

Opinion of the European Economic and Social Committee on 'Extending anti-discrimination measures for areas outside employment and the case for a single comprehensive anti-discrimination directive'

(2009/C 77/24)

On 17 January 2008 the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an own-initiative opinion on

Extending anti-discrimination measures for areas outside employment and the case for a single comprehensive anti-discrimination directive.

The Section for Employment, Social Affairs and Citizenship which was responsible for preparing the Committee's work on the subject, adopted its opinion on 18 July 2008. The rapporteur was Mr Crook.

At its 447th plenary session, held on 17 and 18 September 2008 (meeting of 18 September 2008), the European Economic and Social Committee adopted the following opinion by 112 votes to 3 with 2 abstentions.

1. Conclusions and recommendations

1.1 The right to equality is both a universal right and a fundamental principle of Community law. It is proclaimed in the Charter of Fundamental Rights. Its source is in the European Convention for the Protection of Human Rights and Fundamental Freedoms, the other international instruments to which all Member States are signatories and in the constitutional traditions common to the Member States.

1.2 Article 13 TEC commits the EU to combating discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation in all areas within its competence. The Lisbon Treaty makes combating discrimination a specific aim of the EU.

1.3 Discrimination on the grounds within Article 13 may undermine the objectives of the European Community as set out in Article 2 TEC, including the promotion of a high level of employment and social protection, equality between men and women, the raising of the standard of living and quality of life, economic and social cohesion and solidarity among Member States.

1.4 Effective protection against discrimination outside the field of employment is important to ensure the development of democratic, tolerant societies which allow for the expression of diversity and the full participation and integration of all persons into economic and social life.

1.5 Action is required in response to the continuing inequality and discrimination in the EU. Such discrimination causes harm to individuals and to European societies generally. Current EU legislation is inadequate for this purpose. While all grounds referred to in Article 13 are protected against discrimination in employment and occupation, EU law also provides protection against discrimination on grounds of racial or ethnic origin in social protection, including social security and health-care, social advantages, education and access to goods and

services including housing and on grounds of sex in access to goods and services. For grounds of religion or belief, disability, age and sexual orientation there is no EU legal protection against discrimination outside the field of employment. EU anti-discrimination law fails to recognise and provide protection for multiple discrimination.

1.6 The actual picture of legal protection across the EU is complex. Many Member States have laws beyond EC requirements but with wide variation as to the content, nature and degree of protection offered, while others barely meet minimum requirements. Despite the proven benefit of specialised equality bodies to combat discrimination and promote equality, EU law requires such bodies only in relation to racial or ethnic origin and sex equality. Many Member States have established equality bodies with mandates including equality on all or some of the other Article 13 grounds.

1.7 The EESC considers that there can be no justification for the EU to maintain a system of legislation based on a clear Treaty commitment to combat discrimination on six specified grounds that maintains disparities in protection with lesser protection against discrimination and more limited guarantee of equal treatment on certain grounds. Without binding obligation to meet an EU common standard there is no real incentive for Member States to enact laws providing consistent rights for all grounds.

1.8 The EESC is concerned that achievement of the aims of the EU will be significantly hindered by this hierarchical scheme of protection against discrimination. It could impede freedom of movement of workers, and of goods; workers may be reluctant to move to countries with fewer enforceable rights, and providers of goods or services may be adversely affected by requirements to meet different equality standards in different countries. It works against social cohesion and will limit levels of participation in civil society.

1.9 The EESC considers that there is now a need for new EU legislation prohibiting discrimination outside the field of employment on grounds of religion or belief, disability, age and sexual orientation. Consistent with principles of subsidiarity and proportionality in Article 5 TEC, the achievement of a high common standard of legal protection across all Member States cannot be achieved other than by action at Community level.

1.10 Action by the EC should be in the form of a single directive covering all four grounds. To achieve coherence and consistency in EU and national law, the new directive should apply to all areas other than employment and occupation within the Race Equality Directive. The EESC believes that a single directive offers major advantages: it would provide maximum clarity for businesses and other providers of goods and services, encouraging early compliance; it would most effectively encompass protection against multiple discrimination; it supports greater social cohesion.

