



# PROTECTING ALL WOMEN FROM DISCRIMINATION

steps to take at European and National Level



EUROPEAN WOMEN'S  
**LOBBY**  
EUROPÉEN DES FEMMES

**THE EUROPEAN WOMEN'S LOBBY (EWL)  
IS THE LARGEST UMBRELLA ORGANISATION OF WOMEN'S  
ASSOCIATIONS IN THE EUROPEAN UNION (EU),  
WORKING TO PROMOTE WOMEN'S RIGHTS AND EQUALITY  
BETWEEN WOMEN AND MEN. EWL MEMBERSHIP  
EXTENDS TO MORE THAN 2500 ORGANISATIONS IN ALL  
EU MEMBER STATES AND CANDIDATE COUNTRIES,  
AS WELL AS TO EUROPEAN-WIDE ASSOCIATIONS.**



This publication is supported by DG Employment, social affairs and equal opportunities of the European Commission. Its funding is provided for under the European Community Programme for Employment and Social Solidarity (2007-2013). This programme was established to financially support the implementation of the objectives of the European Union in the employment and social affairs area, as set out in the Social Agenda, and thereby contribute to the achievement of the Lisbon Strategy goals in these fields. For more information see: <http://ec.europa.eu>  
The information contained in this publication does not necessarily reflect the position or opinion of the European Commission.

**Editorial team:**

Amandine Bach, Leanda Barrington-Leach  
& Rachel Minto.

**Translation:**

Marion Diagre, Amandine Bach & Rachel Minto

**Graphic design:**

Aurore de Boncourt

**Special thanks to Alexandra Jachanova**

(Czech Women's Lobby), Cécile Gréboval  
and Myria Vassiliadou (EWL Secretariat)  
for their valuable contributions to the drafting  
of this publication.

# Introduction

The European Women's Lobby (EWL) has been actively involved in the recent discussions concerning the European Commission's 2008 proposed Anti-discrimination Directive which seeks to extend anti-discrimination legislation beyond employment on the grounds of religion or belief, disability, age and sexual orientation. Although sex-based discrimination is not included in the proposed Directive, the EWL welcomes it as an important step towards protecting women from discrimination on other grounds. The proposed Directive responds to and raises many issues, such as the shape of gender equality and anti-discrimination legislation in the EU, the concept of multiple discrimination and the role of equality bodies in protecting individuals' rights.

Within this context, the direction and content of this publication is informed by the EWL seminar, 'Levelling up Gender Equality Legislation and Tackling Multiple Discrimination' held in January 2009. This seminar allowed EWL members to discuss developments at the national level, both in relation to legislation and the mandate and effectiveness of (gender) equality bodies. The relationship between sex and other grounds of discrimination was explored as well as the current debates on multiple discrimination, intersectionality and women's diversity. Given the participants' high levels of expertise and experience in gender equality issues, the seminar provided a constructive forum for the exchange of knowledge and for developing EWL strategy.

More specifically, this publication addresses key priorities of the EWL work on anti-discrimination. These are:

- To ensure a uniform and strong legal framework for all grounds of discrimination at the European level.
- To ensure that victims of multiple discrimination, who very often are women, are effectively protected by European and national legislation.
- To include a gender perspective in anti-discrimination policies.
- To have strong institutional mechanisms for the advancement of women and equality bodies with an effective gender equality strand.
- To put women's rights, gender equality and the fight against discrimination at the core of European and national policy and to ensure sufficient financial resources.

This publication has been designed as a practical tool for all actors involved in policy-making, particularly those who are working to promote gender equality and anti-discrimination. This includes decision-makers, equality bodies, NGOs and legal practitioners working at European, national and regional levels. The focus of this document is solely upon addressing issues surrounding non-discrimination legislation in the EU. However, the EWL firmly believes that achieving substantive equality between women and men goes far beyond non-discrimination. Legislation and policy measures beyond equal treatment: as well as the need to develop equality policies based on an intersectional approach are key to the commitment and the work the EWL conducts but will not be addressed in this particular text.

The article by Minto and Bach evaluates the current frameworks of gender equality and anti-discrimination legislation in the EU, with particular reference to the proposed Anti-discrimination Directive. This analysis concerns the steps required to progress towards *de facto* equality between women and men in all areas. Carles' article examines the concepts of multiple discrimination and gendered discrimination. This is undertaken with reference to empirical research concerning the different experiences of women and men who are subject to racial discrimination. It includes evaluation of both the legal and institutional frameworks required to strengthen protection against discrimination. Crowley's article explores the crucial role of equality bodies in the promotion of gender equality. It includes an overview of the challenges faced by equality bodies which undermine their independence and effectiveness, particularly in the context of the financial and economic crisis.

Brussels, February 2010

Did you know that..

EUROPEAN LEGISLATION DOES NOT FORBID DISCRIMINATION AGAINST WOMEN IN EDUCATION AND MEDIA.

HIGHLY-EDUCATED MIGRANT WOMEN BORN OUTSIDE THE EU ARE TWICE AS LIKELY TO BE EMPLOYED IN LOW-SKILL JOBS AS EU-BORN AND NATIVE-BORN WOMEN WITH THE SAME LEVEL OF EDUCATION.<sup>1</sup>

43% OF ETHNIC MINORITY AND IMMIGRANT GROUPS IN THE EU INTERVIEWED IN A FUNDAMENTAL RIGHTS AGENCY SURVEY IN 2009 THOUGHT THAT ANTI-DISCRIMINATION LEGISLATION DID NOT EXIST, 63% HAD NEVER HEARD OF ANY EQUALITY BODY AND THE VAST MAJORITY DID NOT KNOW OF ANY ORGANISATION OFFERING SUPPORT AND ADVICE TO PEOPLE WHO HAVE BEEN DISCRIMINATED AGAINST.<sup>2</sup>

ONLY 8 EUROPEAN UNION COUNTRIES PROVIDE THE SECOND LESBIAN MOTHER WITH THE RIGHT TO ADOPT THE CHILDREN OF HER WIFE/FEMALE REGISTERED PARTNER.<sup>3</sup>

WOMEN ACCOUNT FOR NEARLY 60% OF UNIVERSITY GRADUATES IN THE EU;<sup>4</sup> HOWEVER, IN ACADEMIC INSTITUTIONS MEN HOLD 84.7% OF TOP GRADE POSITIONS.<sup>5</sup>

ON AVERAGE MEN EARN 17.6% MORE THAN WOMEN IN THE EU.<sup>6</sup>

WOMEN WITH DISABILITIES HAVE AN UNEMPLOYMENT RATE OF 44%, COMPARED WITH 9.7% FOR WOMEN IN GENERAL AND 25% FOR MEN WITH DISABILITIES.<sup>7</sup>

WOMEN UP TO THE AGE OF 34 REPRESENT 79% OF MEDIA PRESENTERS; HOWEVER, IN THE 50-64 YEARS AGE-BRACKET, THIS DROPS TO ONLY 7%.<sup>8</sup>

<sup>1</sup>RAND report, *Migrant Women in the EU Labour force*, 2008. <sup>2</sup>Fundamental Rights Agency, *EU-MIDIS: European Union Minorities and Discrimination Survey*, 2009. <sup>3</sup>ILGA-Europe, *Rainbow Europe: Legal situation for lesbian, gay and bisexual people in Europe*, 2009. <sup>4</sup>European Commission, *Annual Report on Equality between Women and Men - 2010*, Brussels, 2009, p. 4. <sup>5</sup>This data was collected in relation to indicators developed by the German Presidency, 2007. <sup>6</sup>European Commission, *Annual Report on Equality between Women and Men - 2010*, Brussels, 2009, p. 4. <sup>7</sup>Academic Network of European Disability experts (ANED), *The labour market situation of disabled people in European countries and implementation of employment policies: a summary of evidence from country reports and research studies*, 2009. <sup>8</sup>Global Media Monitoring project, *Who Makes the News?*, 2005.

## TABLE OF CONTENTS

••• Introduction	1
••• Table of Contents	3
••• SETTING THE SCENE	
Non-discrimination: Closing gaps in the European Union's hierarchy of rights, by Rachel Minto & Amandine Bach	4
Gender, race and multiple discrimination: Lessons from the GendeRace project, by Isabelle Carles	12
Equality bodies: Statutory drivers for change, by Niall Crowley	18
••• THE EUROPEAN WOMEN'S LOBBY RECOMMENDATIONS	
••• 13 PRINCIPLES OF THE EUROPEAN WOMEN'S LOBBY FOR EFFICIENT EQUALITY BODIES FROM A WOMEN'S RIGHTS PERSPECTIVE	28
••• ANNEXES	
Questions and Answers	30
Key Resources	34



# NON-DISCRIMINATION

Closing gaps in the European union's hierarchy of rights,

by Rachel Minto & Amandine Bach<sup>1</sup>

It is a common myth that European Union (EU) legislation provides full, strong and clear protection against all cases of sex-based discrimination. In fact, whilst sex enjoys the longest history of legal coverage at the EU level amongst the six grounds of non-discrimination considered by the EU, gaps still remain.<sup>2</sup>

Aside from sex-based equal treatment legislation (as part of 'gender equality legislation'), the EU has adopted equal treatment legislation ('anti-discrimination legislation') on five other grounds: racial or ethnic origin, religion or belief, disability, age and sexual orientation. This anti-discrimination legislation is essential in order to protect individuals from discrimination throughout the EU; however, the current legal framework of anti-discrimination also remains incomplete. Indeed, considering the EU's gender equality and anti-discrimination frameworks together highlights the inconsistencies in the legal protection against discrimination across the six grounds. To begin addressing these inconsistencies, in July 2008 the European Commission proposed a piece of anti-discrimination legislation to improve protection against discrimination in areas outside employment on four grounds: religion or belief, disability, age or sexual orientation.<sup>3</sup> Importantly, if adopted, this Directive ('the Anti-discrimination Directive') would strengthen the EU's anti-discrimination framework; however, sex would become the least protected amongst the six grounds at the EU level.

It should be stressed that any evaluation of gender equality apparatus must fully appreciate that non-discrimination legislation only constitutes one element in the pursuit of equality between women and men. It is vital that legislation itself goes beyond the principle of equal treatment to make concrete advances towards *de facto* equality. Other key components to pursuing equality include political strategies such as programmes, campaigns, positive action measures or gender mainstreaming. However, the legally enforceable protection for individuals provided through non-discrimination legislation is fundamental to advancing equality between

women and men and, as such, provides the rationale for the focus of this analysis.

This article presents the current situation and status of sex-based non-discrimination legislation in the EU. Evaluation is undertaken with reference to the other five grounds of discrimination in which the EU has competence and in the light of the Anti-discrimination Directive proposed on 02 July 2008, which, at the time of writing, has not yet been adopted. This evaluation assesses the shape of anti-discrimination and gender equality legislation in the EU and, in particular, the steps required to strengthen protection against discrimination for women.

## EU legal protection against discrimination

The principle of non-discrimination on the grounds of sex in relation to pay in employment was part of the Treaty of Rome (1957);<sup>4</sup> however, the first gender equality Directive was not adopted until nearly two decades later in 1975.<sup>5</sup> This gender equality Directive provided legally-binding protection against sex-based discrimination in relation to pay. Until that time the right to equal pay enshrined in the Treaty in 1957 was hardly used and no legislation making enforcement easier was in place.

