

Beyond the Labour Market

New initiatives to prevent and combat discrimination

European Commission Proposals for new initiatives designed to prevent and combat discrimination outside the Labour Market based on gender, religion, disability, age and sexual orientation.

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Introduction

Equinet welcomes the commitment by the European Commission to propose new initiatives to prevent and combat discrimination outside the labour market based on gender, religion, disability, age or sexual orientation. Equinet also welcomes this opportunity to present an opinion in relation to this proposal of the European Commission.

Equinet is the European network of specialised equality bodies. It brings a particular perspective to bear on proposals to be made by the European Commission, a perspective based on the work of the specialised equality bodies in contributing to the effective implementation of equality legislation at Member State level. A number of Equinet members already have a statutory mandate that encompasses preventing and combating discrimination outside the labour market on the grounds of gender, religion, age, disability and sexual orientation. The expertise and experience of these bodies lend particular weight to this opinion.

The primary focus for this opinion is the need for new legislative initiatives to secure an equal standard of protection from discrimination across the grounds of race, gender, age, disability, sexual orientation and religion. This opinion also reflects the need for additional measures to ensure that this EU equal treatment legislation forms an integral part of a wider strategic framework for action on equality.

Principles to inform European Commission Proposals

Any proposal from the European Commission in relation to new initiatives to prevent and combat discrimination outside the labour market on the grounds of gender, age, religion, disability or sexual orientation should reflect the following four principles:

1. Coherence

New initiatives should secure a coherence across measures to prevent and combat discrimination in employment and vocational training and measures to prevent and combat discrimination outside of the labour market. This coherence should be achieved in any legislative initiative in the definitions of discrimination, harassment and victimisation used, in provision in relation to effective remedies and burden of proof, and in provision for specialised equality bodies.

New initiatives should secure a coherence in approach across all six grounds. This coherence should be based on an equal standard of protection under equal treatment legislation for all six grounds. This coherence should enable and involve multi ground approaches to the promotion of equality that include all six grounds of race, gender, religion, age, disability and sexual orientation.

2. Strategic Approach

New initiatives should contribute to the further development of a wider strategic framework for action on equality. This framework for action includes seven inter-linked elements:

- Legislation, to prohibit and prevent discrimination and to promote full equality in practice which is the foundational element of this framework for action.
- Institutions, to ensure the effective implementation of this legislation alongside institutional development in all sectors to achieve compliance with this legislation.
- Mainstreaming, to ensure that diversity and equality considerations are taken into account at the design stage of all plans, policies and programmes at EU and Member State levels.

- Targeting, to secure the positive action necessary to address legacies of past discrimination and to meet needs specific to groups experiencing inequality.
- Participation, to develop processes that enable groups that experience discrimination to have a say in decisions that impact on them.
- Agenda setting, to establish action plans to achieve full equality in practice for groups experiencing inequality.
- Monitoring, to develop data collection such that decision making in relation to groups experiencing inequality is evidence based.

3. Effective Implementation

New initiatives established must be effectively implemented. The necessary resources and capacity should be mobilised and developed to this end at European Union and Member State level. This principle encompasses human and financial resources, training and skills development, institutional development in all sectors and, as appropriate, the establishment of institutions with a specific mandate to secure implementation of a new initiative.

4. Integrated Approach

New initiatives need to reflect and underpin an integrated approach to equality. This integrated approach reflects the reality that everyone is a member of more than one ground - people have multiple identities and can experience multiple discrimination. An integrated approach to equality requires coherent action across three levels:

- a multi ground level where action is taken that enhances the situation and experience of groups experiencing inequality across all six grounds simultaneously
- a single ground level where action is taken to address the legacy of discrimination or specific needs of one particular group experiencing inequality
- an intersectional level where action is taken to address the particular situation and experience of groups at the intersections of the six grounds who are subject to multiple discrimination and who hold multiple identities.

The Need for New Initiatives

New initiatives are required to combat discrimination outside the labour market on the grounds of age, religion, disability and sexual orientation because:

- the provision of education, social welfare, housing and health services, among others are as important as the area of employment in achieving well being and equality for the diversity of groups in society. It is also important that many of these service areas are key to achieving access to and equality in employment.
- women, older people, young people, people who belong to religions other than the dominant religion in their state, people of no religion, people with disabilities and lesbian, gay and bisexual people experience inequality. This inequality is evident in access to resources such as education, health and accommodation, in access to decision making, in access to status and standing and in experiences of physical and verbal abuse and of being stereotyped or patronised. Discrimination and a failure to take account of and

make accommodation for this diversity of people are key factors in creating and sustaining these inequalities.

- women and Black and minority ethnic people, who are already the focus for some initiatives at EU level to prevent and combat discrimination outside of the labour market, are diverse groups of people that include all ages, a diversity of religions, all forms of disability and the full range of sexual orientations. As such a coherent, strategic and integrated approach to equality is required that covers all six grounds if the initiatives already in place on the gender and race grounds are to be effective.

