services needed for participation in society, preventing and addressing exclusion and fighting all forms of discrimination leading to exclusion. The promotion of equality between women and men has been an objective of both processes since the beginning.

¹ The opinion of the Advisory Committee does not necessarily reflect the positions of the Member States and does not bind the Member States.

² See for a full list the European Parliament resolution on the protection of minorities and anti-discrimination policies in an enlarged Europe, adopted on 8 June 2005 and based on the report A6-0140/2005 of 10 May 2005 (rapporteur Claude Moraes).

³ See EU Network of Independent Experts on Fundamental Rights, Thematic Comment n°3 : the rights of minorities in the Union (April 2005), available at http://ec.europa.eu/justice_home/cfr_cdf/index_en.htm.

1. **Background: definition and legal framework**

The EC and EU legal instruments do not provide a definition of 'ethnic minorities' or 'national minorities' or 'minorities' in the European Union. Indeed, in 2005 the European Parliament complained that 'there is no standard for minority rights in Community policy nor is there a Community understanding of who can be considered a member of a "minority"'. It took the view that this lack of a commonly agreed definition could be compensated by borrowing the definition laid down in Recommendation 1201(1993) adopted by the Parliamentary Assembly of the Council of Europe. However, in its comments on the Recommendation, the EU Network of Independent Experts highlighted that the different EU Member States had in certain respects different understandings of the notion of 'minorities' or 'national minorities', and that, as a result of this situation, the notion of rights of minorities may be subject to diverse interpretations, approaches and rules in the different Member States.

A. **Gender Equality**

Gender equality has been a key principle of the EU ever since the Treaty of Rome introduced the principle of equal pay for men and women in 1957. Using the legal basis provided by the Treaties, the Union has adopted thirteen directives on gender equality since the 1970s. These have ensured, among other things, equal treatment concerning access to work, training, promotions and working conditions, including equal pay and social security benefits, as well as guaranteed rights to parental leave. Three Directives of particular relevance are:

1. "Equal treatment Employment Directive" (2002)⁴, which amends the 1976 Directive and adds some definitions such as "indirect discrimination", "harassment and sexual harassment" and requires the setting up of equality bodies to support equal treatment between women and men;
2. "Goods and Services Directive" (2004)⁵ which reinforces and extends gender equality legislation outside the employment field for the first time;
3. Recast Directive 2006/54 EC concerning the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

Furthermore, the recently adopted Communication by the European Commission, "Roadmap for equality between women and men" 2006-2010"⁶ underlines the need to combat multiple discrimination against immigrant and ethnic minority women. It stresses that female members of disadvantaged groups are often worse off than their male counterparts and that the situation of ethnic minority and immigrant women is emblematic as they often suffer from double discrimination. This requires the promotion of gender equality in migration and integration policies in order to ensure women's rights and civic participation, to use fully their employment potential and to improve their access to education and lifelong learning. In this context, the 2007 European Year of Equal Opportunities for All represents an initiative seeking to fight against multiple forms of discrimination and endorsing the right to equality.

⁴ Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

⁵ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

⁶ "A Roadmap for equality between women and men" 2006-2010. COMM(2006)92

B. Race Equality and Anti-Discrimination in employment

In Amsterdam, in June 1997, the Heads of State and Government agreed to strengthen the European Union's capacity to act effectively towards equal treatment for all by introducing Article 13 of the Treaty establishing the European Community, which gives the Community specific powers to take action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

On 29 June and 27 November 2000, on the basis of proposals presented by the Commission in November 1999, the Council adopted three key instruments intended to prevent and combat discrimination based on racial or ethnic origin, religion or belief, age, disability or sexual orientation:

1. Directive 2000/43/EC (Race Equality Directive) which prohibits discrimination based on racial or ethnic origin in a wider range of fields such as employment, education, provision of goods and services and social protection;
2. Directive 2000/78/EC (Employment Equality Directive) which prohibits discrimination in employment and excludes all discrimination based on religion or belief, disability, age or sexual orientation;
3. Community action programme to combat discrimination (Council Decision 2000/750/EC). This Decision establishes the legal framework for implementing the programme and the associated budget heading.

