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COMMISSION STAFF WORKING DOCUMENT

accompanying the

Proposal for a

COUNCIL DIRECTIVE

on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

Summary of the Impact Assessment

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Document accompanying the proposal for a Council Directive on the principle of equal treatment Summary of the Impact Assessment

1. INTRODUCTION

The right to equal treatment is a general principle of Community law¹. Article 13 of the Treaty specifically allows action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation. This is also recognised by Article 21 of the EU Charter of Fundamental Rights.

The EU has taken effective action² on the basis of Article 13 EC, supplementing the already existing comprehensive body of gender equality law. Yet discrimination still exists in many areas, such as in the access to and supply of goods and services, housing, education, social services and health care.

The Commission committed itself early in its mandate to examining the case for extending the legal framework based on Article 13 EC, starting with the 2004 Green Paper 'Equality and non-discrimination in an Enlarged European Union', the 2005 Commission framework strategy on non-discrimination and equal opportunities for all, the European Year of Equal Opportunities for All 2007, and continuing through to its 2008 legislative work programme³.

2. PRESENT LEGAL FRAMEWORK

The present EC legal framework provides much more extensive protection from discrimination on grounds of sex, race or ethnic origin than from discrimination on grounds of religion or belief, disability, age or sexual orientation, as shown in the table below. These directives have now been transposed into national law, with the result that protection against discrimination has greatly increased under national law. In addition to legal protection, EU-level action has resulted in greater assistance to victims through the establishment of 'equality bodies': 20 Member States had no such body previously.

¹ Case 203/86 Spain v Council, (paragraph 25, and Case C-15/95 EARL de Kerlast, paragraph 35), Case C-144/04 Mangold (paragraph 75).

² Directives 2000/43/EC, 2000/78/EC and 2004/113/EC.

³ COM (2007) 640.

Existing legal framework at European level:

Grounds Field	Race	Religion	Disability	Age	Sexual orientation	Sex
Employment & vocational training	Yes + Equality body	Yes	Yes	Yes	Yes	Yes + Equality body
Education	Yes + Equality body	No	No	No	No	No
Goods and services	Yes + Equality body	No	No	No	No	Yes + Equality body
Social protection	Yes + Equality body	No	No	No	No	Yes + Equality body

Although a number of Member States go beyond the minimum standards set out, the level and extent of protection against discrimination on the various grounds is very varied. Five Member States⁴ have detailed legal protection against discrimination on grounds of religion or belief, disability, age or sexual orientation in all the areas shown above. Others have more general Constitutional provisions or legal protection in some areas, or on some grounds, but not all.

Differing levels of protection from discrimination influence individuals' decisions to make use of their rights of free movement, for instance to travel, work or study in another Member State. It also makes it more difficult for providers of goods and services to operate across borders.

3. EVIDENCE AND CONSULTATION

The "Mapping study" commissioned by the Commission in 2005 on existing national measures going beyond the EU requirements and their impact was received in 2006⁵. In June 2007 the Commission wrote to the Member States to draw their attention to the study, announcing the public consultation, and asking them to provide further information on measures taken or planned to go beyond the 2000 Directives.

In addition, the Commission commissioned a further study⁶ in 2007 from the European Evaluation Policy Consortium. The result, entitled "Study on discrimination on grounds of religion or belief, age, disability and sexual orientation outside of employment", looks at the nature and extent of discrimination outside employment in the EU, and the potential (direct and indirect) costs this may have for individuals and society.

The Report takes account of the reports from the European Network of Independent Experts in the non-discrimination field and the results of a special Eurobarometer survey carried out in

⁴ Ireland, Bulgaria, Luxembourg, Slovenia and Hungary.

⁵ http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm#stud

⁶ EPEC, Study on discrimination on grounds of religion or belief, age, disability and sexual orientation outside of employment, available at:
http://ec.europa.eu/employment_social/fundamental_rights/org/imass_en.htm

March 2008 on discrimination and inequality in Europe⁷ and a more narrowly focussed Eurobarometer flash survey in February 2008⁸.

Particular mention should be made of the public on-line consultation⁹, a survey of the business sector¹⁰, and a written consultation of, and meetings with, the social partners and European level NGOs active in the non-discrimination field¹¹. In parallel, the main EU-level NGO representing people with disabilities presented a petition calling for legislation signed by some 1.3 million people.

The results of the public consultation and that of the NGOs was a clear call for more legislation at EU level to increase the level of protection against discrimination although some argued for ground-specific directives in the areas of disability and of sex. The European Business Test Panel consultation also indicated that businesses believe it would be helpful to have the same level of protection from discrimination across the EU, although the social partners representing business were against new legislation in principle, which they saw as increasing red tape and costs. The trade unions were in favour of prohibiting discrimination outside the labour market on grounds of age, disability, religion or sexual orientation, and pointed out that discrimination outside the labour market affected their members' ability to work (e.g. the lack of accessible transport for disabled workers).

4. BASE LINE SCENARIO

The current EC directives would continue to apply. Some but not all Member States would have detailed national legal provisions protecting people who experience discrimination outside the labour market; others have much more general constitutional provisions.

Discrimination against individuals on grounds of age, disability, religion or belief and sexual orientation will continue to occur, creating distress for the individuals concerned and unnecessary costs and burdens for individuals, businesses and society as a whole.

The UN Convention on the rights of persons with disabilities, which the EC and 26 Member States have signed, will need to be implemented by those Member States and the EC.

