

# Consolidation Act on the Prohibition of Differences of Treatment in the Labour Market etc. <sup>1)</sup>

*This is an unofficial translation for informational purposes only. In case of discrepancy, the Danish text prevails.*

The following is a consolidation of the Act on the Prohibition of Differences of Treatment in the Labour Market etc., i.e. Consolidation Act No. 31 of 12 January 2005 with the amendments following from Act No. 240 of 27 March 2006, Act No. 1542 of 20 December 2006 and section 17 of Act No. 387 of 27 May 2008.

## Part 1

### *Scope of the Act*

**1.-(1)** Differences of treatment shall for the purposes of this Act mean any direct or indirect discrimination due to race, colour of skin, religion or belief, political affiliation, sexual orientation, age, disability or national, social or ethnic origin.

(2) A direct difference of treatment will exist where due to race, colour of skin, religion or belief, political affiliation, sexual orientation, age, disability or national, social or ethnic origin, a person is treated in a way that is inferior to the way another person is, has been or will be treated in a similar situation.

(3) An indirect difference of treatment will exist where a provision, a criterion or a practice which is apparently neutral will place persons of a certain race, colour of skin, religion or belief, political affiliation, sexual orientation, or national, social or ethnic origin or of a certain age or with a disability in a position that is inferior to that of other persons, unless the objective grounds for the provision, criterion or practice in question is a relevant objective and the means to achieve it are appropriate and necessary. See however section 2a.

(4) Harassment shall be considered as discrimination when undesirable conduct related to a person's race, colour of skin, religion or belief, political affiliation, sexual orientation, age, disability or national, social or ethnic origin takes place with the intention or the effect of violating a person's dignity and create an intimidating, hostile, degrading, humiliating or unpleasant environment for the person in question.

(5) An instruction to discriminate against a person on the grounds of race, colour of skin, religion or belief, political affiliation, sexual orientation, age, disability or national, social or ethnic origin shall be deemed to be a difference in treatment.

(6) This Act does not apply to the extent similar protection against a difference of treatment follows from a collective agreement. See subsection (7) however.

(7) This Act does not apply if a prohibition against a difference of treatment based on age and disability follows from a collective agreement or other agreement that corresponds at a minimum to the provisions of Directive No. 2000/78/EC reproduced as Schedule 1 to this Act establishing a general framework for equal treatment in employment and occupation.

**1a.** The Minister of Defence may upon consultation of the affected organisations make armed forces in active service exempt from the prohibition against differences of treatment based on age and disability set out in this Act.

## Part 2

### *Prohibition of differences of treatment*

**2.-(1)** An employer may not subject workers or applicants for vacant jobs to differences of treatment in their appointment, dismissal, transfer, promotion or in respect of pay and working conditions.

(2) A difference of treatment in respect of pay conditions will exist if an employer does not offer equal pay for the same work or work to which the same value is assigned.

(3) A worker whose pay is lower than the pay of others contrary to subsection (1) is entitled to receive the difference.

**2a.** The employer must take the measures that are expedient in light of the specific needs, in order to provide access to employment, to carry through an occupation or be successful in occupation for a person with a disability, or provide access to education for a person with a disability. This obligation shall not apply, however, if a disproportionate burden will thereby be imposed on the employer. Where this burden is alleviated to a sufficient extent through public authority measures, the burden will not be considered to be disproportionate.

**3.-(1)** An employer may not expose workers to any difference of treatment in respect of their access to vocational guidance, vocational training, advanced vocational training and retraining.

## TRANSLATION

(2) The prohibition against differences of treatment furthermore applies to anyone who carries through guidance and training activity as referred to in subsection (1) and anyone who provides employment.

(3) The prohibition against differences of treatment furthermore applies to anyone who defines conditions and makes decisions on the access to self-employment.

(4) The prohibition against differences of treatment furthermore applies to anyone who makes decisions on membership of and participation in a workers' organisation or an employers association and the benefits offered by such organisations to their members.

**4.** An employer may not in connection with or during the employment of a worker request, obtain, receive or make use of information about the worker's race, colour of skin, religion or belief, political affiliation, sexual orientation or national, social or ethnic origin.

