

11.7.6. School and university courses must be made more comparable and brought closer together as a prerequisite for scientific integration in Europe and improved mobility of people working in science.

11.7.7. There should be assessment of the pros and cons of setting up a virtual European university — as another instru-

ment and symbol of European scientific integration — in which the centres of excellence in particular could participate.

11.7.8. The principal Commission officials dealing with research and development matters should in future also increasingly be successful and highly qualified scientists, and European research organisations should contribute their experience to these appointments.

Brussels, 24 May 2000.

The President
of the Economic and Social Committee
Beatrice RANGONI MACHIAVELLI

Opinion of the Economic and Social Committee on:

- the ‘**Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain Community measures to combat discrimination**’,
- the ‘**Proposal for a Council Directive establishing a general framework for equal treatment in employment and occupation**’,
- the ‘**Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin**’, and
- the ‘**Proposal for a Council Decision establishing a Community Action Programme to combat discrimination 2001-2006**’

(2000/C 204/17)

On 19 January and 4 February 2000 the Council decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communication and proposals.

The Section for Employment, Social Affairs, and Citizenship, which was responsible for preparing the Committee’s work on the subject, adopted its opinion on 5 May 2000. The rapporteur was Mr Sharma.

At its 373rd plenary session of 24 and 25 May 2000 (meeting of 25 May 2000), the Economic and Social Committee adopted the following opinion by 108 votes in favour and 6 votes against, with 6 abstentions.

1. Legal basis, content and scope of the proposal

1.1. The Commission in its communication on certain Community measures to combat discrimination is proposing two new equal treatment Directives together with a Community Action Programme to support these initiatives.

1.2. The legal basis for this initiative derives from Article 13 of the Treaty of Amsterdam which for the first time provides

the Community with specific powers to take action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

1.3. The application of the principles of subsidiarity and proportionality as set out in the Protocol on the Treaty, require that action at Community level ‘produce clear benefits by reason of its scale or effect compared to action at the level of the Member States’.

1.4. The Commission has researched the existing situation as regards anti discrimination measures in individual Member States. It concludes that the scope, contents and enforceability of these measures vary significantly and that this fact warrants action at a Community level to reinforce the fundamental values upon which the Union is founded, these being liberty, democracy, the respect for human rights and fundamental freedoms and the rule of law. It will also help strengthen the economic and social cohesion by ensuring that people in all member States enjoy a minimum level of protection against discrimination, with appropriate rights of redress.

1.5. The Commission is proposing two separate Directives:

- A Directive aimed at implementing the principle of equal treatment between people of different racial or ethnic origins in all areas of every day life, e.g. employment, education and access to goods and services. (Directive against discrimination on racial or ethnic origin grounds).
- A framework Directive aimed at implementing the principle of equal treatment between persons irrespective of race or ethnic origin, religion or belief, disability, age or sexual orientation. This Directive is confined to the area of employment and occupation. (Employment Directive) Discrimination on the ground of sex is excluded as existing Directives 76/207/EEC and 86/613/EEC, both of which relate to employment and occupation, already cover this.

1.6. The Community Action Programme proposes three types of action to support the initiative for which limited funds will be available:

- An analysis of factors related to discrimination and an evaluation of anti-discrimination legislation and practice, with a view to assessing its effectiveness and impact.
- The promotion of trans-national co-operation and networking between organisations, including social partners, active in the fight against discrimination.
- Awareness raising of the European dimension of the fight against racism through communications, publications, campaigns and events.

1.7. The objective of this package of proposals is primarily to ensure a common set of minimum standards across the Union and will constitute an unequivocal statement of public policy, leaving no doubts as to the stance which European society has adopted towards discriminatory practices.

2. General comments

2.1. The Committee welcomes the proposal for two new equal treatment Directives as important legal measures to combat the various forms of discrimination across the European Union. The Committee welcomes the wording 'equal treatment' rather than anti discrimination measures, as this wording conveys a positive rather than defensive message and also follows the 1976 Directive on Equal Treatment and 1977 Directive on Burden of Proof⁽¹⁾.