1.11 The EESC therefore welcomes the decision by the Commission announced on 2 July 2008 to propose a new directive implementing the principle of equal treatment irrespective of religion or belief, disability, age or sexual orientation.

1.12 It is essential that new legislation should ensure that the right to equality is not diluted or diminished and does not result in the reduction of protection against discrimination under existing EU or national laws. A new directive should offer a framework for compliance with the equality obligations under the UN Convention on the Rights of Persons with Disabilities including provision of access and reasonable accommodation so disabled people can participate fully in society. It should enable adoption of measures permitting positive action and preferential treatment on grounds of age or disability where this is consistent with the principle of equal treatment. It must not allow a general justification for direct discrimination, but should permit discrimination where it serves to promote equality and respect for human dignity. It should require the establishment or enlargement of specialised bodies to cover equality on the four outstanding grounds.

2. Equality is a fundamental principle of EU law

2.1 The right to equality is both a universal right and a fundamental principle of Community law. It derives from international instruments of which all Member States are signatories and from the constitutional traditions of Member States and is proclaimed in Articles 21 and 22 of the Charter of Fundamental Rights.

2.2 The right to non-discrimination between women and men in the workplace, agreed more than 30 years ago, has been

a key feature in the development of the Union. Equal treatment of women and men remains essential for a fair internal market, freedom of movement and the building of a strong and cohesive European society.

2.3 During the 1990s there was an increasing awareness of the need for measures to tackle discrimination on grounds other than sex and in areas other than employment. The incorporation of Article 13 in the Amsterdam Treaty was a major development conferring new powers and an expanded commitment to secure equal treatment. Article 13 commits the EU to combating discrimination not only on grounds of sex but also on grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation.

2.4 Recognising the pressing need for action in respect of discrimination on these other grounds, in 2000 the Council approved two directives: the Racial Equality Directive (2000/43/EC) implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and the Employment Framework Directive (2000/78/EC) establishing a general framework for equal treatment in employment and occupation. In 2004 the Council approved the Gender Goods and Services Directive (2004/113/EC) implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

2.5 Each of the three directives refers in its preamble to Article 6 of the Treaty on the European Union and confirms that the right to equality is a fundamental right based on the rights enshrined in international instruments of which all Member States are signatories and the constitutional traditions common to all Member States.

2.6 This was endorsed by the European Court of Justice, in *Mangold-v-Helm* ⁽¹⁾ in its preliminary ruling on the interpretation of Council Directive 2000/78/EC in relation to age discrimination:

— ‘74 ... in accordance with Article 1[Directive 2000/78], the sole purpose of the directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation, the source of the actual principle underlying the prohibition of those forms of discrimination being found, as is clear from the third and fourth recitals in the preamble to the directive, in various international instruments and in the constitutional traditions common to the Member States.

— 75 The principle of non-discrimination on grounds of age must thus be regarded as a general principle of Community law’.

There is no reason to suggest that the Court would not equally confirm this as a principle in respect of the other grounds within Directive 2000/78.

⁽¹⁾ [2005] EUECJ C-144/04 of 22 November 2005.

2.7 In *Coleman-v-Attridge Law*, a case in which the European Court of Justice had been asked for a preliminary ruling on the scope of Council Directive 2000/78 the Advocate General in his Opinion stated ⁽²⁾:

— ‘8 Article 13 EC is an expression of the commitment of the Community legal order to the principle of equal treatment and non-discrimination. ... The Court’s case law is clear as regards the role of equal treatment and non-discrimination in the Community legal order. Equality is not merely a political ideal and aspiration but one of the fundamental principles of Community law’.

2.8 Both the Race Equality Directive ⁽³⁾ and Employment Framework Directive ⁽⁴⁾ affirm the Council’s view that discrimination based on the grounds referred to in Article 13 may undermine the achievement of aims of the EC as stated in Article 2 TEC, including the promotion of a high level of employment and of social protection, equality between men and women, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.

2.9 The Lisbon Treaty gives new importance to combating discrimination on the grounds within Article 13 ⁽⁵⁾, making this a specific aim of the EU in defining and implementing its policies and activities ⁽⁶⁾.

