

Progress Update on the Proposal for a New Goods and Services Anti-Discrimination Directive

Background

A new directive was proposed by the European Commission on 2 July **to outlaw discrimination on the grounds of age, disability, religion or belief and sexual orientation in goods and services**. The proposal aims to prohibit discrimination in the public and private sector in relation to the access to and supply of goods and services including housing, social protection including social security and health care, social advantages and education. This directive would therefore fill an important gap, complementing existing EU legislation already outlawing discrimination on grounds of sex and race and ethnic origin in goods and services and discrimination on grounds of age, disability, religion or belief and sexual orientation in employment and training.¹

Before it becomes law at national level, this directive must now be adopted by the Council in a unanimous vote. This means that **all** 27 European Union member states governments must agree to adopt it.

Progress report on adoption

Intergovernmental Negotiations and the UK Government Position

Inter-governmental discussions have started at EU level through working group meetings. The directive was discussed at the Council of Ministers meeting on 2 October 2008. The UK government is publicly supporting the French presidency to get this agreed in Council as soon as possible.

The European Parliament's role in the discussion

The EU legislative procedure for this anti-discrimination work is the Consultation procedure. This means that the Council of the European Union (Council of Ministers) need only consult the European Parliament and does not have to get its approval and the vote in Council for the directive must be unanimous amongst all 27 Member States.

¹ Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180 of 19.7.2000, p.22, Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303 of 2.12.2000, p. 16 and Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373 of 21.12.2004, p.37

However, the European Parliament will be discussing the Directive, mainly through LIBE (Committee on Civil Liberties, Justice and Home Affairs) and EMPL (Committee on Employment and Social Affairs). The LIBE committee will be drafting a report on the Directive. This report is non-legislative but it nevertheless will be influential. The Dutch Green MEP Kathalijne Buitenweg was appointed Rapporteur for the new anti-discrimination law and will therefore be in charge of drafting the European Parliament's report. She was the Rapporteur for the Race Directive in 2000 and therefore has experience in this area.

UK Government concerns

The UK government have identified several areas where our current domestic legislation would not meet the requirements of the proposed directive, these are that we have:

- No explicit provisions on harassment in relation to disability, religion or belief or sexual orientation outside the employment area;
- No provisions for indirect disability discrimination;
- No provisions to outlaw age discrimination in relation to access to goods, facilities and services – although it is proposed that the forthcoming Equality Act will contain a power to enact regulations to do this.

The UK government have expressed concern about the inclusion of education within the scope of the directive. They have said that provisions for education are beyond the EU's competence although, in fact, the Race Directive does already cover education. They raised a number of specific issues concerning education, such as the provision of schools for people with special needs, however, each of these concerns has been specifically addressed within the terms of the draft directive. We understand that the government's position is actually more one of principle – i.e. they don't think the EU should encroach into areas where it doesn't have competence, even though the draft directive stipulates clearly that references to non-community competences are subject to subsidiarity.

The UK government also have a number of specific concerns including:

- There are currently a number of balances in relation to religion and belief and sexual orientation and the Government wishes to be able to preserve these – for example, exceptions for religious organisations from the prohibition against discrimination on grounds of sexual orientation;
- Age – although the draft directive permits objective justification of direct age discrimination in some fields, and does not preclude the fixing of a specific age for access to specific goods and services, the Government will want to clarify what is covered by this provision;
- Also on age, they will want to ensure that the draft Directive does not extend to children;
- The indirect discrimination model proposed is not the model that we currently have in the UK for disability;

- They consider that the draft Directive's provisions relating to anticipatory general access for disabled people are unclear and possibly go beyond current requirements;
- Housing provisions in the Disability Discrimination Act are complex and this is not reflected in the draft Directive.

UKREN Concerns

This proposed directive is to be welcome as it fills an important gap in legislation. Whilst the UK has developed or is currently developing legislation at national level which is similar to what is in the directive, it is still important to keep an eye on the European directive because, if adopted, it will have to be implemented in the UK. In addition, it will have to be implemented across the 27 Member States and will therefore protect UK citizens travelling or settling down in other EU countries.

However, there are a few concerns in relation to the UK position and the potential for a weaker watered down directive finally adopted after negotiations between the 27 governments. These include:

- This directive represents an important opportunity to recognise the concept of **multiple discrimination** and the need to put in place the appropriate mechanisms to tackle discrimination faced by people on more than one ground. However, multiple discrimination is not dealt with in the directive. To fail to put in an express provision would be a wasted opportunity.
- The UK government's position on excluding education completely from the scope of the directive could mean that pupils are not protected from discrimination on the grounds of religion or belief, sexual orientation, disability or age in their schooling. This would be a **significant gap in protection**.
- The UK's opposition to the inclusion of children within the scope of the directive is a matter of concern to UKREN. This is compounded by the fact that, given the age profile of black and minority ethnic communities in the UK, this exclusion is likely to **impact disproportionately on black and minority ethnic communities**.

What can UKREN members do?

It is important that as many organisations show that they are following closely the developments and discussions on the directive at European level. It will also be useful for UKREN members to lobby the European Parliament because it indicates further democratic interest. Experience shows that the Council and Commission do take into account the European Parliament's views and amendments. It is also important to indicate to the European Commission that this is an issue of importance to a wide range of civil society organisations across the EU. UKREN will be shortly sending its members template letters to facilitate their campaigning efforts towards the UK Government and MEPs.

Key people that should be written to.

UKREN members are encouraged to send the template letters attached to this briefing paper to the following individuals:

- UK Government

The UK Europe Minister – Jim Murphy (his private secretary is Nicolas Catsaras – Nicolas.catsaras@fco.gov.uk)

- European Commission

- o President Barroso
- o Commissioner Spidla
- o Baroness Cathy Ashton (Commissioner who has replaced Peter Mandelson)

Address:

European Commission
Rue de la Loi, 200
B – 1049 Brussels

Commissioner	Mandate	Head of Cabinet	Cabinet member responsible for equal opportunities
Jose Manuel Barroso Jose-manuel.barroso@ec.europa.eu	President of the Commission	Joao Vale de Almeida Joao.vale-de-almeida@ec.europa.eu	Ana Martinho Ana.martinho@ec.europa.eu
Vladimir Spidla V.Spidla@ec.europa.eu	Employment, Social Affairs and Equal Opp.	Kristin Schreiber kristin.schreiber@ec.europa.eu	Jan Jarab jan.jarab@ec.europa.eu

- European Parliament

Note; To contact MEPs, the general rule for emails is firstname.lastname@europarl.europa.eu

Some key UK MEPs who have been instrumental in supporting anti-discrimination legislation:

Michael Cashman	Michael.cashman@europarl.europa.eu
Andrew Duff	andrew.duff@europarl.europa.eu
Richard Howitt	richard.howitt@europarl.europa.eu
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In addition, it is important for UKREN Members to contact their local MEPs. A list of MEPs by region can be found here:

http://www.europarl.org.uk/uk_meps/MembersMain.htm