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**Study on positive action measures in
the European Union**

Inception Report

February 2008



Introduction

This is an inception report for a 15-month research study on positive action in the European Union. The Centre for Inclusion and Diversity at the University of Bradford has been commissioned to lead the project in collaboration with the European Roma Research Centre and the Ludwig Boltzmann Institute of Human Rights. The study involves carrying out tasks in the following areas:

- A survey of positive action measures currently employed in the EU and in the EFTA/EEA states participating in PROGRESS
- A comparative study on positive action in two to four selected non-European countries and selected countries in the European Union
- Follow up seminar on both Tasks and publication

This short report will highlight the roadmap and the key project deliverables. It will provide details of changes made to the original proposal, tasks undertaken and timescale for completion.

Consortium Team Members

University of Bradford

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Project Team and Experts	Professor Lisa Waddington (University of Maastricht), Professor Mark Bell (University of Leicester), Professor Carol Baxter (NHS Employers), Dr Aliya Darr (NHS Employers/University of Bradford), Professor Mark Johnson (De Montfort University), Dr Karl Atkin (University of York) and Andy Scally (University of Bradford)

European Roma Rights Centre

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Non-European Country Experts

<i>Canada</i>	Professor Pat Bradshaw
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South Africa
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Professor Oluyinka Adejumo
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Working title

Positive Action Measures in the European Union, Canada, United States & South Africa (PAMECUS)

Principal research question

What role can positive action measures play in preventing or remedying discrimination, building on the knowledge of the existing legal framework in the European Union?

Other research questions

How do policies, practices including effectiveness and mechanisms for measuring the impact of positive action differ between Member States in the European Union, and how do these compare with Canada, United States and South Africa?

Scope and Purpose of the research

The study seeks to help the European Commission develop a framework for better understanding the role that positive action measures can play in practice in preventing or remedying discrimination, building on the knowledge of the existing legal framework set out in other studies. It will also help the Commission gain a better insight in what kind of practical positive action measures are already being taken in the EU (and in the EFTA-EEA countries participating in PROGRESS) and in third countries, as well as the possible outcomes, costs and benefits of the positive action measures.

How the study relates to existing knowledge

There is widespread recognition that the problem of discrimination in employment will not disappear on its own and that appropriate strategies are required in order to nurture a workforce that comprises a variety of talents and reflects the diverse community being served (Archibong, 2006; Archibong et. al. 2006, Dhimi, Squires and Modood 2006). Barriers to recruiting people from diverse backgrounds into employment have been the subject of both theoretical and research literature (Darr and Archibong, 2004). Several authors have pointed out that there is frequently a gap between written policies and actual practices. In some instances, deficiencies in relation to equal opportunities policies within organisations have been cited (Bagilhole and Stephens, 1999), and a reluctance to implement them where they are in place (Carter, 2000).

Even though the intention of equal opportunities policies has been to address the problems of discrimination and inequity, there is still a need to change institutional practice, as women, disabled workers and other minority groups continue to face discriminatory barriers in the workplace which prevent them from enjoying equal opportunity (Povall, 1990; Crompton and Le Feuvre, 2000). Clearly there remains a vibrant debate about the most appropriate way to tackle inequality and diversity at work (Edwards and McAllister, 2002; Bagshaw, 2004; Stratigaki, 2005; Bajawa and

Woodhall, 2006; Young, Mountford and Skrla, 2006). Woodhams and Danieli (2004) have explained how the current UK approach to equality, at least in terms of legislation is to ensure that people are treated equally or “the same” (or no less equally) in spite of their differences. This may take no account of existing inequalities and inbuilt structural and psychological disadvantages.

At the EC level, recent years have seen a significant expansion of legislation in the area of equal treatment. 2000 saw the adoption of two Directives prohibiting discrimination on the grounds of race and ethnic origin,¹ and sexual orientation, religion or belief, disability and age.² These were followed by amendments to the long-standing Directive 76/207 on equal treatment for men and women, the adoption of a “goods and services” gender non-discrimination Directive in 2004³ and, more recently, the adoption of the “Recast” gender Directive.⁴ As a consequence of this wealth of legislation the EC is now the dominant force setting the tone and content of national non-discrimination and equality laws across the 27 Member States. In addition specific work has been undertaken regarding positive action for Roma in the field of education by the European Network of Independent Experts on Fundamental Rights.

