Advocacy Tool-kit
Proposal for a new European Directive against discrimination on the ground of age, sexual orientation, religion or belief and disability
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WHY AN ADVOCACY TOOLKIT

The European Youth Forum (YFJ) has been following the process related to the adoption of a new anti-discrimination Directive since 2008. This is a key issue for young people, as the new legislation is supposed to cover discrimination on the ground of age as well as on sexual orientation, religion or belief and disability.

Discrimination has very serious consequences on the lives of young people, hampering their capacity to be autonomous and to fully participate in society.

The YFJ believes that European governments should not tolerate any form of discrimination. Consequently, they should do whatever is in their capacity to fight against discrimination, including adopting and implementing a comprehensive European and national legal framework against all forms of discrimination taking place in all areas of life.

Nevertheless, many European governments are delaying the adoption of the new Directive, which could have an impact on the lives of millions of people.

The YFJ believes that discrimination should not only be dealt with at European level. A greater level of mobilisation is needed at national level in order to put pressure on governments that are not fully addressing the issue; national governments are the stakeholders voting on this issue within the Council of the European Union.

This toolkit aims at providing youth organisations with basic information on the content of the proposal put forward by the European Commission, on the work undertaken so far by the YFJ together with other European anti-discrimination networks and with some ideas and examples on how to get further involved in the process. Although youth organisations have already brought forward important contributions in combating discrimination, especially by campaigning and

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1 For further information see 0022-06 The European Youth Forum contribution to the EC consultation on the EU legislative initiative to combat discrimination outside the field of employment and occupation, the 2008 European Year of Equal Opportunities for All-thematic report on age (http://www.igfse.pt/upload/docs/gabdoc/2009/Novidades/04-Abr/On-going_Evaluation_Thematic_report_on_age_FINAL.pdf)
raising-awareness, there is the need now for greater involvement by the youth movement in lobbying institutional stakeholders, with the aim of contributing to the achievement of the fundamental principle of equal opportunities for all in Europe.

For recent information on discrimination trends in Europe, take a look at the Eurobarometer 2009 on non-discrimination (experiences and perceptions):


According to the survey perceptions related to discrimination on the ground of age increased steadily: in 2008, 42% of respondents thought that discrimination on the ground of age was widespread while 58% think so in 2009. Furthermore the level of comfort with someone aged under 30 occupying the highest political office at the national level remains low (averagely 5.9 out of 10 at the European level)

Factsheets (in different languages) related to the situation in the EU Member States can be found here:

# SECTION 1
## BACKGROUND INFORMATION ON NON-DISCRIMINATION LEGISLATION IN THE EU

### 1. WHY DO WE NEED SUPPORT AT NATIONAL LEVEL TO BACK A EUROPEAN PROCESS?

The legislative procedure on non-discrimination issues does not follow the co-decision mechanism where the Council of the European Union and the European Parliament share the same powers. Under article 13, national governments, represented within the Council, take decisions. The opposition from one Member State can thus block the adoption of a legislative initiative. The European Parliament gives only an opinion. That is why getting the support from national governments on the proposal for a new directive is crucial.

### 2. EXISTING EUROPEAN LEGISLATION COVERING DISCRIMINATION

<table>
<thead>
<tr>
<th>Ground</th>
<th>Instrument</th>
<th>More info</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>It covers also discrimination on the ground of religion or belief, sexual orientation and disability</td>
<td></td>
</tr>
</tbody>
</table>
### 3. WHAT THE CURRENT EU ANTIDISCRIMINATION LEGISLATION COVERS

<table>
<thead>
<tr>
<th></th>
<th>Employment</th>
<th>Good and Services</th>
<th>Social Protection</th>
<th>Education</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race and Ethnicity</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Gender¹</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>NO</td>
</tr>
<tr>
<td>Age</td>
<td>X</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>Sexual orientation</td>
<td>X</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>Religion or belief</td>
<td>X</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>Disability</td>
<td>X</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
</tbody>
</table>

¹The current EU gender legislation deals only with equality between women and men. Thus, gender identity and expression are left out from its scope.

