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The Employment Equality Directive

What is the Employment Equality Directive?

Directive 2000/78/EC – or the Employment Equality Directive – prohibits discrimination on grounds of religion and belief, age, disability and sexual orientation. It covers the fields of:

- employment & occupation
- vocational training
- membership of employer and employee organisations

The legislation sets out minimum requirements. Member States may therefore provide for a higher level of protection against discrimination in national legislation.

When did the legislation have to be transposed into national law?

The Directive was adopted, unanimously, by the Member States in 2000.

It had to be transposed into national law by 2 December 2003 by the 15 "old" Member States (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands; Portugal, Spain, Sweden, United Kingdom), by 1 May 2004 by the 10 "new" Member States (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia), and by 1 January 2007 for Romania & Bulgaria.

Directive 2000/78/EC permitted Member States an additional period of time for transposing the provisions on age and disability discrimination. For age discrimination, Sweden, the UK, Germany, Belgium and the Netherlands notified the Commission that they would extend the deadline for the full three years until 2 December 2006, and Denmark notified its intention to extend the deadline for one year until 2 December 2004. For disability, the UK and France notified the Commission that they would extend the deadline for the full three years and Denmark for one year.

Which Member States have transposed the Directive into national law and which ones have done so properly?

All the Member States have now transposed the Directive into national law.

The Commission, as "Guardian of the Treaties", is studying the national legislation of all the Member States in detail to see if it correctly reflects the requirements of the Directive. If it does not, the Commission launches infringement procedures against the Member State/s concerned.

What kind of problems has the Commission identified?

The definition of discrimination

Definitions of discrimination which diverge from the Directive (in particular, in terms of indirect discrimination, harassment and instructions to discriminate);

Article 2 defines four types of discrimination:

Direct discrimination

Indirect discrimination – where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons; unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate

Harassment - when an unwanted conduct related to a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

Instruction to discriminate

i.e. where the personnel manager is told not to hire any people of certain religion.

Problems with Article 2:

- Lack of one or several definitions
- Definitions in the law are incorrect: one issue is that the definition of indirect discrimination does not cover future or possible events
- Definition of harassment too limited
- Instructions to discriminate too limited
- Limitation of the personal or material scope of the directive (not applicable to civil servants, or to autonomous work)

Scope of the anti-discrimination legislation and exceptions to equal treatment

Scope

According to its Article 3, the Directive applies to all persons, to both the public and private sectors, including public bodies, in relation to:

- conditions for access to employment, to self-employment and to occupation;
- vocational training;
- employment and working conditions, including dismissals and pay;
- membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

Problems with Article 3:

- Exclusion of public sector;
- Exclusion of certain employment relationships of a private nature;

Exceptions to the principle of equal treatment

Article 4 - Allows for some justified exceptions to the prohibition of unequal treatment for all four grounds : religion and belief, age, disability and sexual orientation

Article 6 - Allows for some justified unequal treatment based on age

Problems with Articles 4 and 6:

In some Member States the exceptions to the prohibition of discrimination are broader than those authorised by the Directive.

Reasonable Accommodation of disabled people

Article 5 of the Directive provides that employers are required to take appropriate measures to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.

For example, in a job interview, in a promotion test or in a training exam, a deaf person should be able to answer questions in a written manner. Likewise, a blind person should be able to answer questions in an oral manner. This should not be very costly for the employer.

Problems with Article 5:

- the provision does not exist in national law;
- not all disabled workers are covered, or they are not covered regarding all aspects required by the Directive.

Which are the main issues in the Member States regarding inconsistencies in the provisions designed to help victims of discrimination?

Article 9: Limitations of the right of associations to engage in legal procedures to help victims of discrimination

Article 10: No reversal of the burden of proof

Article 11: Lack of protection against victimisation in certain sectors or no definition of victimisation

If the Commission is sending reasoned opinions to 11 countries, does that mean that the other Member States have done everything correctly?

No. Although the Commission is at the reasoned opinion stage with those 11 Member States, it is still examining the legislation of the other Member States, so any possible infringement procedures are at a less advanced stage. In some cases, new legislation has just entered into force and there has not been time to study it fully (for example in Belgium and Slovakia). In other cases, new problems have been identified which means that a "complementary" letter of formal notice has to be sent and a reasoned opinion would only come at a later stage, if at all.

How can people enforce their rights if they think they have been discriminated against?

Victims of discrimination must take their cases under national law, before the national courts. Both Directives provide for a shift in the burden of proof (Article 10). This means that if a person claims to have been discriminated against, then it falls to the defendant to show that he did not discriminate unlawfully against the person.

Is information available on how the Directives have been transposed in the Member States?

Information on the application of the Employment Equality Directive and other anti-discrimination legislation in all 27 Member States is available on the European Commission's anti-discrimination website:

http://ec.europa.eu/employment_social/fundamental_rights/legis/lqms_en.htm

http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/07compan_en.pdf

In addition, in 2008 the Commission will publish a specific report on the application of the Employment Equality Directive.

How do infringement procedures work?

First, the Commission sends what is called a "letter of formal notice" explaining in general why it thinks the Member State has incorrectly implemented the Directive into its national law.

The Member State then has two months to reply. If it does not reply, or if the Commission is not convinced by the reply, the Commission can go to the next step of the infringement procedure by sending a "reasoned opinion". This sets out in much more detail the legal arguments. Again, the Member State has two months to reply.

If the Commission still thinks the Member State has incorrectly transposed the Directive, it can at this point refer the case to the European Court of Justice in Luxembourg.

At each stage, a formal decision must be taken by the Commission.