

Equal treatment in employment and occupation. Employment Equality Directive

1999/0225(CNS) - 17/01/2014

The Commission presents a report on the joint report on the application of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive').

The report recalls that protection from discrimination is one of the areas in which EU law closely affects the everyday life of people in the EU. The comprehensive framework provided by the Directive in question and [Council Directive 2000/43/EC](#) implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive'), examined at the same time, has shaped the landscape of European anti-discrimination law for over a decade now.

Some Member States had hardly any legislation in this field before the transposition of the two Directives, and the Directives introduced novel elements like protection from age discrimination into the legislation of all Member States.

Joint Report: given that both of the anti-discrimination Directives have to be reported on regularly, the present document is a joint report because the regulatory approach and content of most of the provisions are identical. In addition, **most Member States have transposed the two Directives in a single national act.**

Today, all 28 Member States have transposed the Directives and gained experience in their application. The Court of Justice of the European Union (CJEU) has also developed the interpretation of the Directives through its case-law.

This report provides an opportunity to:

- examine the application of the Directives,
- take stock of the interpretation given by the CJEU and national courts,
- identify challenges ahead.

Application of the Directives: both Directives have been transposed into national law, but the review of national experiences reveals that there are still challenges to their implementation and application. These relate in particular to the following issues:

- **Indirect discrimination:** this concept is complex and many Member States had initial difficulties in transposing it correctly. It is now enshrined in law, but its application in practice remains a challenge due to its lack of clarity or lack of understanding in national courts;
- **Burden of proof:** this means that where a person claiming to be a victim of discrimination can establish facts from which it may be presumed that discrimination has occurred, it is for the respondent to prove that there has been no discrimination. Some Member States report that the correct application of the reversed burden of proof remains a challenge and is not sufficiently well known by national courts;
- **Discrimination by association, assumption and perception:** as suggested by existing national case-law, the Commission considers that the Directives also prohibit a situation where a person is

directly discriminated against on the basis of a wrong perception or assumption of protected characteristics, for example, if a candidate for a job is not selected because the employer wrongly believes he/she is of a specific ethnic origin or homosexual;

- **Protection for everyone in the EU:** the two Directives make it clear that the prohibition of discrimination also applies to nationals of third countries, but does not cover differences of treatment based on nationality, and is without prejudice to provisions governing entry and residence. This is an important element of the Directives, underlining the fact that the prohibition of discrimination protects everyone in the European Union and not only EU citizens. Some problems, however, do not derive directly from legislation, but from how the relevant legislation is applied on the ground.

The report also deals with **aspects specific to the racial equality directive 2000/78/EC** such as:

- religion or belief,
- disability,
- age,
- sexual orientation

and examines the difficulties relating to these specific aspects in terms of their implementation and their interpretation.

Main findings: all the Member States have taken the necessary measures to transpose the two Directives into their respective domestic legal orders and to set up the procedures and bodies that are indispensable for the implementation of these Directives.

According to the joint report, the main challenge now is to increase awareness of the already existing protection and to **ensure better practical implementation and application of the Directives**. The Commission will, together with the Member States and their equality bodies, make a concerted effort to realise the full potential of the Directives in terms of protection of the fundamental right to equal treatment in the EU. However, legislation alone is not enough to ensure full equality, so it needs to be combined with appropriate policy action. Funding for awareness-raising and training activities is already available under the European Union Programme for Employment and Social Solidarity (Progress), but this work needs to be further strengthened by the Commission in cooperation with Member States to ensure tangible improvements in the awareness of rights throughout the EU. Strengthening the role of the national equality bodies as watchdogs for equality can make a crucial contribution to more effective implementation and application of the Directives.