### 4. WHAT THE NEW LEGISLATION WOULD COVER

(according to the European Commission Proposal):

<table>
<thead>
<tr>
<th></th>
<th>Employment</th>
<th>Good and services</th>
<th>Social protection</th>
<th>Education</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race and Ethnicity</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>Gender</td>
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<td>NO</td>
<td>NO</td>
<td>NO</td>
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<tr>
<td>Age</td>
<td>NO</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Sexual orientation</td>
<td>NO</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Religion or belief</td>
<td>NO</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Disability</td>
<td>NO</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>
### 5. WOULD THE NEW PROPOSAL BRIDGE THE EXISTING LEGAL GAPS?

<table>
<thead>
<tr>
<th></th>
<th>Employment</th>
<th>Good and services</th>
<th>Social protection</th>
<th>Education</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Race and Ethnicity</strong></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td><strong>Gender</strong></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>NO</td>
</tr>
<tr>
<td><strong>Age</strong></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td><strong>Sexual orientation</strong></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td><strong>Religion or belief</strong></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td><strong>Disability</strong></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td><strong>Multiple discrimination</strong></td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
</tbody>
</table>

The new proposal bridges only **partially** the existing legal gaps:

**WHAT IS MULTIPLE DISCRIMINATION?**

Multiple discrimination is a form of discrimination produced by the multiplication, combination or intersection between two or more grounds, leading to a range of negative effects that the individual experiences in diverse social contexts.

The term “multiple discrimination” refers to a situation where discrimination takes place on the basis of several grounds operating separately. For example a young woman may experience discrimination on the basis of her gender in one situation and because of her age in another. “Compound discrimination“ describes a situation where a person suffers discrimination on the basis of two or more grounds at the same time. “Intersectional discrimination“ refers to a situation where several grounds of discrimination interact and operate at the same time in such a way that they are inseparable. This specific situation might involve for example women from ethnic minorities, which are prejudiced in such a way that is not experienced by minority men or women belonging to the ethnic majority.

(0475-08 YFJ Opinion Paper on Multiple Discrimination and how it affects the lives of young people)

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**A.** Gender-based discrimination in the field of education would not be outlawed

**B.** Protection against multiple discrimination would not be provided
C. Article 13 covers only a limited number of grounds (in comparison for instance to the Charter of Fundamental Rights of the European Union)

### THE NON-DISCRIMINATION PRINCIPLE IN THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

#### Article 21

**Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

6. **HOW THE FRAMEWORK EMPLOYMENT DIRECTIVE AND THE RACE DIRECTIVE HAVE BEEN TRANSPONED IN YOUR COUNTRY?**

<table>
<thead>
<tr>
<th>National provisions on non-discrimination</th>
</tr>
</thead>
</table>

### Implementation of the European Directives at the National level

Implementation of Directives 2000/78/EC and 2000/43/EC. Part I. Implementation process, scope and definitions


Developing anti-discrimination law in Europe-The 25 EU Member States compared.

### Equality Bodies

Equality bodies have the role to assist victims of discrimination, to conduct studies on discrimination and to publish recommendations and reports. They have to cover discrimination on the ground of race and ethnicity (under the terms of article 13 of the Race Directive) and often they cover also other grounds of discrimination.

The link to national equality bodies can be found at:

SECTION II
THE CURRENT EU LEGISLATIVE INITIATIVE ON NON-DISCRIMINATION

1. BASIC FACTS RELATED TO THE PROCESS GOING ON AT THE EU LEVEL

• July 2, 2008: Proposal by the European Commission

Text available in 22 languages at:

• April 2, 2009: European Parliament Report

Text available in 22 languages at:

• How the decision on this issue is going to take place

2. YFJ ASSESSMENT OF THE EUROPEAN COMMISSION PROPOSAL

Overall assessment

The YFJ welcomes the Proposal for a new Directive as it provides protection against discrimination on the ground of age, as well as on other grounds included in article 13, for which legal protection was not provided by existing EU legislation in key areas of life such as goods and services, education and health.

In light of this consideration, the YFJ will strive for the Proposal to be adopted by the Council of the European Union.