In spite of this “re-writing” of EC law, and the significant expansion in the personal and material scope which has occurred, enforcement of the legislation at national level is still to occur primarily through the action of individual victims who decide to challenge (allegedly) discriminatory behaviour before courts. This enforcement mechanism was also provided for in the earliest gender non-discrimination directives which date back to the mid 1970s, and it has been the subject of criticism over the years (Blom et al., 1995, Fredman 2005). This is because victims face a range of obstacles in bringing discrimination cases, amongst which financial and emotional costs are some of the most significant (Bell, 2005).

Positive action, including the notion of positive duties to promote equality through, for example, contract compliance programmes, is one means of addressing the limitations and restriction inherent to an individual enforcement model based on litigation. Nevertheless, while the use of positive action measures is recommended as a method of realising equality of opportunity in the workplace, there is a dearth of empirical literature on the use of positive action within the whole employment cycle across Europe.

Aims and objectives of the research

The study will involve individuals who are responsible for designing and implementing positive action measures e.g. Director of Human Resources, Equality and Diversity Leads and Senior Managers with responsibility for equality. The specific objectives include:

- Assess perceptions, understanding and the rationale for developing and implementing strategies for positive action covering equality strands of age, disability, race, religion and belief and sexual orientation. Aspects of gender which intersect with other strands will also be considered in this study.

¹ Directive 2000/43.

² Directive 2000/78.

³ Directive 2004/113.

⁴ Directive 2006/54.

- Identify types, range of positive action measures and how widespread they are across the private, public and third sectors, and the lengths of time these have been in operation.
- Examine the outcomes and impact of positive action measures in participating organisations.
- Obtain the views of organisations about the actual or perceived benefits, including relative success, and main obstacles and barriers of implementing positive action (focusing on best practice) and lessons learned.
- Explore mechanisms utilised for assessing the effectiveness of positive action.
- Explore perceived (cost-)effectiveness of the actions undertaken and how this could be improved.
- Explore the historical, social and political context within which positive action measures have been developed.

Project Tasks

Task 1 A working definition of the concept of positive action

This phase involves conducting a comprehensive review of the literature and building on previous studies in order to have a clearer understanding of positive action. In the early stages, the legal team members produced a working definition of positive action, which was presented to the consortium members and the EC officer for comments. The legal team has since revised the definition taking into account the comments received. The legal team is currently working on the annotation and incorporating examples of positive action. The working definition will be put through a rapid consultation process for further scrutiny by an expert panel comprising legal, Human Resources and Equality & Diversity personnel. This process will yield the final definition to be used throughout the entire aspects of the study.

Task 2 Survey

The survey will involve 27 EU Member States plus three EFTA Countries (Iceland, Switzerland and Norway) and three non-European countries (Canada, South Africa and United States of America). This phase will utilise multiple approaches to solicit public, private and third sector organisations' participation in this study. Different strategies will be employed to collect data from multiple constituencies. This work will be led by the survey task group made up of two staff members of PRL and three members of the research consortium (a lead statistician, project director and the research officer). This is a key phase and will provide the team with a baseline from which to carry out subsequent phases of the project.

Contrary to the original plan, we will no longer be utilising the EBTP database as a major platform for accessing participants for the survey. The initial stage of the survey involves compiling a database of a range of private, public and third sector organisations from the EU member states from scratch. This will involve the use of existing networks and contacts across the Member States. For example members of the anti-discrimination database will be informed of the study; other databases held by

the EC office will also be utilised including NGO and ground-specific networks. We will also be contacting equality bodies through the EC office, Department of Trade and Industry, the Learning and Skills Council, who have existing links with European business for assistance with database for public and third sector organisations. We anticipate sending out 6000 to 10000 questionnaires.

The survey task group will design the questionnaire and put the survey questions through a rapid consultation process for scrutiny by the consortium and EC officer. The survey questions will be piloted before the final product is utilised. The project researchers will ensure that the questionnaire highlights key priorities of the project (such as, assessment of perceptions, understanding and rationale of positive action; types and range of positive action; identifying the outcomes and impact of positive action measures in participating organisations).

For ease of access, the survey will be delivered via web and paper base made available in three languages - English, German and French. The survey will be live for a period of three months to achieve a maximum number of respondents.

In summary the key activities involved in this phase are:

- Research questionnaire will be drafted in close collaboration with the European Commission.
- Project team members will be involved in discussions on appropriate questions for questionnaire.
- Project team members will also facilitate access to countries and organisations to be surveyed as well as facilitate a good response rate.

