

ARTICLE 13

Proposals from the European Commission for combating discrimination

(published jointly by the [CRE](#) and UK Race & Europe Network (UKREN))



ARTICLE 13

"Without prejudice to the other provisions of this Treaty, and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission, and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation."

This leaflet provides information on three new proposals from the European Commission (the Commission), based on Article 13 of the Treaty of Amsterdam, to combat discrimination. If the proposals are adopted unanimously by the Council of Ministers (the decision-making body in the European Union, made up of Heads of State and relevant government ministers), we will have, for the first time, a comprehensive set of anti-discrimination measures that will apply across the European Union, and a minimum standard of legal protection against discrimination.

Time is of the essence. The package of proposals is presently being discussed by various working groups, made up of representatives - civil servants and permanent ambassadors to the European Union - from each of the 15 member states. And the European Parliament will begin debating the Commission's proposals at the end of May.

The aim of this leaflet is to help individuals and organisations in the UK to understand what is being proposed and why the proposals are significant.

The leaflet has been produced by the [Commission for Racial Equality](#) (CRE), in association with the UK Race and Europe Network (UKREN), a network of leading voluntary sector agencies set up to increase awareness of the importance and impact of European Union legislation and policy among UK based race equality and anti-discrimination organisations.

Every effort has been made to ensure that the leaflet is accurate at the date of publication, but the contents of the proposals are likely to continue to change following working group discussions.

BACKGROUND

Since its inception, the European Union has been concerned with discrimination issues. The Treaty of Rome, which established the European Community, provided for equal pay for men and women, and outlawed discrimination on grounds of nationality between citizens of member states.

A directive on equal treatment for men and women was passed in 1976, but it was not until 1997, when the Treaty of Amsterdam amended the Treaty of Rome, that anti-discrimination was included as a basic founding principle of the Union.

Article 13 of the Amsterdam Treaty provides the European Union with a legal basis for the first time to take action to combat discrimination on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The general principles of Article 13 are not themselves legally binding. To give effect to Article 13, the Commission produced a package comprising two draft directives proposing a minimum standard of legal protection against discrimination throughout the European Union, and an Action Programme to

ITSUVO Ltd
Company registration 3687040

53 Listerhills Science Park, Campus Road, Bradford, West Yorkshire. BD7 1HR
Tel. 01274 738 388 Fax. 01274 738 388 E-mail itsuvo@fhit.org www.fhit.org

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Directors: Philip Mayes (Chair), Lee Challenor-Chadwick, Mark Barry Tomlinson

support practical efforts in the member states to combat discrimination.

THE ARTICLE 13 PACKAGE

In November 1999, the European Commission published three proposals to combat discrimination under Article 13:

- A proposal for a directive establishing a general framework for equal treatment in employment and occupation (**the Employment Directive**)
- A proposal for a directive implementing the principle of equal treatment of people, irrespective of racial or ethnic origin (**the Race Directive**)
- A proposal for an Action Programme, to run from 2001-2006, to combat discrimination (**the Action Programme**)

The Employment Directive requires member states to make discrimination unlawful on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation in the areas of employment and training.

Like the Employment Directive, the Race Directive would require member states to make discrimination on grounds of racial or ethnic origin unlawful in employment and training; but it goes further and also requires member states to provide protection against discrimination in non-employment areas, such as education, access to social security and cultural benefits, and the provision of goods and services. For the first time, anyone working, or simply travelling, within the European Union would enjoy the same minimum level of protection from discrimination in all the member states. It should be noted that the directive does not prohibit discrimination on grounds of nationality, which is dealt with separately in the Treaty.

The proposed Action Programme recognises that there are many areas of discrimination which cannot be tackled by law. The Programme will allocate a budget of 100 million euros over six years to fund practical action by member states to promote racial equality in all the areas covered by the two directives. The key objectives of the Action Programme are to promote 'transnational cooperation' between organisations in the 15 member states in tackling discrimination throughout the European Union, and to encourage exchange of ideas and information. The Action Programme will be administered by the Commission, assisted by an advisory committee made up of representatives from all the member

states.

WHY IS THE ARTICLE 13 PACKAGE IMPORTANT?

While many member states have introduced laws prohibiting discrimination on grounds of racial or ethnic origin, racist violence and incitement of racial hatred, the scope and enforceability of these measures vary considerably. Similarly, there is no consistent level of protection in the European Union against discrimination on grounds of religion, disability, age or sexual orientation. (Sex discrimination is already covered by existing European Union legislation.)

