



For Diversity



Against Discrimination

Introduction to the European Community legislation to combat discrimination

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The EC anti-discrimination directives in practice
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Sex Discrimination (Article 141 EC Treaty)

Directives on

- employment (recast Directive 2006/54)
- social security
- access to goods and services (Directive 2004/113)

Discrimination on Nationality (Article 12)

Free Movement of Persons, Goods and Services

Article 13

Discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Directives 2000/43 and 2000/78)

Article 13

“ ... *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.*”

(Amsterdam Treaty, 1997)

Three Directives

- ✓ Racial Equality Directive 2000/43 – race / ethnic origin
- ✓ Employment Equality Directive 2000/78 – religion, disability, age and sexual orientation
- ✓ *Goods and Services Directive 2004/113 – gender*



2- What do Directives say ?

Material scope

Both Directives cover employment

- ✓ Access to employment + promotion
- ✓ Working conditions (incl. pay and dismissal)
- ✓ Vocational training
- ✓ Membership of organisations

Race Equality Directive also covers

- ✓ Education
- ✓ Social protection
- ✓ Social advantages
- ✓ Goods and services, incl. housing

Personal scope

And both cover:

- all persons on EU territory
- public and private sector

Art. 2:

- **Direct discrimination**
- **Indirect discrimination**
- **Harassment**
- **Instruction to discriminate**

Where one person is treated less favourably than another is, has been or would be treated in a comparable situation on any of the grounds covered by the directive (racial or ethnic origin, religion or belief, disability, age, or sexual orientation)

Where an apparently neutral provision, criterion or practice would put persons having a particular racial or ethnic origin, religion or belief, disability, age, or sexual orientation 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.

When an unwanted conduct related to any of the grounds of the Directives (race or ethnic origin, religion or belief, disability, age, or sexual orientation) takes place

with the purpose or effect

- of violating a person's dignity**
- and of creating an intimidating, hostile, degrading, humiliating or offensive environment.**

Not all differences of treatment are discrimination:

- **genuine and determining occupational requirement (Art. 4)**
- **positive action (2000/43: Art. 5; 2000/78: Art. 7)**
- **nationality (Art. 3(2))**
- **age (2000/78: Art. 6)**
- **“religious” employers (2000/78: Art. 4(2))**
- **armed forces (age/disability) (2000/78: Art. 3(4))**
- **“reasonable accommodation” (2000/78: Art. 5)**

Employers are required to provide reasonable accommodation to persons with disabilities (Article 5 of Directive 2000/78/EC)

- **Meaning : Appropriate measures, where needed in a particular case, to enable a person with a disability to have access to / or advance in employment or training**
- **Exception : where such measures would impose a disproportionate burden on the employer (not the case if support subsidies/measures exist)**



Remedies and enforcement:

- Specific rule on burden of proof
- Rights of associations
- Sanctions – effective, proportionate and dissuasive
- Protection against victimisation
- Equality bodies

If complainants establish

"facts from which it may be presumed that there has been direct or indirect discrimination",

then

the respondent has to prove that there has been no breach of the principle of equal treatment.

No full reversal !

Help for victims

Member States must set up racial equality bodies:

- ✓ To help victims of discrimination
- ✓ To conduct research and studies
- ✓ To publish recommendations



Commissie Gelijke Behandeling



Victims of discrimination also may be supported by:

- ✓ Non-governmental organisations (NGO)
- ✓ Trade unions

3 – What about their implementation ?

Directive has to be transposed via national legislation

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 – date of accession

Minimum requirements & non-regression !

- Principle of direct effect (not between individuals!)
- Interpretation of national legislation in conformity with the Directive
- Preliminary referral to the ECJ for questions of interpretation (Art. 234 ECT)
- Complaints to the Commission – infringement procedure

Commission's role as "Guardian of the Treaties"

Article 226 EC – Infringements for

- non-communication of measures of transposition
 - incorrect / incomplete transposition into national law
-
- First stage: Letter of formal notice
 - Second stage: Reasoned Opinion
 - Third stage: Case referred to the European Court of Justice



Interpretation of Community law

Case law – examples of preliminary rulings

Age:

- **Case C-144/04, Mangold**
- **Case C-411/05, Palacios de la Villa**
- **Case C-388/07, Age Concern**

Disability:

- **Case C-13/05, Chacón Navas**
- **Case C-303/06, Coleman**

Sexual orientation:

- **Case C-267/06, Maruko**

General issues:

- **C-54/07, Feryn**

4 - What is the future ?

“Hierarchy of grounds”

Grounds Field	Race	Religion	Disability	Age	Sexual orientation	Sex
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

Presented in July 2008

Prohibits discrimination on grounds of disability, age, religion & belief and sexual orientation **outside employment:**

- Social protection (social security, health care)
- Social advantages
- Education
- Access to goods & services, including housing

Remedies and enforcement:

- defense of rights
- burden of proof
- equality body

The Directive does **NOT** cover

- Laws on marital or family status and reproductive rights
- Content of teaching, organisation of educational systems, including special needs education
- Status and activities of churches + secularity of the State
- Transaction of purely private nature – only professional & commercial transactions
- Justified differences on age in laws – general
- Age and/or disability can be taken into account in financial services (insurance...) if it is a “key” factor in determining risk

Article 4

- Obligation to provide “effective non-discriminatory access” for disabled persons by anticipation
 - unless it imposes a disproportionate burden
 - or fundamentally alters the goods or services
- Obligation to provide “reasonable accommodation” (individually designed measures)
 - unless it imposes a disproportionate burden



Negotiations in Council

- unanimity rule
- support and resistance
- progress under French Presidency
- Czech Presidency focus on disability

European Parliament

- only consultation procedure
- strong support
- supportive vote in plenary April 2009

Pressure from NGOs, business

Parallel to discussion on the UN Convention on the Rights of Persons with Disabilities

Thank you for your attention !

For further information:

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