The Commission has taken note of Resolution A5-0377/2001 adopted by the Parliament. However, it considers that the current priority is to ensure that the existing Community legislation is fully transposed into national law.

Article 13 of the Amsterdam Treaty enables the Community to combat discrimination, inter alia, on the grounds of disability. On the basis of this Treaty article, on 27 November 2000 the Council adopted Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (1). With regard to disability, this Directive recognises that the failure to provide reasonable accommodation in the workplace can constitute discrimination. In practical terms such accommodation includes measures to adapt the workplace for people with disabilities, for example adapting premises and equipment, patterns of working time in order to facilitate their access to employment. The Directive must be transposed by Member States by 2 December 2003, unless they decide to avail of an additional period of three years to transpose the disability and age provisions of the Directive. The Directive will provide people with disabilities with a very clear legal framework to protect them from unfair treatment and discrimination in employment.

The Commission’s focus will therefore remain on ensuring that the legal acquis in the field of fighting discrimination is transposed within the deadlines agreed by the Council. Employment is a major element in achieving the inclusion and integration of people with disabilities into society.

The Commission has, nevertheless, proposed to the Member States that, in the report to the Parliament and the Council to be produced by the Commission in 2006 on the implementation of the Equal Treatment Directive, the case for using Community legislation to combat disability discrimination in areas outside of employment should be examined. It has therefore requested Member States to take this issue into account in the reports on the application of the Directive which they must provide to the Commission by December 2003.

Furthermore, the Commission has started to prepare a Communication on the follow up to the European Year of People with Disabilities. In this respect, contributions from the various stakeholders to the European Year of People with Disabilities 2003 will play an important role.


(2004/C 11 E/278) WRITTEN QUESTION E-2150/03

by Jean Lambert (Verts/ALE) to the Commission

(27 June 2003)

Subject: UK implementation of employment legislation with regard to sexual orientation

The principle underpinning EU Directive 2000/78/EC (1) of 27 November 2000 establishing a general framework for equal treatment in employment and occupation is that there shall be no discrimination whatsoever on the grounds of sexual orientation unless, in very limited circumstances, a difference of treatment may be justified where a characteristic related to religion or belief, disability, age or sexual orientation constitutes a genuine and determining occupational requirement.
The UK Government is proposing to use the following text to implement the articles of the above Directive referring to the principle of equal treatment in employment of people with differing sexual orientations:

Exception for genuine occupational requirement (Regulation 7 (3))

(a) the employment is for purposes of an organised religion;

(b) the employer applies a requirement related to sexual orientation:
   (i) so as to comply with the doctrines of the religion, or
   (ii) because of the nature of the employment and the context in which it is carried out, so as to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers; and

(c) either:
   (i) the person to whom that requirement is applied does not meet it, or
   (ii) the employer is not satisfied, and in all the circumstances it is reasonable for him not to be satisfied, that that person meets it.

In the opinion of the Commission, is this a valid and correct interpretation of the term ‘genuine and determining occupational requirement’?

In the opinion of the Commission, does this not put the onus upon the employee to defend their sexual orientation in tribunal, rather than upon the employer to defend their decision not to employ on the basis of sexual orientation?


Answer given by Mrs Diamantopoulou on behalf of the Commission

(28 July 2003)

The Commission is following closely the draft proposals of the Member States for the transposition of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. This Directive must be transposed into national law by 2 December 2003. The Commission is paying particular attention to the way in which Member States propose to apply the provisions of Article 4 of the Directive concerning occupational requirements.

Article 4(1) allows differences of treatment where, ‘by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate’.

Whether or not a particular difference of treatment meets the conditions of Article 4(1) will depend on the nature of the specific post or job in question. In any event, Article 10 of the Directive makes clear that in civil and administrative procedures, when persons, who consider themselves wronged because the principle of equal treatment has not been applied to them, establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

The Commission cannot intervene during the period allowed for transposition. It will, however, take all necessary legal steps, after the date of entry into force of the Directive, to make sure that Member States have complied with their obligations under the Directive.