3. The importance of effective protection against discrimination outside the field of employment

3.1 The Employment Framework Directive establishes a general framework for equal treatment on grounds of religion or belief, disability, age or sexual orientation in employment and occupation; the Race Equality Directive implements the principle of equal treatment between persons irrespective of racial or ethnic origin in relation not only to employment and occupation but also to social protection including social security and healthcare, social advantages, education and access to and supply of goods and services which are available to the public, including housing.

3.2 The Gender Goods and Services Directive supplements the protection against sex discrimination in employment and occupation in directives adopted under Article 141 TEC ⁽⁷⁾ and implements the principle of equal treatment between men and women in the access to and supply of goods and services.

3.3 In the Race Equality Directive ⁽⁸⁾ and the Gender Goods and Services Directive ⁽⁹⁾ the Council has recognised that to

⁽²⁾ [2008] EUECJ C-303/06 of 31 January 2008.

⁽³⁾ Recital 9.

⁽⁴⁾ Recital 11.

⁽⁵⁾ Treaty on the Functioning of the European Union (consolidated version as amended by the Treaty of Lisbon), Article 19.

⁽⁶⁾ Treaty on the Functioning of the European Union (consolidated version as amended by the Treaty of Lisbon), Article 10.

⁽⁷⁾ e.g. Directives 76/207/EEC and 2002/73/EC.

⁽⁸⁾ Recital 12.

⁽⁹⁾ Recital 9.

ensure full participation of all persons, protection against discrimination should extend beyond employment.

3.4 The EESC has recognised ⁽¹⁰⁾ the importance of eAccessibility in combating discrimination and enabling full participation in society of all groups and recommended legislation under Article 13 to achieve a common high standard of measures for eAccessibility.

3.5 The EESC believes that the elimination of discrimination both within and outside of the labour market is essential for the achievement of the objectives of the Lisbon Strategy. Conversely, discrimination in social protection, healthcare, education or housing or in the access to essential public and private sector services will hinder progress towards sustainable growth and more and better jobs.

4. Current position of equality and non-discrimination in the EU

4.1 The European Year of Equal Opportunities for All in 2007 provided a valuable opportunity for EU institutions, national governments and civil society to reflect on the importance of equality and the elimination of discrimination for the realisation of a more socially inclusive society. It exposed the fact clearly noted by the Council that inequality and discrimination on grounds of sex, racial or ethnic origin, age, disability, religion or belief or sexual orientation ‘continue to exist in the EU, at a substantial cost to the individual women and men concerned and European societies as a whole’ ⁽¹¹⁾.

4.2 The European Year also exposed the disparity in protection against discrimination within the existing EU legislation, described in 3.1 and 3.2 above. The EESC is concerned that denial of fair treatment, including institutional patterns of discrimination, on any of the Article 13 grounds in areas such as healthcare, education, access to goods and services and housing may contribute to persistent inequality in access to employment and may profoundly affect the quality of people’s lives and their ability to participate fully in society.

5. Multiple discrimination

5.1 As the Council noted ‘The European Year has highlighted the aggravated difficulties stemming from multiple discrimination’ ⁽¹²⁾.

⁽¹⁰⁾ EESC opinion of 30.5.2007 on ‘Future eAccessibility Legislation’, rapporteur: Mr Hernández Bataller (OJ C 175 of 27.7.2007).

⁽¹¹⁾ Council Resolution of 5 December 2007 on the follow-up of the European Year of Equal Opportunities for All (2007), page 1.

⁽¹²⁾ Idem, page 3.

5.2 'Multiple discrimination' recognises the complex identities of every natural person. It occurs when a person experiences discrimination or harassment on more than one of the grounds that form part of their identity.

5.3 A research report by the Danish Institute for Human Rights 'Tackling Multiple Discrimination — Practices, policies and laws' was published in December 2007⁽¹³⁾. From their academic and legal research and consultation with stakeholders the authors conclude: *'If the reality of discrimination and inequality is to be tackled, workable solutions to combat the existence of Multiple Discrimination have to be found'*⁽¹⁴⁾.