Given the narrow scope of gender equality and non-discrimination enshrined in the Treaty (which focused solely on pay) the Directives and case law that followed extended to, but did not go beyond, employment and social security considerations. To some extent the Directives concerning the latter touched upon the areas of social protection and social advantages;<sup>6</sup> however, this did not increase protection for individuals outside of a paid employment relationship. It was not until the late 1990s that this scope was expanded with the coming into force of the Treaty of Amsterdam.

The Treaty of Amsterdam strengthened the EU's commitment to equality between women and men through introducing two provisions: Article 2 TEC (now Article 3(3) TEU), making equality between women and men a task of

<sup>1</sup>Rachel Minto is a PhD student at the University of Bristol (UK) and was an intern at the EWL Secretariat in 2009-10. Amandine Bach is Policy Officer and Project Coordinator at the EWL Secretariat. <sup>2</sup>In some EU Member States the level of legal protection exceeds that provided at the European level; however, the present analysis focuses on the EU given its vital role in setting minimum standards across the EU. <sup>3</sup>European Commission, 'Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation', COM (2008) 426, Brussels, 2008. <sup>4</sup>Article 119 of the Treaty of Rome (ex Article 141 TEC, now Article 157 TFEU). <sup>5</sup>Council Directive 75/117/EEC of February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women. <sup>6</sup>Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security and Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes.

the EU, and Article 3(2) TEC (now Article 8 TFEU), which enshrined the principle of gender mainstreaming in the Treaties.<sup>7</sup> These articles provide a strong legal base for the development of European gender equality legislation beyond the traditional sphere of employment. With respect to non-discrimination in general, the Treaty of Amsterdam introduced Article 13 TEC (now Article 19 TFEU) which provides a basis for the development of non-discrimination legislation, both inside and outside employment, on six grounds: sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Therefore, not only did this broaden the material scope (areas covered) of EU involvement by going beyond employment but it also increased the grounds for action against different types of discrimination under EU law. Article 13 TEC therefore represented an important step forward in the protection of rights to non-discrimination in the EU.

Both anti-discrimination and gender equality Directives have been based on Article 13 TEC (now Article 19 TFEU). With reference to anti-discrimination, the first text to be adopted was the Racial Equality Directive of June 2000.<sup>8</sup> This provided for equal treatment between persons irrespective of racial or ethnic origin across a broad range of areas, including employment and training, social protection (including social security and healthcare), social advantages, education and access to and supply of goods and services which are available to the public (including housing). The second was the Employment Framework Directive of November 2000 which provided for equal treatment in employment and training on the grounds of religion or belief, disability, age or sexual orientation.<sup>9</sup>

The third Directive to be adopted under Article 13 TEC was the Goods and Services Directive of December 2004 ('the 2004 Gender Equality Directive'). This was the first time the EU adopted legislation on gender equality beyond employment, providing for equal treatment between women and men in access to and supply of goods and services.<sup>10</sup> It covers crucial

areas such as financial services. For example, the Directive provides protection against discrimination in insurance with respect to costs relating to pregnancy and maternity. As such, it is a positive step. However, its potential to push gender equality legislation firmly beyond employment is severely limited by three factors: firstly, exceptions written into the Directive; secondly, its failure to include certain areas within its material scope; and thirdly, uncertainty regarding its precise coverage.

To begin, in relation to its material scope, the 'content of media and advertising' and education are explicitly excluded from the Directive. These exclusions were the result of high levels of sectoral and national resistance during the negotiations to European legislation in this area. A further exception is included in Article 5 of the 2004 Directive regarding the right to equal treatment between women and men in insurance and related financial services. The Article 5 exception, which the EWL has argued against, has been the subject of a review which began in 2009 and which will continue in 2010.<sup>11</sup> Although Article 5 might be revised, resistance to its elimination remains high.

Secondly, contrary to the Racial Equality Directive, neither 'social protection' nor 'social advantages' are explicitly included in the scope of the 2004 Gender Equality Directive. Therefore, contrasting this coverage with the scope of the Racial Equality Directive highlights clear gaps in legal protection: no such exceptions apply to media, advertising and education, and social protection and social advantages are explicitly included in the Racial Equality Directive.

Finally, in addition to these exemptions and omissions, there is a lack of clarity regarding the precise definitions of 'goods' and 'services' covered by the Directive. Unfortunately, due to the lack of case law, the exact reach of the 2004 Directive remains to be clarified.

Therefore, the extent to which the 2004 Gender

Equality Directive increases protection against sex-based discrimination beyond employment cannot yet be confirmed. What is certain, however, is that gaps in protection for women do remain. As explained above, earlier gender equality Directives provide protection in employment and some level of coverage in the area of social protection and social advantages (regarding social security). However, given the explicit exclusion of certain provisions, the failure to include others and a general lack of clarity of the 2004 Directive's scope, women continue to be explicitly denied protection from discrimination in media, advertising and education; in relation to both social protection and social advantages the level of coverage remains uncertain, particularly for women who are not in paid employment.

Figure 1 (see below) neatly illustrates the level of protection against discrimination provided by the anti-discrimination and gender equality Directives currently in force, displaying by policy area which grounds of discrimination are covered. It is remarkable that, despite the EU's commitment to equality and human rights, across most of these policy areas EU law still fails to protect individuals from discrimination based on sex, religion or belief, disability, age or sexual orientation.

The gaps illustrated here refer solely to existing EU legislation and areas covered by EU law. It is important to highlight that certain key issues are yet to enter European gender equality legislation, such as decision-making and gender-based violence. Addressing gaps in existing legislation and pushing for both legislative and policy measures to ensure equality between women and men in all areas remain key dimensions of the EWL's advocacy work.

Education & media						
Social advantages						
Social protection						
Goods and Services						
Employment						
	Race	Sex	Age	Sexual Orientation	Disability	Religion or Belief

- Existing legislation
- Proposal for a new Directive COM (2008) 426
- Areas partly covered / uncertain areas
- Clear gap (excluded from gender equality legislation)

<sup>7</sup> Gender mainstreaming addresses gender inequality at a structural level through integrating a gender perspective throughout the policy-making process so that policies, processes and institutions fully address and reflect the needs and experiences of women, as well as men. <sup>8</sup>Council Directive 2000/43/EC of 29 June 2000. <sup>9</sup>Council Directive 2000/78/EC of 27 November 2000. <sup>10</sup>Council Directive 2004/113/EC of 13 December 2004. <sup>11</sup>The EWL has been very active throughout the adoption and review processes, sending letters to MEPs, preparing briefings for EWL members and contributing fully to the Commission's consultation. See, for example: Contribution on the implementation of Article 5 of Directive 2004/113 on gender equality in relation to goods and services prepared by the European Women's Lobby, the AGE Platform and Test-Achats/Test-Aankoop for the European Commission Forum on the implementation of this Article, July 2009, available at: [www.womenlobby.org](http://www.womenlobby.org)

## The Anti-discrimination Directive proposed in July 2008

In 2008 the Commission proposed a new Anti-discrimination Directive in order to address some of the remaining gaps in legal protection on the grounds of religion or belief, disability, age and sexual orientation. Protection against sex-based discrimination is not included in the proposal. The material scope of the proposed Directive includes the areas in the Racial Equality Directive that are not covered by the Employment Framework Directive (see figure 1 above): social protection (including social security and health care), social advantages, education, as well as access to and supply of goods and services which are available to the public (including housing). Importantly, media and education are not specifically excluded from the material scope of the proposed Directive; this is in contrast to their explicit exclusion from the 2004 Gender Equality Directive.

The proposed Anti-discrimination Directive is welcome; indeed it is long overdue. If adopted, it would go a significant way to rectifying the present shortfalls in legal protection for individuals who experience discrimination. This enhanced legal protection is a crucial element of promoting equality for all across the EU and as such the Directive must be fully and firmly supported. Given that women experience discrimination on all of the grounds listed in Article 19 TFEU and sometimes constitute the majority of people within a discriminated group (e.g. older people),<sup>12</sup> ensuring an individual's ability to pursue complaints on all of these grounds is also an essential part of protecting all women from discriminatory treatment. However, even if the Anti-discrimination Directive is adopted there will still exist two notable gaps in legal protection against discrimination: the first (highlighted above) concerns sex-based discrimination in education and media, and to some extent in social protection and social advantages (where coverage remains to be clarified); the second is with respect to multiple discrimination. In addition to this, the provisions for gender

mainstreaming the Directive are weak. This does not bode well for the inclusion of a gender perspective in this piece of anti-discrimination legislation.

Regarding the remaining gaps, if the Directive is adopted with the proposed scope, this will create a clear hierarchy of rights in European legislation: to an even greater extent, sex will become the least protected amongst all grounds covered by Article 19 TFEU. This clear gap must be addressed with urgency within the ongoing review of current gender equality legislation. If not, denying women this most basic level of protection from discrimination will signify a failure of the EU to uphold its fundamental values of equality and human rights. To achieve substantive equality throughout the EU a firm, clear and consistent legal coverage is vital: uniform and strong legal protection for all grounds cited in Article 19 TFEU must be ensured across all policies and activities.

Regarding multiple discrimination, over recent years there has been increasing academic, political and social sensitivity to the experiences of individuals who are discriminated against upon multiple grounds; for example, a heightened awareness of the particular situation of a woman who is discriminated against in the labour market because she is both a woman and because she is from an ethnic minority. Multiple discrimination is increasingly present in the discourse of political institutions (including the European Commission)<sup>13</sup> and is certainly an important element of political activism for civil society interest groups. However, at the legal level the concept has not yet been robustly articulated either at the European level or throughout Member States.<sup>14</sup> The proposed Directive is no exception.

In the recital<sup>15</sup> of the proposed Directive (as in the two existing anti-discrimination Directives from 2000) there is acknowledgement that women are often the victims of multiple discrimination; however, despite this, multiple discrimination is explicitly identified as falling

beyond the scope of the Directive (although Member States are not prohibited from pursuing action in this area). This is a missed opportunity to strengthen equality legislation at the European level to protect individuals who are victims of discrimination on multiple grounds. On this point, however, there is uncertainty regarding whether inserting a multiple discrimination provision would require opening up existing anti-discrimination Directives for revision or not. This remains contested amongst legal experts. Despite the failure of the proposed Anti-discrimination Directive to cover multiple discrimination, in strengthening legal protection in terms of both grounds for discrimination and material scope of the legislation, it goes some way towards preparing the terrain for future activity in this area.

On the matter of gender mainstreaming, in the recital of the Directive explicit reference is made to the EU's mission to promote equality between women and men as enshrined in Article 3(2) TEC (now Article 8 TFEU). However, as this appears only in the recital of the proposed Directive, not in the articles themselves, the extent to which the Anti-discrimination Directive would ensure that gender is mainstreamed into national laws upon transposition is uncertain. This is an issue of central importance given that gender is a fundamental category of discrimination and inequality. In order to promote equality between women and men, it is crucial that all non-discrimination provisions fully address the particular needs and situations of women. Gender must be mainstreamed.