What the YFJ would oppose

The YFJ would oppose the adoption of a new anti-discrimination legislation covering only some of the grounds included in the Commission proposal. The YFJ would also oppose the adoption of a Directive covering only some of the areas included in the current proposal. In particular the YFJ would not back a new Directive excluding education from its material scope.
**HOW THE PROPOSAL CAN BE IMPROVED?**

Differences of treatment on the ground of age

<table>
<thead>
<tr>
<th>Article 2.6</th>
<th>Notwithstanding paragraph 2, Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary. In particular, this Directive shall not preclude the fixing of a specific age for access to social benefits, education and certain good and services.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meaning</td>
<td>It means that differences of treatment based on age should stem out from the national law, otherwise they should be considered against the principle of equal opportunities and therefore forbidden. This could pose challenges to the existing differences of treatment, which do not always build upon a specific legal provision and which are not only put in place by institutional stakeholders but also by private actors. Considering the provision allowing for differences of treatment on the grounds of age in the Framework Employment Directive (article 6), Member States have either explicitly set out the circumstances when age discrimination can be justified or they have just introduced a general provision in national law including the test for justification provided by the Directive.</td>
</tr>
<tr>
<td>YFJ proposal (supported by other European civil society networks) and the European Parliament</td>
<td>This Directive does not preclude differences in treatment on grounds of age if they are objectively and reasonably justified by a legitimate aim, and if the means of achieving that aim are appropriate, proportionate, necessary and effective.</td>
</tr>
<tr>
<td>Rationale behind the YFJ proposal</td>
<td>If the reference to the national law was not foreseen, Member States should nonetheless provide justification for the differences of treatment they allow under their national law. Any difference of treatment should indeed undergo a test of justification. The test in the Proposal is lower than the one provided by the Employment Directive, which requires objective and reasonable justification. Considering that differences of treatment are exceptions to the principle of equality, they should undergo a strict test for justification. Deleting the reference to Member States allow differences of treatment put in place by private actors to be considered as legal (provided that they are duly justified).</td>
</tr>
</tbody>
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2 See the Social Platform consolidated proposal for amendments on the Commission’s proposal for a council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation http://cms.horus.be/files/99907/MediaArchive/Policies/Equality_ and_non-discrimination/Social%20Platform%20consolidated%20proposal%20for%20amendments%20on%20the%20new%20article%2013%20directive%20-%20December%202008.pdf
### Article 5

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to religion or belief, disability, age or sexual orientation.

### Meaning

The same provision was included in the Employment Directive. Differences of treatment aimed at compensating disadvantages have to be justified and proportionate. As in the Employment Directive, only measures adopted or maintained by Member States are mentioned. In some countries (for example the Netherlands) voluntary policies adopted by employers have not been considered justifiable. It has to be stressed that sometimes differences of treatment included in policies undertaken by the private sector can be important to compensate for disadvantages related to age and therefore should not be excluded a priori.

### YFJ proposal (supported by other networks and by the EP)

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures or from allowing these measures to be taken by the public, private or voluntary sectors to prevent or compensate for disadvantages linked to religion or belief, disability, age, or sexual orientation.
<table>
<thead>
<tr>
<th>Article 2.7</th>
<th>Notwithstanding paragraph 2, in the provision of financial services Member States may permit proportionate differences in treatment where, for the product in question, the use of age or disability is a key factor in the assessment of risk based on relevant and accurate actuarial or statistical data.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meaning</td>
<td>Contrary to provision 2.6, this provision does not include the reference to national law. It means that Member States can be allowed to introduce a general justification for these differences when transposing the directive, without explicitly mentioning which differences are permitted. It could be the case that differences of treatment on the ground of age in the provision of financial services are easier to be allowed than other differences under article 2.6. A similar article in Directive 2004/113 (Gender Goods and Services Directive) is much more stringent and requires the European Commission's scrutiny over Member States' compilation of accurate data relevant to use sex as a factor in the assessment of risk. Furthermore Member States are asked to review their decision after 5 years.</td>
</tr>
<tr>
<td>YFJ proposal (supported also by other networks)</td>
<td>Notwithstanding paragraph 2, in the provision of financial services Member States may permit differences in treatment where, for the product in question, the use of age or disability is a key factor in the assessment of risk based on relevant and accurate actuarial or statistical data and the difference in treatment is objectively and reasonably justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. The Member States concerned shall inform the Commission and ensure that accurate data relevant to the use of age and disability as a determining factor are compiled, published and regularly updated. These Member States shall review their decision five years after the deadline for the transposition of the Directive, taking into account the Commission report [on the transposition of the directive] and shall forward the results of this review to the Commission.</td>
</tr>
<tr>
<td>Rationale behind the proposal</td>
<td>The model adopted in the Directive 2004/113 has the advantage that it requires the analysis of the shifts in demography and behaviour by age groups. Article 2.7 should therefore be strengthened; all differences of treatment on the ground of age in the provision of financial services should be monitored by the Commission and they should undergo a test of justification as strict as the one set down by article 2.6. Member States should periodically review the statistics under which age is considered as a factor to assess the risk. Furthermore actuarial and statistics data are often biased as they do not take into consideration personal attitudes and way of living. Therefore these data should be complemented by other methods.</td>
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</tbody>
</table>
The report succeeds in tackling very important issues and brings improvements to the European Commission’s Proposal. In particular it:

