

To:  
Pierre Sellal, Ambassador Extraordinary and Plenipotentiary Permanent  
Representative, Permanent Representation of France to the European Union,

Brussels, 28 November 2008

**Subject: Comment on the proposal for a Council Directive on  
implementing the principle of equal treatment between persons  
irrespective of religion or belief, disability, age or sexual orientation**

Dear Ambassador,  
Dear Mr. Sellal,

### **Introduction**

EQUINET is the European Union network of specialised equality bodies established across the Member States with statutory mandates to promote equality and combat discrimination. This 'comment' on the proposal for a Council Directive is based on the experience and work of these specialised equality bodies.

Specialised equality bodies in some Member States have the experience of implementing equality legislation in the fields covered by the proposal for a Council Directive and containing provisions that go beyond this proposal. Specialised equality bodies in all Member States have the experience of implementing equality legislation in the fields covered by the proposal for a Council Directive on the grounds of race and gender. It is these experiences that are brought to bear in this brief 'comment' on the proposed Directive.

### **Starting points**

A European Union Directive promoting equal treatment in fields outside the labour market is urgently required. The first priority in relation to the current proposal is that it should be adopted as a Council Directive.

The second priority is to acknowledge that there is scope for improvement in the proposed Directive and that the current proposal should at least not be diminished during the process of adopting the Directive. In particular, the coverage of four grounds, the broad scope of the Directive and the use of definitions that are coherent with previous Directives must be protected. EQUINET has a particular concern that the provisions requiring an equality body (Article 12) should be protected. In this regard the statement in

Preamble 28 that these bodies should operate in a manner consistent with the United Nations Paris Principles is particularly important.

Improvements relating to the current proposal should have particular regard to ensuring that the provisions of the proposed Directive:

- are coherent with the provision of previous European Union Equal Treatment Directives;
- do not in any way disadvantage the current situation of the groups it seeks to protect.

It would also be valuable if improvements could maximise the scope of the proposed Directive, minimise the extent of exemptions and in particular ensure that any exemptions are narrowly drawn, and ensure a clarity in all provisions made.

### **Scope**

1. The scope of the Directive set out in Article 2(1) limits the provision in relation to access to and supply of goods which are available to the public, including housing by the provision that this shall only apply to individuals insofar as they are performing a professional or commercial activity.

This provision does not appear in the 'Race' Directive. It is a very broadly drawn exemption and runs the risk of diminishing the scope of the Directive in a key area of provision for all grounds.

This provision should be deleted. The issues that gave rise to this provision could be dealt with by:

- introducing a provision that exempts different treatment where the provision of accommodation by a person is in a part (other than a separate and self contained part) of a person's home, where the provisions of the accommodation affects the person's private or family life or that of any other person residing in the home;
- or by
- introducing a general exemption in relation to respecting private or family life in this area of provision of goods and services.

2. The scope of the Directive is further limited in Article 3(2) in an exemption that is very broadly drawn in relation to marital or family status and reproductive rights that impacts in particular on the sexual orientation and disability grounds.

This provision should be deleted. The issues that give rise to this provision could be dealt with by:

- drawing the exemptions more narrowly in terms of this Directive being without prejudice to national laws on marital status.
3. The scope of the Directive is further limited in Article 3(3) in relation to the provision of education. This Article contains very broadly drawn exemptions that impact on the disability ground and on the religion ground.

This provision should be deleted.

If this is not possible the issues that give rise to this provision could be dealt with by:

- (a) in relation to disability, the text should be clear that this exemption while allowing for the provision of special needs education does not limit the principle of non-discrimination for people with disabilities in access to mainstream education and does not limit the application of the principle of non-discrimination in the provision of special needs education;
- (b) in relation to religion, the text should be clear that this does not allow for discrimination on any ground other than religion. It should further draw the exemption more narrowly on the religion ground by confining the exemption to educational institutions with a specific religious ethos and ensuring discrimination on the religion ground is only allowed where this is essential to maintaining the religious ethos of the institution.

## **Exemptions**

1. The exemption on the age ground in Article 2(6) is too broadly drawn and could allow Members State to opt out of the legislation in relation to the age ground in a range of key areas. This provision should be deleted or it should be clarified that this Article only applies where the difference of treatment on the ground are designed to make preferential provision to benefit a particular age group.
2. The exemption on the age and disability grounds in Article 2(7) is too broadly drawn and is not coherent with provisions in the gender or 'Race' ground Equal Treatment Directives. It is also incompatible with the UN Convention on the rights of disabled persons.

This provision should be deleted at least as far as the disability ground is concerned. If this is not possible in relation to the age ground it should at least be provided that:

- (a) Member States shall inform the Commission and ensure that accurate data relevant to the use of age as a determining actuarial factor are compiled, published and regularly updated;
- (b) change the wording 'key factor in the assessment of risk' to 'determining factor in the assessment of risk' as per the Gender Equal Treatment Directive;
- (c) introduce a definition of which financial services are covered by this exemption (eg. insurance and related financial services).

### Clarity

There are a number of concerns with the wording of Article 4 of the proposed Directive:-

- Article 4(3) is too broadly drawn and it should be made explicit that this Article cannot be used to permit discrimination on the disability ground or to circumvent obligations to make reasonable accommodation.
- In Article 4(1)(a) the meaning of 'fundamental alteration' should be clarified and narrowly set out as 'fundamental alternation to the nature of social protection, etc..'
- In Article 4(1)(a) the addition of 'or require the provision of alternatives thereto' is too broadly drawn and undermines the anticipatory nature of the duty in this Article as there are instances where alternatives may be required. This text should be deleted.

Yours Sincerely,



Chila van der Bas  
Chair of EQUINET  
European Network of Equality Bodies  
& Member of the Dutch  
Equal Treatment Commission



Anne Gaspard  
Executive Director of EQUINET  
European Network of Equality Bodies

*This comment does not necessarily reflect the position of individual members of EQUINET and does not bind individual members.*

CC. Heads of:  
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Permanent Representation of Bulgaria to the European Union  
Permanent Representation of the Czech Republic to the European Union  
Permanent Representation of Denmark to the European Union  
Permanent Representation of Germany to the European Union  
Permanent Representation of Estonia to the European Union  
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