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THE EU RACE DIRECTIVE: ITS SYMBOLIC VALUE – ITS ONLY VALUE?

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ABSTRACT

Legislation against racial discrimination makes, it is argued, a clear statement against racism in all its forms and hence has symbolic value. This is expressed in different ways, for example: a declaration of firm opposition to racism; the sending out of a clear political signal regarding the commitment to the fight against racism; a powerful symbol and a statement of intent. This Article will argue that the European Union's Race Directive[1] had, at the time of its adoption, significant symbolic value because it made a clear and unequivocal statement to the Union's citizens, to its Member States and to the wider world, that the Union was committed to the elimination of racism and racial discrimination. The plans for enlargement of the European Union, with a number of States joining in 2004, added to the value of the statement: it signalled to these new Member States that the Union expects them to combat racism and racial or ethnic discrimination and to promote and adopt effective measures against such discrimination in line with the Race Directive, as this has become part of the Acquis Communautaire, the body of law that must be adopted by all States wishing to join. But does the Race Directive today, after the deadline for its implementation has passed, still have any symbolic value?

INTRODUCTION

The symbolic value of anti-discrimination legislation in general has often been brought forward as one of the arguments for taking such measures. By the 'symbolic value' we mean the value of anti-discrimination legislation as a symbol of the rejection of discrimination and of an intention to fight discrimination. In this sense, laws against racial discrimination make a clear statement against racism; they are a powerful symbol that the lawmakers condemn racism in all its forms. Anti-discrimination laws represent a declaration of public policy: they reflect the intention to combat discrimination. In their first annual report[2], the UK Race Relations Board summarised the role of legislation against racial discrimination in five principles, the first of which was that 'law is an unequivocal declaration of public policy'. In other words, legislation against (racial) discrimina-

tion can give a Government a means to show people that they are serious about the fight against discrimination. In a report[3] on improvements to UK equality law it was expressed as follows:

> "Well-conceived legislation is not simply a luxury. It provides a vehicle through which an incoming Government could make an unequivocal declaration of its commitment to the principle that everyone in a democratic society is entitled to equality before the law and the equal protection of the law."

Therefore, anti-discrimination legislation can have a symbolic value: it can act as a symbol of the intent to curb discrimination. However, this statement can be a 'hollow' statement; a statement used by the government to show its willingness to combat discrimination without actually doing anything further. It can be used to hide behind and to avoid making other commitments. Lustgarten[4] concludes his article, in which he discusses the effects of the Race Relations Acts in the UK, as follows:

> "It is impossible to say whether the preference for a legal approach was based upon an exaggerated faith in the efficacy of the law; or the need, for political reasons, to be seen to do something highly visible, such as enacting a statute; or was a conscious alternative to taking on a wider long-term expensive and controversial commitment. It does seem tolerably clear, however, that continued reliance on the legal approach in the future will signal a decision that racial equality has been accorded low priority, and perhaps also that greater importance has been accorded to being seen to be doing something rather than actually doing it."

Anti-discrimination legislation can, therefore, be a symbol and make a statement of intent. However, this might be all it is, a 'hollow' statement without any more being done to turn this intent into action. This symbolic value is (usually) present when anti-discrimination legislation is adopted, but this value is not always a lasting value. It is a value that wears off over time if the legislation is not followed up by action to ensure proper implementation and enforcement and is not supported by other measures. As MacEwen[5] writes, states may provide anti-discrimination legislation because they 'want to look good. States are frequently concerned about their own public image and will go to some lengths to avoid being categorised as racist, xenophobic or exploitative', but 'the legislation may often lack the necessary teeth to secure compliance'. So, if the statement is 'hollow', then the symbolic value will be a short-term value. Only when it is followed up by action, will the symbolic value turn into a longer lasting value and the legislation will become an instrument to combat racial discrimination. This is not to say that the symbolic value as a statement is the only aim or purpose legislators have in mind when enacting anti-discrimination measures. Other purposes suggested by

