C/2023/446

1.12.2023

P9_TA(2023)0111

Combating discrimination in the EU — the long-awaited horizontal anti-discrimination directive

European Parliament resolution of 19 April 2023 on combating discrimination in the EU — the long-awaited horizontal anti-discrimination directive (2023/2582(RSP))

(C/2023/446)

The European Parliament,

— having regard to the Treaty on European Union (TEU), in particular Articles 2, 3 and 6 thereof,

— having regard to the Treaty on the Functioning of the European Union (TFEU), in particular Articles 10 and 19 thereof,

— having regard to the Charter of Fundamental Rights of the European Union ('the Charter'), in particular Articles 20, 21 and 23 thereof,

— having regard to the case-law of the Court of Justice of the European Union (CJEU),

— having regard to the Commission proposal of 2 July 2008 for a Council directive on implementing the principle of equal treatment outside the labour market irrespective of age, disability, sexual orientation or religious belief ('horizontal anti-discrimination directive'),

— having regard to Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [1] ('Racial Equality Directive'),

— having regard to Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2] ('Employment Equality Directive'),

— having regard to Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law [3],

— having regard to Regulation (EU) 2021/692 of the European Parliament and of the Council of 28 April 2021 establishing the Citizens, Equality, Rights and Values Programme [4],

— having regard to the Commission communication of 3 March 2021 entitled 'Union of Equality: Strategy for the Rights of Persons with Disabilities 2021-2030' (COM(2021)0101) and to the United Nations Convention on the Rights of Persons with Disabilities, ratified by the EU and all its Member States,

— having regard to the Commission communication of 12 November 2020 entitled 'Union of Equality: LGBTIQ Equality Strategy 2020-2025' (COM(2020)0698),

— having regard to the Commission communication of 18 September 2020 entitled 'A Union of Equality: EU anti-racism action plan 2020-2025' (the EU anti-racism action plan) (COM(2020)0565),

— having regard to the Commission communication of 5 March 2020 entitled 'A Union of Equality: Gender Equality Strategy 2020-2025' (COM(2020)0152),

— having regard to the Commission communication of 16 April 2019 entitled 'More efficient decision-making in social policy: Identification of areas for an enhanced move to qualified majority voting' (COM(2019)0186),

(1) OJ L 180, 19.7.2000, p. 22.
(2) OJ L 303, 2.12.2000, p. 16.
(3) OJ L 328, 6.12.2008, p. 55.
(4) OJ L 156, 5.5.2021, p. 1.

— having regard to the Commission report of 19 March 2021 on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive') (COM(2021)0139),

— having regard to the guidelines on improving the collection and use of equality data, drawn up in 2018 by the Subgroup on Equality Data of the Commission's High Level Group on Non-discrimination, Equality and Diversity and published in 2021,

— having regard to the UN human rights treaties and instruments on the protection of human rights and fundamental freedoms, in particular the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of Persons with Disabilities,

— having regard to the UN 2030 Agenda for Sustainable Development,

— having regard to the recommendations and reports of the Office for Democratic Institutions and Human Rights, the High Commissioner on National Minorities and other bodies of the Organization for Security and Co-operation in Europe,

— having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Article 14 and Protocol No 12 thereof, prohibiting discrimination,

— having regard to the case-law of the European Court of Human Rights (ECtHR),

— having regard to the recommendations, reports and resolutions of the European Commission against Racism and Intolerance, the Steering Committee on Anti-Discrimination, Diversity and Inclusion, the Parliamentary Assembly, the Venice Commission and other bodies of the Council of Europe,

— having regard to the European Social Charter,

— having regard to the European Pillar of Social Rights, including its third principle on equal opportunities, and to the Commission communication of 4 March 2021 on the European Pillar of Social Rights Action Plan' (COM(2021)0102),

— having regard to its resolution of 13 December 2022 towards equal rights for persons with disabilities ([5]),

— having regard to its resolution of 10 November 2022 on racial justice, non-discrimination and anti-racism in the EU ([6]),

— having regard to its resolution of 14 September 2021 on LGBTIQ rights in the EU ([7]),

— having regard to its resolution of 11 March 2021 on the declaration of the EU as an LGBTIQ Freedom Zone ([8]),

— having regard to its resolution of 17 December 2020 on the need for a dedicated Council configuration on gender equality ([9]),

— having regard to its resolutions of 25 October 2016 ([10]) and of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights ([11]),