• includes legal protection against multiple-discrimination (article 1, not included in the Commission’s Proposal);

• allows differences of treatment on the grounds of age (article 2.6 included also in the Commission’s Proposal) under specific conditions (objectively justified, necessary and proportionate means) opening up the possibility for other actors than Member States to introduce these differences (for example private companies establishing less expensive fares for young people);

• clearly points out that differences of treatment in access to faith-based schools should be objectively justified and cannot lead to the denial of the right of education (article 3.3, the Commission’s Proposals allowed these differences of treatment in general without establishing any test of justification);

• states that the Directive does not cover differences of treatment based on nationality (article 3.5, the Commission’s Proposal also included this exception) but clarifies that discrimination on any of the grounds included in the Directive and presented as a difference of treatment on the grounds of nationality should be considered as discrimination;

On the other hand the report fails to:

• limit differences of treatment on the grounds of age in the field of financial services (article 2.7) as the amendment

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proposed by the Rapporteur and adopted by the European Parliament’s Committee on Civil Liberties and Home Affairs was defeated in plenary by an amendment put forward by MEP Gaubert and MEP Weber (EPP-ED);

• be consistent with the existing EU definition of harassment; indeed it links harassment with freedom of speech which is not the case in other EU anti-discrimination legislation

• cover the material scope to its full extent as it excludes the audiovisual and advertisement sectors.

4. WHAT NEXT

The Council is currently discussing the proposal. Opposition has been expressed by several Member States on:

• the need to adopt a new legislation in the field of non-discrimination considering the fact that the existing directives still need to be implemented;

• the material scope of the Proposal. Some Member States expressed concerns over the fact that a horizontal directive would put into question the division of competences between the EU and its Member States (for example in relation to education and social security and protection);

• the costs of implementing this Directive (in particular as regards the provisions on disability);

• the lack of clarity of certain provisions (for example the one related to differences of treatment on the ground of age).

It is not clear if and when the Council will reach a compromise on the proposal. Its adoption should not be taken as granted. The Council could indeed limit the material scope of the proposal, for example excluding education, and/or providing protection against a limited number of grounds of discrimination (instead of the 4 covered by the current proposal).

TO SUM UP:

Main messages to be conveyed to the EU and its Member States:

1. An agreement related to a new Directive in the field of non-discrimination should be reached by the Council of the European Union as there is the need to bridge the gaps within the current legislation. This need was also expressed by the European Parliament and builds upon the evidence of the extremely negative impact of discrimination on the lives of young people.

2. The agreement should be based on the report drafted by the European Parliament which brings significant improvements to the proposal made by the European Commission;

3. Although there is a need for compromise, it should not be reached at the expense of the effectiveness of the new legislation to address major challenges in the field of discrimination. In particular:

   a. the new directive should provide protection against discrimination on the ground of age, sexual orientation, disability and religion and belief;

   b. the new directive should have the same material scope of the Race Equality Directive (2000/43). In particular protection from discrimination in the field of education should be ensured, including protection against harassment at school for all age-groups, particularly minors;

   c. differences of treatment on the grounds of age should be allowed provided that they are objectively justified by a legitimate aim and that the means to achieve it are necessary and proportionate.
5. EXAMPLES OF ACTIONS THAT YOUR ORGANISATION COULD UNDERTAKE:

- Writing a letter to, or meeting with, the Ministry dealing with equality issues and/or other governmental stakeholders, mentioning the messages highlighted above and, if possible, providing more information and examples of discrimination at the national level in order to strengthen those arguments (see Annex 1 as example);

- Compiling a petition addressed to national governments and collecting signatures at youth events and other events, including cultural and art events. This petition would include the main messages mentioned above and would call for the commitment of the government in supporting these arguments within the Council of the European Union;

- Getting in touch with other organisations working on equality and non-discrimination issues at the national level and undertaking joint actions;

- Contacting the equality body in your country and collecting further information on discrimination cases which could be used to argue on the reason why new legislation is needed;

- Informing and involving young people when organising trainings or other non-formal education activities;

- Liaising with students’ unions in your country to get their support and to raise the awareness of young people at school.