The adoption of the Commission's package is therefore vital to guarantee for the first time a common legal framework of minimum protection against all forms of discrimination across all 15 member states of the European Union (including the UK). It will also serve as an unequivocal statement of the European Union's commitment to a society free of discrimination, and as an encouragement to other countries, especially those which have applied to join the European Union, to promote and adopt tolerant and democratic policies for equal treatment.

The directives, if passed, will require action by *each* member state. Although the Commission's proposals are concerned with laying down broad objectives to ensure that discrimination is prohibited and that victims are entitled to a minimum level of redress, member states will be free to introduce greater degrees of protection, in accordance with their individual histories and traditions; however, where higher levels of protection already exist, member states will be required to uphold these.

WHAT ARE THE KEY FEATURES OF THE ARTICLE 13 PACKAGE?

Grounds of discrimination

In relation to the Employment Directive only, member states will be required to introduce protection against discrimination on the grounds of religion or belief, disability, age, sexual orientation, and racial or ethnic origin. In the UK, new legislation will be required to cover equal treatment on grounds of age or sexual orientation; and in Great Britain, on grounds of religion or belief.

Third Country Nationals

In the Race Directive only, it is envisaged that protection would not be confined to nationals of member states alone, therefore providing protection to third country nationals against discrimination, but only

on grounds of racial or ethnic origin (not nationality).

Direct and Indirect Discrimination

Both the Race Directive and the Employment Directive set out clear definitions of direct and indirect discrimination. The definition of indirect discrimination is broader than the one in current UK anti-discrimination legislation.

Harassment

Both directives make it clear that harassment on grounds of ethnic or racial origin which creates a hostile environment should be regarded as a form of discrimination.

Scope of the Directives

Both directives would afford protection in the areas of employment, self-employment, working conditions, and membership of workers', employers' or professional organisations. The Race Directive alone would also ensure protection against discrimination in the areas of education, including access to grants and scholarships; social protection and social security; 'social advantages' such as concessionary charges for cultural events and subsidised meals; and provision of, and access to, goods and services.

Positive Action

Both directives recognise that equal treatment may not be sufficient to overcome the weight of accumulated disadvantage experienced by discriminated groups, and permit member states to take measures such as positive action to correct situations of inequality.

Genuine occupational qualification

Member states will also be permitted to treat people differently on racial or ethnic grounds where a particular occupational activity justifies this.

Defence of Rights

Both directives will enable organisations, including non-governmental organisations (NGOs), to bring proceedings on behalf of individual complainants, subject to their approval.

Burden of Proof

Recognising that it can be very difficult to obtain evidence in discrimination cases, where the necessary information is often in the respondent's hands, both directives require a shift in the burden of proof from the complainant to the respondent, 'once the complainant has clearly established facts from which a court or tribunal can presume discrimination'.

Victimisation

Both directives include protection against

victimisation, covering both complainants and those who assist in bringing a complaint.

Independent Bodies

In relation to the Race Directive only, there is an obligation on each member state to establish an independent body, along the lines of the CRE, to contribute to the promotion of the principle of equal treatment between people of different racial or ethnic origin.

Public Information

Both directives require member states to publicise widely measures introduced in relation to the areas covered by the directives, including information about available assistance.

Social dialogue

Both directives require member states to promote 'social dialogue' between both sides of industry in pursuit of equal treatment in the workplace.

Compliance

Both directives require member states to comply with the directives. Member states will have two years following adoption to introduce or amend their laws and procedures to meet the standards in the directives. Member states will also be expected to ensure that their laws and administrative provisions, as well as employment contracts and collective agreements, are non-discriminatory.

WHAT HAPPENS NEXT?

The two directives and the action programme were introduced as a package, to be considered as a whole. That is the basis on which the CRE and UKREN are working, even though both organisations are primarily concerned with race issues. This approach will allow organisations to deal with the possibility that one of the directives may not succeed, or may be passed at a later stage; to support the concerns of related interest groups.

The proposals are being discussed at present by the European Parliament as well as by representatives of the member states. There will be tough negotiations, and it is likely that some provisions will be diluted or deleted, in order to secure unanimous acceptance of one or both of the directives by the Council of Ministers.

The timetable for discussion and final ratification is decided by the country which holds the European Union presidency, presently Portugal (followed by France from July to December 2000). The pace of negotiations has accelerated sharply recently, partly in response to political developments in Austria, and

partly to send a strong message to countries that have applied to join the European Union about the fundamental values on which the European Union is founded: the commitment to human rights and fundamental freedoms.

The Race Directive could be considered by the Council of Ministers as early as June 2000.

