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The Race Directive: A New Dimension in the Fight against Ethnic Discrimination in Europe†

I. INTRODUCTION

At the end of June 2000, the EU Council of Ministers adopted Council Directive 2000/43/EC (hereinafter the “Directive”), which implements the principle of equal treatment of all persons irrespective of racial or ethnic origin.1 This new piece of European legislation establishes a “framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment.”2 The Directive – to be transposed by member states by 19 July 2003 – will have considerable impact upon future antidiscrimination policies of both the current member states and the candidate countries.

Although the term ‘Race Directive’ has itself been subject to criticism,3 the provisions represent a significant element of a wider legal package against discrimination which also contains a ‘Framework Employment Directive’4 and an action programme against discrimination. The source of the three measures may be traced to a Commission proposal from late 1999. The legal basis for these measures was then

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† For a comparison of national antidiscrimination legislation, see the EUMC (European Monitoring Centre on Racism and Xenophobia) Report “Study on the Comparison of the Adopted Article 13 Council Directives with Existing National Legislation in the EU Member States” (May 2002), http://www.eumc.at/.


3 Even the use of the word “race” was subject to criticism from some member states who claimed that it could be interpreted as an acceptance of racist theories. By way of compromise, a recital was included in the text of the Directive declaring that the Community deplores theories based upon the alleged existence of human races. See Adam Tyson, “The Negotiation of the European Community Directive on Racial Discrimination”, 4(3) European Journal of Migration and Law (EJML) (2001), 199, 202. It is, however, probable that the term “antidiscrimination law” will be employed by some member states in transposing the Directive. See e.g. for Germany, Rainer Nickel, “Handlungsaufträge zur Bekämpfung von ethnischen Diskriminierungen in der neuen Gleichbehandlungsrichtlinie 2000/43/EG”, 54 Neue Juristische Wochenschrift (2001), 2668, 2670.

virginal: it was only the Treaty of Amsterdam which inserted a new Article 13 into the Treaty establishing the European Community (TEC) which promulgated a wide-scale programme in which the Council would have competence to combat various forms of discrimination.

Pressure to adopt strict legal measures against all possible forms of racial discrimination had, since the early 1990s, come mainly from the Starting Line Group, an NGO coalition. The Council negotiated and adopted the Directive in a mere seven months from the date of original proposal by the Commission, despite not only the inclusion of several contentious provisions in the initial proposal but also the fact that Article 13 requires unanimity in the Council. The swift adoption of the Directive therefore to some extent reflects the EU political climate of that period. The Austrian affair in 2000 emphasized the need for a common standard in the fight against discrimination which would go beyond current legal provision in the field of racial discrimination, insofar as the Commission got the firm impression that the member states were ready to go further here than in other fields of discrimination. Indeed, the entry into force of the Directive heralded a new priority for racial equality matters and at the peak of the 'hierarchy of equalities' stands now racial and ethnic belonging, with an importance beyond even that of gender equality.

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6 For details of the objections and amendments to the original Commission proposal, see Tyson, “The Negotiation ...”, 199. For the development of the Directive, see also the respective opinions of the Committee of the Regions (12 April), the Parliament (18 May), the Economic and Social Committee (25 May) and the amended proposal of the Commission (COM (2000) 328 final, 31 May 2000).

7 During both the Amsterdam and Nice Intergovernmental Conferences, there were forces pushing for qualified majority voting (QMV) for Art. 13 TEC. The Treaty of Nice allows for QMV at least insofar as it introduced into Art. 13 TEC the following new paragraph 2: “By way of derogation from paragraph 1, when the Council adopts Community incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1, it shall act in accordance with the procedure referred to in Article 251.” See Official Journal C 80 (10 March 2001), 14.


9 See e.g. Kirsty Hughes representing the Commissioner Anna Diamantopoulou, speech held in Birmingham in February 2000, see at http://europe.eu.int/comm/dgs/employment_social/speeches/000217ad.pdf; “… we wanted to make headway on all grounds but we did not want to waste the opportunity to go further on racial discrimination, where it was deemed politically possible. There is no question about the seriousness of our commitment to discrimination on the other grounds.”