the literature[6] are that anti-discrimination laws give protection and redress to victims; that such laws can reduce prejudice by discouraging behaviour in which prejudice finds expression and in this sense they can have an important educational function; that anti-discrimination legislation can strengthen and underpin other measures and activities; and that such legislation supports people who do want to fight discrimination. All these aims can, and have been, criticised and counteracted. Not everyone is convinced that law can be an effective tool to combat racism and discrimination. However, many of the writers referred to in footnote six suggest that law is useful but only if it is combined with other measures relating to, for example, education; information and the media; prevention; and policies to improve economic and social conditions. This article will look in particular at the recent provisions against racial or ethnic origin discrimination made in European Union law and discuss whether these have symbolic value and if this is a real value or just a 'hollow' statement. This focus on the symbolic value of European Union measures against racial and ethnic discrimination does not mean that those measures are the only ones that can have such symbolic value. A similar discussion can take place in relation to anti-discrimination legislation at national level or at other international levels and in relation to legislation against discrimination on other grounds.

THE SYMBOLIC VALUE OF EUROPEAN UNION LAW AGAINST RACIAL DISCRIMINATION

(i) Up to the early 1990s

In June 2000, the European Union adopted the Race Directive: the Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin[7]. This Directive represents the first legislative framework against racial or ethnic discrimination within the European Union. The problem of racism and discrimination on racial grounds has been discussed within the European Union since the mid-1980s. Since then, repeated calls for legislative measures to combat racism and xenophobia within the Union have been made by the European Institutions.[8] It was, however, the European Parliament, which was particularly active[9] as were many non-governmental organisations at national and international level. One of the reasons for legislative action, repeated in many documents, was that it would make a clear statement against racism in all its forms.

The Starting Line Group, an informal network of nearly 400 non-governmental organisations, semi-official organisations, trade

unions, churches, independent experts and academics in the European Community, was created in 1991 to promote legal measures to combat racism and xenophobia in the European Community. The group brought out a proposal for a draft Council Directive concerning the elimination of racial discrimination, called 'the starting line'.[10] In the preface to this proposal it states:

> "Legislative protection will not only give a remedy to the individual but will declare, on behalf of the responsible authorities, firm opposition to racism in all its forms."[11]

However, no legislative measures were taken until June 2000. This was because it was held that there was no basis for competence for any of the Community Institutions to bring out such legislation. But if this competence was considered to be absent, why could it not have been created by amendment of the EC Treaty?

Bell[12] describes the evolution of EU law and policy in the field of racial discrimination. He notes that, although racism entered into the debates in the mid-1980s, no significant progress was made because of the opposition in the Council. He writes:

> "Symbolic statements of commitment were not underpinned by a genuine desire to develop common measures against race discrimination. The Council relied on the absence of any specific EC Treaty provision on racism to insist that this was not within the Community's legal competence. In this way, the question of competence became a kind of filter mechanism, a device to keep off the agenda issues the Council did not wish to address."

As Bell writes, if the Member States genuinely had wanted to take action, then they could have amended the Treaty to give the Community legal competence in this field, but they did not do so in either the Single European Act (1986) or the Treaty on European Union (TEU 1992). MacEwen notes, in his 1995 book[13], that there is 'a lack of resolve, particularly by the Council of Ministers, to secure the promotion of Community legislation against racial discrimination'. Therefore, the Member States appear to have been reluctant to take anti-discrimination measures at European Union level, despite the opinion often expressed by the European Parliament and of many non-governmental organisations that this was necessary. A number of reasons can be suggested for their reluctance: firstly, the Member States might not have considered EU measures necessary or desirable because measures against race discrimination were seen as a matter for national legislation, and not for EU legislation. Secondly some Member States did already have comprehensive anti-discrimination laws and many had equality safeguards in their constitution or in other laws. These could have been considered sufficient to protect people against discrimination. Thirdly, all

Member States were signatories of the European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe and most of them were also signatories of the United Nations International Convention on the Elimination of all Forms of Racial Discrimination. This again might, especially in combination with national guarantees, have been considered to offer sufficient protection.[14]

The above suggests that, certainly until the early 1990s, the statements against racism and racial discrimination made by the European Council of Ministers were 'hollow' statements behind which they hid to avoid making further commitments or taking any actions.

(ii) Early 1990s onwards

In the 1990s, the situation slowly changed and support for Community action grew[15]. Calls for amendment of the Treaty were heard from different quarters. The Starting Line Group proposed an amendment to the EC Treaty, called "the Starting Point".[16] This proposal again pointed out that 'the present situation in Europe urgently requires that the Union should make an unequivocal statement of principle'.

