

The European Union



against discrimination

## **European Community Legislation on Discrimination**

**DG Employment ,Social Affairs  
& Equal Opportunities**

Equality, Action against Discrimination: Legal Questions



## **Art. 13 TEC (Amsterdam Treaty)**

Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.



# Directives

- Directive 2000/43/EC on equal treatment irrespective of racial or ethnic origin
- Directive 2000/78 on equal treatment in employment & training on grounds of religion or belief, age, disability or sexual orientation



# Concept of discrimination (article 2)

- Direct discrimination
- Indirect discrimination
- Harassment
- Instructions to discriminate



# Indirect discrimination

Where an apparently neutral provision, criterion or practice would put persons in any of the protected categories at a particular disadvantage compared with other people.

*Except* if this provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary



# Grounds covered

**Directive 2000/43/EC (article 1):**

- **Race or ethnic origin**

**Directive 2000/78/EC (article 1):**

- **Religion or belief**
- **Age**
- **Disability**
- **Sexual orientation**



# Personal Scope

The Directives apply to all persons

- in the EU – regardless of nationality
- public & private sector



# Material Scope I

The Directives prohibit discrimination in employment, defined as:

- Access to employment, self-employment and occupation and working conditions, including dismissals and pay
- membership of organisations
- vocational guidance and training





## Material Scope (II)

Directive 2000/43 also prohibits discrimination in:

- Social protection, including social security and health care
- Social advantages
- Education
- Goods and services, including housing



# Exceptions

Not all differences of treatment will be unlawful:

- genuine & determining occupational requirement (article 4)
- Positive action ((2000/43: article 5; 2000/78: article 7)
- nationality (article 2.4)
- age (**Directive 2000/78: article 6**)
- churches etc (2000/78: article 4.2)
- Limitations on reasonable accommodation (2000/78: art. 5)



# Rights of Redress (I)

- Sharing of the burden of proof (2000/43: article 8, 2000/78: article 10)
- Rights of associations (2000/43: art. 7, 2000/78: art. 9)
- Sanctions - effective, proportionate and dissuasive (2000/43: article 15, 2000/78: article 17)
- Protection from victimisation (2000/43: article 9, 2000/78: article 11)
- Equality Body – race and sex discrimination (Directive 2000/43: article 13)



## Rights of Redress (II)

Once the Directive is transposed, victims must bring their cases under national law before the national courts.

If the Directive has not been transposed:

- principle of direct effect
- interpretation in accordance with Directives
- State liability

Article 234 EC – question from national court to ECJ<sup>12</sup>



# Specialised Bodies

## **Art. 13 Directive 2000/43/CE :**

- Independent assistance to victims
- Independent surveys
- Independent reports and recommendations



# Transposition (I)

All Member States had to make changes to legislation

- Directive 2000/43- by 19 July 2003
- Directive 2000/78 - by 2 December 2003 (up to 3 extra years for disability and age discrimination)
- « New » Member States – 1 May 2004 and 1 January 2007



## Transposition (II)

Commission's role as "Guardian of the Treaties" (article 226 EC) - Infringements for non-communication of measures of transposition and for incorrect transposition into national law:

First stage: letter of formal notice – 2 months to reply

Second stage: reasoned opinion – 2 months to reply

Third stage: case referred to the European Court of Justice



## Transposition (III)

Directive 2000/43/EC :

Reasoned opinions sent to 14 Members States (June 2007)

Directive 2000/78/EC:

Reasoned opinions sent to 10 Member States (January 2008)



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## End of the «hierarchy of grounds»?

Grounds Field	Race	Religion	Dis- ability	Age	Sexual orient- ation	Sex
Employ- ment & vocational training	Yes + Equality body	Yes	Yes	Yes	Yes	Yes + Equality body
Education	Yes + Equality body	Yes + Equality body	Yes + Equality body	Yes + Equality body	Yes + Equality body	No
Goods and services	Yes + Equality body	Yes + Equality body	Yes + Equality body	Yes + Equality body	Yes + Equality body	Yes + Equality body
Social protection	Yes + Equality body	Yes + Equality body	Yes + Equality body	Yes + Equality body	Yes + Equality body	Yes + Equality body



# Further information

## INTERNET:

## INTERNET:

<http://ec.europa.eu/social/>

&

<http://www.stop-discrimination.info/>

## EMAIL:

[empl-antidiscrimination@ec.europa.eu](mailto:empl-antidiscrimination@ec.europa.eu)