



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMISSION STAFF WORKING DOCUMENT

**Implementation of the age and disability discrimination provisions of Directive
2000/78/EC of 27 November 2000 establishing a general framework for equal treatment
in employment and occupation**

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1. INTRODUCTION

On 27 November 2000 the Council adopted Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (Official Journal L303, 2.12.2000, p16). This Directive prohibits discrimination on grounds of religion or belief, disability, age or sexual orientation in employment, occupation and vocational training.

Directive 2000/78/EC had to be transposed into national law by 2 December 2003 (in the EU 15) and 1 May 2004 (in the EU 10). However, under Article 18 of the Directive Member States could have an additional period of up to three years to implement the provisions on age and disability discrimination in order to take account of particular circumstances. To take advantage of this possibility, the Member States had to notify the Commission "forthwith", in other words by the dead-line for transposition of the Directive.

Sweden, the UK (including Gibraltar), Germany, Belgium and the Netherlands notified the Commission that they wished to avail themselves of the possibility to have an additional three years to implement the age discrimination provisions of the Directive. Denmark notified the Commission that it required an additional year only. Regarding the disability discrimination provisions, Denmark has used one extra year, and France, the UK (including Gibraltar) three. In January 2004 Austria informed the Commission by letter from the Employment Ministry that four of its Länder wanted to make use of the additional period for both age and disability discrimination, but gave no information on the particular circumstances that necessitated the extra time, and was received well after the transposition date of the Directive. For these reasons the Commission did not accept the notification from Austria. None of the Member States which joined the European Union on 1 May 2004 have informed the Commission that they required more time for transposition of the age and disability requirements of the Directive.

The Member States making use of this extra time for transposition are required to report annually to the Commission on their progress, and the Commission reminded the Member States of this obligation by letter at the beginning of December 2004. The Commission, in turn, must report annually to the Council. This report is not an assessment of the measures adopted – this will be dealt with in the normal way through infringement procedures and in addition a full report on the transposition of Directive 2000/78/EC is foreseen for 2006 (as required under Article 19).

2. BELGIUM

Belgium transposed Directive 2000/78/EC into federal law by the Act of 25 February 2003 combating discrimination¹, which also amended the legislation establishing the Equal Opportunities and Anti-Racism Centre (which can deal with age discrimination). Although the Act of 25 February 2003 includes age among the prohibited grounds of discrimination, it contains no equivalent of Article 6 of the Directive, which allows the Member States to provide that certain differences of treatment on grounds of age may be justified in certain circumstances. As direct discrimination is not in general justifiable, the implication is that all differences of treatment on grounds of age would be discriminatory, without a specific transposition of Article 6. Apart from Article 6, Belgium considers that it has transposed Directive 2000/78/EC. Belgium plans a four stage study to enable it to enact national provisions transposing article 6 of the Directive:

- the Federal Government Service for Employment, Labour and Social Consultation will take stock of all existing regulations regarding age discrimination;
- it will study whether these regulations comply with the Directive;
- it will repeat of these two aspects in relation to the other Federal Government Services;
- it will study whether it is sufficient to reproduce the wording of Article 6 of the Directive or whether the grounds of justification need to be explained in more detail (including looking at how other Member States have transposed Article 6).

Phase 1 has been completed, and phase 2 is on-going. The third phase should be completed in 2005, and legal provisions introduced in 2006.

3. DENMARK

In autumn 2004 the Danish Government put forward a draft law amending the Act on Discrimination in the Labour Market to insert age and disability in the existing list of prohibited grounds of discrimination. This law came into force on 12 January 2005². It obliges employers to make reasonable accommodation for disabled people in employment and training. Positive action aimed at improving the employment opportunities of people who are disabled or of a particular age is permitted. Certain differences of treatment based on age are permitted. Age and disability are added to the list of characteristics which may not be specified in job advertisements. In addition, a long-term strategy to improve employment opportunities for disabled persons will be put in place in 2005.

4. FRANCE

A new law on equal rights and opportunities, participation and citizenship of persons with disabilities came into force on 12 February 2005. (Loi No 2005-102 of 11 February 2005)³

¹ Loi du 25 février 2003 tendant à lutter contre la discrimination et modifiant la loi du 15 février 1993 créant un Centre pour l'égalité des chances et la lutte contre le racisme

² Acte. No. 31, (2005) Lov om forbud mod forskelsbehandling på arbejdsmarkedet m.v

³ Loi No 2005-102 du 11 février 2005 pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées

This law establishes the principle of non-discrimination on grounds of disability, for both the private and public sectors. It obliges employers to provide reasonable accommodation for disabled workers, as long as the cost is not disproportionate. Special arrangements can be made for disabled candidates to take entrance exams for the public service, and it will be possible to employ disabled civil servants under contract as well as by entrance exams. Disability associations which have been legally established for at least five years will be able to give legal help to victims of discrimination. Positive action in favour of disabled workers is not considered discriminatory. Employers will have to negotiate annually on the conditions of access to employment of disabled persons, on their vocational training and working conditions, as well as actions to raise awareness of all workers on disability issues. The Government must produce an annual report on the employment of disabled people in the public service. A national Observatory on training, research and innovation in the field of disability will be created. With the adoption of this law France considers that it has fully transposed Directive 2000/78/EC.