Duncan[17] also discusses the rationale for Treaty amendment to give the European Community Institutions competence to take action against racial and other forms of discrimination. He writes that law can, among other things, operate as 'a powerful symbol and statement of intent'.

There were signs of this changing mood within the European Union as well. In its final report, The Kahn Commission[18] – appointed by the European Council, and therefore by the Member States – recommended, *inter alia*, amendment of the Treaty. It stated:

> "An explicit Treaty change, confirming the Community competence, will be the clearest expression of the European Union's real intention of combating, not merely protesting against the rising tide of racism and xenophobia."[19]

This quote suggests that the Kahn Commission recognised that previous statements made by the Commission were 'merely protesting' rather than expressing a 'real intention' to do something. In other words, that they were 'hollow' statements.

In a resolution in 1995, the European Parliament called on the Commission to send a clear political signal regarding its commitment to the fight against racism and xenophobia[20].

The Commission itself, in a report in 1996[21], talked about

legislative measures to combat racism and xenophobia. The following passage is interesting:

> "Passing new legislation sends a signal to those engaged in such rhetoric and activities that the excesses of their behaviour are not to be tolerated; it is also excellent publicity in the run up to an election."

So, by 1996, the European Commission itself refers to the symbolic value of laws against racial discrimination, to the way such law 'sends a signal'. The second part of the quote expresses a similar sentiment to the Hepple report above[22], that it might be a good political move, a vote winner, to proclaim a political party's opposition to racism and its intent to fight racial discrimination.

A clear sign that the mood within the Community had changed and that the fight against racism and xenophobia had come to the top of the agenda was the decision to make 1997 the European Year Against Racism[23]. At the Opening Conference of that year, the Presidents of the Council of the European Union, of the European Parliament and of the European Commission made a declaration of intent called 'Europe against Racism'[24]. The declaration called upon all European Institutions, public authorities, private organisations and individuals at both European, national and local level, to contribute in everyday life, at school, at the workplace, in the media, to the struggle against racism, xenophobia and anti-Semitism. During the European Year Against Racism, the declaration was signed by a large number of political decision makers.

The Commission, in its report on the European Year[25], wrote:

> "The Declaration gave a clear political signal, it acted as the symbol of a consensus about the need to combat racism and the promise to put this political intent into practice at every level."

The Commission here stressed not only the value of the declaration as a symbol, but also the 'promise to put this political intent into practice...'. In other words, the declaration was seen not just as a 'hollow' statement, but also as a clear expression of the intent to take further action.

The above leads us to the conclusion, that, by the mid-1990s, the Member States were more ready to take steps to amend the Treaty. They did this in the Treaty of Amsterdam (1997), which entered into force on 1 May 1999 and introduced Article 13 to the EC Treaty. This article allows the Council, on a proposal of the Commission, to take measures in respect of discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. In November 1999, the Commission brought out three proposals based on Article 13: a proposal for a general framework directive for equal treatment in employment and occupation[26]; a

proposal for a directive on equal treatment irrespective of racial or ethnic origin[27]; and a proposal for a Community action programme to combat discrimination[28]. In June 2000, the Race Directive was adopted, followed in November 2000 by the Framework Directive[29] and the Action Programme[30].

In the communication from the Commission that accompanied the proposals[31] it was stated that:

> "Action to promote equal treatment and combat discrimination is important for the sake of citizens and their commitment to the ideals of the Union. But it is also important, including in the context of enlargement, to make clear that these principles must be more than simple words."[32]

Again, there is the emphasis on the fact that these principles should be 'more than simple words'. This suggests that in the past the statements were 'simple words'. The Communication ended with:

> "Community Action is a clear signal that discrimination is not acceptable within the European Union."[33]

Others within the European Community also emphasised the value of a clear statement. For example, the Commissioner for Employment and Social Affairs, Anna Diamantopoulou, said that 'the proposals give a strong signal about the ambition of the Community to promote a more equal society'.[34] And in its explanatory memorandum to the proposal for the Race Directive[35], the European Commission wrote that legal measures to combat racism and intolerance demonstrate 'society's firm opposition to racism and the genuine commitment of the authorities to curb discrimination'[36], and that the adoption of a directive at Community level 'will constitute an unequivocal statement of public policy towards discrimination'.[37] Kirsty Hughes stated that Article 13:

> "...sends important signals: it is an unequivocal statement of the EU's commitment to a discrimination-free society; and the proposals, which the Commission presented just two months after taking office last year, are a clear sign of our determination to honour that commitment."[38]

This statement is important because it emphasises the Commission's determination to honour the commitment to a discrimination free society, which is shown in the Commission's Article 13 proposals.

