



ETUCE Statement 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

Adopted by the EI/ETUCE Bureau on 9 December 2009

Preliminary remarks

President
Président
Ronnie Smith

On 2 July 2008, the European Commission made a proposal for a new directive on anti-discrimination outside employment, based on grounds of religion/belief, sexual orientation, age and disability.

Vice-Presidents
Vice-Présidents
Paul Bennett
Odile Cordelier
Kounka Damianova
Jörgen Lindholm
Ulrich Thöne

After several years of studies and an extensive public consultation process - involving Member States, business sector, social partners, civil society organisations, equality bodies and the public in general - the European Commission acknowledged the need for action at EU level in addressing the existing differences in the degree and scope of protection from discrimination on the different grounds. The new proposal for a Council Directive was finally presented¹.

General Secretary
Secrétaire Général
Martin Rømer

The ETUCE welcomes this new proposal for a Council Directive and recognizes the importance of promoting equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside the domains of employment and occupation - and thus, especially, in the education sector.

Treasurer
Trésorier
Walter Dresscher

The ETUCE (European Trade Union Committee for Education) is the European trade union industry federation for education within the ETUC, representing 110 teachers' unions in the EU/EFTA from all levels of the education sector, including primary, secondary, VET and higher education. The ETUCE is also an autonomous organisation within the Education International Pan-European Structure.

Weaknesses of the current legal framework. The need for a new Directive.

The ETUCE acknowledges that the European anti-discrimination policy and legal frameworks are considered as the most effective and well-known tools to combat discrimination and protect equal treatment in Europe. The transposition into national laws of Directives 2000/43/EC and 2000/78/EC has been very effective in improving the level of protection against discrimination on grounds of race, religion, belief, disability and sexual orientation in a large number of Member States.

However, and in line with the voices raised by many legal experts and civil society organisations, **the ETUCE believes that certain inconsistencies remain** as regards the different levels of protection against discrimination on the different grounds and in different fields. In this sense, in the Impact Assessment of the new Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or

¹ This statement follows the "ETUCE information note on a Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation", which was presented to the ETUCE Executive Board on 11th and 12th November 2008

belief, disability, age or sexual orientation², the Commission acknowledges that ***“the present EC legal framework provides much more extensive protection on grounds of racial and ethnic origin than from discrimination on grounds of religion, belief, disability, age or sexual orientation”***. This implies that whereas European legislation bans discrimination on grounds of racial and ethnic origin in areas such as education, access to goods and services and social protection, the same fields remain uncovered when dealing with discrimination on grounds of religion or belief, disability, age or sexual orientation.

The confusion created by the **incomplete set of legal texts** aimed at protecting Europeans against discrimination has been very often criticized by various stakeholders, including the ETUC (European Trade Union Confederation).

Description of the new proposal and its possible impact in education.

The ETUCE welcomes the fact that the proposed Directive is intended to supplement the existing EC legal framework. There is a **need for a comprehensive approach to non-discrimination; all grounds of discrimination of article 13 should be covered in a similar way in all the relevant areas.**

The new proposal is a minimum standards directive; Member States could provide a higher level of protection, but will not be allowed to lower the level of protection provided for in the Directive.

The text is built on the same structure as the rest of the EU anti-discrimination Directives based on Article 13 of the EC Treaty.

- Concerning the concept of discrimination (article 2) the proposal follows the definitions of direct and indirect discrimination, harassment and instruction to discriminate in the same line than the other three anti-discrimination directives. A denial of reasonable accommodation for persons with disabilities is considered a form of discrimination. The directive provides for an exception regarding differences of treatment on grounds of age. In this sense, the possibility of fixing a certain age for access to education, social benefits and certain goods or services could be justified by a legitimate aim, if the means of achieving that aim are appropriate and necessary.

The ETUCE welcomes **the respect of national laws and educational systems in relation to the access to education.** The respect of national specificities in the field of education is particularly important when dealing with anti-discrimination issues, as the different cultural environments existing in each Member States need to be preserved as well.

- The scope of the proposed new Directive is established in article 3. Discrimination on grounds of religion and/or belief, disability, age and sexual orientation is prohibited in the public and private sector in relation to: a) social protection, including social security and healthcare; b) social advantages; c) education; d) access to and supply of goods and other services which are available to the public, including housing.

² Commission Staff Working Document accompanying the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion, belief, disability, age or sexual orientation (SEC(2008) 2180)

Following the principle of subsidiarity, these areas are covered only to the extent to which the subject matter falls within the limits of the European Community competences. In this context, exceptions are specifically provided as regards the content of teaching and the activities and organisation of the national educational systems, including the provision of special needs education, as these issues are considered responsibility of the Member States. Respect for national laws on the secular nature of the State and its institutions – including educational establishments – is also ensured. Member States may provide for differences of treatment based on religion or belief as regards access to religious educational institutions or educational activities (i.e. a faith based school would be allowed to arrange school trips with a religious theme).