— having regard to its resolution of 19 June 2020 on the anti-racism protests following the death of George Floyd ([12]),

— having regard to its resolution of 21 January 2021 on the EU Strategy for Gender Equality ([13]);

— having regard its resolution of 26 March 2019 on fundamental rights of people of African descent in Europe ([14]),

([5]) Texts adopted, P9_TA(2022)0435.
([6]) Texts adopted, P9_TA(2022)0389.
([7]) OJ C 117, 11.3.2022, p. 2.
([8]) OJ C 474, 24.11.2021, p. 140.
([9]) OJ C 445, 29.10.2021, p. 150.
([10]) OJ C 215, 19.6.2018, p. 162.
([11]) OJ C 395, 29.9.2021, p. 2.
([12]) OJ C 362, 8.9.2021, p. 63.
([13]) OJ C 456, 10.11.2021, p. 208.
([14]) OJ C 108, 26.3.2021, p. 2.

— having regard to its resolution of 12 February 2019 on the need for a strengthened post-2020 Strategic EU Framework for National Roma Inclusion Strategies and stepping up the fight against anti-Gypsyism ([15]),

— having regard to its legislative resolution of 2 April 2009 on the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation ([16]),

— having regard to its resolutions on the situation of fundamental rights in the EU,

— having regard to its plenary session debate in Strasbourg entitled 'Taking forward the horizontal anti-discrimination directive', which took place on 22 October 2019,

— having regard to the reports and surveys of the EU Agency for Fundamental Rights (FRA), in particular its report entitled 'Equality in the EU: 20 years on from the initial implementation of the Equality Directives' ([17]),

— having regard to the questions to the Council and to the Commission on combating discrimination in the EU — the long-awaited horizontal anti-discrimination directive (O-000010/2023 — B9-0013/23 and O-000011/2023 — B9-0014/23),

— having regard to Rules 136(5) and 132(2) of its Rules of Procedure,

A. whereas the right to non-discrimination is a fundamental right enshrined in the Charter and in the Treaties and must be fully respected; whereas the EU prohibits discrimination;

B. whereas the principle of non-discrimination is one of the common values of the European Union, as referred to in Article 2 TEU; whereas under Article 10 TFEU, the Union must aim to combat discrimination in the development and implementation of its policies and activities; whereas Article 20 of the Charter asserts that everyone is equal before the law and whereas Article 21, further, prohibits discrimination on a range of grounds;

C. whereas every person in the EU has the equal right to become a full and active member of society and be equally treated before the law;

D. whereas there are considerable gaps in the protection afforded by the EU anti-discrimination framework; whereas this fragmentation leads to an artificial hierarchy of grounds, which limits the breadth and the scope of EU-level protection against discrimination at work and outside work; whereas while the grounds of sex and racial or ethnic origin are protected to some degree, the grounds of religion or belief, disability, age and sexual orientation are not afforded the same level of protection;

E. whereas in 2008 the Commission presented a proposal for a horizontal anti-discrimination directive (COM(2008)0426) which covered a large number of areas, such as education, social protection and access to and supply of goods and services; whereas Parliament adopted its position in April 2009; whereas the Council has never adopted a position after more than 15 years; whereas despite repeated calls from Parliament, the proposal remains blocked in the Council;

F. whereas some Member States have been blocking concrete progress on this specific file in the Council;

G. whereas discrimination is on the rise across the EU; whereas the lack of collection of comparable and disaggregated equality data by Member States and the underreporting of cases prevents discrimination from being properly documented; whereas one in five people in the EU experience discrimination or harassment on different grounds or on a combination of grounds ([18]);

H. whereas the CJEU and the ECtHR have developed extensive case-law in the field of equal treatment and anti-discrimination since the Commission presented the proposal for a horizontal anti-discrimination directive in 2008; whereas the CJEU and ECtHR case-law has clarified several issues of interpretation of the EU anti-discrimination framework and therefore provides useful guidance for applying the current legislation;

([15]) OJ C 449, 23.12.2020, p. 2.
([16]) OJ C 137 E, 27.5.2010, p. 68.
([17]) https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-opinion-equality-directives-01-2021_en_0.pdf
([18]) https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-opinion-equality-directives-01-2021_en.pdf

I. whereas the lack of implementation of the EU anti-discrimination framework and the CJEU and the ECtHR case-law by Member States is a continuing concern that cannot be ignored;

J. whereas protection against discrimination is inconsistent across the Member States and this has proven to have a negative impact on individuals and society as a whole;