So, after the initial reluctance to enact Community laws against racial discrimination, the Race Directive was adopted very quickly, just over a year after the Community competence to do so was established. The adoption of the Framework Directive and the Action Programme took place a few months later, in November 2000. The Framework Directive is to combat discrimination in the

labour market on the grounds of religion or belief, disability, age or sexual orientation. The Race Directive aims to combat discrimination on racial or ethnic grounds and goes beyond the labour market. The Commission pointed at the 'strong political will which exists to take action to combat as many aspects as possible of racial discrimination', as justification for the difference[39].

Bell provides a reason why the Race Directive was adopted so quickly. In February 2000, Jorg Haider's Freedom Party, an extreme rightwing party, got into government in Austria. The other Member States protested against this and imposed bilateral diplomatic sanctions. This led the Portuguese Presidency to fast-track the Race Directive as a sign of the Union's commitment to combating racism. It also pressurised the individual Member States to be more flexible in their negotiating positions –'with presumably no state wishing to be regarded as blocking new laws combating racism'[40]. Bell also reports that evidence from his study of existing race and sexual orientation discrimination laws in the EU Member States shows a favourable environment for anti-discrimination law at that time, which also helps to explain the relative ease with which the Article 13 Directives were adopted[41].

Goldston[42] also stresses the influence of the elections in Austria on the adoption of the Race Directive where he writes that the Race Directive was 'given renewed political impetus by the electoral developments in Austria ... which prompted a number of EU member governments to offer tangible evidence of their commitment to combating racism'.

It is therefore submitted that the need to make a clear statement against racism played an important role in the speedy adoption of the Race Directive. The Member States used the Race Directive to express their intent, and the European Union's intent, to combat racial and ethnic origin discrimination and to show that the Union would not accept any racism, racial or ethnic discrimination or intolerance.

(iii) Importance for future European Union Member States

Many writers[43] have pointed out the Race Directive's symbolic value as a statement to future Member States. It was important that the anti-discrimination measures were adopted within the European Union before accepting the accession of new Member States. Ten new Member States are due to join in 2004, with three others waiting to join at a later stage. The Article 13 Directives have, by their adoption, become part of the *Acquis Communautaire*, the body of Community law that must be adopted by all States wishing to join

the Union. Therefore, the Directives will have to be adequately transposed by all candidate countries into their national laws before their accession. This is important because, as Chopin points out, the candidate countries do not always have a tradition of respect for human rights and protection of minorities[44].

As seen above,[45] the European Commission itself stresses the importance of promoting equal treatment and of combating discrimination 'in the context of enlargement'. In the explanatory memorandum to the proposal for the Race Directive[46], it states that 'the Directive will provide a solid basis for the enlargement of the European Union'.

HOLLOW STATEMENT OR GENUINE COMMITMENT?

It will be clear from the above that the Race Directive has symbolic value, as the European Institutions themselves have emphasised in several different documents. Perhaps this should be rephrased: the Race Directive had strong symbolic value when it came out. It was stating the Union's and the Member States rejection of racism and racial and ethnic origin discrimination and their intent to curb these. It should be placed in its political context of early 2000. The Member States reacted to the elections in Austria and sent a clear warning against extreme rightwing tendencies. But this poses the question, already hinted at in the above quotes from Bell and Goldston, if the statement by the Member States was a genuine expression of commitment or rather a hollow statement made because they did not want to be seen as blocking new laws against racism.