The ETUCE supports the **protection against discrimination** on grounds of **religion or belief, disability, age and sexual orientation** in the field of **education** and strongly welcomes the explicit exception made in **defence of the national responsibility of each Member State concerning the content of teaching and the organisation of the national educational system**. However, the ETUCE would like to express its strong concern as regards faith based education institutions and their views on discrimination on grounds of sexual orientation.

- Article 4 of the proposal especially relates to “*Equal treatment of persons with disabilities*”. Persons with disabilities should have non-discriminatory access to social protection, social advantages, health care, education and supply of goods and services which are available to the public, including housing and transport. Special measures should be taken, but they should not impose “a disproportionate burden nor require fundamental alteration” of the services or products provided. The consideration of whether the access would impose a disproportionate burden for the establishment would remain to be analysed case by case, subject to national laws and its interpretation by national judges and, eventually, the ECJ. However, if the legislation of a Member State provides for special grants or aid for the educational establishments as regards access to pupils with disabilities these establishments would be compelled to provide the pupil with the educational service.

The ETUCE welcomes the protection of the right to education and non-discrimination of persons with disabilities in all educational settings. However, ETUCE considers that, for the sake of legal certainty, the concept of “disability” should be defined in the Directive. A clear definition would provide a better implementation of the Directive and guarantee the same level of protection in all Member States. The ETUCE would like to suggest the definition provided in the UN Convention on the rights of persons with disabilities.³

- Articles 5, 8 and 9 of the proposal provides for three well-known measures - positive action, shift of the burden of the proof and victimisation - that have been considered essential in the promotion of equal treatment. These measures are observed in all article 13 Directives.

³According to article 1 of the UN Convention “*Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others*”.

In relation to positive action, Member States have the possibility of maintaining or adopting specific measures to prevent or compensate for disadvantages linked to the grounds of discrimination covered by the Directive. However, such measures are not compulsory, but left to the appreciation and traditions of every Member State. Certain quotas could be established in schools or educational establishments for pupils/students/teachers with disabilities.

The two other instruments, reversal of the burden of proof and victimisation relate to the legal procedure - once a discriminatory fact has taken place.

The ETUCE welcomes the observance of these three measures in the new Directive in the same way they are used in all existing EU anti-discrimination Directives. The ETUCE considers these measures as **indispensable** in the fight against discrimination.

- Article 11 of the proposal is aimed at fostering the “dialogue with relevant stakeholders” in the promotion of equal treatment. The current proposal makes a special reference to non-governmental organisations having a legitimate interest in contributing to the fight against discrimination on the grounds covered by the new proposed legal text, but do not mention in particular trade unions. On the contrary, Directive 2000/78/EC – covering discrimination in employment and occupation – and Directive 2000/43/EC – covering other sectors, among which employment and occupation are included as well - have a specific provision aiming at the promotion of equal treatment within social dialogue. These provisions recognize the important role of management and labour in the promotion of equal treatment. .

The ETUCE believes, in the same line than ETUC’s opinion, **that social partners have an important role to play in the area of non-discrimination, by developing instruments** complementing the existing national and European legal measures (i.e. within collective agreements). Trade unions play a special role in society and can be considered as relevant players and observers in many areas, including education. They should be involved in the reflection and implementation of anti-discrimination policies at national and EU levels.

- Article 12 of the proposal deals with “*Bodies with the promotion of equal treatment*”. This provision is common to Directive 2000/43/EC and Directive 2000/78/EC. It requires Member States to designate a body or bodies for the promotion of equal treatment of all persons irrespective of religion or belief, disability, age or sexual orientation.
A key role for these bodies is to give independent help to victims of discrimination. They are also entitled to conduct independent surveys and to publish reports and make recommendations on issues relating to discrimination.
Until now, existing equality bodies in the different Member States were compelled by European law to deal with discrimination in the field of education only on grounds of racial or ethnic origin.

The ETUCE welcomes the fact that the **new proposal will oblige Member States to enlarge the scope of the existing equality body/bodies or to designate new ones in order to deal with discrimination on grounds of religion or belief, disability, age and sexual orientation in the education sector.** This requirement could be a good guarantee to ensure this new proposal will be implemented respecting the national specificities.

ETUCE policy and action

The ETUCE welcomes the fact that the Commission has adopted a holistic approach in designing this new Directive in coherence with all existing EU legislations in this field. However, the ETUCE considers that due to the number of legal sets covering different fields and anti-discrimination grounds, a future re-cast of all EU anti-discrimination Directives will be needed in order to ensure the coherence of the EU legislation in the area.

The ETUCE urges the Commission to continue informing and involving the ETUCE as the social partner for education in its future work on anti-discrimination and calls Members States and the European Parliament to take the above mentioned issues into account when discussing the final version of the Directive.