A number of specialised equality bodies within Equinet's membership already have a mandate to combat discrimination and promote equality in areas outside the labour market on the grounds of gender, age, disability, religion and sexual orientation. The experience and work of these specialised equality bodies demonstrates the wide range of discriminatory issues experienced on these grounds:

- On the gender ground the discriminatory issues identified include the structure of social welfare provisions, access to pension entitlement for those who have played caring roles, stereotyping and segregation and sexual harassment in education provision.
- On the age ground the discriminatory issues identified include access to health services, access to social protection provision, access to private rented accommodation, access to financial services, access to insurance, access to goods and services, stereotyping and access to decision making.
- On the sexual orientation ground the discriminatory issues identified include social welfare provision, harassment in educational establishments, access to insurance, access to financial services, access to recognition for same sex partners and the consequences of non recognition in areas such as accommodation, taxation and social welfare provision, succession rights and state sector immigration functions.
- On the disability ground the discriminatory issues identified include access to and participation in educational establishments, access to health services, access to local authority services, access to social protection, access to public sector and private rented accommodation, access to banking and financial services, access to insurance, access to shops, access to transport service, and other public sector services, access to goods and services, standards in disability specific services, stereotyping and access to decision making.
- On the religion ground the discriminatory issues identified include access to education, the state sector policing and immigration functions and stereotyping.

New Legislation

New legislation should be the priority in terms of new initiatives brought forward by the European Commission. This legislation should prevent and prohibit discrimination and promote equality in areas outside the labour market on the grounds of age, religion, sexual orientation and disability. It should enhance the provision already made on the gender ground.

This new legislation should reflect the principles set out above - coherence, strategic approach, effective implementation and integrated approach. The following recommendations are made to ensure these principles are reflected.

1. Purpose

The purpose of the Directive should be to put into effect the principle of equal treatment on the grounds of gender, age, disability, sexual orientation and religion. The Directive should aim to achieve full equality in practice for groups experiencing inequality across these grounds. It should recognise the diversity of these groups and the diversity within these groups.

2. Scope

The Directive should:

- prohibit discrimination, harassment and victimisation in the access to and supply of goods and services provided by the public and private sectors. In this the Directive should be explicit in covering the functions of the state including taxation, policing and immigration control. The fields of education provision, health services, social protection and social welfare, accommodation provision and goods and services should be explicitly addressed.
- address issues of stereotyping in education and in commercial advertising. Stereotyping should be prohibited in the education system and in commercial advertising. An appropriate formula will need to be identified for such a prohibition so as to take account of complexity of this issue. Member States could be required to take appropriate measures to eliminate any other forms of stereotyping.
- address issues of participation of minorities in the decision making process at all levels in political, economic, social and cultural life.
- ensure private clubs and associations are open to membership from across the grounds covered where membership of the private club or association is of importance for the individual member's job opportunities, access to business networks or professional advancement.
- ensure remedies are effective, proportionate and dissuasive and make provisions in relation to the burden of proof on a par with the gender ground, and ensure a broad right of representation of claimants before the Courts/Tribunal that includes non governmental organisation.
- enhance the level of protection on the gender ground outside of the labour market to the level of the race ground under 'Race' Directive. Thus the protection on the gender ground would be explicitly extended to include education, social protection and social welfare, social benefits and health and a broader definition of goods and services would apply.

3. Grounds

The Directive should:

- explicitly name transsexual people and identify that they are covered by the gender ground.
- make explicit reference to carers and those with caring responsibilities and identify that they are covered by the Directive.
- make explicit that that ground of religion includes people of no religion.

4. Positive duties

The Directive should secure a proactive approach to promoting full equality in practice. It should underpin other elements of the strategic framework for action on equality, in particular institutional development and equality mainstreaming. The Directive should therefore:

- require Member States to promote equality as is required on the ground of gender in the gender equal treatment Directive.
- require Member States to implement equality mainstreaming in all planning, policy making and programme development in the areas covered by the Directive. This equality mainstreaming should include the grounds of gender, race, age, religion, sexual orientation and disability. This provision could build on the provision for gender mainstreaming in the gender equal treatment Directive covering employment and vocational training. This provision should ensure that high standards are set and monitored for this equality mainstreaming.
- require service providers to be planned and systematic in their approach to equality. This provision could also build on a similar provision in the gender equal treatment Directive covering employment and vocational training.

5. Accommodating Diversity

The Directive should also ensure an adequate and appropriate response to diversity by service providers. This issue has been addressed in the Framework Employment Directive on the disability ground with the requirement on employers to take appropriate measures to ensure access to employment and career progression. A similar approach to diversity is required in the new Directive - not alone on the disability ground but on all the grounds covered. The new directive should:

- require service providers to make adjustments and to provide special treatment or facilities to ensure that members of minority groups that are experiencing inequality can access and benefit from the service provided. This should be required unless it results in a disproportionate burden for the service provider.