5. PROBLEM DEFINITION

A substantial number of people in the European Union suffer from or are at risk of discrimination, as shown by the public consultation (35% of respondents claimed to have suffered discrimination in education, social protection or health care on grounds of age, disability, religion or sexual orientation; and 20% claimed they had experienced discrimination in access to goods, services or housing). According to a Eurobarometer survey¹² conducted in February 2008, between 8% and 16% of EU citizens said they or a member of their family or friends had experienced discrimination on grounds of their age,

⁷ Special Eurobarometer Survey 296 on discrimination in the EU, to be published in July 2008 on the following web pages: http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm and http://ec.europa.eu/public_opinion/archives/eb_special_en.htm

⁸ Flash Eurobarometer 232; the full results are available online at: http://ec.europa.eu/public_opinion/flash/fl_232_en.pdf

⁹ The full results of the consultation can be accessed at: http://ec.europa.eu/employment_social/fundamental_rights/news/news_en.htm#rpc

¹⁰ http://ec.europa.eu/yourvoice/ebtp/consultations/index_en.htm

¹¹ http://ec.europa.eu/employment_social/fundamental_rights/org/imass_en.htm#ar

¹² Flash Eurobarometer 232;

disability, religion, sexual orientation or a combination of factors. The EPEC study presents evidence of the scale of discrimination on the grounds of religion and belief, age, disability and sexual orientation in a number of areas (access to goods and services, health care, education, transport etc). The NGOs that responded to the consultation also gave specific examples of discrimination.

The legal protection that victims of discrimination can expect varies according to the grounds of discrimination concerned, whether it takes place in employment or in other areas of life, and where they live. This difference in protection from discrimination at EU and national level has practical consequences: it means that the incidences of discrimination identified in the Report are not addressed in a coherent manner and that victims of discrimination have unequal means of redress depending on their Member State. It also means that differences in protection afforded by the Member States may affect people's mobility as well as the cross-border marketing of goods and services.

6. EU POLICY RESPONSES

The objectives of any action would be to step up the protection of individuals from discrimination, achieve greater social inclusion and full participation by all groups in society and the economy, and provide a clear legal framework across the Member States that can stimulate cross-border trade and unfetter movement.

A number of ways of possibilities were looked at and after a preliminary screening of possible policy options, six were selected for further analysis:

- no new action at EU level
- self-regulation dealing with insurance and/or banking services
- a recommendation dealing specifically with the competences of the equality bodies and multiple discrimination
- a general recommendation
- single ground directive(s)
- a multi-ground directive

7. COMPARISON OF THE OPTIONS

Each option was analysed to assess the extent to which it could meet the objectives, and how it compares with the baseline scenario of no new action but "business as usual".

Economic and social impacts were examined for all options, as were environmental impacts where relevant. As far as possible, figures are provided to illustrate costs and benefits to individuals, providers of goods and services, and society as a whole, although it should be pointed out that reliable data on discrimination, and the related costs, can be difficult to find.

The option of not taking action would not tackle the problems which have been identified, would mean that the economic and societal costs of discrimination remain, and would increase the risk of widening the gap in legal protection.

The non-legislative options looked at could not guarantee any clear improvement in the level of protection against discrimination because it was impossible to foresee to what extent the

Member States would take up these options and implement them effectively. A dialogue with the insurance and banking industries was considered a possibly effective way of dealing with allegations of discrimination in that context.

Member State action alone, based on national constitutional and legal frameworks, was considered to run the risk that differences in the levels of protection would not only be left in place but could also widen.

The only sure way to make clear progress towards the objectives identified is through a legally binding measure at EU level. The experience with the existing Directives was positive and their transposition resulted in a much higher level of protection against discrimination in many Member States than was the situation previously, or would have been without the impetus of EU action.

The Report also explains that a directive which prohibited discrimination based on disability, as well as the other grounds, could be an effective and coherent way for the Member States to implement parts of the UN Convention on the rights of persons with disabilities. In particular, by defining what is expected in terms of "reasonable accommodation" a directive would provide greater legal certainty than the Convention. In addition a directive would provide clearer and more effective mechanisms of redress for victims of discrimination.

8. CONCLUSION

The Impact Assessment Report comes to the conclusion that a legally binding measure at Community level extending the scope of protection against discrimination on grounds of age, disability, sexual orientation and religion or belief would be the best suited instrument to achieve the defined objectives

9. THE NEW DIRECTIVE

- would build on the approach and concepts of the existing Article 13 EC directives and notably 2000/43/EC and 2000/78/EC, for example the definitions of discrimination and harassment, the obligation to provide reasonable accommodation, as well as the procedural rules;
- would only prohibit discrimination in the areas that fall within EC competence, so would not affect the organisation or content of education (e.g. special needs education), questions of marital status (e.g. same sex partnerships/marriages) or family law (e.g. adoption) or national rules on the secular nature of the State or its institutions;
- would lay down minimum prescriptions, so that Member States are free to adopt or maintain provisions affording greater protection and some Member States could, on their own initiative, step up the level of protection provided nationally;
- would not affect national constitutional provisions requiring equal treatment or prohibiting discrimination.

New legislation could be coupled with a dialogue to look at perceived discrimination in the insurance and banking sectors, in order to clarify rules for industry and consumers. The promotion of non-legal measures to combat discrimination, such as raising awareness of discrimination, training and exchange of good practice would continue.