5.4 EU anti-discrimination legislation and national laws transposing EU legislation should be capable of providing protection and rights to redress against all forms of multiple discrimination. In order to do this, there needs to be parity of protection for all of the grounds. Currently this is not the case under EU law outside the field of employment.

6. Legal protection against discrimination across the EU

6.1 Although not all Member States have yet adequately transposed the Race Equality Directive or the Employment Framework Directive⁽¹⁵⁾, many Member States have laws prohibiting discrimination that go beyond the requirements of the current Article 13 directives.

6.2 A mapping study⁽¹⁶⁾ published in December 2006 looked at national laws prohibiting discrimination outside the field of employment and occupation on grounds of sex, sexual orientation, disability, religion and belief and age. As the author states:

'Perhaps the most striking features of the European countries surveyed are (1) the fact that most countries go well beyond current EC requirements and provide legal protection of some form in respect of much of the discrimination forming the subject matter of this report, and (2) the variety between the countries as to the degree, as well as the nature, of such protection'⁽¹⁷⁾.

6.3 She found wide disparities in terms of which grounds were protected in relation to which areas of activity and

⁽¹³⁾ Office for Official Publications of the European Communities, 2007, ISBN 978-92-79-06953-6.

⁽¹⁴⁾ *Idem*, page 7.

⁽¹⁵⁾ See M. Bell, I. Chopin and F. Palmer, 'Developing Anti-Discrimination Law in Europe — The 25 EU Member States Compared', July 2007, Office for the Official Publication of the European Communities, 2007, ISBN 978-92-79-06572-9.

⁽¹⁶⁾ See A. McColgan, J. Niessen and F. Palmer, 'Comparative Analyses on National Measures to Combat Discrimination Outside Employment and Occupation' VT/2005/062, Migration Policy Group and Human European Consultancy, December 2006.

⁽¹⁷⁾ *Idem*, page 3.

whether protections were set out in national constitutions, generic anti-discrimination laws, national or regional laws or special laws covering single areas, such as housing or education. For each of the grounds or areas covered there were different variations between countries in the nature, form and extent of exceptions to non-discrimination rights⁽¹⁸⁾. The comparison of Member States by Bell, Chopin and Palmer⁽¹⁹⁾ reinforces these findings of variation and inconsistency.

6.4 As the Council recognised in its Resolution on the follow-up of the European Year, specialised equality bodies are, or could be, key driving forces in combating discrimination and promoting equality in every Member State; in particular they have a critical awareness raising role. The Race Equality Directive, the Gender Goods and Services Directive and the Recast Gender Directive⁽²⁰⁾ require Member States to establish specialised equality bodies to support equality rights on grounds of racial or ethnic origin and sex, but there is no requirement to establish equality bodies for religion or belief, disability, sexual orientation or age. The specialised bodies established in Member States vary widely in terms of the grounds within their competence: some are limited to racial and ethnic origin and others include all Article 13 grounds plus additional grounds⁽²¹⁾. The Equinet network⁽²²⁾ operates at European level, made up of autonomous or governmental authorities responsible within the Member States for applying anti-discrimination legislation.

6.5 The EU Agency for Fundamental Rights, after reviewing legal protection against sexual orientation discrimination across the EU⁽²³⁾, recommended EU legislation to ensure equal rights to equal treatment for all grounds within Article 13.

6.6 The EESC believes that there is no valid justification for a system of EU anti-discrimination legislation based on a Treaty commitment to combat discrimination on the grounds of sex, racial and ethnic origin, religion or belief, disability, age and sexual orientation that permits and perpetuates a lower degree of protection and more limited guarantees of equal treatment on certain of these grounds.

⁽¹⁸⁾ *Op.cit.* Comparative Tables pages 36-45, and see M. Bell, I. Chopin and F. Palmer (see footnote 15).

⁽¹⁹⁾ *Op. cit.* Comparative Tables pages 83-113.

⁽²⁰⁾ 2006/54/EC.

⁽²¹⁾ See M. Bell, I. Chopin and F. Palmer, 'Developing Anti-Discrimination Law in Europe — The 25 EU Member States Compared', July 2007, Office for the Official Publication of the European Communities, 2007, ISBN 978-92-79-06572-9, pages 108-113.

