A new multi-ground Directive creates a higher level of protection against discrimination


Setting out the legal basis to combat discrimination in these areas, the Commission also explained that, "The objectives of the proposal cannot be sufficiently achieved by the Member States acting alone because only a Community-wide measure can ensure that there is a minimum standard level of protection against discrimination based on religion or belief, disability, age, or sexual orientation in all the Member States."

The Proposal represents an important step towards combating discrimination and ensuring social justice in many areas of life for people living in the European Union. The proposed Directive which essentially levels up protection from discrimination on grounds of religion or belief, disability, age or sexual orientation to that afforded to race or ethnic origin through Council Directive 2000/43/EC sends a clear message that discrimination in many social areas is not only unjust but is unacceptable in today's European Union.

On 30 April 2008 The Equal Rights Trust (ERT), which advocates a unified approach to equality, submitted to the European Commission a detailed and reasoned communication which put forth a number of recommendations relating to the content of the proposed Council Directive. One of the ERT recommendations was that the Commission needed to take steps to ensure that all grounds are given equal protection in law, thereby adopting a uniform approach to protecting against discrimination. The
Commission's Proposal goes some way towards making a unified approach to equality a reality. The impact which the Council Directive will have in overcoming the fragmented approach to anti-discrimination law that the European Union has employed to date should be welcomed.

Among the many strengths of the Proposal is the definition of reasonable accommodation in respect to persons with disabilities as a form of discrimination (Article 2(5)). Furthermore, Article 4 (1)(a) provides that in order to guarantee compliance with the principle of equal treatment, anticipatory measures are necessary. Both these aspects of the proposed Council Directive follow the progressive approach contained in the UN Convention on the Rights of Persons with Disabilities which the European Community has signed.

Despite this and other important steps forward made by the Proposal, it contains certain unfortunate limitations and leaves many issues to be addressed in a future EU equality agenda. In particular,

1. Discrimination on grounds of sex is still legal in a number of areas including education – a gap that needs to be filled as soon as possible.

2. Multiple discrimination has still not been dealt with adequately in the Proposal: while mentioning it in the preamble in relation to women, the Proposal does not provide a legal definition of this phenomenon and leaves victims of multiple discrimination without adequate protection.

3. Positive action conceptually remains an exception to equal treatment and is only allowed but not regarded as required in certain cases: an effort should be made in the future to overcome the limitations of this anachronistic approach and to see positive action as an integral part of implementing the principle of non-discrimination.

4. The limitations to the material scope of the directive and in particular Article 3(1)(d) are too broad and ambiguous. The decision to reduce the application of non-discrimination in the area of provision of goods and services to “individuals only in so far as they are performing a professional or commercial activity” is unclear and will inevitably lead to greater confusion among Member States and goods and service providers that have to implement and adhere to the law.

The Proposal set forth by the Commission represents an important step towards improving the lives of people affected by discrimination in the European Union. However, The Equal Rights Trust believes that a new equality agenda of the European Union is emerging and should be adopted for the next decade. All stakeholders should continue their efforts in promoting equality and combating discrimination, if Europe is to come closer to full equality in practice.

To see the text of the Proposal for a new equality Directive, go to