HOW TO FIND FURTHER INFORMATION ON INITIATIVES AND ORGANISATIONS WORKING ON THIS ISSUE IN YOUR COUNTRY

You can contact the national members of these European Networks:

- The European Network against Racism (ENAR) - [www.enar-eu.org](http://www.enar-eu.org)
- The European Disability Forum (EDF) - [www.edf-feph.org](http://www.edf-feph.org)
- The European Region of the Lesbian and Gay Association (ILGA-Europe) - [www.ilga-europe.org](http://www.ilga-europe.org)
- The European Older People’s Platform (AGE) - [www.age-platform.org](http://www.age-platform.org)

Your Excellency,

We are writing to you with regards to the proposal for a new Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, which is currently being discussed within the Council of the European Union.

Young people have always been striving to achieve equality in Europe. Key improvements in protection of young people against discrimination have been made in the recent past, especially in the area of employment and occupation, since the adoption of the Council Directive 43/2000/EC. Similarly, important efforts have been undertaken to raise the awareness on equality and non-discrimination, and to empower the most vulnerable groups who are more exposed to discrimination.

Nevertheless, the experience of youth organisations working at both national and European level, as well as many studies, surveys and research, highlight that discrimination still has a very negative impact on the lives of young people. Furthermore, the intersection of the ground of age with other grounds such as religion or belief, ethnic origin, sexual orientation, gender and gender identity and expression, and disability, puts specific groups of young people at higher risk of discrimination and of social exclusion.

We welcomed very much the proposal made by the European Commission on July 2, 2008 for a new Council Directive implementing the principle of equal treatment outside the field of employment. In particular, we believe that the horizontal nature of this proposal is key to bridging the gaps within the European anti-discrimination legislation and that the material scope, including key areas for young people such as education, health and access to good and services, will contribute to putting an end to the inequalities experienced by the European youth.

Last April, we also welcomed the adoption by the European Parliament of the report on the Commission’s proposal. We believe that the report succeeds in bringing further legal clarity on certain provisions, such as article 2.6 on differences of treatment on the ground of age, and in providing protection against multiple-discrimination.

Your Excellency, we would like in this context to express our concerns about the resistances put forward by certain Member States to the introduction of a new piece of legislation providing protection against discrimination on the ground of religion or belief, disability, age or sexual orientation, and having the same material scope as of Directive 73/2000/EC.
Similarly, we are disappointed about the lack of commitment by the Czech Presidency of the Council of the European Union to further advance the negotiations on this issue among Member States and to bring further improvements to the Commission's proposal.

The principle of equality and of non-discrimination being one of the key acquis of the European Union, we believe that Member States should further engage to promote it, by effectively transposing the existing instruments and at the same time by seizing the opportunity to enhance the European and the national anti-discrimination legislative framework.

We call upon your Presidency to take an active stand on this issue and to do whatever is in your remit to initiate a fruitful dialogue among Member States and to create the political willingness for the adoption of a new Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, having the same material scope as of Directive 73/2000/EC. In the 18-month programme of the Council, it is stated that changing attitudes towards elderly persons in a positive direction is necessary in an ageing society. We fully agree with this position, however in this context it is important to stress that, in a society of demographic change, this must include also changing attitudes towards younger persons.

Regular cooperation between your Presidency and civil society organisations committed to achieving equality and to fighting against discrimination is also key in order to get further evidence that such a Directive is needed and to bring clarity on specific provisions included in the Commission's proposal.

We are confident that the Swedish Presidency of the European Council will commit to further advancing equality for young people and for all in Europe. We remain available for any kind of support that you would deem useful to this end.

Yours Sincerely,

Giuseppe PORCARO
Secretary-General
European Youth Forum

Richard BENGTSSON
Secretary-General
LSU