Negotiations for the Anti-discrimination Directive began in autumn 2008 and it is hoped that the Directive will be adopted under the Belgian Presidency between July and December 2010. It has already passed through the European Parliament, which adopted a Legislative Resolution in April 2009. Among the amendments proposed by the European Parliament was that the Directive should prohibit multiple discrimination.<sup>16</sup> However, as the adoption procedure under Article 13 TEC

(under which the Directive is being negotiated) provides for a simple consultation of the European Parliament and unanimity in the Council of Ministers, the largest hurdle to overcome in the negotiation process will be agreement amongst the Member States. This is likely to be problematic given the sensitivity of some Member States to non-discrimination legislation, particularly based on sexual orientation. In addition to this, the financial and economic crisis has resulted in issues of social justice being pushed further down the EU's political agenda as promoting equality is (wrongly) viewed as a luxury saved for periods of economic prosperity.<sup>17</sup> For these reasons the quick adoption of a strong Anti-discrimination Directive is by no means secure.

<sup>12</sup> Eurostat, *The life of women and men in Europe: a statistical portrait*, 2008, p. 119. <sup>13</sup> European Commission, *Tackling Multiple Discrimination: Practices, policies and laws*, 2007. <sup>14</sup> Protection against multiple discrimination is present in only a selection of Member States, although legal developments have recently been noted in certain Member States. Some countries do provide either explicit or implicit protection against multiple discrimination and, furthermore, outline means of investigation and redress. In others, the issue of multiple discrimination has been recognised before the courts or other dispute resolution bodies. For more information see: Non-Discrimination Governmental Expert Group, 'Multiple Discrimination. Report on the work carried by Governmental Expert Group on Non-Discrimination 2008/2009', 2009.

<sup>15</sup> This is the preliminary statement that precedes the articles of the Proposal/Directive.

<sup>16</sup> European Parliament legislative Resolution of 02 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 (COM(2008)0426 – C6-0291/2008 – 2008/0140(CNS)). <sup>17</sup> The Confederation of European Business (BusinessEurope) has voiced its opposition to this most recent move to promote anti-discrimination. In a letter to the European Competitiveness Council of 28-29 May 2009, the Director General of BusinessEurope voiced his opposition to the proposed directive by arguing: 'Today's crisis does not allow for a 'business as usual' attitude to regulatory policy. New legislative proposals that risk creating an extra burden on companies should be avoided. Here, we call for the anti-discrimination directive to be withdrawn and for ideas about introducing legislation on EU collective redress to be dropped.'

When anti-Discrimination networks  
and the EWL work together:  
the work of the Platform of European Social NGOs towards  
the adoption of a strong new anti-Discrimination Directive

The Social Platform (the largest civil society alliance fighting for social justice and participatory democracy in Europe consisting of 42 pan-European networks of NGOs) has been pushing the EU to expand its gender equality and anti-discrimination law since 2005. Since the tabling of the proposed new Directive by the European Commission on 02 July 2008, anti-discrimination networks (AGE, the Youth forum, the European Network Against Racism, ILGA-Europe and the European Disability Forum) and the EWL - all members of the Social Platform - have been working together to ensure the adoption of a strong proposal that would meet their demands. The campaign was successful in influencing the drafting and adoption of the European Parliament Report on 02 April 2009. However, the main challenge will be to convince the Council to strengthen the proposal by building on the European Parliament's Report and taking into account the demands of Social Platform members, and finally to adopt the Directive.

••• For more information see: [www.socialplatform.org](http://www.socialplatform.org)

### Conclusion and recommendations

Evaluation of EU gender equality and anti-discrimination legislation highlights a substantial gap between the political rhetoric of women's rights, equality and human rights and the legal protection afforded to individuals who experience discrimination. Although 2010 marks the 35th anniversary of the EU's first equal treatment Directive,<sup>18</sup> significant steps remain to be taken in order to protect women from discrimination and to promote equality between women and men in a number of areas: media, advertising and education (areas which were explicitly excluded from the 2004 Gender Equality Directive); social protection and social advantages (where protection is both partial and unclear); as well as other areas such as decision-making and gender-based violence (which are yet to be addressed with either legally-binding or political measures).

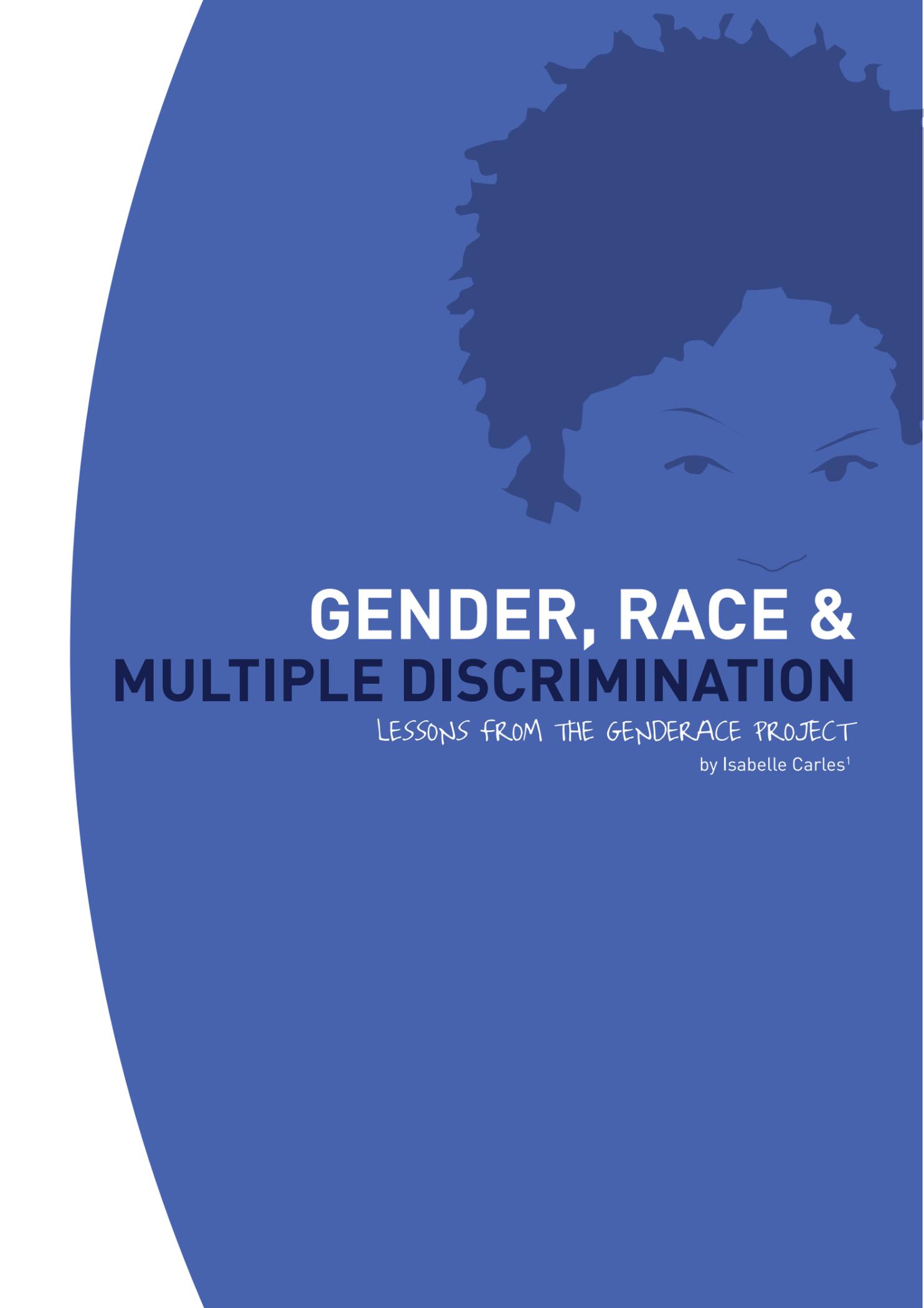
Secondly, the proposed Anti-discrimination Directive must be adopted in order to protect individuals who experience discrimination on other grounds aside from gender. Many of the individuals faced with discrimination on these grounds are also women who may be subject to discrimination on multiple grounds. As such, it is regrettable that the proposed Directive clearly excludes tackling multiple discrimination. Notably, one of the most striking results of the Anti-discrimination Directive would be that, if adopted, non-discrimination on the grounds of sex would benefit from a weaker level of legal protection in EU legislation than any other form of non-discrimination. This must be addressed with urgency: the EU must level-up protection. It is vital that the EU ensures uniform legal protection against all forms of discrimination across all areas and that, given the pervasion of gender inequality, all non-discrimination legislation is gender mainstreamed.

In order to advance effective legal frameworks which provide real protection against discrimination for individuals, it is crucial that attention is paid not only to the policy-making

processes surrounding the creation of legislation, but also to the implementation stages when Directives are transposed to the national level. Previous experience has shown that not only have Member States been slow to transpose and implement equal treatment Directives, but in some cases Member States have failed to introduce the requisite legal provisions or have even decreased levels of protection. Furthermore, the lack of public knowledge about rights remains a persistent problem which requires attention from all stakeholders at both national and European level.

Whilst equal treatment legislation is only one element of advancing substantive equality between women and men, it is crucial that other legislative measures and political action are underpinned by strong, uniform and clear legally-binding provisions against discrimination. Upon reviewing the current situation, an uncomfortable reality is highlighted: the EU proclaims human rights as a founding value and celebrates equality between women and men as a central principle of EU law; however, even with regard to fundamental legal provisions, women are still having to call on the EU to ensure the most basic level of protection against discrimination.

<sup>18</sup>Council Directive 75/117/EEC of February 1975.



# GENDER, RACE & MULTIPLE DISCRIMINATION

LESSONS FROM THE GENDERACE PROJECT

by Isabelle Carles<sup>1</sup>

Since the adoption of the first framework of anti-discrimination Directives at a European level in 2000, multiple discrimination has emerged as a European issue. However, it has been highlighted that the respective European Directives against discrimination, which are each shaped around one ground of discrimination, ignore all those people who experience discrimination at the intersection of several grounds. This is the case of people who experience discrimination based on race and gender.

The comparative research project 'GendeRace: The use of racial anti-discrimination laws. Gender and citizenship in a multicultural context' analyses the use of racial anti-discrimination laws by women and men from an immigrant background in six European countries. It brings together six European research teams from Bulgaria, France, Germany, Spain, Sweden and the UK.<sup>2</sup>

The primary objective of the GendeRace project is to improve our understanding of the phenomenon of multiple discrimination through the analysis of the experiences of women and men confronted with discrimination. The aim is to stimulate new and complementary actions to better assess the effectiveness of policies and practices in the field of anti-discrimination based on race and gender.

One of our hypotheses is that because of the single discrimination ground approach to equality legislation in most European countries, the present legal framework does not address multiple discrimination on the grounds of both race and gender properly. We also argue that social relations based on gender and race or ethnicity influence the perception and use of racial anti-discrimination laws.<sup>3</sup> We postulate that men and women experience different kinds of discrimination and react in different ways. Furthermore, the institutional framework provides different responses according to gender in terms of action and conflict resolution.

