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Technical Assistance for Strengthening
Fundamental Rights Sector Coordination Project

ANTI-DISCRIMINATION

FACTSHEET



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Introduction

The non-discrimination and the principle of equality are two concepts based on human dignity, expressing the same concept in different aspects. Prohibiting discrimination on different grounds or determines the measures that must be taken to ensure equality, the principle of equality provides for treating people in the same manner in the same or similar situations, as well as treating people differently if they are not in the same or similar situations and conditions. To this end, anti-discrimination should be ensured by the measures taken by legal, as well as, administrative and judicial bodies.



International Standards

United Nations (UN)

- ✔ Article 2 of the Universal Declaration of Human Rights (1948) states that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status while Article 7 states that “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”
- ✔ Article 2 of the International Covenant on Civil and Political Rights requires each State Party to the Covenant to undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Moreover, Article 26, titled “equality before law”, regulates that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”
- ✔ United Nations International Convention on the Elimination of All Forms of Racial Discrimination:

This Convention was adopted by the resolution of the United Nations General Assembly on 21 December 1965 and entered into force on 4 January 1969.

The supervisory body of the Convention is the Committee on the Elimination of Racial Discrimination. The Committee is responsible for monitoring and reviewing the activities carried out by the states parties to fulfil their responsibilities arising from the international Convention on the Elimination of All Forms of Racial Discrimination.

United Nations (BM) Committee on the Elimination of Racial Discrimination (CERD): The Committee is responsible for monitoring and reviewing the activities carried out by the states parties to fulfil their responsibilities arising from the international Convention on the Elimination of All Forms of Racial Discrimination.

Council of Europe

European Convention on Human Rights (ECHR)

- ✔ The ECHR addresses prohibition of discrimination in two provisions: Prohibition of discrimination in conjunction with other rights (ECHR art. 14) and independent prohibition of discrimination (Article 1 of Protocol No. 12).
- ✔ The non-discrimination article of the Revised European Social Charter secures the enjoyment of the rights set forth in the Charter without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

European Commission against Racism and Intolerance (ECRI) (1993)

- ✔ The ECRI is responsible for fighting against racism, discrimination, xenophobia, antisemitism and intolerance. The ECRI prepares reports and issues recommendations to member States.
- ✔ In accordance with the case-law of the European Court of Human Rights (ECtHR), the relevant article is deemed to have been violated (i) in a dispute within the scope of application of the relevant article; (ii) if there is direct discrimination (where people in similar situations are treated differently) or indirect discrimination (where people in different situations are treated similarly) on the basis of one of the listed grounds (e.g. sex, race, colour, language, religion...), and (iii) this cannot be justified as proportionate on the basis of legitimate ground (see, for example, App. 51500/08, *Çam v. Turkey*, 23 February 2016).

Anti-Discrimination in the European Union

General Assessment: Primary Sources and Non-Discrimination

The European Union (EU) has become increasingly involved in non-discrimination over time. Essentially, the European Economic Community (EEC) (1958) included the prohibition of discrimination on two grounds in order to properly realize the common market, which is a stage of economic integration, and to prevent any member country from gaining a competitive advantage in this respect: the prohibition of discrimination on the basis of nationality and the prohibition of discrimination on the basis of sex (see Articles 7 and 119 of the Treaty of Rome). With the amendments of the Treaty of Amsterdam (1999), the grounds of discrimination were expanded and the European Community (EC) was granted the authority to take appropriate actions to combat discrimination (Article 13 of the Treaty of Amsterdam).

Finally, with the Treaty of Lisbon (2009), which is the last major change in the founding treaties, the EU highlights the non-discrimination in several aspects. First, non-discrimination becomes a part of the EU's values: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, [...]. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail" (Article 2 of the Treaty on European Union). Secondly, under Article 21(1) of the Charter of Fundamental Rights of the European Union, non-discrimination forms part of the fundamental rights protected by the EU. Thirdly, in accordance with Article 3 of the Treaty on European Union, to combat discrimination on certain grounds becomes one of the EU's objectives. Finally, Article 19 of the Treaty on the Functioning of the European Union makes it part of the EU's powers to combat discrimination on certain grounds.

Therefore, non-discrimination is a part of (i) the EU's values and (ii) the EU's fundamental rights, and non-discrimination is (iii) a part of the EU's objectives (on certain grounds) and (iv) the EU may take appropriate measures in this regard.

General Principles of EU Law

- ✔ Non-discrimination is protected as part of the general principles of EU law.
- ✔ The general principles of EU law are among the unwritten sources of EU law and therefore determined by the Court of Justice of the European Union (CJEU). For example, according to the *Mangold* decision (Case C-144/04), one of the CJEU's non-discrimination decisions, discrimination on the basis of age is prohibited in principle, but can be justified (in general) on the basis of legitimate reasons and in accordance with the principle of proportionality. Based on its justification, this decision seems to be extended to other similar grounds besides the age.

Secondary Legislation and Non-Discrimination

Legislation Concerning Equality between Women and Men

✔ *Directive 2006/54/EC*

✔ Directive 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)

✔ *Directive 2010/41/EU*

✔ Directive of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity

✔ *Directive 2004/113/EC*

✔ Council Directive of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services

✔ *Directive (EU) 2023/970*

✔ Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms

Legislation Concerning Other Specific Grounds

✔ *Directive 2000/43/EC*

✔ Council Directive of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
✔ This Directive aims to lay down a framework for combating discrimination on the grounds of racial or ethnic origin (Article 1).

✔ *Directive 2000/78/EC*

✔ Council Directive of 27 November 2000 establishing a general framework for equal treatment in employment and occupation
✔ This Directive aims to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation (Article 1).

Soft Law and Non-Discrimination

- ✔ EU Anti-Racism Action Plan (2020-2025) (COM (2020) 565 final)
- ✔ EU Gender Equality Strategy (2020-2025) (COM (2020) 152 final)
- ✔ EU Strategy for the Rights of Persons with Disabilities (COM (2021) 101 final)
- ✔ EU Roma Strategic Framework for Equality, Inclusion and Participation (COM (2020) 620 final)
- ✔ Council Recommendation on Effective Roma Integration Measures in the Member States (2013/C 378/01)
- ✔ Council Recommendation on Roma Equality, Inclusion and Participation (2021/C 93/01)

Institutional Mechanisms regarding Non-Discrimination in the EU

✔ *European Union Agency for Fundamental Rights (2007)*

- ✔ The EU Agency for Fundamental Rights carries out tasks to help protect the rights, values and freedoms set forth in the Charter, for example by providing independent, evidence-based advice on rights.
- ✔ On the website of the Agency, the following are provided under “Equality, non-discrimination and racism” under “Work on Rights”: (i) children, youth and older people; (ii) people with disabilities; (iii) hate crime; (iv) racial and ethnic origin; (v) religion and belief; (vi) Roma; and (vii) sex, sexual orientation and gender

✔ *European Institute for Gender Equality (EIGE)*

- ✔ The EIGE was established by Regulation (EC) No. 1922/2006 of the European Parliament and of the Council of 20 December 2006. The objectives of the Institute are to contribute to and strengthen the promotion of gender equality, including gender mainstreaming in all EU policies and the resulting national policies, and the fight against discrimination based on sex, and to raise EU citizens’ awareness of gender equality.

✔ *National Equality Bodies and European Network of Equality Bodies (Equinet)*

- ✔ Member States have national bodies to combat discrimination or promote equal treatment, as required, for example, by Directive 2000/43/EC reviewed above.
- ✔ These national bodies can organise and coordinate through networks such as Equinet.