⁽²²⁾ See www.equineteurope.org.

⁽²³⁾ Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States: Part I — Legal Analysis, European Union Agency for Fundamental Rights, 2008 (author: Olivier De Schutter).

6.7 Without consistent legislation covering all grounds at EU level there is no real incentive for Member States to enact consistent legislation, and there is no legal basis for intervention by the Commission or the Council where there are inadequate or uneven levels of protection against discrimination, as is currently the case.

6.8 The EESC accepts that the enactment of legislation prohibiting discrimination does not of itself rid a country of the scourge of discrimination, but it could at least be said to reflect the state's recognition of the harm discrimination causes to individuals and society and its commitment to use legal means to bring it to an end. The absence of anti-discrimination legislation conveys quite different messages, indicating a (mistaken) belief that such discrimination does not exist or that such discrimination is not a problem of sufficient gravity to warrant formal preventative measures, or, in political terms, indicating that the objections of potential discriminators to any form of regulation overshadow concerns to improve the quality of life for all citizens and to achieve greater social cohesion.

6.8.1 There is good evidence that informal non-legislative measures intended to promote good practice have failed to eradicate entrenched patterns of discrimination.

6.8.2 Anti-discrimination legislation on its own, however, without a comprehensive programme of awareness-raising and education, as well as effective enforcement, will not achieve its aims.

7. A hierarchy of rights to equality operates against the achievement of the aims of the EC

7.1 The EESC believes allowing the present inconsistent hierarchical system of EC protections against discrimination operates against the achievement of the aims of the EC:

- It impedes the freedom of movement of workers, who have fewer enforceable rights to non-discrimination in some States than in others. For example, 69.2 % of individual respondents to the Commission's on-line survey, Discrimination — Does it Matter, indicated that the level of legal protection against discrimination outside of work on grounds of age, disability, religion and sexual orientation would influence their decision to move to a different Member State ⁽²⁴⁾.
- It may impede freedom of movement of goods, as suppliers must meet different equality standards for goods and services in different Member States. For example, 26.3 % of companies participating in the European Business Test Panel on Anti-Discrimination ⁽²⁵⁾ indicated that the level of legal protection offered by another Member State against discrimi-

nation on grounds of age, disability, religion and sexual orientation, in terms of access to goods and services, as well as housing, would affect their ability to do business there.

- It affects the quality of life, since, without a legal ban, discrimination and harassment are likely to remain unchecked, and barriers to full and equal enjoyment of economic and social rights will remain in place.
- It militates against social cohesion, since it fails to give full and equal recognition to all groups within the society.
- It limits the degree of participation in civil society by major groups and communities.

7.2 With its stated concerns regarding continuing discrimination, the Council, in its Resolution on the follow-up of the European Year:

- noted that '*discrimination can lead to poverty and social exclusion by preventing participation and access to resources*'; and
- noted that '*the European Parliament and civil society have called for extending legal protection against discrimination to areas beyond employment and occupation*'; and
- invited Member States and the European Commission to '*strengthen efforts to prevent and combat discrimination ... inside and outside the labour market*' and to '*secure and strengthen the effectiveness of specialised equality bodies*'.

8. A new directive is required

8.1 To respond to the Council's concerns and to ensure a consistent minimum standard of protection across the EU, there is a need for new legislation implementing the principle of equal treatment irrespective of disability, religion or belief, sexual orientation or age outside the field of employment.

8.2 The nature and scale of the matters affected by the current levels of discrimination and their impact on the achievement of the objectives of the EU and the need for a common high level of protection in all Member States cannot be sufficiently met or achieved by the Member States and therefore requires action at Community level, consistent with the principles of subsidiary and proportionality as set out in Article 5 TEC.

8.3 The EESC recommends that this should be in the form of a single directive prohibiting discrimination on grounds of disability, religion or belief, sexual orientation or age in relation to all areas outside the field of employment within the scope of the Race Directive and requiring the establishment or enlargement of an equality body with full competence to work across all matters within the scope of the legislation. This was a main recommendation of EU Agency for Fundamental Rights ⁽²⁶⁾.