2.2. The Committee has played an important role in the development of this package of Commission proposals to deal with discrimination on the grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation. Some examples of ESC's previous opinions on racism and xenophobia, disability, social exclusion and age are set out in the footnote below⁽²⁾.

2.3. The Committee recognises and supports the pragmatic approach taken by the Commission in its decision to propose a comprehensive Directive prohibiting racial discrimination in many areas of daily life and a separate Directive prohibiting discrimination on grounds of religion, disability, age or sexual orientation limited to the field of employment. The Committee recognises the political momentum that exists and is supportive of specific legislation to protect racial and ethnic minorities within the Union. However the Committee requests that the Commission consider enacting future legislation to protect all

⁽¹⁾ Directive 76/207/EEC of 9.2.1976 — Equal Treatment directive, Directive 97/80/EC of 15.12.1997 — Burden of Proof.

⁽²⁾ 1992 opinion on 'Citizens Europe' which called for Treaty provision banning discrimination on the grounds of sex, colour, race, opinion and beliefs (OJ C 313, 30.11.1992); The Communication 'An action plan against racism' (OJ C 407, 28.12.1998); The proposal for a Regulation establishing a European monitoring centre for racism and xenophobia (OJ C 158, 26.5.1997); The Communication on racism, xenophobia and anti-semitism and the proposal for a Council Decision designating 1997 as European Year against Racism (OJ C 204, 15.7.1996); The Communication and Draft Resolution on equality of opportunity for people with disabilities (OJ C 66, 3.3.1997); The Draft Council Recommendation on parking card for disabled persons (OJ C 174, 17.6.1996); The Communication: A Concerted Strategy for Modernising Social Protection (OJ C 117, 26.4.2000, p. 3); The Communication concerning the social action programme 1998-2000, Rapporteurs Mr Meriano, Mrs Engelen-Kefer (OJ C 407, 28.12.1998); The Communication on modernising and improving social protection in the European Union (OJ C 73, 9.3.1998); The proposal for a Council Decision on Community Support for Actions in favour of Older People (OJ C 236, 11.9.1995); Youth Unemployment (OJ C 18, 22.1.1996); Implementation of Employment Guidelines 1999 (OJ C 209, 22.7.1999); Proposals for Guidelines for member states Employment policies 2000 (OJ C 368, 20.12.1999).

groups vulnerable to discrimination on the grounds of religion or belief, disability, sexual orientation or age, modelled on the principles proposed in the Directive against discrimination on racial or ethnic grounds. Furthermore the Committee requests that the Community Directive on equal treatment between men and women be reviewed in the light of these Directives.

2.4. The Directives have been drafted to stand alone. If one is adopted before the other, then the remaining proposal can be amended accordingly. Should both Directives be adopted simultaneously serious problems of overlap would occur and amendment of the texts would be necessary.

2.5. In the light of the resolutions of the Council of Ministers on 20 December 1996 and 17 June 1999⁽¹⁾ the Committee believes that urgent consideration should be given to extending the legislation to protect disabled people in areas other than employment and particularly in the areas of access to services, education and transport. It is pointed out that there are an estimated 36 million disabled persons in the European Union (10 % of the population).

2.6. In the opinion of the Committee it is essential that all residents of Member States can enjoy a minimum level of protection and rights of legal redress against discrimination and that these initiatives will indeed strengthen economic and social cohesion within the Union. It should be made clear that the Employment Directive applies to third country nationals present in the territory of the European Union. The Committee notes that the Directives do not prohibit differences of treatment based on nationality, which are dealt with by separate Articles of the Treaty (Articles 12 and 39), and by existing secondary legislation.

2.7. The Committee welcomes the emphasis put in the proposals, on establishing minimum standards across the Union and the prohibition of any reduction in existing protection in Member States in response to the implementation of these Directives.

