

Equal treatment: implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

2008/0140(APP) - 02/07/2008 - Legislative proposal

PURPOSE: to implement the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside the labour market.

PROPOSED ACT: Council Directive.

CONTENT: this proposal builds upon Directives 2000/43/EC, 2000/78/EC and 2004/113/EC which prohibit discrimination on grounds of sex, racial or ethnic origin, age, disability, sexual orientation, religion or belief. The Commission stresses that, as far as possible, the concepts and rules provided for in this proposal build on those used in the existing Directives based on Article 13 EC.

Purpose: the main objective of the directive is to combat discrimination based on religion or belief, disability, age or sexual orientation and to put into effect the principle of equal treatment, outside the field of employment. The directive does not prohibit differences of treatment based on sex which are covered by Articles 13 and 141 of the EC Treaty and related secondary legislation.

Concept of discrimination: the definition of the principle of equal treatment is based on that contained in the previous directives adopted under Article 13(1) EC as well as relevant case law of the European Court of Justice.

Direct discrimination consists of treating someone differently solely because of his or her age, disability, religion or belief and sexual orientation. Indirect discrimination is more complex in that a rule or practice which seems neutral in fact has a particularly disadvantageous impact upon a person or a group of persons having a specific characteristic. The author of the rule or practice may have no idea of the practical consequences, and intention to discriminate is therefore not relevant. As in Directives 2000/43/EC, 2000/78/EC and 2002/73/EC, it is possible to justify indirect discrimination (if "that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary").

Harassment is a form of discrimination. The unwanted conduct can take different forms, from verbal or written comments, gestures or behaviour, but it has to be serious enough to create an intimidating, humiliating or offensive environment. This definition is identical to the definitions contained in the other Article 13 directives.

A denial of reasonable accommodation is considered a form of discrimination. Certain differences of treatment based on age may be lawful, if they are justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (proportionality test).

In the existing Article 13 EC directives exceptions to the prohibition of direct discrimination were allowed for "genuine and determining occupational requirements", for differences of treatment based on age, and in the context of sex discrimination, in access to goods and services. Although the current proposal does not cover employment, there will be differences of treatment in the areas mentioned in the proposal. However, as exceptions to the general principle of equality should be narrowly drawn, the double test of a justified aim and proportionate way of reaching it (i.e. in the least discriminatory way possible) is required.

A special rule is added for insurance and banking services, in recognition of the fact that age and disability can be an essential element of the assessment of risk for certain products, and therefore of price. If insurers are not allowed to take age and disability into account at all, the additional costs will have to be entirely borne by the rest of the "pool" of those insured, which would result in higher overall costs and lower availability of cover for consumers. The use of age and disability in the assessment of risk must be based on accurate data and statistics.

Scope: discrimination based on religion or belief, disability, age or sexual orientation is prohibited by both the public and private sector in:

- 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.

In terms of access to goods and services, only professional or commercial activities are covered. Transactions between private individuals acting in a private capacity will not be covered: letting a room in a private house does not need to be treated in the same way as letting rooms in a hotel. The areas are covered only to the extent that the subject matter falls within the competences of the Community. Thus, for example, the organisation of the school system, activities and the content of education courses, including how to organise education for persons with disabilities, is a matter for the Member States, and they may provide for differences in treatment in access to religious educational institutions.

Matters related to marital and family status, which includes adoption, are outside the scope of the directive. This includes reproductive rights. Member States remain free to decide whether or not to recognise legally registered partnerships. However once national law recognises such relationships as comparable to that of spouses then the principle of equal treatment applies.

The directive does not cover national laws relating to the secular nature of the State and its institutions, nor to the status of religious organisations. Member States may thus allow or prohibit the wearing of religious symbols in schools. Differences in treatment based on nationality are also not covered.

Equal treatment of persons with disabilities: effective access for disabled people to social protection, social advantages, health care, education and access to and supply of goods and services which are available to the public, including housing, shall be provided by anticipation. This obligation is limited by the defence that if this would impose a disproportionate burden or would require major changes to the product or service, it does not need to be done.

In some cases individual measures of reasonable accommodation may be necessary to ensure effective access for a particular disabled person. This is only the case if it would not impose a disproportionate burden. A non-exhaustive list is given of factors that could be taken into account in assessing whether the burden is disproportionate, thus allowing the specific situation of small and medium sized, and micro enterprises, to be taken into account.

The concept of reasonable accommodation already exists in the employment sphere under Directive 2000/78/EC, and Member States have experience in applying it. What might be appropriate for a large corporation may not be for a small or medium-sized company. The requirement to make reasonable accommodation does not only imply making physical changes but may entail an alternative means of providing a service.

The proposal deals with other provisions which are common to all Article 13 Directives. These provisions include positive action, minimum requirements, the defence of rights, the shift of the burden of proof, victimisation, the dissemination of information, the promotion of dialogue with relevant stakeholders, the requirement that Member States have a body or bodies ("Equality Body") at national level to promote equal treatment of all persons, compliance and sanctions.