••• For more information see: <http://genderace.ulb.ac.be/>

In this article, we first present the current academic debate on multiple discrimination. Then we focus on the gendered dimensions of the experience of discrimination. Finally, we examine the ways in which equality bodies, NGOs and social actors deal with cases of multiple discrimination to examine how the current system could be improved.<sup>4</sup>

<sup>1</sup>Isabelle Carles, Université Libre de Bruxelles, on behalf of the GendeRace team, International Centre for Minority Studies and Intercultural Relations, Bulgaria; Technical University of Berlin, Germany; University of Barcelona, Spain; Kalmar University, Sweden; Middlesex University, UK. <sup>2</sup>The research for this project has received funding from the European Community's Seventh Framework Programme FP7/2007-2011 under grant agreement n° SSH7-CT-2007-217237. The article does not necessarily represent the Commission's official position. <sup>3</sup>The concepts of race applied within the EU Directives remains very controversial. That is why in the GendeRace project, we used 'Racialised identities' instead of 'Race' because 'races' are based on assumed immutable physical characteristics. <sup>4</sup>We should highlight that these recommendations are provisional as they are based on one part of the fieldwork (namely the analysis of the complaints) and need to be complemented with the results from the complete fieldwork.

## The academic legal debate on multiple discrimination

In the European Union (EU), with the multiplicity of grounds of discrimination, the discussion around the question of multiple discrimination and intersectionality is now open from a legal as well as a sociological perspective. On the one hand, in the UK for example, feminist sociologists use the concept of intersectionality to analyse the interrelation of diverse social layers.<sup>5</sup> On the other hand, legal scholars examine the legal mechanisms which provide protection against multiple discrimination. Several European academic lawyers agree that the question of multiple discrimination is not properly addressed in the EU, neither at the European nor at the national level.<sup>6</sup> We are in a paradoxical situation: the recent equality Directives have expanded the number of prohibited grounds of discrimination. However, neither the legal provisions nor the institutional framework are able to deal with the issue of multiple discrimination.

### • Legal provisions

At the European level, the structures of the Directives create several obstacles for the recognition of multiple discrimination. The first is the exhaustive list of grounds of discrimination. A non-exhaustive list would permit courts to recognise additional grounds of prohibited discrimination. This opinion is shared by the Network of Legal Experts in the non-discrimination field who stated in 2008 that in contrast to the anti-discrimination Directives, the Charter of Fundamental Rights of the EU contains a non-exhaustive list that can offer protection for individuals experiencing multiple discrimination.<sup>7</sup>

However, concerning specifically race and gender grounds, it is argued that the Preamble of the Racial Equality Directive (Para. 14) and the Preamble of the Employment Equality Directive (Para. 3) should allow the European Court of Justice (ECJ) to combine two or more grounds of discrimination.<sup>8</sup> This is because

both Directives declare that women are often the victims of multiple discrimination and that 'the Community should aim to eliminate inequalities and to promote equality between men and women in implementing the principle of equal treatment'.

At the national level, in many cases, lawyers or trade unions introduce cases based only on one ground of discrimination in court.<sup>9</sup> This is the case in the UK where lawyers have been criticised for usually arguing on the strongest ground and ignoring the other aspects.<sup>10</sup> In this regard, some adjustments to existing British provisions would be an improvement such as, within the limits of the European equality Directives, the inclusion of a provision which permits action to be taken in respect of discrimination based on several grounds.<sup>11</sup>

### •• Institutional framework

The second main obstacle to the adequate treatment of multiple discrimination identified by some academics is institutional division according to the grounds of discrimination. This is the case in Belgium for example where a specialised body is dedicated to gender, while all the other grounds of discrimination, including race, are treated by the same organisation. These organisations do not have any common mechanisms or tools to address multiple discrimination.<sup>12</sup>

Finland provides a clear example of a unidimensional approach to race and gender grounds of discrimination, in both theory and practice, which has led to the invisibility of some manifestations of intersectional discrimination.<sup>13</sup> As a result, they are not properly addressed in anti-discrimination policies at the national level. Ensuring provisions and institutions which are flexible and able to deal with all the grounds of discrimination is recommended in response to these shortfalls.<sup>14</sup>

However, even if specialised bodies deal with all the grounds of discrimination, as a rule they still treat cases separately, including when

they are based on more than one ground. This is the case in France where there is no legal rule addressing multiple grounds of discrimination and no consistent method in place to appreciate the particular nature of each individual claim made on multiple grounds.<sup>15</sup> Consequently, multiple discrimination remains hidden in both institutional frameworks, whether they are single ground or multiple ground equality bodies.

A single ground focus is no longer adequate for anti-discrimination law.<sup>16</sup> There are a number of groups in society that are among those most subject to discrimination based on the constellation of categories that make them unique. The logic of a single category being the object of discrimination (e.g. women or black people) is not sufficient to reflect the multidimensional discrimination experienced by some people. In order to address this, immutability should be incorporated into the spectrum of stigmatised characteristics that are related to the multiple categories that make up the entity of the discriminated group, for instance, black, adolescent males.<sup>17</sup>

### Is discrimination gendered?

One of the main hypotheses of the GendeRace project is that men and women experience different kinds of discrimination and react in different ways to the phenomenon because they develop different representations of the legal system and experience different types of discrimination. In order to grasp a deep understanding of the impact of gendered experiences of racial discrimination, we combined quantitative and qualitative approaches in this research, mainly based on an analysis of case law complaints and claims on the ground of race or ethnic origin.<sup>18</sup>

The first results of the analysis of the complaints and claims show clearly that although both men and women principally lodge complaints and claims concerning employment, they can experience different discrimination in other sectors.

According to this research, women are subject to discrimination mostly in access to goods and public services, as well as in education and housing. Men are victims of discrimination by the police and the judiciary as well as of racism in access to goods and private services, particularly recreational activities. This is especially the case for young men of Turkish, North-African or Arab origin and black men. In Spain and Germany, for instance, men from this category experience a higher proportion of discrimination related to police sectors compared to women (in Spain, 26,5% for men versus 2,5% for women; and in Germany 75% for men versus 25% for women).

This division between men and women reflects the gender-based division of tasks, since women handle tasks for the entire family with respect to public services. These differences also result from a differentiated and gender-based construction of the representation of foreign men and women or those assumed to be foreign, with men being considered dangerous (especially young men of Turkish, North African or Arab origin, and black men) and women seen more as victims.

As a result, men and women experience different types of racism: men are more exposed to access racism by unknown parties, whereas women are more often victims of relational racism with people they have known for a long time in the neighbourhood, or through employment, in the form of harassment.

Finally, our fieldwork revealed that two categories of population are particularly exposed to discrimination against both men and women: firstly, the Roma; secondly, people of Turkish, North African or Arab origin and black people. With reference to the first category, in the case of Spain, 70% of Roma who lodge complaints are women, and they are also the ones who lodge the greatest number of complaints based on multiple forms of discrimination, thanks to the Fundación Secretariado Gitano, an organisation focusing on the treatment of cases from the perspective

<sup>5</sup>Anthias, F., 'The material and the symbolic in theorising social stratification: issues of gender, ethnicity and class', *British Journal of Sociology*, 2001, vol. 52, no. 3, pp. 367-390; Brah, A. & Phoenix, A., 'Ain't I a Woman? Revisiting Intersectionality', *Journal of International Women's Studies*, 2004, vol. 5, pp. 75-86; Yuval-Davis, N., 'Intersectionality and feminist politics', *European Journal of Women's Studies*, 2006, vol. 13, no. 3, pp. 193-209; Walby, S., 'Complexity Theory, Systems Theory, and Multiple Intersecting Social Inequalities', *Philosophy of the Social Sciences*, 2007, vol. 37, no. 4, pp. 449 - 470; Davis, K., 'Intersectionality as buzzword: A sociology of science perspective on what makes a feminist theory successful', *Feminist Theory* 2008, vol. 1, pp. 67-85. <sup>6</sup>Tsaklanganos, G., 'Women at the intersection of Race, Class and Gender' *Social and Economic Justice*, 2001, vol. 14. Makkonen, T., 'Multiple, compound and intersectional discrimination: bringing the experiences of the most marginalized to the fore'; Hannett, S., 'Equality at the Intersections: The legislative and judicial failure to tackle Multiple discrimination', *Oxford Journal of Legal Studies*, 2003, vol. 23, no. 1, pp. 65-86; Fredman, S., 'Double trouble: multiple discrimination and EU law' *European Anti-Discrimination Law Review*, 2005, vol. 2, pp. 13-18. <sup>7</sup>Network of Legal Experts in the non-Discrimination Field, 'Multiple discrimination and potential conflicts between grounds',

Discussion Paper, 2008 <sup>8</sup>Fredman, S., 'Double trouble: multiple discrimination and EU law', *European Anti-Discrimination Law Review*, 2005, vol.2, pp. 13-18. <sup>9</sup>Grabham, E., 'Taxonomies of Inequality: Lawyers, Maps and the challenge of Hybridity', *Social & Legal studies*, 2006, vol. 15, no. 1, pp. 6-23; Smith, O., 'Ireland's multiple ground antidiscrimination framework - Extending the limitations?', *International Journal of Discrimination and the Law*, 2005, vol. 8, pp. 7-31. <sup>10</sup>Moon, G., 'Multiple discrimination-Problems compounded or solutions found?', 2006. <sup>11</sup>ibid. <sup>12</sup>Carles, I., 'Citizenship and rights: the use of racial anti-discrimination laws in a gender perspective' in B. Oleksy, A. Peto & B. Waaldijk (eds), *Gender and citizenship in a multicultural context*, 2008, pp. 35-68. <sup>13</sup>Makkonen, T., 'Multiple, compound and intersectional discrimination: bringing the experiences of the most marginalized to the fore', 2002 <sup>14</sup>ibid. <sup>15</sup>Latraverse, S., 'Report on measures to combat discrimination Directives 200/43 and 2000/78/EC Country Report, France', 2007. <sup>16</sup>Solanke, I., 'Stigma: A limiting principle allowing multiple-consciousness in anti-discrimination law?' in D. Schiek & V. Chege (eds), *European Union Non-Discrimination Law: Comparative Perspectives on Multidimensional Equality Law*, London and New-York, Routledge-Cavendish, 2009, pp. 723-749. <sup>17</sup>ibid. <sup>18</sup>The sample compiled around 1000 cases collected from equality bodies, local

of multiple discrimination. They may be frequently subject to multiple discrimination related to their ethnicity, gender and socioeconomic situation.

With reference to the second category, foreign women or women of foreign origin lodge fewer complaints than foreign men or men of foreign origin on the ground of ethnic origin. For instance, in Germany 58% of complainants are male versus 38% who are female. The situation is similar in France (55% versus 39%). We postulate that this is because women may have a narrower support network than men, particularly from unions and women's NGOs, which are more focused on combating domestic violence or exploitation of prostitutes than discrimination. In addition, anti-racist NGOs do not take the gender ground into consideration because they are used to working on one ground only. The second reason is that they have difficulty recognising the discrimination of which they are victims, especially gender discrimination. Foreign women tend to identify first ethnic origin or religion as a ground of discrimination rather than gender.

#### The role of stakeholders and social actors

In the GendeRace project, we postulate that the intersectional experience of discrimination based on race or ethnicity and gender is not recognised and treated properly in legal and institutional frameworks because experiences are analysed and treated through mutually exclusive checklists of discrimination.