2.8. The Committee welcomes the reference to Article 137 that deals with social exclusion in general. The equal treatment Directives will in our view promote social inclusion, as well as social cohesion, and will ultimately reduce the high social costs of exclusion.

2.9. The Committee would have liked the Directive on racial or ethnic origin to include provisions on racial violence and incitement to racial hatred. The exclusion of these very important issues is in our view a missed opportunity, as this is an area which crucially affects the human rights of people from ethnic minority backgrounds. The Committee also knows that the political commitment and practical measures taken to deal with this increasing phenomenon vary dramatically from Member State to Member State. The Committee is of the opinion that the 1996 joint action on racism is not enough to deal with the problem and that the Commission should find the appropriate legal means to cover this important area.

2.10. Only brief reference is made to the benefits to business of equality of opportunity, in that they are able to make the best use of human resources available to them (the business case). The Committee would like to see more effort put into researching and developing this argument based upon the many examples of good business practice which clearly exist in companies operating within and outside the Union. Notwithstanding the impact assessment made by the Commission of the implementation costs for small and medium-sized businesses, it is recognised that there may be additional costs incurred by such businesses in adjusting to the new Directives.

2.11. The implications of an unequivocal Community statement of public policy towards race discrimination continue even today to be timely and critical.

2.12. In the same spirit, and outside the context of these specific Directives, the Committee reiterates its earlier proposal for integrated Community measures to prevent discrimination, racism and xenophobia. It therefore calls upon the Commission to consider and develop such measures, especially in the sphere of education, using the modern tools of the information society.

2.13. The Committee believes that an increased dialogue between business, trade unions and other social and economic actors, based on good practice, could show that equal treatment in employment and occupation can improve both economic performance and social inclusion. The Committee is well placed to help promote such a dialogue and intends to organise a hearing on the subject.

⁽¹⁾ Resolution of the Council and representatives of the Governments of Member States meeting within the Council of 20.12.1996 on equality of opportunity for people with disabilities (OJ C 12, 13.1.1997) and Council Resolution of 17.6.1999 on equal employment opportunities for people with disabilities (OJ C 186, 2.7.1999).

Specific comments on the Directives

3. Directive on Racial or Ethnic Origin

Introduction

3.1. The Committee welcomes the Commission's move to ban discrimination on the grounds of race or ethnic origin in all areas of society. In the light of experience with this Directive, the Commission should lose no time in determining whether similar arrangements should be proposed for the other types of discrimination mentioned in Article 13 of the EC Treaty.

3.2. The Committee welcomes the fact that the Directive applies to third country nationals present in the territory of the European Union.

Specific comments

4. The Directive on Racial or Ethnic Origin

4.1. Article 1 — Purpose

The purpose of the Directive is expressed as applying the principle of equal treatment between individuals irrespective of racial or ethnic origins. This should be amended to all persons. This formulation is used in the Employment Directive and should be the same in the racial or ethnic origin Directive.

4.2. Article 2 — Concept of discrimination

The Committee welcomes the introduction of definitions of direct and indirect discrimination in the text of the Directive. Concerning the definition of direct discrimination, for reasons of clarity, it should be specified that a person who regards him or herself as a victim of discrimination should be compared to a person in a comparable situation. Therefore the Committee proposes the following amendment to Article 2 (2a): Direct discrimination shall be taken to occur where one person is treated less favourably than another is in a comparable situation.

It is particularly helpful that the definition of indirect race discrimination does not necessarily have to rely upon statistical proof, but allows for other forms of evidence to demonstrate discrimination in keeping with the European Court of Justice ruling in cases involving the free movement of workers⁽¹⁾. However, interpretation of indirect discrimination by administrative authorities could create problems in some countries.

(1) O'Flynn v Adjudication Officer case C-237/94 Judgement 23.5.96.

The Committee welcomes the introduction of the definition of harassment in the text of the Directive. The Committee however, is concerned to ensure that the liability of employers for harassment is limited to situations clearly under the employer's control and to situations where the employer has knowledge of the harassment and has tolerated its continuance.