Task 3 - Comparative Study on Positive Action

This phase will involve a comparative case study approach to explore policy frameworks and practical applications of Positive Action measures in three non-European and eight EU countries making a total of 11 countries. The non-European countries selected for the study are United States, Canada and South Africa. These countries were selected because of **their history and credibility regarding anti-discrimination laws and affirmative action measures.**

The EU countries to be involved in the case study are UK, Austria, France, the Netherlands, Ireland, Hungary, Slovakia and Sweden. In general, these countries were selected on **the basis of geographical importance covering different regions in Europe** (see table 1), **size and experience with positive action measures on the different strands of equality.**

Changes have been made to the original EU countries in negotiation with the Commission in order to capture as many examples of PA (on all grounds) and lessons for the effectiveness and replicability of these measures. The following changes were made after **due consultation with members of the research team and further review of the literature** (e.g., Dhimi, R S, Squires J and Modood T, 2006).

- Ireland (to replace Italy)
- Sweden (to replace Bulgaria)
- The Netherlands and France added to the list and

- The specific work on positive action targeted at the Roma Community will now take place in two (Hungary and Slovakia) rather three countries.

Table 1: Geographical distribution of EU countries selected for case study

Region	Countries
Eastern	Hungary Slovakia
Western	UK The Netherlands Ireland
Central	Austria
Northern	Sweden
Southern	France

This comparative study allows for further elucidation of the need for, use of, and impact of positive action measures. This aspect of the study will specifically aim to identify the historical, social and political context of positive action; explore the implementation of positive action; identify methods of measuring the impact of positive action; seek the views of organizations regarding the benefits, success and challenges of positive action; and seek suggestions for overcoming challenges to successful implementation of positive action.

In addition to questionnaire used during the survey phase, the comparative case study data will be collected by means of participatory methods, including (a) in-depth literature review of context and application of positive action in the selected EC and non-EC countries; (b) document analysis of policy statements of participating organizations (for example, overview of policies and procedures supporting different positive action measures in countries); (c) consensus workshop which encourages maximum participation of all stakeholders through focus groups; (d) interviews (in-depth and semi-structured) will also be conducted with key actors in order to generate more feedback and guide ongoing research.

In summary the key activities involved in this phase are:

- In-depth case study and report on SA, USA, Canada, UK, Austria, the Netherlands, France, Ireland, Hungary, Slovakia and Sweden
 - Policy / legal analysis

- o Consensus workshops and interviews on practical positive action measures taken (100 people) + 15 interviews per country (different arrangements for France through European Network Against Racism (ENAR) Roundtable events)

Who will be involved?

- (a) Analysis of, and report on policy/legal framework - Working in collaboration with in-country consultants, the legal team (Professor Lisa Waddington, Professor Mark Bell) will develop a template for the analysis and report.
- (b) Case study and report on positive action
 - i. In Canada, USA and South Africa – Professor Archibong and Research officer will work with in-country consultant for each country (Prof Pat Bradshaw, Prof Oluyinka Adejumo and Prof Phyllis Sharps) to facilitate consensus workshops and follow-on interviews.
 - ii Europe – the work will be co-ordinated by the team members as follows:
Austria and the Netherlands (BIM and Research officer), UK, Ireland and France (Research manager/officer), Hungary, Slovakia and Sweden (ERRC and Research officer).
- (c) Comparative analysis using framework analysis will be undertaken. This will involve project lead, research officer and other project team members.

Task 4 - Expert Seminar to be held in Brussels

The project findings will be disseminated to multiple stakeholders in the form of reports (both interim and final); a website and flyers highlighting the findings of the study; and a seminar. As stated earlier, the role and identity of the Commission and its logo will be used in all publicity material including advertising information, other publications and letterheads. Participants will also be informed at all stages that the project is funded by the Commission.

Activities:

Brussels venue hire

EC recommendation of 30 Delegates to attend + all project team members

Contribution to / speaking at seminar

Interpretation service for three languages – English, French and German

Who will be involved? - Project lead, research officer and other members of the project team

Publication Preparation

A synthesis report will be produced by selected members of the project team. All other team members and non-EU consultants will read and comment on the report before submission and presentation to the Commission. The team will be involved in the revision and resubmission of the report

Translation of the report in three languages – English, French and German

Project management board

Three meetings of the project management board will be held during the course of the project; one face-to-face meeting and two teleconferences.

Who will be involved? - Three from Bradford team, One from BIM, One from ERRC and five external members

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