This individual based personal right is a useful and effective tool to deal with diversity. Diversity across the grounds has practical implications for the manner in which goods and services are provided. The failure to take account of these practical implications can and has led to exclusion from such goods and services for members of these grounds. This individual based personal rights can ensure any such practical implications are addressed and any such exclusion prevented.

6. Positive Action

The new Directive should only include a minimal number of exemptions. It should follow the approach of the 'Race' Directive in this regard. There should however be an exemption for positive action to meet needs specific to groups experiencing inequality and to address the legacy of past discrimination. The new Directive should:

- allow positive action to achieve full equality in practice under each of the grounds covered.
- require positive action to address significant imbalances that exist in the areas covered by the Directive for groups experiencing inequality.

7. Multiple Discrimination

The new Directive needs to be able to address the situation and experience of groups and individuals at the intersections between the grounds covered. The Directive should reflect the reality that people hold multiple identities and can experience multiple discrimination. The new Directive should include in the definition of discrimination an explicit prohibition of multiple discrimination defined as discrimination based on more than one of the grounds covered. The Directive should also ensure that this provision applies under the Race Directive and the Framework Employment Directive.

A further option worthy of consideration would be to introduce a new definition of discrimination into the new Directive. This would meet the standards set out in Article 21 of the Charter of Fundamental Rights. These standards include adopting a unified inclusive definition of discrimination which incorporates all elements of discrimination, which focuses on the cause and effects of discrimination and which moves away from reliance on a comparator. This new definition should also include the concept of dignity and an understanding of discrimination as violating or diminishing the dignity of a person. This would also assist in moving away from reliance on a comparator and would further assist in enabling a focus on standards in the provision of service.

8. Implementation

Specialised equality bodies make a key contribution to the effective implementation of equality legislation. This contribution includes provision of information on rights, provision of legal advice and representation to those experiencing discrimination, acting as *amicus curiae* in cases, keeping equality legislation under review and identifying how it should be further developed, supporting and setting standards for equality mainstreaming and specific positive action measures, supporting and setting standards for good practice in promoting equality, combating discrimination and accommodating diversity in employment and in the provision of goods and services, in conducting research and surveys and in promoting a wider awareness of and recognition for diversity and equality.

The new Directive should require Member States to establish specialised equality bodies to carry out all of these functions in the areas covered by the Directive. It should further ensure that the specialised equality bodies should be empowered to carry out these functions under the Framework Employment Directive and the gender equal treatment Directive covering areas outside the labour market. This would enable coherence, effective implementation and a strategic and integrated approach to combating discrimination and promoting equality at Member State level.

The Directive should also require Member States to meet standards of independence and effectiveness in the manner in which they establish these specialised equality bodies. These standards could be established and kept under review by the European Commission.

New Initiatives Beyond Legislation

This legislative initiative should be accompanied by a range of further initiatives to prevent and combat discrimination outside of the labour market on the grounds of gender, race, age, disability, sexual orientation and religion. These new initiatives should prioritise the further development of the different elements that make up the strategic framework for action on equality that is outlined above.

These new initiatives should include:

- equality mainstreaming of all plans, policies and programmes developed at European Union level. This should include developing a methodology and support materials, building the skills and knowledge necessary and identifying responsibilities for ensuring the effective implementation of equality mainstreaming. This should build on and be coherent with the methodologies for gender mainstreaming and should be effectively articulated with the gender mainstreaming strategy.
- developing a practice of implementing equality action plans at Member State level. This could replicate and accompany the open method of coordination process developed in relation to social inclusion, social protection and pensions. Common and agreed guidelines for these equality action plans should be developed at European Union level and a system of peer review between Member States should be facilitated to accompany preparation and implementation of these equality action plans.
- coordinating an approach to equality data gathering and analysis across the European Union. Qualitative data should be gathered where quantitative data is not available or appropriate. This data should cover all six grounds of age, disability, gender, race, religion and sexual orientation and should include a focus on multiple identity groups where these grounds intersect. This data gathering should be approached in a manner that respects particular sensitivities in relation to data collection on some of the grounds and that reflects different cultures in relation to data collection across the Member States.
- developing a series of initiatives to analyse and create new understandings of the identity, experience and situation of groups at the intersections of the six grounds and to stimulate and support new responses to the particular needs of these groups. This work could usefully start with a focus on older women and on women with disabilities.
- commissioning a feasibility study to examine the inclusion of further grounds in the equal treatment directives. This work could be based on the incorporation of the Charter on Fundamental Rights into the EU Treaties. It could have a particular focus on socio-economic status - a ground that would achieve a valuable linkage with the social inclusion strategies being pursued by the European Union.
- developing further initiatives on the issue of stereotyping and its impact on equality across all of the grounds. These initiatives should build on and continue the work that the European Commission has already developed in this area particularly on the ground of gender.