Article 16 of the Race Directive determines that Member States will have to adopt the laws, regulations and administrative provisions necessary to implement the Directive's principles, and that this had to be done by 19 July 2003. If the Member States were, and are, genuinely committed, then they will have taken action to transpose the Directive fully into their national laws before this deadline. Then the symbolic value, which the Race Directive had in 2000, will have been translated into concrete legislative measures to fight racial and ethnic origin discrimination at national level. On the other hand, if the statement was 'hollow' and made only to be seen to be committed, it is to be expected that the Member States will be slow and reluctant to implement the Directive into their national laws and they will have missed the deadline. So what has happened since the adoption in 2000? At Union level, there are some signs that the European Union is taking the fight against discrimination seriously, although not all of these concern racial or ethnic discrimination. Firstly, there is the European Charter of Funda-

mental Rights[47] which contains a chapter on equality with, in Article 21(1), a prohibition of discrimination on a very extensive number of grounds. Not only is the list of grounds very extensive, it is also open-ended, which means that the Court could recognise additional grounds. However, the Charter has at present no binding legal force. Secondly, there are plans for a specific directive on disability discrimination[48]. Thirdly, there is a proposal concerning the status of third country nationals who are long-term residents in the Community[49]. This proposal, when adopted, will improve the status of long-term residents and will therefore help against the often racially motivated discrimination that takes place against them. Fourthly, there is a proposal concerning the approximation of laws regarding racist and xenophobic offences and the co-operation to combat these offences.[50] Fifthly, there is the Equal Treatment (Amendment) Directive[51], aimed at bringing the Equal Treatment Directive[52] more in line with the Race and Framework Directives. And, finally, there are plans for a directive based on Article 13, extending the principle of equal treatment between men and women beyond the employment field.[53]

There is also the European Commission Contribution to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which took place in Durban, South Africa, in August/September 2001. In her foreword to this contribution[54] Commissioner Anna Diamantopoulou writes that the World Conference 'will provide an important opportunity for the world, and for the EU, to send a strong signal condemning all forms of racism and xenophobia. It will be an opportunity for Governments to express their commitment to taking concrete action to promote equality irrespective of racial and ethnic origin.' The Commissioner clearly links the sending out of a signal with Governments' commitment to take concrete action. It is also interesting that the European Union contributed to this Conference in its own capacity. It was not just left to the Member States to contribute by themselves. This can also be seen as a sign that the Union is serious about combating racial and ethnic discrimination.

Despite these signs that the European Union is taking the fight against (racial and ethnic) discrimination seriously, there are also signs pointing in the opposite direction. Not all Member States have transposed the Race Directive into their national legislation before the deadline of 19 July 2003. In a Press Release[55] of the day before, the European Commission expressed its concern that many Member States were set to miss the deadline for transposing the Race Directive. Another Press Release, this time from the European Network Against Racism (ENAR)[56] condemned the failure of most Member States to transpose the Race Directive into their national

legislation. ENAR expects no more than four countries to comply fully with their obligations. These four are Belgium, Great Britain[57], Italy and Sweden. Of the other Member States, France and Denmark have transposed the Directive partially, and the Netherlands and Portugal are working on draft legislation. However, Austria, Finland, Germany, Greece, Luxembourg, Ireland and Spain have not, according to ENAR sources, undertaken any steps yet to start the legislative transposition[58]. The ENAR Press Release reports that 'NGOs in Europe sense a lack of political will behind the inaction'. It continues that 'such wavering also sends the wrong signal to accession countries, which are expected to undertake a complete overhaul of their legal system in applying the body of Community laws'.

This suggests that, since the adoption of Article 13 EC and the two Directives based on it, the political climate in Europe has changed. In many Member States, support for extreme rightwing parties is on the increase, as many recent national elections show. These parties are often supporting policies which discriminate against foreigners, asylum seekers, refugees, non-nationals and economic migrants to name but a few. This implies that the strong political will to act against racial and ethnic discrimination which aided the rapid adoption of the Race Directive is no longer present. Proclaiming opposition to racism and the fight against discrimination no longer appears to be good publicity or a vote winner. MacEwen[59] writes that 'much of the history of race relations has been bound up in ideas about electoral tolerance'. This 'electoral tolerance' appears to have diminished in most EU Member States. Therefore, the momentum in favour of measures against racial and ethnic discrimination has crumbled, and transposition of the Race Directive has become a very low priority on the political agenda in most Member States. The question is: what will the European Union do now? Will the Commission act decisively against the Member States who have failed to meet the deadline? At the ENAR public hearing the ENAR chair Bashy Quraishy said[60] that the Commission has promised to send out, no later than 20 July, reminder letters to countries that do not live up to their obligations. The Commission has also, on several occasions, indicated that it would not refrain from starting infringement procedures. If the Commission and the other institutions of the European Union do not take an active role in ensuring effective implementation, then the Race Directive will remain a 'hollow' statement and its symbolic value will disappear very quickly. If there is no action against the present Member States who have not transposed the Directive, then there will be no incentive for future Member States to comply with it either, even though it has become part of the *Acquis Communautaire*. The Union