⁽²⁴⁾ Consultation on-line July-October 2007.

⁽²⁵⁾ 12.7.2007-31.8.2007, question 4a.

⁽²⁶⁾ Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States: Part I — Legal Analysis, European Union Agency for Fundamental Rights, 2008 (author: Olivier De Schutter).

8.3.1 While recognising that protections under the existing anti-discrimination directives could be strengthened, including a clearer recognition of institutional discrimination, the current priority of the EESC is to secure protection for the above grounds at the same standard as now exists for racial and ethnic origin.

8.4 The EESC accepts that the initial reaction of many organisations, especially small business, to any proposal for new regulation will be genuine concern about the costs of compliance. For businesses, multiple layers of rules make compliance 'extremely difficult'.⁽²⁷⁾ The EESC is not persuaded that enactment of a single directive establishing a common EU standard of protection against discrimination outside the field of employment would result in significant new costs; in many cases the costs of bringing practice in line with the law would be more than outweighed by the resulting wider customer base that would result from the eradication of discrimination. It was the view of 89.8 % of the European Business Test Panel on Anti-discrimination that there should be legislation to 'guarantee the same level of protection against discrimination all over Europe'⁽²⁸⁾.

8.5 The EESC is aware of arguments supporting separate directives for each of the relevant grounds, however the EESC considers that a single directive covering all four grounds is strongly to be preferred:

- to provide maximum clarity and transparency for individuals and providers of goods and services; we are aware that private business rarely welcomes new forms of regulation, and to set separate EC non-discrimination standards for each ground separately, at different times, without any certainty of consistent requirements will make compliance far more difficult, especially for small businesses with limited resources;
- to enable effective response to and remedy for multiple discrimination; if there is consistent, equivalent protection for all grounds then individuals who face discrimination or harassment based on more than one characteristic of their identity will be able to seek appropriate and relevant redress;
- to make the law understandable and accessible; in its Resolution on the follow-up of the European Year, the Council referred to the low level of public awareness of anti-discrimination legislation⁽²⁹⁾. The task of improving awareness will be many times more difficult if there are complex variations of rights to equal treatment based on different grounds in different fields in EU or national legislation;
- to avoid any form of hierarchy within a European system of rights to equal treatment; social cohesion depends on members of society feeling a shared commitment and sense of belonging; this will be far more difficult to achieve if

different groups can read from the content of legislation that the rights to equal treatment of some groups carry greater weight than the rights of others.

8.6 The Race Equality Directive has established the key areas outside the field of employment within the competence of the EU in which, to achieve the aims of the EU it is relevant and necessary to prevent discrimination on grounds of disability, religion or belief, sexual orientation and age; the EESC strongly recommends that these same areas should be fully within the scope of the new directive.

8.7 The EESC accepts that, in accordance with the principle of subsidiarity, in respect of certain areas of activity, for example housing, education or certain other public services, competence for organisation and delivery of provision and/or for other aspects of regulation is primarily within the competence of Member States, at national or regional level. The EESC believes that, pursuant to Article 5 TEC, to ensure the required comprehensive high level common standard of equal treatment in respect of all such areas of activity cannot be achieved other than by legislation at European level.

8.8 The EESC therefore welcomes the decision of the Commission announced on 2 July 2008 to propose a new directive that would implement the principle of equal treatment irrespective of religion or belief, disability, age or sexual orientation in the areas outside the field of employment covered by the Race Equality Directive. As earlier drafts of this opinion had been submitted to the Commission, it is hoped that the arguments and preliminary conclusions of the EESC Study Group recommending a directive in the form now proposed may have assisted the Commission in its decision-making. We further hope that this opinion in its final form may encourage Member States to recognise the value and importance of EU legislation for this purpose and assist them to contribute to its positive development and approval.

8.9 The EESC endorses the Commission's decision to propose a directive which to a maximum degree is consistent with other Article 13 directives, with the same definitions of direct and indirect discrimination, harassment and positive action, application to all persons present in a Member State including third country nationals and the same obligations on Member States to ensure rights to redress, effective, proportionate and dissuasive sanctions, protection against victimisation and incorporation of the shift of the burden of proof. Equally important are consistent obligations to raise awareness and to encourage dialogue with social partners and NGOs.