The Committee regret that there is no mention of discriminatory instructions or pressure to discriminate on grounds of racial or ethnic origin, in the Directive.

4.3. Article 3 — Material scope

The Committee notes that there is no specific reference to the provision of services by public bodies included in the scope of the Directive. An explicit reference should be made in the Directive to ensure that this area is covered.

4.4. Article 4 — Genuine Occupational Qualifications

The Committee supports the limited nature of the Genuine Occupational Qualification exemption to the discrimination provisions. This exemption should be periodically assessed by the Member States and by independent bodies, (as defined by Article 12 of the Directive), to justify its maintenance or exclusion.

4.5. Article 5 — Positive action

The Committee welcomes this formulation.

4.6. Article 6 — Minimum requirements

The Committee welcomes these provisions.

4.7. Article 7 — Defence of rights

Articles 7.1 and 7.2 are welcomed. The Committee understands the proposal in Article 7.2 to mean that a relevant organisation concerned with the defence of human rights or combating racism and xenophobia and promoting equality, can pursue a case on behalf of an individual complainant only with her or his approval. It should, however also be possible for a relevant organisation, with a mandate, to pursue an action on behalf of a group of persons, Member State legislation permitting.

Appropriate conciliation procedures should be made available which are capable of resolving difficulties between individuals. Such conciliation procedures shall not be mandatory and shall be without prejudice to the right of the complainant to receive recourse to judicial remedies.

4.8. Article 8 — Burden of Proof

The Committee fully supports the formulation of the burden of proof to be applied in the area of race discrimination. It should be made clear that the proposal is advocating a shift of the burden of proof and not a reversal, which brings it into line with the 97/80/EC Directive on burden of proof in sex discrimination cases. The Committee opinion on the Burden of Proof⁽¹⁾ broadly supported this approach (there may be additional costs for SMEs, see paragraph 2.10).

4.9. Article 9 — Victimisation

The Committee welcomes the inclusion of protection from victimisation. It should be made clear that protection also extends to any person who suffers a detriment as a result of being involved in, or suspected of being involved in, making a complaint or assisting a complaint alleging racial discrimination, provided that the allegation was not false and was made in good faith.

4.10. Article 10 — Dissemination of information

In addition to the requirement for the dissemination of information on the provisions of the Directive there should also be provision for training particularly for public authorities and all institutions and concerned organisations. Training is important in the context of dissemination of information, particularly in countries not familiar with fighting racial discrimination. There should be a similar requirement on Member States to publicise information on how to prevent discrimination from occurring and to identify and disseminate best practice in this area.

4.11. Article 11 — Social Dialogue

4.11.1. The Committee welcomes the fact that the social partners, whose independence and autonomy is respected, are going to be involved in fostering the principle of equal treatment through monitoring of workplace practices, collective agreements, Codes of Practice, research, exchange of experience and good practice. The social partners should be required to provide training for their representatives on the provisions of the Directive.

4.11.2. Role of NGOs

The Committee strongly recommends that an additional Article be inserted in the Directive which stresses the key role non governmental organisations concerned with human rights, discrimination and equality issues play in the implementation and monitoring of the Directive without prejudice to the prerogatives of social partners.

⁽¹⁾ Economic and Social Committee Opinion on the Directive on the Burden of Proof, OJ C 133, 28.4.1997 — op. cit.

4.12. Article 12 — Independent bodies

The Committee welcomes the creation of independent bodies in all the Member States. The Committee proposes that these bodies, in addition to the power to receive and pursue complaints about discrimination on behalf of individuals, should also have the power to pursue complaints on behalf of organisations.

4.13. Article 13 — Compliance with the Directive

The Committee fully supports the compliance measures set out in the Directive.

4.14. Article 14 — Sanctions

The Committee welcomes the proposal that sanctions must be proportionate, effective and dissuasive.