cannot punish the new Member States for non-compliance if it does nothing against the present Member States. However, even if a Member State has transposed the Race Directive fully into its own national legislation, the national laws should be enforced properly. If they are not, they could remain, despite full transposition, a 'hollow' statement, directed at the people from the Member State itself as well as at the European Union and the other Member States. The EU institutions should therefore not only ensure effective implementation of the Race Directive but also monitor the enforcement of the national laws. The provision of a reporting procedure in Article 17 of the Race Directive will help the Commission and the other institutions to monitor national provisions.

ALL PERSONS CONCERNED

One more point needs to be raised. This article has argued that anti-discrimination legislation has symbolic value because it makes a clear statement against discrimination. The legislators aim to make a declaration of their intent to fight discrimination, but to whom is this statement directed? The statement has been described as a 'public policy' and many of the quotes suggest that the declaration is aimed at the public, the people, the citizens. This is perhaps most clear where the statement is linked to the winning of votes.

It is submitted that national legislators, in making anti-discrimination laws, first and foremost aim to make a declaration to the people in their own nation. The statement might, however, also be used in the international field, towards other countries, for example to show that the state fulfils its obligations under international treaties. The international aspect is, perhaps, more important for the European Race Directive. This Directive, does, as argued above, make a statement of the intent of the Union to combat racism and racial discrimination. The statement is aimed at the Union's citizens –everyone holding the nationality of a Member State is a citizen of the Union according to Article 17 EC- and other people within the Union. But it is also aimed at the Member States, the future Member States and at the rest of the world. The European Union's participation in the World Conference is an example of the latter.

The European Union itself has stressed the importance for its citizens of the Race Directive and its declaration against discrimination.[61] But the Race Directive is not only aimed at citizens, its provisions include non-citizens, often referred to as third country nationals, as well. Recital 13 to the Directive states that the prohibition of discrimination based on racial or ethnic origin should

also apply to nationals of third countries – although there are exceptions to this[62].

The European Union also recognises the importance of ensuring that 'all persons concerned' know about their rights to protection: Article 10 of the Race Directive puts a duty on the Member States to disseminate information about non-discrimination provisions. Awareness raising is a part of the Action Programme of 2000.[63] In June 2003 the Commission has launched a pan-European information campaign on combating discrimination on the grounds of racial or ethnic origin, religion or belief, age, disability and sexual orientation.[64]

But what is the effect of all this on the people within the Union? A Eurobarometer Survey on Discrimination in Europe[65] showed that more than a third of EU citizens said that, should they be discriminated against or harassed in accessing commercial services, they knew their rights and about half did not. Unfortunately, this survey only questioned EU citizens and excluded non-citizens; it did not identify the respondent's racial or ethnic origin; it did not specify the grounds of discrimination in this question; it was limited to access to commercial services; and, it did only refer to existing rights and laws, not to possible incoming legislation. This makes it very difficult to draw any conclusions. The excluded third country nationals are most probably less well informed than EU citizens about their rights, although they are often the principal objects of racial and ethnic discrimination, as the vast majority of them are from minority backgrounds. Besides, even if a person knows about his rights, it is not always easy to pursue them. Furthermore as most Member States have as yet not (fully) implemented the Race Directive, there might not be all that many rights in the first place.

If the European Union wants to make a clear statement towards its citizens and other people within the territory that racism, race discrimination, racist speech and activities will not be tolerated, then this can only be a genuine commitment if the Union will do everything within its power to protect people against such deeds. This includes making sure that people know about their rights to protection. The Union has adopted the Race Directive, which puts a duty on Member States to implement anti-discrimination measures. But if it does nothing against non-transposition by the Member States, or does not monitor enforcement of the national laws that implement the Race Directive, then any number of awareness raising campaigns will make very little difference for the persons concerned. The statement made by the Race Directive will be 'hollow'.