The purpose of the Racial Equality Directive and the Employment Equality Directive is not to ensure that the Member States 'promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage' (the wording of Article 5(1) of the Framework Convention); **the Directives prohibit discrimination based, inter alia, on grounds of race and ethnic origin as well as on religion or belief.**

Under the above directives, the Member States must prohibit discrimination on grounds, *inter alia*, of race or ethnic origin, and of religion or belief, in the area of work and employment. This includes, in both the public and private sectors:

1. conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
2. access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
3. employment and working conditions, including dismissals and pay; membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

In addition, the Racial Equality Directive also imposes an obligation to prohibit discrimination on grounds of race or of ethnic origin in the following areas:

1. social protection, including social security and healthcare;
2. social advantages;
3. education;

4. access to and supply of goods and services which are available to the public, including housing.

The fight against discrimination still constitutes one of the major challenges for the EU. In this context, the Commission published in May 2004 a Green Paper on "Equality and non-discrimination in an enlarged European Union" whereby it solicited the contributions of all interested stakeholders and the public at large on issues and questions concerning future policy developments. As a response to this wide public consultation exercise, the Commission adopted a Communication⁷ setting out its new framework-strategy on non-discrimination and equal opportunities in June 2005. The Communication underlines that the implementation and enforcement of anti-discrimination legislation on an individual level is not enough to tackle the multifaceted and deep-rooted patterns of inequality experienced by ethnic minorities and particularly by women belonging to these minorities.

C. Integration⁸ of ethnic minorities and immigrants⁹

The effective and responsible integration of ethnic minorities and immigrants in the labour market also constitutes an important contribution to reaching the Lisbon targets. The European Commission therefore, stimulates and supports Member States' efforts in employment, social affairs and equal opportunities, stressing the gender perspective to utilize fully the potential of minority and immigrant women in the labour market.

In the case of ethnic minorities composed of EU citizens, their social and labour market inclusion can directly be tackled through EU and national employment, education and social policies. For immigrants – who face in some cases similar problems as ethnic minority citizens in integrating into the labour market and into society and some of whom belong to ethnic minorities – the EU has adopted the Hague Programme (adopted by the European Council of 4-5th November 2004) and the "Common Basic Principles for immigrant integration policy in the European Union" (hereinafter referred to as the Common Basic Principles). These Common Basic Principles, developed further in the Common Agenda for Integration¹⁰, assist Member States in formulating integration policies by offering them a thoughtful guide of basic principles against which they can judge and assess their own efforts. The Common Basic Principles are complementary to and in full synergy with the Community legislative instruments relating to gender equality, non-discrimination and social inclusion.

2. Overview of current situation

A. The non-recognition of the intersection of gender and minority groups¹¹

All grounds of discrimination interact with each other and produce specific experiences of discrimination. Recent intersectional discrimination analysis¹² argues that the traditional understanding of discrimination based on specific grounds (e.g. racial discrimination) does not necessarily include experiences that are particular to that of women and men in specific groups. Hence women from an ethnic minority group have a substantially different experience to that of

⁷ COMM(2005)224 of 1.6.2005.

⁸ Instruments for asylum seekers and refugees are not referenced in the opinion.

⁹ The term immigrant refers to third-country nationals coming into the EU

¹⁰ COMM(2005)389.

¹¹ See Glossary and research findings at www.ilo.org and at www.fra.europa.eu.

¹² Ref: Publications of the European Union Agency for Fundamental Rights (Former EUMC) and reports prepared by the European Racism and Xenophobia Information Network (RAXEN).

both men from the same minority group and from women of the ethnic majority group¹³. This approach is particularly useful in exposing new forms of multiple discrimination that have remained hidden from the public policies, directing attention to those who are most disadvantaged. Such insights into discrimination should lead to more effective gender mainstreaming of policies to combat the discrimination experienced by ethnic minorities and particularly by girls and women.

B. Monitoring the gender dimension of ethnic minority populations¹⁴

Monitoring the gender dimension of ethnic minority populations is complex since this requires the availability of data disaggregated both by sex and with regards to race and ethnic origin. The availability of sex-disaggregated data has improved over the last 20 years, however, the process of mainstreaming gender into the entire process of production, analysis and dissemination of official statistics has not yet been completed. While determining one's gender status may be relatively easy, collecting data on race and ethnic origin is complex and politically sensitive in many countries. In addition, as stated above, there is still neither an international nor European accepted definition of a minority that is objective and easily measurable. Different countries use different concepts and dimensions for identifying and defining minority populations. The point here is that any extension of statistical monitoring should include a gender dimension.