4.15. Article 15 — Implementation

Consideration should be given as to whether the European Monitoring Centre on Racism and Xenophobia and Anti-Semitism based in Vienna can be given powers to monitor the impact of national legislation in combating discrimination, or whether these powers could also be given to national 'independent bodies' in Member States who in turn could report to the Monitoring Centre.

5. The Employment Directive

5.1. Article 1 — Purpose

The purpose of the Employment Directive is to put into effect in Member States the principle of equal treatment in employment, irrespective of racial or ethnic origin, religion or belief, disability, age or sexual orientation.

5.2. Article 2 — Concept of discrimination

The Committee welcomes the introduction of definitions of direct and indirect discrimination in the text of the Directive. Concerning the definition of direct discrimination, for reasons of clarity, it should be specified that a person who regards him or herself as a victim of discrimination should be compared to a person in a comparable situation. Therefore the Committee proposes the following amendment to Article 2 (2a): Direct discrimination shall be taken to occur where one person is treated less favourably than another is or would be in a comparable situation.

It is particularly helpful that the definition of indirect race discrimination does not necessarily have to rely upon statistical proof, but allows for other forms of evidence to demonstrate discrimination in keeping with the European Court of Justice ruling in cases involving the free movement of workers.⁽¹⁾ However, interpretation of indirect discrimination by administrative authorities could create problems in some countries.

The Committee welcomes the introduction of the definition of harassment in the text of the Directive. The Committee however, is concerned to ensure that the liability of employers for harassment is limited to situations clearly under the employer's control and to situations where the employer has knowledge of the harassment and has tolerated its continuance.

The Committee regrets that there is no mention of discriminatory instructions or pressure to discriminate on racial or ethnic origin, religion or belief, disability, age or sexual orientation in the Directive.

Article 2.4 deals more specifically with the disabled. The Committee welcomes the drafting of the article that limits the burden for small and medium enterprises by only requiring 'reasonable accommodation' for disabled persons unless this requirement creates undue hardship. Committee welcomes the concepts of 'reasonableness' and 'undue hardship' that limit the impact on small enterprises.

5.3. Article 3 — Material scope

Committee supports the provisions in Article 3 of the Directive.

5.4. Article 4 — Genuine occupational qualifications

The Committee supports the limited nature of the Genuine Occupational Qualification exemption to the discrimination provisions. This exemption should be periodically assessed by the Member States and by independent bodies, to justify its maintenance or exclusion.

5.5. Article 5 — Justification of differences of treatment on grounds of age

The Committee notes the non-exhaustive status of the list of differences in treatment, which are not considered to be direct discrimination provided that they are objectively and reasonably justified by a legitimate aim, and are appropriate and necessary to the achievement of that aim. The Committee

is concerned that Article 5f could be interpreted as legitimising wide ranging age discrimination on labour market grounds. On the other hand, the common message in Clauses a-f is that differences in treatment can be objectively and reasonably justified by a legitimate aim, and if they are appropriate and necessary to the achievement of that aim. The Member States' national legislation also contain a number of examples of protective legislation and collective agreements based on age. Against this background the Committee is prepared to accept Article 5f. In the last resort, the courts will have the task of assessing general considerations regarding reasonable justification.

5.6. Article 6 — Positive action

The Committee welcomes this formulation. However the Committee would like to point out that an interpretation of positive action measures in the light of current case law⁽²⁾ on sex discrimination could cause legal uncertainties with regard to some, of the non discrimination grounds (religion and sexual orientation) covered by this Directive.

5.7. Article 7 — Minimum requirements

The Committee welcomes the introduction of this non regression clause as being necessary to ensure that common standards in the employment field in the 15 Member States as a result of the implementation of the Directive.

5.8. Article 8 — Defence of rights

The Committee understands the proposal in Article 7.2 to mean that a relevant organisation concerned with the defence of human rights and promoting equality can pursue a case on behalf of an individual complainant only with her or his approval. It should, however also be possible for a relevant organisation, with a mandate, to pursue an action on behalf of a group of persons, Member State legislation permitting.