First of all, ethnic minority women seem to receive little support from social players (in particular women's organisations) when they lodge complaints about ethnic or intersectional forms of discrimination. This is the case in Spain and France where the women's organisations are highly focused on political action and provide little legal support to back women's complaints. In France, this is mainly because the French conception of equality is deeply embedded in the tradition of republican universalism, which has served to limit equal

treatment and positive actions in favour of specific groups. In Germany there are special bodies and women's organisations that were originally set up to address gender discrimination. They provide legal support in cases of gender discrimination but not in cases of racial or ethnic discrimination. The women's organisations in Bulgaria are quite aware of the problem of multiple discrimination and the specific problems faced by women from ethnic minorities. Nevertheless, they only provide legal support for women who are victims of domestic violence, not for cases of discrimination as these women do not usually recognise themselves as victims of discrimination.

In addition, the complainants (particularly women) rarely consult trade unions despite the fact that the sample contains a majority of cases of discrimination at work in Bulgaria, Germany, France, Spain, Sweden and the UK. Trade unions tend to support the complainants only when there is a question of discrimination related to union activities (Bulgaria, France). Their support is rare in cases of racial and/or gender-related discrimination, especially in Bulgaria, France and Sweden.

The results also show that equality bodies do not generally take multiple and intersectional discrimination into account in their practices. This is demonstrated by the low number of complaints based on multiple discrimination. This can be explained by various factors.

Firstly, the organisations competent to receive and process complaints, such as anti-racism bodies, are accustomed to working on a single ground of discrimination: the one in which they specialise. In France and Spain for example, these organisations are either not well-versed in the concept of multiple discrimination or else do not use it, considering it will not work in court (except for the Fundación Secretariado Gitano in Spain). They thus tend to favour an approach based on a single motive, with the motive chosen being the one for which the most evidence can be collected.

Secondly, some anti-discrimination bodies which cover multiple grounds are divided into separate services for different forms of discrimination. This division of competencies makes it hard to process multiple discrimination cases. In Sweden, for example, we observed that even when a complaint mentions several motives, it is nevertheless handled as if it were based on a sole criteria.

Finally, data collection must be enhanced to give higher visibility to multiple discrimination through a complaint encoding system, including the possibility of lodging a complaint on several grounds of discrimination on the one hand, or in several sectors and committed by different persons on the other. This would permit the publication of complaint statistics (analysis of grounds, sectors of occurrence, types of discrimination) from a gender perspective in the annual activity reports of equality bodies.

#### Conclusion

Through the examination of six European countries, the GendeRace project shows clearly that multiple discrimination is not sufficiently addressed at the national level, even in countries with a long experience of

anti-discrimination such as Sweden and the UK.

At the same time, the concepts of intersectionality and multiple discrimination are increasingly used both by sociologists and legal academics. They are useful tools for analysing the overlap and interrelation of diverse sociological phenomena as well as for developing approaches to deal with the recent multiplication of grounds in discrimination law.

It is now necessary to develop further research on multiple discrimination and related issues of intersectionality in order to better frame policies, laws and practices according to people's specific experiences. Indeed, it is necessary to shape the direction of debate on the European anti-discrimination framework by establishing a corresponding theoretical approach to intersectionality.

To achieve this, addressing multiple discrimination should be introduced as a new element in European equality law. We agree with Schiek who asks for the introduction of a clarifying clause in the anti-discrimination Directives.<sup>19</sup> This will facilitate the implementation of the fight against multiple discrimination at the national level.

## TWO EXAMPLES OF GOOD PRACTICES

### → THE UK EQUALITY BILL: A FIRST STEP TO APPROACHING MULTIPLE DISCRIMINATION

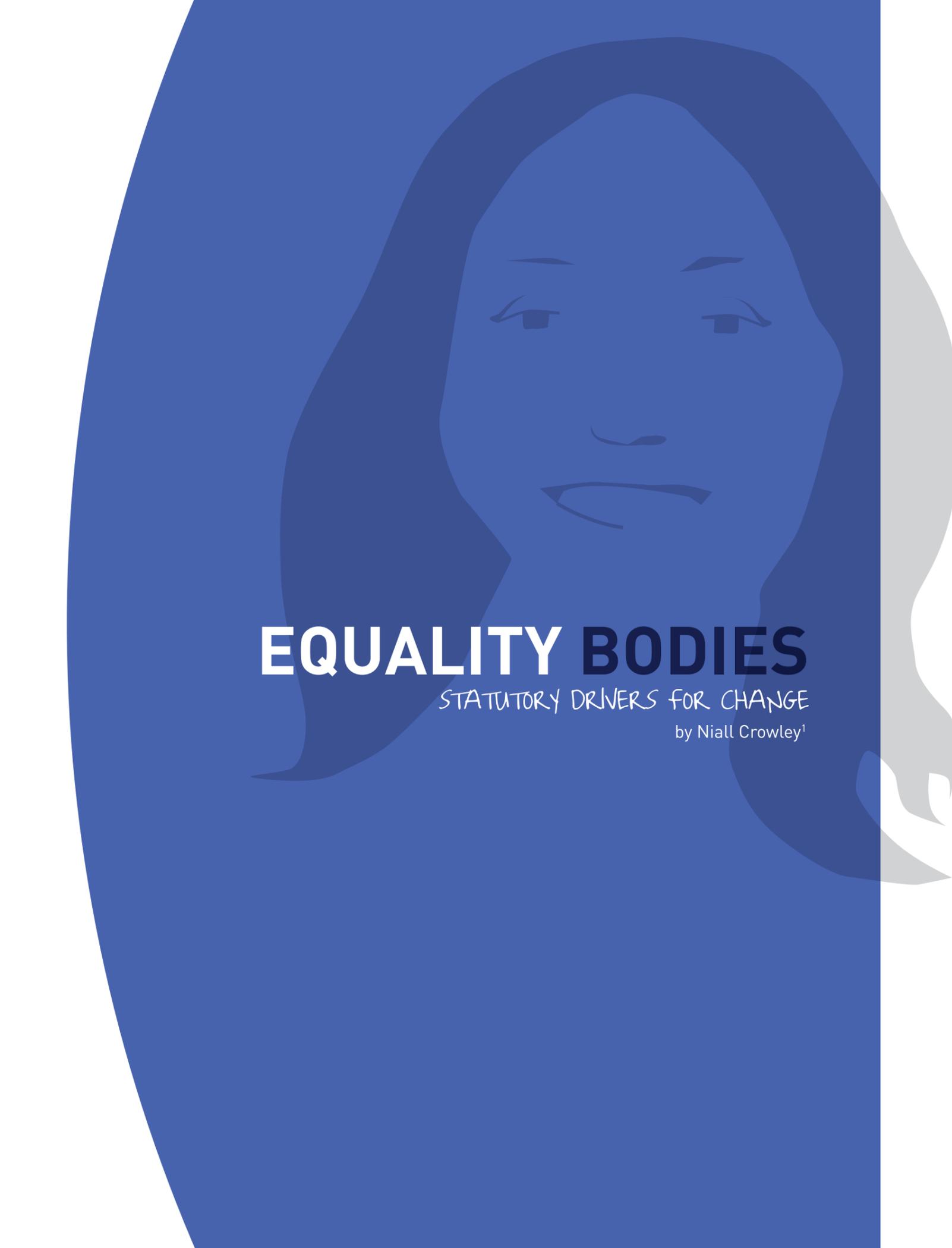
The Government Equalities Office set out a proposal in April 2009 for a legal provision for inclusion in the Equality Bill which would provide protection from multiple discrimination.<sup>20</sup>

### → THE SPECIAL PANEL ON MULTIPLE DISCRIMINATION OF THE BULGARIAN EQUALITY BODY

In addition to a specific definition of multiple discrimination in the Bulgarian anti-discrimination Bill (PADA) in place since 01 January 2004,<sup>21</sup> the Commission for Protection against Discrimination in Bulgaria has a special subdivision specialised in multiple discrimination cases.

anti-discrimination offices and NGOs in the six countries involved in the project. We should highlight that the team faced limitations in the accessibility of the data because some information, such as origin or religion, is deemed sensitive, personal information and is subject to protection. In addition, the comparative work was difficult because data collection methods, the categories used and the data collected vary widely not only from one country to another but also within a given country.

<sup>19</sup>Schiek, D., 'Executive Summary', in S. Burri, & D. Schiek, *Multiple Discrimination in EU Law. Opportunities for legal responses to intersectional gender discrimination?*, European Network of legal Experts in the field of gender equality, European Commission, 2009.<sup>20</sup> Although the Bill allows a claim only on two grounds and only for direct discrimination, we consider that having a provision in law for a claim on two grounds would be a step forward. For more information see: Government Equalities Office, *A Fairer Future: the Equality Bill and other action to make equality a reality*, 2009.<sup>21</sup> Multiple discrimination is defined in the Bulgarian anti-discrimination law as 'discrimination on the grounds of more than one of the characteristics under Article 4(1)'. For more information see: [http://kzd-nondiscrimination.com/start/index.php?option=com\\_content&task=view&id=15&Itemid=31](http://kzd-nondiscrimination.com/start/index.php?option=com_content&task=view&id=15&Itemid=31)



# EQUALITY BODIES

STATUTORY DRIVERS FOR CHANGE

by Niall Crowley<sup>1</sup>

Equality bodies have a key role to play in ensuring the effective impact of gender equality legislation and, more broadly, in advancing equality between women and men. Most face significant challenges in seeking to conduct their work in an independent and effective manner – challenges that have now been deepened in a context of economic recession.

All Member States should have an equality body to promote gender equality and to combat discrimination on the ground of sex. This is a requirement of the Gender Equal Treatment Directives. Most Member States do indeed have such a body while others, such as Poland and Denmark, do not as yet. Some of these bodies work specifically and exclusively on the gender ground, as for example in Croatia and Belgium. Some, such as in Northern Ireland, work on all Article 19 TFEU grounds including the gender ground. Some form part of another body with a broader set of concerns in relation to human rights, as for example in Slovakia.<sup>2</sup>

## Roles

The EU Equal Treatment Directives require these equality bodies to have three functions. These are to:

- Provide independent assistance to victims of discrimination;
- Conduct independent surveys concerning discrimination;
- Publish independent reports and make recommendations on any issue relating to such discrimination.

In fact, most equality bodies have a broader range of functions and powers. The work and potential of these bodies can best be viewed under the four headings of (a) enforcement, (b) cultural action, (c) knowledge development and (d) promotion. A recent (unpublished) survey of these equality bodies by Equinet (the European Network of Equality Bodies) provides some insight into the extensive work they are doing on the gender ground. This survey is used to inform the following discussion of enforcement, cultural actions, knowledge

development and promotional work.

## • Enforcement

Enforcement involves the equality bodies in providing legal advice and representation to people who have experienced discrimination. It also involves the equality bodies in taking cases under their own name. The cases that have been supported on the gender ground are predominantly taken by women. Pregnancy related discrimination and discrimination related to statutory leave entitlements emerge as dominant issues in this legal work. Equal pay, sexual harassment, promotion in the workplace and discrimination in recruitment also emerge as significant issues. Workplace issues of discrimination currently predominate in the legal work of most equality bodies on the gender ground.

This probably reflects the still recent nature of Gender Equal Treatment in relation to matters beyond the labour market.<sup>3</sup> It also reflects the incomplete nature of this Directive, with areas such as education, the media and advertising still not covered. Casework developed by the equality bodies in relation to discrimination outside the labour market has included a focus on taxation and access to public benefits, including public services and social protections systems. Transport services, insurance contracts and charging of different fees to men and women also feature in this legal work.