C. Socio-economic status

It is very important to recall that ethnic minority and immigrant women in Europe are economically active on the formal, informal and illegal labour market. Current research carried out by IZA¹⁵ for the High Level Advisory Group on ethnic minorities shows, however, that their economic activity rate, the likelihood that they will engage in the job market and their risk of unemployment differ significantly from Member State to Member State (and probably also from minority group to minority group). They are, however, often an invisible part of society and the workforce, performing unskilled, low-paid, monotonous and strainful jobs. Even highly qualified women - and men - belonging to ethnic groups tend to end up in unemployment or in short-time or substandard jobs that do not correspond to their qualifications or previous work experience.

Discrimination in employment and occupation often exacerbates or perpetuates poverty and social exclusion, while poverty furthers discrimination at work in a vicious cycle. Lack of work and work that is insecure and unprotected are the main causes of the material deprivation and vulnerability that ethnic minority and immigrant women belonging to ethnic groups experience.

Immigrant women

One of the most important obstacles for the integration of immigrant women in the host societies derives from the dependency factor generated by the legal status. Dependency on the husband, in case of family reunification; on the employer, when the entry into the EU is for an economic purpose in a designated sector or when work is undertaken without recognised status (undocumented immigrant women); or on the state, in the case of asylum seekers. Independent

¹³ Gender inequalities in the risks of poverty and social exclusion for disadvantaged groups in thirty European countries. Report prepared by the Expert Group on Gender, Social Inclusion and Employment, available at http://ec.europa.eu/employment_social/publications/2006/ke7606201_en.pdf.

¹⁴ Ref: reports and documents of the 4th UN-ECE work session of International group of experts on gender statistics. ECE/CES/GE.30/2006

¹⁵ Institute for the Study of Labour.

legal status and work permit are the key to ensure integration and equal and full access to employment and protection services and facilities.

Immigrant women from some countries (usually with similar living standards and cultural background to the host society) have employment rates which are close to or exceed those of non-migrant women. However, the pay and working conditions of a number of employed migrant women is typically inferior to that of non-migrant women. Yet many of them are performing socially necessary jobs for which the host country is very dependent on their labour, as evidenced by the growing pool of migrant women performing care and domestic work for private households and the concentration of migrant women in sales, cleaning and related jobs. Many fail to accumulate full entitlements under the social protection system, particularly if their employment is largely in the informal sector¹⁶.

Roma women

Everywhere in Europe, the Roma people¹⁷ and particularly women exhibit the highest unemployment and social exclusion rates compared to the rest of the population. Systemic and prolonged discrimination is expressed through substantial inequalities in education and access to, and treatment by, public agencies and institutions, including the criminal justice system¹⁸.

Children and youth

Patterns of racial and religious discrimination against children and young citizens belonging to ethnic minorities or to immigrant communities have changed considerably with the intensification of global population movements and diversification of settlements. Although nationality is what often appears in observing discrimination against non-national young people in Europe, the race, colour and perceived religion and cultural beliefs are the factors most impairing or precluding altogether the right of young girls women belonging to ethnic minorities to equal access to education, housing, vocational training and employment, etc. Examples of unfair treatment on racial and religious grounds include offensive behaviour at school (which may lead to higher and earlier drop out rates particularly for boys) at work, and in dealing with public and private institutions. Stigma, lack of respect and ignorance of cultural and religious customs impacts on equal access and opportunities and creates barriers to social and economical promotion and participation.

Child labour is generally associated with the poverty of parents. Poor single-parent families, usually headed by women, and migrant families are also often forced to resort to having their children work

D. Cultural norms and stereotypes

Cultural norms and societal beliefs on gender roles and relations are known to play a role in influencing educational choices of women and men and their participation in employment, society and culture. Until now in most societies, women rather than men are expected to take time off from work to look after their children or other family dependants and to undertake domestic tasks. This occurs despite abundant evidence that, in many European countries, the contribution of women's paid work to the household budget is as significant as that of men's and is key to keeping many households above the poverty line. The growth in families headed by women belonging to

¹⁶ Ibid footnote 13.

