



October 2008
AK Position Paper

Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation

About us

The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.

The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.

Organisation and Tasks of the Austrian Federal Chamber of Labour

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

Herbert Tumpel
President

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community- and military service - of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labor.

Werner Muhm
Director

The Position of the AK

The AK welcomes the initiative of the European Commission to extend protection from discrimination to public life.

The Federal Chamber of Labour (AK) would like to thank the European Commission for giving it the opportunity to state its position on the proposal for a directive.

The AK welcomes the European Commission initiative to also extend protection from discrimination on discrimination grounds contained in Directive 2000/78/EC to areas outside the working world. We hold the view that the basis for protection from discrimination, which is founded on the protection of human rights, requires a level of protection that is as uniform as possible for all grounds and for all areas.

We propose also incorporating the principle of equal treatment at the beginning of the proposal for a directive in a positive light and not only stating the purpose of the directive.

From the AK's point of view, the principle of equal treatment and with it protection from discrimination is undermined if it is based on the competences of the Community. In our estimation, Art 13 EC Treaty has a further area of application as protection from discrimination should guarantee extensive social and economic participation in all areas of life.

The AK notes that Article 2 Para 7 of the proposal for a directive permits proportionate differences in treatment

for financial services (see recital 15, this means insurance, banking and other financial services) for reasons of age or disability where, for the product in question, these criteria are used based on relevant actuarial or statistical data. It is important that people with disabilities have the same access to financial, insurance and banking services as everyone else. Equal access to financial services in particular is a key prerequisite for equal participation in economic and social life. In our opinion, the admissibility of differences of treatment therefore needs to be handled in an extremely restrictive manner. A difference of treatment solely based on actuarial or statistical factors is unjustified. Another criterion that needs to be added is objective justification with a strict assessment of what is reasonable. Different risk assessments made by private health insurance companies or pension/life insurance companies should still be allowed, although it seems discriminatory (and almost opposed to the purpose of the proposal for a directive) if this has discriminatory effects on the conditions under which the financial services can be taken up by people with disabilities. We refer here to the social responsibility of the insured community to compensate for the different risks.

Whilst protection from discrimination in relation to education is embodied in the scope in Art 3 Para 1, Art 3 Para

The AK criticises the restrictions on protection from discrimination in the education area.

3 of the proposal completely exempts the content of teaching, activities and organisation of the educational system from the scope. In addition, Member States may provide for differences in access to educational institutions based on religion or belief. In our estimation, restrictions on protection from discrimination in the area of public education should not be subject to a general exemption, they should only permit this if there is an objective justification for it. As regards access to educational institutions, following the example of Art 4 Para 2 Directive 2000/78/EC a difference in treatment based on religion or belief should only be allowed if this is a significant, legitimate and objectively justified requirement owing to special circumstances.

We also refer to the fact that there may be inconsistencies in assessments between the general exemptions in Art 3 Para 3 of the proposal and Art 3 Para 1 lit b of Directive 2000/78/EC as the areas of education and vocational training and further training cannot be separated clearly.

In Art 4 Para 1 lit a of the proposal, we believe that clarification should be provided that the „supply of services“ is taken to mean not only economic services in the narrow sense, but also services of general interest such as access to cultural activities even if these are offered free of charge. Protection from discrimination in the last sentence of lit a is completely undermined if neither fundamental changes nor the provision of corresponding alternatives can be stipulated in relation to the measures

to be taken. This half sentence should therefore be deleted.

When assessing whether there is a disproportionate burden, the AK proposes also taking into account the period that has elapsed since the regulation entered into force; in addition, when taking into account the possible benefits of improved access we should ensure that it is based not only on „measurable“ material benefits, but also on the immaterial values important to those affected (increased social contacts, better quality of life).

The importance of full integration of children with disabilities and support for family members was also emphasised specifically in the opinion delivered by the European Economic and Social Committee (EESC) on the topic „Equal opportunities for people with disabilities“ of 17.1.2007 (SOC/249). The AK therefore proposes emphasising in particular the importance of additional support measures to make it easier for children to participate in society in Art 5 („Positive action“) or at least in a separate recital. Disadvantages linked to a disability (or even another ground for discrimination) should therefore already be remedied at an early age.

As extensive surveys, opinions [EESC - SOC/249, Communication by the Commission of 26.11.2007, SEC(2007)1548] reveal, barrier-free access to public buildings, information and communication areas as well as public transport is particularly important for people with disabilities in order to establish equal opportunities. The accessibility neces-

The AK believes that the directive should also ensure barrier-free access to information, communication as well as to public transport and buildings for people with disabilities.

sary in these areas has not yet found its way into the directive. We therefore propose including these priorities in the directive – at least in the recitals. This would ensure that people with a disability (around 15% of the population) could actually benefit from the proposal for a directive.

The European Court of Justice has developed the principle of effective legal protection. Preserving it in connection with protection from discrimination is of particular importance. To protect this principle, the AK proposes specifying the provisions on the establishment of independent bodies for protection from discrimination (Art 12) in so far as the Member States are instructed to provide minimum provisions in an objective and personal way. A provision should be added to the proposal for a directive that takes into account in particular multiple discrimination vis-à-vis sanctions. The AK kindly requests that these suggestions are taken into consideration.



For further information please contact

Martina Thomasberger

(Expert from the AK Vienna)

T +43 (0) 1 501 65 2392

martina.thomasberger@akwien.at

or

Christof Cesnovar

(in our Brussels Office)

T +32 (0) 2 230 62 54

christof.cesnovar@akeuropa.eu

Bundesarbeitskammer Österreich

Prinz-Eugen-Strasse, 20-22

A-1040 Vienna, Austria

T +43 (0) 1 501 65-0

F +43 (0) 1 501 65-0

AK EUROPA

Permanent Representation to the EU

Avenue de Cortenbergh, 30

B-1040 Brussels, Belgium

T +32 (0) 2 230 62 54

F +32 (0) 2 230 29 73