



Anti-discrimination Law in the EU

DG JUSTICE/JUST/D1 Equal treatment legislation unit



Principle of non-discrimination in the Treaties

Article 2 TEU

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, *non-discrimination*, tolerance, justice, solidarity and equality between women and men prevail.

Article 19 TFEU

Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them on the Union, *the Council* acting unanimously in accordance with a special legislative provision and after obtaining the consent of the European Parliament, *may take appropriate action to combat discrimination* based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.





Charter of fundamental rights of the EU

- **Title III ‘Equality’** with Articles on equality before the law, principle of non-discrimination, cultural, religious and linguistic diversity, equality between women and men, the rights of the child, the rights of the elderly and integration of people with disabilities.
- **Article 21 ‘Non-discrimination’**: 1. Any discrimination on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
- **The scope of application the Charter**: ‘addressed to institutions, bodies, offices and agencies of the union with due regard for the principle of subsidiarity, and to the Member States only when they are implementing Union law’ (Art. 51)





The anti-discrimination Directives

- ✓ Racial Equality Directive 2000/43 – race / ethnic origin
- ✓ Employment Equality Directive 2000/78 – religion, disability, age and sexual orientation





Scope of application

Material scope

The field of employment and occupation

- ✓ Access to employment + promotion
- ✓ Working conditions (incl. pay and dismissal)
- ✓ Vocational training
- ✓ Membership of organisations

Race Equality Directive also covers

- ✓ Education
- ✓ Social advantages
- ✓ Social protection and healthcare
- ✓ Goods and services, incl. housing





Scope of application (2)

Personal scope

Both Directives cover:

- * all persons on EU territory (both EU citizens and third country nationals*
- * public and private sectors*

DO NOT cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.





The concept of discrimination

Article 2:

- Direct discrimination
- Indirect discrimination
- Harassment
- Instruction to discriminate





Direct discrimination

Where one person is treated less favourably than another is, has been or would be treated in a comparable situation on any of the grounds covered by the directive (racial or ethnic origin, religion or belief, disability, age, or sexual orientation)





Indirect discrimination

Where an apparently neutral provision, criterion or practice would put persons having a particular racial or ethnic origin, religion or belief, disability, age, or sexual orientation at a particular disadvantage compared with other people.

Except if this provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.





Harassment

When an unwanted conduct related to any of the grounds of the Directives (sex, race or ethnic origin, religion or belief, disability, age, or sexual orientation) takes place

with the purpose or effect

- of violating a person's dignity
- and of creating an intimidating, hostile, degrading, humiliating or offensive environment.





Exceptions

NOT all differences of treatment constitute discrimination:

- **nationality**
- **positive action**
- **age and disability for the armed forces**
- **genuine and determining occupational requirement**
- **religion when a specific ethos is required**
- **age requirements**
- **“reasonable accommodation” for disabled persons**





Genuine and determining occupational requirement

A difference of treatment which is based on a characteristic related to any of the prohibited grounds shall not constitute discrimination 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.





Religion when a specific ethos is required

*In the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, **by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement**, having regard to the organisation's ethos.*

*This Directive **shall thus not prejudice the right of churches and other public or private organisations**, the ethos of which is based on religion or belief [...], **to require individuals working for them to act in good faith and with loyalty to the organisation's ethos.***





Age requirements

Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Examples (non-exhaustive):

- *the setting of special conditions on access to employment and vocational training for young people or older workers to promote their integration;
- *the fixing of minimum conditions of age, professional experience or seniority;
- *the fixing of a maximum age for recruitment based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.





Reasonable accommodation

**Employers are required to provide reasonable accommodation to persons with disabilities
(Article 5 of Directive 2000/78/EC)**

- **Meaning: Appropriate measures, where needed in a particular case, to enable a person with a disability to have access to / or advance in employment or training**
- **Exception: where such measures would impose a disproportionate burden on the employer (not the case if support subsidies/measures exist)**





Concept of disability

Case C-13/05 Chacón Navas v. Eurest Colectividades SA [2006]

*The Court defined disability as **"a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life"** (§43). For any limitation to be regarded as a disability, **"it must be probable that it will last for a long time"** (§45).*

Joint Cases C-335/11 and 337/11 Ring / Skouboe Werge [2013]

*The Court also stated that "if a **curable or incurable illness** entails a limitation [...] and the **limitation is a long-term one**, such an illness can be covered by the concept of disability" (para. 41). "The circumstance that the person concerned can work only to a limited extent is not an obstacle to that person's state of health being covered by the concept of disability" (para. 43).*





An effective protection

- Provision of judicial and/or administrative procedures in order to allow victims of discrimination to seek redress
- Associations having a legitimate interest in ensuring the respect of the principle of equal treatment may assist victims of discrimination, either on their behalf or in their support, with their approval, in judicial or administrative procedures
- Adoption of effective, proportionate and dissuasive sanctions





An effective protection (2)

- **Reversal of the burden of proof**

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.

- **Protection against victimisation**

Protection of employees/persons against adverse treatment by the employer or another person as a reaction to a complaint or to any legal proceedings aimed at enforcing the principle of equal treatment:





Other Implementation measures

- Promotion of social dialogue between social partners, especially for the inclusion of equality in collective agreements, codes of conduct, etc.
- Promotion of dialogue between the national authorities and NGOs
- Dissemination of information regarding the rights laid down by anti-discrimination legislation





Help for victims

Under the Racial equality Directive, Member States must set up equality bodies which must:

- ✓ Provide independent assistance to victims of discrimination
- ✓ Conduct independent surveys
- ✓ Publish independent reports and make recommendations

Victims of discrimination may also be supported by:

- ✓ Non-governmental organisations (NGO)
- ✓ Trade unions





State of play of EU anti-discrimination Acquis

- Transposed in all 28 Member States
- Implementation deadline: 2-3 years
- Monitoring by Commission
- Complaints by citizens
- Infringement procedure
- Role for European Court of Justice:
 - Incorrect transposition of EU law
 - Interpretation of EU law





Comparative table of EU Directives

Grounds Field	Race 2000/43/ EC	Religion 2000/78/ EC	Disability 2000/78/EC	Age 2000/78/ EC	Sexual orientation 2000/78/EC	Gender 2004/113 /EC & 2006/54 /EC
Employment & Vocational training	Yes + Equality body	Yes	Yes	Yes	Yes	Yes
Education	Yes + Equality body	No	No	No	No	No
Goods and Services	Yes + Equality body	No	No	No	No	Yes + Equality body
Social protection & Health	Yes + Equality body	No	No	No	No	Yes + Equality body



New proposal for a Directive

Presented in July 2008

Prohibits discrimination on grounds of disability, age, religion & belief and sexual orientation **outside employment:**

- Social protection (social security, health care)
- Social advantages
- Education
- Access to goods & services, including housing

Also provides the obligation to establish **equality bodies** for the promotion of non-discrimination concerning those grounds





Thank you for your attention !