Appropriate conciliation procedures should be made available which are capable of resolving difficulties between individuals; or social partners. Such conciliation procedures shall not be mandatory and shall be without prejudice to the right of the complainant to receive recourse to judicial remedies.

⁽¹⁾ O'Flynn v Adjudication Officer case C-237/94 Judgement 23.5.1996.

⁽²⁾ Kalanke & Marshall cases Case C-450/93, ECR 1995, p. 3051, Case 409/95 ECR 1997, p. 6363.

5.9. Article 9 — Burden of proof

The Committee fully support the formulation of the burden of proof. The Committee opinion on the Burden of Proof⁽¹⁾ broadly supported this approach. It should be made clear that the proposal is advocating a shift of the burden of proof and not a reversal, which brings it into line with the 97/80/EC Directive on burden of proof in sex discrimination cases (there may be additional costs for in particular SMEs, see paragraph 2.10).

5.10. Article 10 — Victimisation

The Committee welcomes the inclusion of protection from victimisation. It should be made clear that protection also extends to any person who suffers a detriment as a result of being involved in, or suspected of being involved in, making a complaint or assisting a complaint alleging racial discrimination, provided that the allegation was not false and was made in good faith.

5.11. Article 11 — Dissemination of information

In addition to the requirement for the dissemination of information on the provisions of the Directive there should also be provision for training particularly for public authorities and all institutions and concerned organisations. Training is important in the context of dissemination of information, particularly in countries not familiar with anti-discrimination legislation. There should be a similar requirement on Member States to publicise information on how to prevent discrimination from occurring and to identify and disseminate best practice in this area.

5.12. Article 12 — Social dialogue

The Committee welcomes the fact that social dialogue will be reinforced. Social partners must play a fundamental role and can make a valuable contribution via the monitoring of procedures and practices. This power is not about 'control' but about monitoring, the difference between these concepts should be underlined. (In some of the translations the word 'control' has been used.) The Committee also welcomes the recommendation that social partners implement the directive into collective agreements thus demonstrating the compatibility between collective and individual rights.

5.13. Article 13 — Compliance

The Committee welcomes this article.

5.14. Article 14 — Sanctions

The Committee welcomes the proposal that sanctions must be proportionate, effective and dissuasive.

5.15. Articles 15 — Implementation and Report

The Committee welcomes this Article.

6. Action programme to combat discrimination: 2001-2006

6.1. The aim of the action programme is to promote measures to combat discrimination by supporting trans-national co-operation between a number of actors on a series of key themes.

6.2. The Committee fully supports the proposal for an action programme. The three principal objectives and accompanying strands of action, namely, analysis of the extent and nature of discrimination, capacity building of actors active in the fight against discrimination and dissemination of values and practices underlying the fight against discrimination, provide a well balanced programme with maximum possibilities for exchange and co-operation.

6.3. The action programme assumes that the experiences of people subject to discrimination will be taken into account during the planning, implementation and follow-up processes for the activities of the action programme. The Committee is concerned, however, that there is no mention made of the way in which the experiences of victims will be taken into account. The Committee feels that these experiences should serve as a starting point.

6.4. The programme aims to support trans-national projects. This means that in practice a whole range of organisations will be excluded, as they do not have the human or financial resources or the infrastructure necessary to take part in such projects. Given that these organisations have the advantage of in depth practical knowledge of the issues and are well placed to express the point of view of victims of discrimination, the action programme should provide an appropriate means for their inclusion.

6.5. The Committee welcomes the broad scope of the action programme and the fact that it extends beyond employment and the labour market into the areas of access to goods and services.

