

THE PRINCIPLE OF NON-DISCRIMINATION ON THE GROUNDS OF AGE

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THE CONTEXT

- A 'greying' European population;
- Greater expectations that individual self-realisation will continue throughout life;
- Increasing challenges to stereotyping based on age.

DIRECTIVE 2000/78/EC

- Age one of the 'controlled' forms of discrimination.
- Article 6(1) – both direct and indirect age discrimination can be objectively justified.
- Genuine occupational requirement defence also exists.

THE SCOPE OF THE DIRECTIVE

- Article 6(2) – states may exempt age distinctions in controlling admission and entitlement in relation to occupational pension schemes.
- Recital 14 – ‘national retirement ages’?
- *Palacios* – the Court of Justice considers that national laws regulating retirement ages come within the scope of the Directive.

GENUINE OCCUPATIONAL REQUIREMENT ('GQR')

- When will age constitute a GQR?
- The UK government in its consultation paper suggested that it would be rare for age to be a GQR, if the standard approach to identifying GQRs adopted in the gender context is carried over to age.
- Modelling? Acting?

JUSTIFICATION

- The ECJ applied in *Mangold, Palacios* and *Heyday* standard proportionality analysis: i) legitimate aim and ii) proportionate means.
- In applying this test, should a 'rational' standard or stiffer 'objective' standard be applied? The ECJ decision in *Heyday* and national experience (the UK, Netherlands, Ireland) indicates the latter.
- Should a distinction be made between direct and indirect age discrimination? *Heyday* suggests not, but the context is important.

SPECIFIC ISSUES TO CONSIDER

- positive action;
- pay related to the national minimum wage;
- retirement;
- pay and other employment benefits linked to seniority/age;
- occupational pension schemes.

PARTING SHOTS A

- Medical/social/political trends are very much towards age-neutral approaches: but will economic turbulence change the situation?
- Is age discrimination 'less morally problematic' than other forms of discrimination? Should/will this be reflected in the application of the 'objective justification' test?

PARTING SHOTS B

- Will age discrimination legislation be extended?
- If so, which exceptions will be recognised in areas such as health care or the provision of public welfare support services?