



For Diversity



Against Discrimination

State of play on the proposal for a new Directive based on Article 13 EC

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Why a new Directive?

The «hierarchy of grounds »

Grounds	Race	Religion	Disability	Age	Sexual orientation	Sex
Field						
Employment & vocational training	Yes + Equality body	Yes	Yes	Yes	Yes	Yes + Equality body
Education	Yes + Equality body	No	No	No	No	No
Goods and services	Yes + Equality body	No	No	No	No	Yes + Equality body
Social protection	Yes + Equality body	No	No	No	No	Yes + Equality body



Eurobarometer Surveys

- *discrimination widespread, in particular on grounds of sexual orientation (51%) and disability (45%), age (42%) and religion (42%).*
- *discrimination most widespread in housing, but also significant in education.*
- *40% felt people buying insurance policies were likely to face discrimination because of their age and as many felt the same regarding disability.*
- *16% of respondents said they or their family had been discriminated on grounds of age, or a combination of factors*

Public consultation

- *69% lack of uniform protection would influence their decision to visit or work in another MS;*

Business consultation

- *63% different levels of protection matter;*
- *26%: a difference in the level of protection would affect their ability to do business in another MS.*

- Adopted in July 2008 (COM(2008)426 final)
- Prohibits discrimination on grounds of disability, age, religion & belief and sexual orientation outside employment)
- Same material scope as Directive 2000/43/EC:
 - social protection, including social security and health care;
 - social advantages;
 - education;
 - access to and supply of goods and services which are available to the public, including housing.

But:

- The prohibition of discrimination on access to and provision of goods and services applies to individuals only insofar as they are performing a professional or commercial activity
- MS 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 the fixing of a specific age for access to social benefits, education and certain goods or services.
- In the provision of financial services, MS 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.

Article 4 of the proposal

- Measures necessary to enable persons with disabilities to have effective non-discriminatory access to matters covered by the Directive shall be provided by anticipation, including through appropriate modifications or adjustments.
- Such measures should not impose a disproportionate burden, nor require fundamental alteration or require the provision of alternatives thereto.
- Notwithstanding the obligation to ensure effective non-discriminatory access and where needed in a particular case, reasonable accommodation shall be provided unless this would impose a disproportionate burden.
- The Directive shall be without prejudice to the provisions of Community law or national rules covering the accessibility of particular goods or services.

- Discussions began in July 2008.
- Generally speaking, the great majority of Member States welcome the proposal
- Some Member States have fundamental problems with the proposal (competence, subsidiarity)
- Most of the Member States require clarifications and greater legal security
- MS reluctant in leaving to ECJ the interpretation of vague or general notions like:
 - reasonable accommodation
 - social protection
 - social advantages
 - professional or commercial activity
 - fundamental alteration, etc.

- MS asked for an opinion of the Council's Legal Service on the Community competence with regards with the scope of the proposed Directive and on the respect of the principle of subsidiarity
- The opinion of the CLS was adopted on 29 October 2008.
- « A measure taken under Article 13 cannot interfere with the Member States' competence for the content of teaching and the organisation of education systems and their cultural and linguistic diversity, nor with the organisation and delivery of health services and medical care, nor with the organisation and financing of national systems of social security ».
- It concludes that «access with regard the policy areas referred to in Article 3 of the proposal is a matter which can, if the Council so wishes, be covered in the context of a Directive adopted on the basis of Article 13 EC ».
- « The text of the proposal has to be clarified (« reasonable accommodation », « fundamental alteration », « extent of the obligations for manufacturers of goods »).

- Discussions will continue.
- French Presidency will present alternative texts.
- On the agenda of the next EPSSCO Council.
- Will be taken over by the Czech Presidency, but...

- This is not a co-decision procedure, EP is NOT co-legislator.
- Politically, opinion of the EP, if adopted by a large majority, is important.
- LIBE Committee is competent, EMPL Committee associated
- Kathalijne Buitenweg (Green, NL) and Liz Lynne (ALDE, UK) are rapporteurs.
- Likely that EP will propose to tighten exemptions and get inspiration on the UN Convention on People with Disabilities.

- EP has a tradition of position on the issue, likely that a resolution is adopted before the end of the mandate.
- Theoretically, the Council could adopt the text during the CZ Presidency (June's Council).
- But...

- The adoption of the proposal is a success:
 - controversial
 - horizontal
 - large scope
- Adoption in Council will be difficult (rule of unanimity)
- Until now, all proposals based on Article 13 EC have been adopted despite the rule of unanimity.