Under-reporting of discrimination is a significant barrier to this work of enforcement. An Irish survey, conducted by the Central Statistics Office in late 2004,<sup>4</sup> found that 60% of those who reported experiencing discrimination do nothing about it. It found that less than 6% of those who reported experiencing discrimination took any manner of formal (including legal) action in response. This barrier is common across the Member States. It emphasises the importance of cultural action by the equality bodies.

<sup>1</sup>Niall Crowley is an independent equality expert from Ireland. <sup>2</sup>Editors' note: For a full list of Equality Bodies see: <http://www.equineteurope.org/361.html> <sup>3</sup>Council Directive 2004/113/EC of 13 December 2004. <sup>4</sup>Central Statistics Office, 'Quarterly National Household Survey', Equality Module, Central Statistics Office, Dublin, 2005.

## •• Cultural Action

Cultural action by equality bodies includes very basic activities to ensure that people are aware of their rights under equality legislation. Information help-lines, outreach services and the dissemination of promotional material play an important role in this regard. There are significant deficits in the level of knowledge held by people as to their rights under the equality legislation.

The focus for this cultural action goes further through seeking to stimulate a cultural context where it is deemed normal to exercise one's right not to be discriminated against and where people can feel confident in doing so without fear of retribution. High profile successful casework is valuable in this regard. Successful casework in relation to claims of victimisation (adverse treatment of people because they have taken cases to court) is particularly important in addressing fears held by many claimants. Media coverage of all this casework serves to build knowledge of rights and obligations under the legislation, to normalise the reality that many people are and will be pursuing cases under equality legislation, and to encourage people to follow the example of other complainants who have successfully done so.

There is another dimension to cultural action that is pursued by some equality bodies such as in Malta and Portugal. This is action to enhance the status and standing of women in society and to establish equality as a core social value. Public education initiatives, publications and promotional activities are used in this regard. Some equality bodies have sought to highlight and challenge the stereotyping of women and men through these types of initiatives.

## ••• Knowledge Development

Gender stereotyping has also been a focus for research projects commissioned or carried out by equality bodies. For example, the Equality Authority in Ireland published 'An Introduction

to gender equality Issues in the Marketing and Design of Goods for Children' in 2007. Knowledge development through research and surveys has played a valuable role in developing evidence of and understanding about inequality and discrimination experienced by women. This knowledge development assists in informing and shaping new policy and new organisational practices. Equal pay, sexual harassment and multiple discrimination have been notable areas for knowledge development by equality bodies. The work on multiple discrimination has had a particular focus on ethnic minority women, older women and women with disabilities.

## •••• Promotional Work

The promotional work of equality bodies emphasises the need to stimulate and support new policies and new organisational practices if gender inequalities are to be effectively tackled. Equality bodies deploy the knowledge and expertise developed through their wider work to negotiate for necessary systemic change in policy making and organisational practice and to provide the necessary support to implement such change.

In some Member States the equality legislation itself drives and sustains this work by the equality bodies. Their equality legislation includes duties for both public and private sector organisations to be pro-active in advancing gender equality. In some jurisdictions, public sector bodies are required to give due regard to equality in carrying out their functions. Equality impact assessments are required on new plans and policies as evidence of this. In some cases, private sector companies are required to conduct and report on gender pay audits so as to address the pay gap. Sweden is one example where employers of 25 or more employees are required to undertake a pay survey and analysis every three years.

The equality bodies play key roles in supporting and monitoring the implementation of these positive duties. It would be valuable to further

develop these positive duties across the European Union by means of future Equal Treatment Directives, if legislation is to be effective in addressing the persistence of gender inequalities. This further development could build on current provisions that require Member States to implement gender mainstreaming in public sector work in the fields of employment and labour market policy, and to support employers to be planned and systematic in their approach to gender equality in the workplace. Extending these provisions beyond the labour market, enforcement of such provisions and according a role to equality bodies in supporting and monitoring their implementation is necessary.

In Member States where there are no such positive duties enshrined in legislation, equality bodies have worked to mobilise employers and service providers on a more voluntary basis. Codes of practice, guidelines, practical advice and even funding have been made available by the equality bodies to support institutional change and new practices for gender equality. Expert submissions have been made to influence policy making. A significant body of work can and has been developed on this basis, however it is hard to sustain in the absence of legal provisions.

## Standards

It is necessary to note that no standards – apart from the requirement to be independent in the exercise of the three functions defined in the Directives – have been set by the European Commission for the establishment and work of the equality bodies. This needs to be rectified. Standards already vary between Member States. Standards are now under attack within some Member States, using economic recession as a cover for undermining independence and effectiveness.

Equinet (the European Network of Equality Bodies) has already received calls for assistance from within five Member States where the independence and effectiveness of equality bodies is being undermined. The first

call came from the Equality Authority in Ireland when its budget was cut by 43% in October 2008. This has been followed by calls from Bulgaria, Latvia, Lithuania and Romania. The Equinet annual general meeting 2009 highlighted that this was an issue across an even wider range of Member States.

This undermining of standards through the diminishing of the independence and effectiveness of the equality bodies takes five principal forms:

→ Disproportionate financial cutbacks that mean the equality body can no longer advance a critical mass of work sufficient to make an impact. Effectiveness and independence are compromised;

→ Financial cutbacks that require a restructuring of the equality body such that specialist skills and experience are lost and work cannot be advanced to a sufficient quality. Effectiveness is compromised;

→ Merging equality bodies with other institutions, such as a parliamentary ombudsman, whose functions are only vaguely related to those of the equality body. Effectiveness is compromised through loss of profile, focus and specialised skills. Independence is compromised through loss of control of the specific mandate to promote equality and combat discrimination;

→ Failure to re-appoint commissioners to the equality body such that a quorum is no longer available to make decisions. In other instances commissioners are appointed with an overt political agenda which is a problem. Independence is thus compromised;

→ Expanding the mandate of the equality body without increasing resources. Effectiveness is damaged as already inadequate resources are spread too thinly.

This is a context of backlash where the potential of equality bodies is being stymied before it can be fully realised. It is now important for the European Commission to establish standards of effectiveness and independence for equality bodies. These standards should be based on internationally recognised standards such as the Paris Principles of the United Nations and the European Commission against Racism and Intolerance (ECRI) recommendation of the Council of Europe.<sup>5</sup> Standards would serve to protect equality bodies as well as to increase their effectiveness if they are properly enforced. The European Commission has sent a valuable signal in this regard by including reference to the Paris Principles in the preamble to the new Directive currently under consideration by the Member States on discrimination in areas beyond the labour market on four Article 19 TFEU grounds. However, it is not clear that the Member States will agree to leave this reference in the text and its removal would be a very negative indicator for the future.

#### Conclusion

Equality bodies need to be identified and understood as statutory drivers for change. Their establishment reflects and communicates a statutory commitment to make the public and private sectors accountable for discrimination and for advancing gender equality. The current attack on the independence and effectiveness of equality bodies represents a drawing back from this valuable commitment. This does not bode well for advancing gender equality over the coming years.

#### Further resources

Crowley, N., *An Ambition for Equality*, Irish Academic Press, Dublin, 2006.

Equality Authority, Ireland, 'An Introduction to gender equality Issues in the Marketing and Design of Goods for Children', Ireland, 2007.

Equinet, 'Promoting Equality: Overview of positive measures used by national equality bodies', 2008.

Equinet, 'Between Impartiality and Responsiveness: Equality bodies and practices of independence', 2008.

Equinet, 'New tools for Promoting equality', 2008.

Holtmaat, R., *Catalysts for Change - Equality bodies according to Directive 2000/43 - existence, independence and effectiveness*, Office for Official Publications of the European Communities, Luxembourg, 2007.

<sup>5</sup>UN Paris Principles, 1993, available at: <http://www2.ohchr.org/english/law/parisprinciples.htm>; European Commission against Racism and Intolerance (ECRI), ECRI general policy recommendation no. 2 on specialised bodies to combat racism, xenophobia, anti-semitism and intolerance at national level, 1997, adopted 13 June 1997, Council of Europe, Strasbourg.

## THE EUROPEAN WOMEN'S LOBBY recommendations

## STEPS TO BE TAKEN BY THE EUROPEAN COMMISSION

→ Ensure a pro-active, holistic and multilayered approach to gender equality in the EU with policies actively aiming at realising equality between women and men in practice and with a focus on fighting *de jure* discrimination as one key element of this approach. This corresponds to Treaty obligations as reinforced by the Lisbon Treaty (now Article 3(3) TEU and Article 8 TFEU).

### Ensure strong institutional mechanisms and tools for equality between women and men by:

→ Ensuring the adoption of a strong new Strategic Action Plan for Effective Equality between women and men with concrete commitments and measures concerning governance and institutional mechanisms for the advancement of equality between women and men in all areas, a specific budget and strong coordination and accountability mechanisms;

→ Ensuring that the new Strategic Action Plan fully reflects the needs and perspectives of different groups of women particularly those belonging to the groups mentioned in Article 19 TFEU (ex Article 13 TEC);

→ Making sure that the new European Institute for gender equality is a strong actor contributing to more visible gender equality policies, more efficient gender mainstreaming and *de facto* equality between women and men in all areas;

→ Ensuring that at least one of the meetings of the Commissioners' Group on Equal Opportunities per year is devoted to equality between women and men;

→ Ensuring that national equality bodies are independent and follow the UN's 'Paris Principles' notably by adding a reference to this in European legislation;

→ Creating a women's information service within the Commission to deal with awareness-raising activities and public information;

→ Improving the Commission's web site on gender equality, in all official languages.

### Ensure an effective implementation of gender mainstreaming by:

→ Further clarifying and refining the obligation to mainstream a gender perspective in all activities of the EU contained in Article 8 TFEU (former Article 3(2) TEC) through developing and promoting an implementation instrument (with tools, structures, and budget) especially with the adoption of the Lisbon Treaty, which reinforces the obligation to mainstream gender in all EU activities and policies;

→ Creating permanent positions of gender equality and gender mainstreaming advisors in each European Commission Directorate General, attached to Director Generals;

→ Setting up a secretariat for the existing Commission Inter-Service Group on Gender Mainstreaming that is fully funded, more visible inside and outside the Commission and strengthened through consistency in membership, the proven expertise and commitment to gender equality of its members, and regular gender equality training of its members;

→ Including in the Commission's Annual Report on gender equality a chapter on gender mainstreaming in each Commission Directorate General whose content should be closely related to the implementation of the new Strategic Action Plan;

→ Setting up mandatory gender mainstreaming and gender awareness training for Commissioners and civil servants at all

levels and to be included within all management training for European civil servants. Ensure that all training information is made publicly available;

→ Making resources available for targeted training and awareness-raising measures at the European and national level.

### Improve EU gender equality and anti-discrimination legislation and ensure its implementation at the national level by:

→ In the context of the review of the 2004 Goods and Services Directive, eliminating all derogations and exceptions remaining in EU gender equality legislation notably in the field of social security and goods and services including financial services;

→ Proposing new legislation prohibiting sex-based discrimination in education and the media;

→ Introducing new European policies and legislation to eliminate inequalities in decision-making and violence against women;

→ Enabling victims of multiple-discrimination to be effectively protected through the inclusion of a multiple discrimination clause in gender equality and anti-discrimination legislation;

→ Taking appropriate, accelerated and public measures against Member States who have not transposed and (adequately) implemented gender equality and anti-discrimination Directives and ensuring that Member States do not use the transposition process of European Directives to lower legal protection;

→ Putting more effective mechanisms in place to hold Member States responsible for the full implementation and public knowledge of legal measures at the national level, including involving women's NGOs at the national level and supporting their work in this regard;

→ Monitoring the transposition, implementation and use of existing gender

equality and anti-discrimination Directives by conducting independent reviews.