8.10 The EESC recommends that the Council and other EU institutions in scrutinising the proposed directive should consider the following matters to ensure that in its final form it achieves the purposes we have described:

⁽²⁷⁾ The Confederation of European Business, response to European Commission consultation 'Discrimination, does it matter?' 12 October 2007.

⁽²⁸⁾ 12.7.2007-31.8.2007, question 4b.

⁽²⁹⁾ Consultation on-line July-October 2007, page 1.

8.10.1 *Non-regression*: The development of a new directive must not be used to reduce protection against discrimination in any EU legislation and Member States should not be able to use implementation of the directive as grounds for reduction in their existing level of protection against discrimination.

8.10.2 *Equality rights and reasonable accommodation for disabled people*: Outside the field of employment disabled people meet the same or greater barriers to their full participation. The new directive should provide a framework for all Member States to meet their equality and non-discrimination obligations under the UN Convention on the Rights of Persons with Disabilities.

8.10.2.1 The new directive should require all persons engaged in the provision of social protection including social security and healthcare, social advantages, education and goods and services including housing:

- a) to anticipate accessibility needs, including access to physical environment, transportation and information, related to disability; and
- b) to make anticipatory reasonable accommodation, removing barriers to maximum participation and use by disabled people.

8.10.2.2 The new directive should define as a form of discrimination failure to ensure reasonable accessibility or to provide reasonable accommodation for a particular disabled person, unless the measures would impose a disproportionate burden on the provider.

8.10.3 *Multiple discrimination*: the directive should confirm that the principle of equal treatment includes protection in relation to multiple discrimination so that this is given effect in EU and national law.

8.10.4 *Positive action*: Inequality is well entrenched in areas of activity other than employment and occupation, for example in education, healthcare, housing and access to services such as hotels restaurants, financial services, and travel arrangements. Therefore, with a view to ensuring full equality in practice, the new directive should explicitly permit Member States to maintain or adopt measures to prevent or compensate for disadvantages linked to religion or belief, disability, age or sexual orientation.

8.10.5 *Preferential treatment on grounds of disability or age*: The new directive should acknowledge practices within Member

States of providing preferential treatment to persons based on their age or their status as a disabled person, many of which contribute to greater social inclusion of older or younger people and disabled people. The new directive should not discourage public or private sector organisations from offering such benefits where they are intended to overcome or ameliorate real, financial or attitudinal barriers to equal participation. It should enable Member States to permit such measures provided they have a legitimate aim that is consistent with the principle of equal treatment and the means of meeting that aim are proportionate.

8.10.6 Any exceptions must be narrowly defined. The EESC accepts that there will be circumstances in which differential treatment based on a protected ground may be appropriate and necessary but rejects the introduction of a general justification for direct discrimination. Exceptions to the prohibition of discrimination should not be so wide that they remove the impact of the protection the directive is intended to provide; on the other hand the directive should not be made unduly complicated with a long list of specific exceptions for particular circumstances or grounds. Differential treatment should be permitted within anti-discrimination legislation only where it serves to promote and enhance equality and human dignity and does not undermine the impact of the anti-discrimination provisions.

8.10.7 *Enforcement of rights*: The new directive, recognising the importance and value of organised civil society, should ensure that associations or organisations which have a legitimate interest in ensuring compliance may engage in judicial or administrative procedures either on behalf of or in support of persons affected by discrimination.

8.10.8 *Specialised bodies*: there is little doubt that awareness and enforcement of national laws and the promotion of equal treatment benefit greatly by the existence of an independent specialised body resourced and competent to carry out the functions specified in the Race Equality Directive ⁽³⁰⁾ or the Gender Goods and Services Directive ⁽³¹⁾. The new directive should require the establishment of a body or bodies (or the extension of an existing body) for religion or belief, disability, age or sexual orientation. Furthermore, these organisations should be made responsible for regularly evaluating the results of anti-discrimination policies.

Brussels, 18 September 2008.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS

⁽³⁰⁾ Article 13.

⁽³¹⁾ Article 12.