1. Deeply regrets that the horizontal anti-discrimination directive has been blocked in the Council since 2008; reiterates its previous calls on the Council to urgently unblock the horizontal anti-discrimination directive after 15 years of inaction; underlines that this needs to be achieved by the end of this year and that Parliament stands ready to adopt it before the end of this parliamentary term;

2. Recalls that the EU Treaties and the Charter enshrine the EU's mandate and responsibility to combat discrimination and to promote equal treatment for everyone;

3. Underlines that according to the last progress report on the horizontal anti-discrimination directive, two delegations have maintained general reservations, two have maintained parliamentary scrutiny reservations and all delegations have maintained general scrutiny reservations; underlines that the issues at the core of the discussions in the Council include the disability provisions, and in particular the possibility to offer Member States an inordinately long extension of the transposition period in respect of their obligation to provide reasonable accommodation; deplores the fact that despite the clear and urgent need to take action to horizontally fight discrimination at EU level, no tangible progress has been made to date;

4. Deplores the fact that the Council has ignored numerous and insistent requests to unblock the file, as well as recommendations from Parliament, and urges the Council to integrate them in its mandate and to take all appropriate actions to fight discrimination in the EU;

5. Calls on the upcoming Council presidencies to seriously consider establishing a Council configuration on gender equality and equality to facilitate high-level discussions on these issues and allow appropriate ministerial discussions on the text of this directive; deplores the fact that unanimity is required in the Council under Article 19 TFEU and calls for the *passerelle* clause to be activated;

6. Highlights the fact that the adoption of the horizontal anti-discrimination directive would offer a comprehensive and crucial framework for combating discrimination at EU level and would remove the current loophole in the EU anti-discrimination framework, which would ensure protection outside the labour market; underlines the urgent need for adopting a horizontal approach to combating discrimination in order to remove the current artificial hierarchy of protected grounds, thus granting protection for everyone;

7. Deplores the continuous lack of implementation of the EU anti-discrimination framework by Member States; is concerned that this has a negative impact on individuals and on society as a whole ([19]); urges the Member States to ensure the full and correct implementation of the current EU anti-discrimination framework;

8. Calls on the Commission to step up its monitoring of the implementation of current legislation; recalls its position that the Commission's annual rule of law report should be broadened in scope to include all the values in Article 2 TEU, including equal treatment and non-discrimination; calls on the Commission, further, to pro-actively use all the tools available to enforce EU law in this area, including by launching and advancing infringement procedures against Member States;

9. Requests that the Member States urgently comply with the CJEU and the ECtHR case-law and that the Commission monitors its implementation, in particular in the area of equal treatment and non-discrimination; calls on the Commission to take action in cases of non-compliance;

10. Expresses deep concern about the insufficient awareness and lack of implementation of the Charter at national level, as highlighted by the FRA; calls on the Commission to step up efforts to promote the Charter and its correct implementation, as well as the EU anti-discrimination framework and the relevant CJEU and ECtHR case-law, in the Member States;

11. Is concerned that, according to the FRA, the current processes and systems for reporting experiences of discrimination are often ineffective and do not always aid victims of discrimination in seeking redress and access to justice; calls on the Member States and the Commission to address this situation, which would ensure that all European citizens feel that they can safely disclose any instances of discrimination that they may have faced;

([19]) https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-opinion-equality-directives-01-2021_en_0.pdf

12. Calls on the Member States and the Commission to promote the collection and use of equality data in accordance with EU and national legislation; highlights the fact that the mandatory collection of comparable and disaggregated equality data is necessary to ensure that discrimination is adequately documented while fully respecting the fundamental right to privacy, the protection of personal data and the relevant EU and national legislation;

13. Regrets the deeply concerning trends with respect to equal treatment in several Member States, which have also been highlighted by the FRA ([20]); calls on the Commission to closely monitor the growing current backlash against fundamental rights and the rise in discrimination across the EU; calls on the Commission, further, to explore all possible avenues to overcome the political deadlock on the horizontal anti-discrimination directive and to combat all forms of discrimination in the EU with equal resolve;

14. Considers that any update of the proposal for a horizontal anti-discrimination directive by the Commission must build on Parliament's position, address intersectional discrimination and explicitly prohibit discrimination on any combination of grounds listed in the Charter;

15. Instructs its President to forward this resolution to the Council and the Commission.

([20]) https://fra.europa.eu/en/publication/2022/fundamental-rights-report-2022