### Ensure that a gender equality perspective is systematically taken into account in the policy and awareness-raising work on anti-discrimination by:

→ Strengthening the cooperation between the gender equality unit and the Anti-Discrimination unit of the Directorate General Employment, Social Affairs and Equal Opportunities;

→ Allocating resources and developing tools to build capacity on the implementation of gender mainstreaming and gender budgeting in anti-discrimination policies among bodies working on anti-discrimination both within the European Commission and at Member State level;

→ Developing toolkits and training sessions on multiple discrimination, women's rights and gendered discrimination.

### Build evidence-based policies that promote equality between women and men and are non-discriminatory by:

→ Setting up a systematic *a priori* gender equality impact assessment as part of the impact assessment procedure for all new legislative proposals adopted by the European Commission and formally consult both the Fundamental Rights Agency and the Gender Institute at all preparatory stages of a legislative procedure;

→ Ensuring that European research findings on equality between women and men and anti-discrimination are systematically taken into account in the design of policies and legislation, especially research conducted by the Fundamental Rights Agency and the Gender Institute;

→ Ensuring that significant research on inequality between women and men and other inequalities is directly financed by the Directorate General Research;

→ Ensuring that in the studies of the European Commission or European agencies that do not look specifically at gender there is systematic collection of gender-disaggregated data and the presentation of the results in a gender-disaggregated way while ensuring that gender-specific studies cross gender data with other data such as race, age or disability and present their results in an intersectional way.

...

## STEPS TO BE TAKEN BY THE FUNDAMENTAL RIGHTS AGENCY

→ Include a transversal gender equality and women's rights perspective in all the thematic areas of the Multi-Annual Framework and subsequent activities.

→ Systematically collect gender-disaggregated data and present all investigation results in a gender-disaggregated way.

→ Systematically and actively involve women's organisations in all activities, not only those explicitly addressing gender equality issues.

→ Be pro-active in commenting on all legislative and policy initiatives which touch upon issues of fundamental rights, including gender equality and anti-discrimination legislation and policy.

→ Develop specific activities on issues which

are part of women's fundamental rights such as violence against women.

→ Establish systematic, direct and formal links and cooperation with the Gender Institute.

...

## STEPS TO BE TAKEN BY THE GENDER INSTITUTE

→ Work on the basis of a strong feminist perspective and take a pro-active stand on equality between women and men.

→ Ensure the full and efficient use of the gender mainstreaming and gender budgeting strategies within the EU Institutions and Member States.

→ Be pro-active in initiating work on issues not yet tackled at the EU level from a women's rights perspective such as violence against women, inequalities in decision-making, health, media, environment or immigration.

→ Take into account the multiple identities of women and develop concrete activities (research, awareness-raising, etc.) on the situations of groups of women facing specific inequalities or with specific needs.

→ Cross gender data with other data such as race, age or disability and present investigation results in an intersectional way.

→ Systematically and actively involve and formally consult women's organisations in all activities beyond the experts forum.

→ Establish systematic, direct and formal links and cooperation with the Fundamental Rights Agency.

...

## STEPS TO BE TAKEN BY NATIONAL DECISION-MAKERS

→ Ensure a pro-active, holistic and multilayered approach to gender equality with policies actively aiming at realising equality between women and men in practice and with focus on fighting *de jure* discrimination as one key element of this approach.

→ Ensure sufficient human and financial resources at all levels for policies and institutional structures aimed at achieving equality between women and men and ensuring against all forms of discrimination. Ensure this in both the governmental and non-governmental sector including women's organisations. This is essential to counteract the cuts and regression that have already been observed in some Member States.

→ Ensure that legislation provides a uniform protection for all grounds of discrimination listed in Article 19 TFEU and extend additional cover to grounds other than those listed in Article 19 TFEU.

→ Ensure the full implementation of existing gender equality and anti-discrimination Directives through making resources available for targeted training and awareness-raising measures.

→ Take concrete steps towards ensuring the

full and efficient use of the gender mainstreaming and gender budgeting strategies at all levels of government and by all state agencies.

→ Adopt a strong new anti-discrimination Directive on age, sexual orientation, religion or belief and disability that meets the demands of the EWL, anti-discrimination networks and the European Parliament.

→ Add explicit clauses and binding regulations on multiple discrimination in the national legal system.

→ Ensure the efficiency and independence of equality bodies, notably by following the UN 'Paris Principles' as well as the EWL principles for efficient equality bodies from a women's rights/feminist perspective (listed in this publication).

...

# 13 Principles

## OF THE EUROPEAN WOMEN'S LOBBY FOR EFFICIENT EQUALITY BODIES FROM A WOMEN'S RIGHTS PERSPECTIVE

page 28 ...

These 13 principles are the outcome of the discussions held at the EWL seminar in January 2009 where EWL members had the opportunity to discuss the challenges of the merging of equality bodies at the national level<sup>1</sup> and the danger of the dilution of women's rights. The EWL recognises the usefulness in specific contexts of separate gender equality bodies, notably to make visible gender inequalities in society and to build a gender equality expertise. Our priority at the EWL has been to ensure the efficiency of equality bodies from a women's rights perspective that include mechanisms to tackle multiple and intersectional discrimination.

In this context, EWL members defined a list of 13 key principles that bodies covering all grounds of discrimination, including sex, should respect in order to avoid a dilution of women's rights and gender equality issues. These principles are complementary to the 'Paris Principles' relating to the Status of National Institutions.<sup>2</sup>

...

...

<sup>1</sup>For example, the UK merged in 2007 all its separate equality bodies including the gender equality into one single body covering all grounds i.e. the Equality and Human Rights Commission. <sup>2</sup>UN Paris Principles, 1993, available at: <http://www2.ohchr.org/english/law/parisprinciples.htm>.

1 TAKE WOMEN'S RIGHTS AND GENDER EQUALITY FULLY INTO ACCOUNT IN THE PLANNING, BUDGETING AND CREATION OF EQUALITY BODIES.

...

2 GUARANTEE EXPERTISE IN WOMEN'S RIGHTS AND GENDER EQUALITY AT ALL LEVELS, INCLUDING AT THE HIGHEST LEADERSHIP LEVELS OF SUCH BODIES THROUGH ADEQUATE HUMAN RESOURCES MANAGEMENT AND TRAINING.

...

3 GUARANTEE SUFFICIENT ALLOCATION OF FINANCIAL AND HUMAN RESOURCES AND STAFF FOR EACH GROUND OF DISCRIMINATION AS WELL AS FOR MULTIPLE DISCRIMINATION.

...

4 IMPLEMENT GENDER BUDGETING METHODS AND TOOLS TO ASSESS THE LEVEL OF FINANCIAL AND HUMAN RESOURCES DEVOTED TO ACTIVITIES ON GENDER EQUALITY AND COMBATING SEX-BASED AND GENDERED DISCRIMINATION AND IMPROVE BUDGETARY POLICIES ACCORDINGLY.

...

5 ENSURE HIGH LEVELS OF AUTHORITY AND VISIBILITY OF GENDER EQUALITY ACTIVITIES BOTH INTERNALLY AND EXTERNALLY.

...

6 ENSURE THAT ALL STAFF MEMBERS WORKING ON GENDER EQUALITY HAVE EXPERTISE ON THE ISSUE, ARE THOROUGHLY TRAINED AND THAT THEIR POSITIONS REMAIN STABLE FOR AN ADEQUATE PERIOD OF TIME TO ENSURE CONSISTENCY AND RESULTS.

...

7 MAKE WOMEN VISIBLE AS A TARGET GROUP OF THE INSTITUTION (BY INCLUSION OF WOMEN IN THE NAME, LOGO, VISUAL IDENTITY, BROCHURES, WEBSITES, RESEARCH ON OTHER GROUNDS, ETC.).

...

8 HAVE AS A MANDATE TO RAISE AWARENESS OF STRUCTURAL GENDER INEQUALITIES AND DISCRIMINATION AGAINST WOMEN.

...

9 DEVELOP PUBLIC CAMPAIGNS THAT MAKE ALL THE DIFFERENT GROUNDS OF DISCRIMINATION AND INTERSECTIONAL DISCRIMINATION VISIBLE.

...

10 INITIATE THINKING AND DEVELOP TOOLS TO ADDRESS INTERSECTIONALITY, INCLUDING IN THE COLLECTION OF DATA.

...

11 USE DISAGGREGATED DATA BY GROUND OF DISCRIMINATION ON THE NUMBER OF CASES BROUGHT TO COURT AND CASE LAW AS AN INDICATOR OF THE EFFICIENCY OF THE EQUALITY BODY.

...

12 INCLUDE WOMEN'S ORGANISATIONS IN ADVISORY BODIES, CONSULTATIONS AND VICTIM PROTECTION ACTIVITIES.

...

13 BE ACCOUNTABLE TO CIVIL SOCIETY, INCLUDING WOMEN'S ORGANISATIONS,

... page 29

## Questions and Answers

### 1 • Why is EU legislation against sex-based discrimination so important?

EU legislation against sex-based discrimination is fundamental to promoting equality between women and men. This legislation provides minimum standards of legally enforceable protection against sex-based discrimination. Therefore, if an individual in the EU is discriminated against because of her/his sex in an area covered by a gender equality Directive, this case of discrimination can be pursued in a court of law. For further information please see Minto and Bach's article in this publication.

### 2 • Is non-discrimination legislation enough to achieve equality between women and men?

Non-discrimination legislation alone will not achieve substantive equality between women and men. For example, although the principle of equal pay has been a part of EU law since 1957, 50 years later there remains a gender pay gap of 17.6% in the EU.<sup>1</sup> This is because gender inequalities exist at a structural level and these structures are not robustly challenged by non-discrimination legislation. Equally, ensuring against sex discrimination in employee selection does not automatically mean that women will enjoy genuine equality with men with respect to employment. Other issues which must be addressed in this case include: equality in education to ensure that women are afforded real and equal career choices, regardless of gender stereotypes; access to affordable, good quality childcare and care for other dependants (crucial given that women remain the primary carers); the availability of safe and reliable public transport (especially important for women working late shifts in bars and restaurants); positive action measures for women in decision-making in the economic and social sector; the recognition of foreign qualifications (vital for third country nationals), etc.

Legislation itself must go beyond non-discrimination to promote a broader vision of equality between women and men in order to make concrete steps towards achieving substantive equality. The adoption of strong gender equality legislation is a crucial part of changing patterns of behaviour, attitudes and institutions. For example, fundamental to achieving real equality between women and men in Europe is the adoption of a European action plan and legislation to combat all forms of male violence against women.