5. GERMANY

The Permanent Representation of Germany to the European Union sent to the Commission a copy of the draft Bill by which the government intends to transpose into national law Directives 2000/78/EC (including the prohibition on age discrimination), 2000/43/EC, 2002/73/EC and 2004/113/EC. This Bill had its first reading in the Parliament on 21 January 2005 but the timescale for the conclusion of the Parliamentary debates is as yet unknown.

6. THE NETHERLANDS

The Equal Treatment in Employment (Age Discrimination) Act of 17 December 2003 entered into force on 1 May 2004⁴. This Act makes it unlawful to discriminate on grounds of age in recruitment, employment, working conditions and training. The prohibition of age discrimination also applies to the liberal professions and trade unions and employers' organisations, but it will not apply to the armed forces until 2008. It will still be possible, until 2 December 2006, to link a compulsory dismissal to the starting date of a pension without any justification of the dismissal being required. The Equal Treatment Commission can investigate whether discrimination on grounds of age has taken place⁵. The social partners have been informed of the new legislation. With the adoption of this law the Netherlands considers that it has fully transposed Directive 2000/78/EC.

7. SWEDEN

In 2002 the Swedish Government established a special Inquiry Commission to deliberate on how to extend Sweden's existing anti-discrimination legislation to age discrimination. The Commission is expected to report in January 2006.

⁴ de Wet gelijke behandeling op grond van leeftijd bij de arbeid (WGBL)

⁵ It has given its opinion in two cases where employers asked whether special provisions for older workers (reduced working time and extra holidays for older workers) were acceptable. In both cases the Commission held that the provisions discriminated against younger workers and were not justified.

8. UNITED KINGDOM

Disability

The UK made use of three extra years to implement the Directive's provisions on disability discrimination. This required amendments to the Disability Discrimination Act 1995, and to the Disability Rights Commission Act 1999⁶. The main changes were:

- ending the exemption for small employers and for previously excluded professions such as police officers and business partners;
- specific definitions of direct discrimination and harassment against disabled people;
- covering qualification bodies and officer holders;
- outlawing discrimination in occupational pension schemes.

The amended legislation came into force on 1 October 2004, as did two Codes of Practice on the new rights and duties. This legislation completes the transposition of the employment aspects of Directive 2000/78/EC. It is planned that further new legislation dealing with the provision of vocational training will come into force in September 2006, finalising transposition of the Directive as regards disability and age discrimination.

The UK undertook a public consultation "Equality and Diversity: Age Matters" in 2003, and will further consult in summer 2005 on the draft secondary legislation which is supposed to come into force in December 2006, implementing the age discrimination provisions of the Directive. The "Age Positive" campaign aims to raise awareness of employer on age diversity, and 750,000 copies of a voluntary code of practice for employers on age diversity at work have been issued, as well as Age Positive awards in 2004. A group made up of representatives of employers, trade unions and age organisations has been established by the Departments of Trade and Industry and Work and Pensions to work on the new legislation.

Gibraltar is currently drafting legislation to outlaw discrimination on grounds of age and disability, which should come into force by December 2006.

9. CONCLUSION

Of all the grounds of discrimination, age and disability are particularly difficult to transpose into national law primarily because of the potential impact on the labour market. Prohibiting discrimination on grounds of age and disability also challenges long-held assumptions about people's abilities and their place in society.

For this reason Directive 2000/78/EC allowed the Member States an additional period of time for transposition of these grounds of discrimination, coupled with an obligation to send a full annual progress report to the Commission. The promptness and level of detail with which this obligation was complied with varied greatly. The coming into force of new legislation in Denmark, France, the Netherlands and the UK is a very positive step towards the full

⁶ The Disability Discrimination Act 1995 (Amendment) Regulations 2003 & the Disability Discrimination Act (Pensions) Regulations 2003

transposition of Directive by 2 December 2006, and the Commission hopes that the other Member States which are using the extra period of time will have their legislation adopted and in force by the deadline. At that point the transposition of Directive 2000/78/EC will finally be achieved, and the goal of a labour market free of discrimination will be a step closer.