CONCLUSION

That the Race Directive had great symbolic value as a statement against racism and racial discrimination at the time of its adoption, appears to be clearly recognised by many within the European Union. This symbolic value, the value as a clear statement of intent to curb racial and ethnic discrimination played a significant role in its adoption within eight months.

The symbolic value is important in the context of enlargement as well: the Race Directive signals to the new Member States that the Union expects them to combat racism and racial and ethnic discrimination. Because the Race Directive, by its adoption, has become part of the *Acquis Communautiare*, the established body of Community legislation, the future Member States will have to implement it before they join.

Therefore, the Race Directive's symbolic value lies in the fact that it made a clear and unequivocal statement to the Union's own citizens and other persons within the territory, to its Member States and future Member States, and to the wider world, that the European Union is committed to the elimination of racism and racial or ethnic discrimination.

However, does this symbolic value still exist? Or has it worn off, because in many Member States the statement it made has not been followed up by action to transpose the Directive? Claude Moraes MEP, wrote at the launch of a 'Name and Shame' League Table of Failure to implement new EU Race laws[66]:

> "With this inaction, national governments are sending a clear signal that they will only pay lipservice to their basic obligation to protect millions of their citizens from discrimination."

The statement made by the Race Directive was, as far as most Member States are concerned, a 'hollow' statement, a 'lipservice', without any real commitment to legislate against racial and ethnic origin discrimination. If the European Union Institutions do not take action against the Member States for their failure to comply or to enforce, then the Race Directive will be a 'hollow' statement as far as the Union is concerned as well. The Commission can start infringement procedures, and the European Parliament can, together with NGOs and anti-racism organisations continue to put pressure on governments to comply. If the European Union does nothing, then the Race Directive will remain a 'hollow' statement, a 'dead letter', without symbolic or other value for anyone. The good intentions present at the time of adoption will have gone to waste.

NOTES

1 Council Directive 2000/43/EC, [2000] OJ L 180:22–6. Hereafter referred to as the Race Directive.
2 *Report of the Race Relations Board*, 1966–1967, para 65. The Race Relations Board was created by the Race Relations Act 1965 and was later replaced by the Commission for Racial Equality.
3 Hepple et al, 1997:16. Note that this report came out in 1997, a year in which general elections took place in the UK and a Labour Government replaced a Conservative Government.
4 Lustgarten, 1986:84–5.
5 MacEwen, 1995:26.
6 The reader is referred to the following literature for more information on this: Race Relations Board Report, supra note 2; Allott, 1980:161–237; Lustgarten, 1986; Sunstein, 1991; Hepple, B, Have Twenty-Five Years of the Race Relations Acts in Britain been a Failure? in Hepple and Szyszczak, 1992:19–34; Lacey, N, From Individual to Group? idem:99–102; Banton, 1994:69–73; MacEwen, 1995:25–30; Curtin and Geurts, 1996; Lester, 1997; Dinsdale in Byrne and Duncan, 1997:26–9; Lutchman idem:34; Duncan idem:45–7; Justice 1997:18; Hepple et al. 1997; Barnard, 1999:385–6; Proposal COM (1999) 566: 1; Meier-Wang, 2001; Fredman 2002.
7 Supra, note 1.
8 See, for example, the Joint Declaration of the Institutions, 1986.
9 The Parliament produced a number of resolutions: [1986] OJ C 36:142 and 176:63; [1987] OJ C 190:108; [1988] OJ C187:117; [1989] OJ C 69:40; [1990] OJ C 175:178 and 284:57; [1991] OJ C 280:146; [1992] OJ C 305:590; [1993] OJ C 342:19; [1994] OJ C 323:154; [1995] OJ C 126:75 and 308:140. The Parliament also brought out two reports drawn up by the Committee of Inquiry into the Rise of Fascism and Racism in Europe. A2-0160/85 (Evrigenis Report 1985) and A3-0195/90 (Ford Report 1990).
10 Dummett, 1994.
11 At 531.
12 Bell, 2002b:62–63.
13 MacEwen, 1995:75.
14 See on this MacEwen, 1995:75.
15 A discussion of the reasons why this change occurred is beyond the subject of this article. See, for example, Bell, 2002b:63–72.
16 Starting Line Group, 1997.
17 Duncan, in Byrne and Duncan, 1997:45–7.
18 The European Council Consultative Commission on Racism and Xenophobia, named the Kahn Commission after its chairman, Jean Kahn, was set up by the European Council at the Corfu Summit in 1994 to 'make recommendations, geared as far as possible to national and local circumstances, on co-operation between governments and the various social bodies in favour of encouraging tolerance, understanding and harmony with foreigners', 1995.