### 3 • What other measures can the EU implement to promote gender equality? Are these important?

In addition to gender equality legislation, the EU can implement policies and political strategies to promote equality between women and men. These are a vital complement to legislation and they play a key role in advancing substantive equality between women and men. Action at a political level includes: campaigns, which serve to raise public and political awareness about an issue; positive action measures, which provide increased opportunities to the underprivileged sex; gender mainstreaming, which is a political strategy that challenges institutions at a structural level by ensuring that the needs and experiences of women (as well as men) are firmly included in the policy-making process and, hence, are reflected throughout policy; the collection of comprehensive and reliable gender-disaggregated statistics to inform policy-making; programmes including gender equality research projects; and sufficient protected

<sup>1</sup>European Commission, *Report on Equality between Women and Men – 2010*, Brussels, 2009, p. 4.

funding specifically for actors advancing gender equality, including women's NGOs

To achieve substantive equality between women and men, discrimination and inequalities in all areas of life must be combated: issues cannot be addressed in isolation; all inequalities are interconnected. For example, women will not enjoy equal opportunities with men to participate in the labour market until men take an equal share of domestic responsibilities (including caring for children and other dependants). As such it is vital that all activity of the EU is gender-sensitive as is provided for by the gender mainstreaming obligation enshrined in the Treaty.

The EU has committed to a dual approach to advancing gender equality. This combines gender mainstreaming with women-specific measures, such as positive action. It is essential that this dual approach to achieving substantive equality between women and men is pursued in all areas of EU activity.

### 4 • Why is it so important to fully incorporate a gender perspective into all anti-discrimination legislation and other equality measures?

Gender inequalities are present across all areas of society, including in political institutions, businesses, industry, the media, education, culture and the home. Women are not a disadvantaged 'group': they constitute over half of the population of the EU and often the majority in so called 'disadvantaged groups' (e.g. older people). Gender remains fundamental to determining an individual's opportunities in life. As such, the discrimination and inequalities experienced by individuals on other grounds (such as age or racial origin) are often gendered, meaning that women and men experience discrimination and inequalities on these other grounds in different ways (see question 7 on gendered discrimination). This difference must be fully reflected in all anti-discrimination legislation and other equality measures.

Equality between women and men is an objective of the EU, as stated in Article 8 TFEU (ex Article 3(2) TEC) of the EU Treaties. This commitment to gender equality is reaffirmed in the recital of the two anti-discrimination Directives, as well as in the proposed Anti-discrimination Directive. The EU must honour this commitment by ensuring that a gender perspective is fully integrated in all anti-discrimination legislation, programmes and other equality measures, such as positive action measures.

### 5 • Can the transposition of EU Directives into law at the national level lead to a decrease in the level of protection?

EU gender equality and anti-discrimination Directives impose minimum requirements upon Member States. It is explicitly stated in the text that the transposition of a Directive cannot be used to justify reducing the level of provisions already in place in a Member State. However, despite this, there are examples of Member States decreasing levels of protection against discrimination upon transposition of an EU Directive. Therefore the transposition of EU Directives into national law must be carefully monitored and decisive action must be taken against Member States as required.

### 6 • Are the terms 'gendered discrimination', 'multiple discrimination' and 'intersectionality' the same?

No. Each of these terms refers to a different concept. A description of each is given below.

### 7 • What is gendered discrimination?

Although both women and men may be subject to discrimination, they experience discrimination in different ways: this is gendered discrimination.

The gendered nature of discrimination affects where an individual experiences discrimination, what form it takes and her/his response to it. For example, as highlighted in the research undertaken by the GendeRace project (see Carles' article in this publication), women predominantly experienced racial discrimination in access to goods and public services, including in education and housing. Men, however, were more often subject to racial discrimination by the police and the judiciary, as well as in access to goods and private services, especially recreational activities. This is a clear example of how discrimination is gendered.

As stressed above in question 4, the gendered nature of discrimination must be fully and robustly reflected and addressed in both legislative and policy activity. It is essential that all EU anti-discrimination legislation and policy measures (such as positive action) are gender mainstreamed.

### 8 • What is multiple discrimination?

Multiple discrimination is discrimination which is based on more than one ground. For example, if a disabled woman is discriminated against because she is disabled and because she is a woman then she is subject to multiple discrimination.

In order to protect individuals from multiple discrimination it is vital that the EU legally prohibits discrimination on multiple grounds so that cases can be pursued on more than one ground. This is not yet required by EU law.

### 9 • What is intersectionality?

The concept of intersectionality (developed by both feminist sociological and legal scholars) is highly complex and remains contested in both academic and political circles. Intersectionality goes beyond an additive approach to considering and combating multiple forms of discrimination and inequalities; it appreciates inequalities as constitutive. As such intersectionality addresses inequalities at a structural level and explores the dynamic between inequalities. Therefore it goes further than adding together non-discrimination legislation as a response to tackling multiple discrimination and inequalities, recognising that the experiences of individuals cannot be fully appreciated by separating the oppressions they are subject to.

For example, an intersectional approach recognises that the experiences of black women cannot be appreciated by 'adding together' the experiences of women and black people. Therefore, in order to develop legislation and policy that will effectively advance the status of black women and will increase their life opportunities, their particular needs and experiences must be understood. This is undertaken through exploring the relationship between gendered and racialised structures of power and oppression.

An intersectional approach to promoting equality calls for differentiated responses to different types of oppression, inequality and discrimination. For more information, please see the section

on key resources in this publication.

### 10 • Why must equality bodies fully integrate women's rights and gender equality into their work and how can they do this?

Gender plays a fundamental role in determining the opportunities available to all individuals, as well as shaping the discrimination and inequalities experienced by all individuals and their responses. It is crucial to include women's rights and gender equality fully in the work of all equality bodies, whether they are specific equality bodies (dealing with one ground) or equality bodies responsible for multiple grounds.

Experience has shown that in countries with a single equality body, gender equality is higher on the agenda when previously separate equality bodies have merged, as opposed to when no separate gender equality body existed before. The full and effective integration of women's rights and gender equality in all cases is vital.

The EWL's 13 principles for equality bodies listed in this publication provide concrete measures that must be implemented in order to ensure that these bodies are gender-sensitive in all aspects of their work.

### 11 • What type of equality bodies address multiple discrimination most effectively?

It has been argued that having a single equality body which deals with different grounds of discrimination is best in order to tackle multiple discrimination and to promote equality for all. However, this is not necessarily the case in practice as even single equality bodies covering all grounds fail to pursue cases on multiple grounds. For example, as highlighted in the GendeRace project (see Carles' article in this publication), although the new Swedish equality body covers multiple grounds there are separate services within the equality body to address each ground of discrimination. As a result, even when discrimination is experienced on multiple grounds, cases are pursued on one ground only.

Of fundamental importance is the effectiveness and independence of equality bodies. Our priority at the EWL has been to ensure the efficiency of equality bodies from a women's rights perspective; this includes the adoption of effective mechanisms to tackle multiple and intersectional discrimination. For further information please refer to Crowley's article in this publication and to the EWL's 13 principles that bodies covering all grounds of discrimination, including sex, should respect.

.....

## Key Resources

European Women's Lobby, 'Response to the Consultation on the Roadmap for equality between women and men 2006-2010 and follow-up strategy', 2009, available at: <http://www.womenlobby.org>

European Women's Lobby, *From Beijing to Brussels. An unfinished journey, The EWL's Beijing+15 Report on activities of the European Union*, 2010, available at: <http://www.womenlobby.org>

### Publications on discrimination and intersectionality

Bell, M., 'Advancing EU Anti-Discrimination Law: the European Commission's 2008 Proposal for a New Directive', *The Equal Rights Review*, vol. 3, 2009, pp.7-18.

Crenshaw, K., 'Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color', *The Public Nature of Private Violence*, M. Fineman and R. Mykitiuk (eds), Routledge, New York, 1994, pp. 93-108.

Crenshaw, K., 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics', *Feminist Legal Theory: Readings in Law and Gender*, K. Bartlett & R. Kennedy (eds), Westview Press, San Francisco, CA, 1991, pp. 57-80.

Di Torella, E., 'The Goods and Services Directive: limitations and opportunities', *Feminist Legal Studies*, no. 13, 2005, pp. 337-47.

Equinet, *Beyond the Labour Market: New Initiatives to Prevent and Combat Discrimination*, Brussels, 2008.

European Commission, *Tackling Multiple Discrimination Practices, Policies and Laws*, DG for Employment, Social Affairs and Equal Opportunities, 2007.

Franken, M., A. Woodward, A. Cabó & B.M. Bagihole (eds), *Teaching Intersectionality: Putting Gender at the Centre*, 2009, available at: [http://www.erg.su.se/content/1/c6/06/44/80/Teaching\\_Intersectionality.pdf](http://www.erg.su.se/content/1/c6/06/44/80/Teaching_Intersectionality.pdf)

Fredman, S., 'Positive Rights and Positive Duties: Addressing Intersectionality', *European Union Non-discrimination Law: Comparative Perspectives on Multidimensional Equality Law*, D. Schiek & V. Chege (eds), Routledge, London, 2008, pp. 73-89.

Fundamental Rights Agency, *European Union Minorities and Discrimination Survey (EU-MIDIS)*, 2009, available at: <http://fra.europa.eu/eu-midis>

Fundamental Rights Agency, *Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States*, 2009, available at: <http://fra.europa.eu>

Grabham, E., D. Cooper, J. Krishnadas & D. Herman (eds), *Intersectionality and Beyond: Law Power and the Politics of Location*, Routledge, London, 2009.

Marx Ferree, M., 'Inequality, Intersectionality and the Politics of Discourse: Framing Feminist Alliances', *The Discursive Politics of Gender Equality: Stretching, Bending and Policy-Making*, E. Lombardo, P. Meier & M. Verloo (eds), Routledge, London, 2008, pp. 84-104.

McColgan, A., 'The Goods and Services Directive: a curate's egg or an imperfect blessing', *European Gender Equality Law Review*, no. 1, 2009.

Verloo, M., 'Multiple Inequalities, Intersectionality and the European Union' *European Journal of Women's Studies*, vol. 13, no. 3, 2006, pp. 211-28.

Weldon, L. S., 'The Concept of Intersectionality', *Politics, Gender and Concepts: Theory and Methodology*, A. Mazur & G. Goertz (eds), Cambridge University Press, Cambridge, 2009, pp. 193-218.

Yuval-Davis, N., 'Intersectionality and Feminist Politics', *European Journal of Women's Studies*, 2006, vol. 13, no. 3, pp. 193-209.

### Websites

#### European research projects on multiple discrimination and intersectionality

GendeRace, FP7 research project: <http://genderace.ulb.ac.be>

Quing (Quality in Gender + Equality Policies), FP6 Research Project: <http://www.quing.eu>

#### European institutions working on anti-discrimination and gender equality

Fundamental Rights Agency: <http://fra.europa.eu>

DG Employment, Social Affairs and Equal Opportunities, European Commission: <http://ec.europa.eu/social>

European Parliament: <http://www.europarl.europa.eu>

#### Equality bodies

Equinet: <http://www.equineteurope.org>

#### European networks fighting against discrimination

European Women's Lobby: <http://www.womenlobby.org>

European Disability Forum: <http://www.edf-feph.org>

European Network Against Racism: <http://www.enar.org>

European Older's People Platform AGE: <http://www.age-platform.org>

European Youth forum: <http://www.youthforum.org>

ILGA Europe – European branch of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA): <http://www.ilga-europe.org>

Black European Women's Council: <http://www.bewnet.eu>

European Network of Migrant Women: <http://www.migrantwomennetwork.org>

Social Platform: <http://www.socialplatform.org>