6.6. The Committee believes that the action programme should have a strong focus on the issue of discrimination on the grounds of age given the fact that the Directive on employment singles out age discrimination and specifies circumstances when it can be justified and is therefore legally permissible. The action programme should therefore put a

⁽¹⁾ Economic and Social Committee Opinion on the Directive on the Burden of Proof, OJ C 133, 28.4.1997 — op. cit.

special emphasis on investigating the feasibility of measures and initiatives in the field of age discrimination. The action programme could provide a means of testing the political will of Member States on this issue and of exploring the potential for effective and enforceable age discrimination legislation.

6.7. The Commission proposes an end of programme evaluation report by 31 December 2005. The Committee suggests that, in addition, it would be appropriate to submit a

mid term evaluation report given that this is a new area of action and the aims and themes of action may need to be adapted in the course of the programme.

6.8. The Committee feels that the prevention of discrimination and promotion of equality of opportunity are an important part of the overall strategy to underpin the anti discrimination Directives. To this end the Commission should consider a high profile media and advertising campaign as part of the action programme.

Brussels, 25 May 2000.

The President
of the Economic and Social Committee
Beatrice RANGONI MACHIAVELLI

APPENDIX

to the Opinion of the Economic and Social Committee

The following amendments, which obtained more than one quarter of the votes cast, were rejected during the discussions.

Point 4.2

In the last sentence of the first paragraph, add following words:

‘... than another is or would be in a comparable situation.’

Reason

Direct discrimination arises when persons in comparable situations are not treated equally. The different treatment can be shown in one of two ways. Either by a direct comparison with the treatment afforded to another, or a situation where one person is treated less favourably than another would be so treated.

The Commission proposal allows for the comparator to be found in either situation and not just the one. The amendment is therefore for completeness.

Result of the vote

For: 41, against: 47, abstentions: 8

Point 4.8

Add following wording in last sentence:

‘...(there may be additional costs for companies and in particular SMEs, see paragraph 2.10).’

Reason

It is recognised that a shift of burden of proof will create heavy burden and additional costs for companies, in particular SMEs, as employers will have to retain documents relating to each decision concerning human resource management, in order to have elements of proof in the event that action is taken against them.

Result of the vote

For: 54, against: 63, abstentions: 3.

Opinion of the Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council amending for the nineteenth time Council Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous substances and preparations (azocolourants)'

(2000/C 204/18)

On 10 April 2000, the Council decided to consult the Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 April 2000. The rapporteur was Mrs Williams.

At its 373rd plenary session (meeting of 25 May 2000), the Economic and Social Committee adopted the following opinion by 73 votes to none, with 1 abstention.

1. Introduction

1.1. This proposal from the Commission on the marketing and use of certain dangerous products concerns the health and safety of both consumers and workers. Its motivation is essentially to protect human health by prohibiting the use of dangerous azo dyes so that those textiles and leather goods which are coloured by them are no longer placed on the market. Some of these products, such as toys, clothes and shoes can affect the most vulnerable of consumers, in particular pregnant women and small children.

1.2. The proposal is yet another safety amendment to the existing Directive on dangerous substances⁽¹⁾, with its text supplemented by technical annexes.

1.3. The proposal also underlines the importance of harmonisation in the Internal Market. Since some Member States have already enacted restrictions of marketing and use of certain carcinogenic azo dyes, there is a compelling need for

co-ordinated, common action to create EU legislation which will ensure harmonisation which will also apply to candidate countries.

1.4. The proposal must also be seen in the context of the World Trade Organisation's requirements, so that any limitations on the use of azo dyes must be supported by well-identified risks to consumers.

2. Background information

2.1. Azo colourants (both dyes and pigments) are the most widely used organic colouring materials. They all contain at least one azo link. This azo link can be reduced in the body to form the corresponding aromatic amine. The Proposal therefore is not to restrict all azo colours but only those soluble azo dyes which would break down or cleave to form any of the 21 listed amines which are carcinogens. Most azo pigments are not affected since they are virtually insoluble and therefore do not cleave under normal conditions.

⁽¹⁾ 76/769/EEC, OJ L 262, 27.9.1976, p. 201.