19 At 57.
20 Resolution [1995] OJ C 308:140.
21 V/6188/97 – EN, 1996:20.
22 *supra*, note 3.
23 Resolution [1996] OJ C 237:1. See Article 1 of this Resolution for the objectives of the European Year.
24 Declaration of Intent: 'Europe against Racism', (1997).
25 Commission Report, COM (1999) 268.
26 Proposal COM (1999) 565.
27 Proposal COM (1999) 566.
28 Proposal COM (1999) 567.
29 Council Directive 2000/78/EC [2000] OJ L 303:16–22, (hereafter referred to as the Framework Directive).
30 Council Decision 2000/750/EC [2000] OJ L 303:23–8.
31 Communication COM (1999) 564.
32 At 2. The context of enlargement will be discussed later.
33 At 11.
34 Press Release IP/99/895, 1999.
35 *supra*, note 27.
36 At 1.
37 At 3.
38 Hughes, 2000.
39 Communication COM (1999), 564, at 8.
40 Bell, 2002b:74.
41 Bell, 2002b:180.
42 Goldston, 2001:127–9.
43 For example, Goldston, supra; Chopin, 1999a:3; Chopin, and Niessen, 2002:4. See also for the UK: Commission for Racial Equality (CRE) 2000:3.
44 Chopin, 1999a:3.
45 *supra*, note 31 and the quote from that Communication.
46 *supra*, note 27, at 3.
47 *Charter of Fundamental Rights of the European Union*, [2000] OJ C 364:1, Chapter 3, Articles 20–26.
48 Waddington, 2000:181.
49 Proposal COM (2001) 127.
50 Proposal COM (2001) 664.
51 Directive 2002/73/EC [2002] OJ L 269:15–20.
52 Council Directive 76/207/EEC [1976] OJ L 39:40–2.
53 European Social Agenda, approved at Nice, [2000] OJ C 157:4–12, under IV(c).
54 European Union Action to combat Racism, European Contribution to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, South Africa, (31/08/2001 – 07/09/2001), based on COM (2001) 291.
55 Press Release IP/03/1047, 2003.
56 This is a network of over 600 organisations combating racism and promoting equal treatment. ENAR, 2003a.

57 Although Great Britain has amended its Race Relations Act 1976 by the Race Relations Act 1976 (Amendment) Regulations 2003 to bring it in line with the Race Directive, the way this has been done (by regulation rather than by primary legislation) and its content have been widely criticised, even by the United Nations Committee on the Elimination of Racial Discrimination in their Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, CERD/C/63/CO/11.
58 This is based on information of the ENAR, which held a public hearing on 8 July 2003. ENAR, 2003b and c.
59 MacEwen, 1995:25.
60 ENAR, 2003d.
61 See, for instance, The Communication from the Commission accompanying the Article 13 EC proposals, supra note 31.
62 See Article 3(2) of the Directive. Many writers have criticised these exceptions, see for example, Lester, 2000; Bell, 2001:22–54; Goldston, 2001; O'Hare, 2001; Skidmore, 2001; Bell, 2002a; Brown, 2002.
63 See Article 3(c) Action Programme, supra note 30.
64 For more information on this campaign 'For Diversity, Against Discrimination' see www.stop-discrimination.info
65 Eurobarometer 57.0, Discrimination in Europe, 2003. This report is based on information gathered in February–April 2002.
66 "Claude Moraes MEP launches a 'Name and Shame' League Table of Failure to implement new EU Race laws", www.claudemoraes.net/article13transpose.html

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