Equal treatment in employment and occupation. Employment Equality Directive

1999/0225(CNS) - 27/11/2000 - Final act

PURPOSE : to implement the principle of equal treatment in employment.

COMMUNITY MEASURE : Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

CONTENT : in accordance with Article 13 of the Treaty of the European Communities, this Directive aims to establish a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting it into effect in the Member States the principle of equal treatment.

The Directive sets out a definition of 'discrimination' whether it be direct (when one person is treated less favourably than another is) or indirect (where an apparently neutral provision, criterion or practice puts persons at a particular disadvantage compared with other persons). Moreover, as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged under national legislation, to take appropriate measures in order to eliminate disadvantages entailed by such provision, criterion or practice. Harassment shall be deemed to be a form of discrimination when unwanted conduct 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. Even an instruction to discriminate against persons on any grounds shall be deemed to be discrimination.

With regard to the scope, the Directive applies to:

1) conditions for access to employment, to self-employed or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
2) access to all types and to all levels of vocational training, advanced vocational training and retraining, including practical work experience;
3) employment and working conditions, including dismissal and pay;
4) membership of, and involvement in, any organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

This Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned. The Directive does not apply to payments of any kind made by state schemes or similar, including state social security or social protection schemes.

The Directive does, however, provide an exhaustive list of differences of treatment on grounds of age, which shall not consistute direct discrimination, provided that they are objectively justified. There are also provisions for remedies and enforcement. Particular provisions exist with regard to the burden of proof, which rests initially on the defendant rather than the plaintiff. In addition, Member States must also:

- introduce into their national legal systems measures to protect employees against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal

proceedings aimed at enforcing compliance with the principle of equal treatment;
- take adequate measures to promote dialogue between the social partners with a view to fostering equal treatment.

Lastly, in order to tackle the under-representation of one of the major religious communities in the police service in Northern Ireland, differences in treatment regarding recruitment into that service, including its support staff, shall not constitute discrimination insofar as those differences in treatment are expressely authorised by national legislation. With regard to maintaining a balance of opportunity in employment of teachers in Northern Ireland while furthering the reconciliation of historical divisions between the major religious communities there, the provisions on religion or belief in this Directive shall not apply to the recruitment of teachers in schools in Northern Ireland in so far as this is expressly authorised by national legislation.

ENTRY INTO FORCE : 02.12.2000.

DEADLINE SET FOR TRANSPOSITION : 02.12.2003.