¹⁷ Roma is used in the generic sense and comprises a broad variety of peoples including Roma, Sinti, Cale or Travellers. See glossary of the Council of Europe. www.coe.int

¹⁸Source: Council of Europe and European Roma Rights Centre (ERRC)

ethnic minorities and immigrant groups confirms the importance of paid work for the well-being of women and that of their children. The stereotypes ethnic minority and immigrant women belonging to an ethnic group may face from within their own communities may exacerbate the problem.

3. Recommendations

The working group on promoting the gender dimension of the inclusion of ethnic minorities drafted its opinion considering that:

- The strengthening of gender mainstreaming measures towards inclusion of ethnic minorities and immigrants has a direct link with the protection of women's fundamental rights and with the implementation of the international and European legal instruments against all forms of discrimination
- Multiple discrimination of ethnic minority and immigrant persons, especially women, has a clear negative effect on their well-being and that of their families and the full access of their children to protection, education and health care services;
- Multiple discrimination of ethnic minority workers, especially women, has a clear and wide life-cycle dimension. If no remedial action is taken, disadvantages tend to accumulate and intensify over time, with negative repercussions for their economical and social inclusion.

Therefore, the following draft recommendations are meant to apply to a wide range of situations. Measures required to enhance and advance the inclusion of the various ethnic minorities concerned with particular focus on the gender dimension are likely to vary significantly according to the group concerned, the approaches developed and national contexts.

It is recommended that the European Commission:

- I) Encourages the extension of minority/migration statistics with respect to race and ethnic origin to include figures broken down by sex as these are essential to monitor and develop gender-mainstreaming programmes and policies towards the inclusion of minority and immigrant women and men belonging to an ethnic group. The absence of data makes it hard to identify and address the issues affecting minority women and men. Furthermore, available data on gender and minority background are needed to highlight inequalities and raise consciousness, persuading policy makers about the need to combat discrimination in their respective societies;
- II) Encourages full implementation of existing legislation and policies and include consideration of possible policy and legal responses at European level to the phenomena of multiple discrimination, which should wherever possible include a focus on the situation of ethnic minority women in general and in particular disadvantaged or socially excluded groups of each sex;
- III) Strengthens the support for social inclusion policies and measures to combat direct and indirect discrimination towards ethnic minorities in general, and in particular towards women of ethnic minorities, immigrants and refugees, aimed at promoting empowerment and economic, social and cultural independence.
- IV) Encourages the study of obstacles arising by different actors on the labour market (employers, labour exchange officials, trade unions, municipalities; etc.) with a view to improving the situation of ethnic minority women and consider the voices of these women;

V) Encourages the sharing of good practices in employment for ethnic minority workers through dissemination of information.

It is recommended to the Member States:

VI) Encourage the extension of minority/migration statistics with respect to race and ethnic origin to include figures broken down by sex as these are essential to monitor and develop gender-mainstreaming programmes and policies towards the inclusion of minority and immigrant women and men with an ethnic belonging. The absence of data makes it hard for Governments and public bodies to identify and address the issues affecting minority women. Furthermore, available data on gender and minority background are needed to highlight inequalities and raise consciousness, persuading policy makers about the need to combat discrimination in their respective societies;

VII) Support the reinforcement and development of consultation mechanisms and dialogue at national and regional level between ethnic minorities and immigrants' communities, as well as local people on the one hand and institutions involved in the integration process on the other hand. This is particularly important for society as a whole and in the towns and cities where many immigrants and minority groups settle. In these areas there are already many interesting initiatives although they are not always well known outside of the town or region concerned.

VIII) Provide financial and technical assistance to NGOs promoting gender mainstreaming and positive actions for and by ethnic minorities, especially women, and migrants.

It is recommended that the social partners:

IX) Work together on the elimination of ethnic and gender discrimination in access to work and in the workplace that is strategic for combating not only discrimination but also social exclusion and poverty. By bringing together and treating equally people with different characteristics, the workplace can help dispel prejudices and stereotypes. The elimination of discrimination in the labour market provides ethnic minority women the potential to expand and to be deployed more effectively.