POSSIBLE CHANGES IN UK LEGISLATION

If the directives come into effect, amendments to the Race Relations Act 1976 will be required:

1. to incorporate harassment and the new definition of indirect discrimination
2. to incorporate a shift in the burden of proof - the CRE has already recommended this in its proposals for reform of the Act
3. to provide protection in areas that are not covered by the present Act, such as: access to self-employment or occupation; and membership of, and involvement in, workers', employers' or professional organisations
4. to ensure that UK law covers the full ambit of 'social protection' and 'social advantages', where the Race Directive proposes protection
5. to ensure that UK legislation does not exclude areas covered by the directives
6. to permit organisations to bring proceedings on behalf of individual complainants
7. to tighten the exception for genuine occupational qualification
8. to abolish laws and regulations that are discriminatory.

THE ACTION PROGRAMME

The Action Programme will provide a welcome opportunity for many agencies involved in combating discrimination to develop and participate in projects to change public attitudes to diversity and to promote racial equality.

Detailed information on the Action Programme is not yet available; for example, it is not clear how funding will be administered, or how it can be accessed. However, it is safe to say that there will be opportunities for a variety of agencies to participate in the programme.

Significantly omitted from the Action Programme is the notion of an independent central body to oversee and monitor the work at an expert/technical level (the European Commission and the appointed Advisory Committee will monitor operational and financial management). The CRE and UKREN are seeking further clarification on this.

WHAT THE CRE AND UKREN ARE DOING

The CRE and UKREN have independently submitted detailed briefings to relevant MEPs and UK government departments on key aspects of the Article 13 package which we are anxious to see retained. We have also proposed important amendments to the package, concentrating largely on those that are likely to succeed. The CRE and UKREN are also working closely with interested NGOs and relevant national institutions in other member states.

WHAT YOU CAN DO

1. Raise awareness of the basic principles enshrined in the Article 13 package and encourage support for them.
2. Write to your MEP as soon as possible, urging him or her to support the package. Time is running out: the European Parliament will be debating the Race Directive at a full plenary session in late May 2000 and the Employment Directive and the Action Programme in late summer/early autumn 2000.
3. Write to your MP, as the Westminster parliament will debate the package in due course. In the meantime your MP can raise the matter with the appropriate Minister. In Wales, Scotland and Northern Ireland, you may also wish to write to your Welsh Assembly Member, your Member of the Scottish Parliament or, if appropriate, your Member of the Northern Ireland Assembly. It is likely that debates will also be held in the Assemblies and the Parliament, even though discrimination legislation has been reserved to the Westminster Parliament.
4. In your letters to MEPs and MPs it is always useful if you can provide examples from your own networks of why and how ratification of these proposals will help in your work against discrimination.
5. If you have time, do contact the CRE or UKREN to obtain details on the specific

amendments being proposed. You could assist in more in-depth lobbying on the Article 13 package, and organise specific events in your local area to raise public awareness. It may be possible for the CRE or UKREN to provide or suggest speakers.

Offices of the European Commission and Parliament:

UK Office of the European Commission

8 Storey's Gate
London SW1P 3AT
<http://www.cec.org.uk>
European documentation at: www.europe.org.uk/info

Northern Ireland Office of the European Commission

Windsor House
9-15 Bedford Street
Belfast BT2 7EG
www.europa.org.uk/info/ni

Wales Office of the European Commission.

4 Cathedral Road
Cardiff CF11 9SG
<http://www.cec.org.uk>

Scotland Office of the European Commission

9 Alva Street
Edinburgh EH2 4PH
<http://europa.eu.int>

European Commission (Brussels)

website
<http://europa.eu.int>

Directorate General of the European Commission responsible for Article 13:

DG-V (Employment and Social Affairs)
Rue de la Loi 200
B-1049 Brussels
Belgium
Tel: +32 2 299 1111

UK Office of the European Parliament

2 Queen Anne's Gateway
London SW1H 9AA
www.europarl.org.uk

OTHER USEFUL CONTACTS:

European Monitoring Centre on Racism and Xenophobia
UK Secretariat
Elliot House
10-12 Allington Street,
London SW1E 5EH
Tel: 020 7932 5272

UKREN Secretariat
C/o The Runnymede Trust
133 Aldersgate Street
London EC1A 4JA
Tel: 020 7600 9666

Commission for Racial Equality
Elliot House
10-12 Allington Street,
London SW1E 5EH
Tel: 020 7932 5367/5424
www.cre.gov.uk

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Elliot House,
10/12 Allington Street,
London SW1E 5EH,
Tel: 020 7828 7022