**5.-(1)** In advertising it may not be indicated that for employment or vocational training an employer seeks or prefers a person of a certain race, colour of skin, religion or belief, political affiliation, sexual orientation or national, social or ethnic origin or of a certain age or with a disability. It may not be indicated either that the employer does not want a person with the characteristics referred to in the first sentence above.

(2) Subsection (1) shall not apply if according to exemption provisions of this Act an employer may prefer workers with a certain characteristic.

**5a.-(1)** Provisions of individual or collective contracts and agreements and in internal rules of undertakings which are contrary to the prohibition of differences of treatment as set out in sections 2 – 5 shall be ineffective. This applies to provisions of rules governing the independent occupations or professions and organisations of employers and workers as well.

(2) Provisions in agreements and in rules of undertakings etc. which cover more than one employer are similarly ineffective if they permit differences of treatment due to one of the criteria referred to in section 1(1) within the areas referred to in sections 2 – 5, which also applies to provisions of rules governing the independent occupations or professions.

(3) Irrespective of the provision set out in subsection (1), this Act shall not prevent the retention of existing age limits established by or agreed according to contracts and collective agreements, provided that the reasons for such age limits are objective and reasonable and aimed at a legitimate purpose in the framework of Danish law and the means to achieve the purpose in question are appropriate and necessary.

(4) Irrespective of section 2(1) this Act shall not prevent provisions in individual or collective contracts or agreements on the termination of employment when a worker turns seventy years. Provisions in collective contracts or agreements on the termination of employment before a worker turns seventy years, which are comprised by subsection (3) may however be varied to raise the age limit to an age level below seventy years.

(5) Irrespective of the provision in subsection (1) above, this Act shall not prevent provisions in collective contracts and agreements on special rules for pay rates paid to young persons under 18 years. The prohibition of differences of treatment due to age in respect of employment, pay conditions and dismissal shall not apply to young persons of less than 18 years whose employment is covered by a collective agreement that includes special rules on pay rates to be paid to young persons under 18 years of age.

(6) The prohibition of differences of treatment due to age in respect of employment, pay conditions and dismissal shall not apply to young persons of less than 15 years whose employment is not regulated by a collective agreement.

**5b.** The provisions of this Act cannot be varied by agreement if such variations are unfavourable to the worker.

### Part 3

#### *Exemptions*

**6.-(1)** The prohibition of any difference of treatment based on political affiliation, religion or belief as set out in sections 2 – 5 shall not apply to employers whose operations have as their explicit objective the furtherance of a specific political or religious standpoint or a specific belief and the worker's political affiliation, religious conviction or belief may be considered to be of importance for the operation of the undertaking.

(2) In case, in certain forms of occupational activity and certain training programmes it is of decisive importance that the worker is of a specific race, political affiliation, sexual orientation or national, social or ethnic origin or has a specific colour of skin, age or a specific disability, or belongs to a certain religion or belief and the requirement of a specific affiliation is in reasonable proportion to the occupational activity in question, the relevant government minister may upon having obtained an opinion from the Minister for Employment derogate from the provisions of sections 2 – 5.

**6a.** Irrespective of sections 2 – 5, this Act shall not prevent the fixing of age limits for the access to occupational social security schemes or the application of the age criterion in actuarial calculations within the framework of such schemes. The application of the age criterion may not lead to any discrimination based on gender.

### Part 4

#### *Compensation, assessment of evidence, etc.*

## TRANSLATION

**7.-(1)** Persons whose rights have been infringed through violation of sections 2 – 4, may be awarded compensation.

(2) A person who is exposed to unfavourable treatment or unfavourable consequences because that person has made a demand for equality of treatment according to sections 2 – 4 may be awarded compensation.

**7a.** If persons who consider themselves to have been subjected to infringement as set out in sections 2 – 4, are able to demonstrate objective circumstances that give rise to assuming that direct or indirect discrimination is taking place, the opposing party shall bear the burden of proving that the principle of equal treatment has not been infringed.

**8.-(1)** Violation of section 5 shall be punished with a fine.

(2) Where the violation has been committed by a company, an association, a proprietary institution, a foundation or a similar body, the legal person may as such be held liable to pay a fine. If the violation has been committed by the State, a local authority or a joint local authority enterprise comprised by section 60 of the Act on the Government of Local Authorities, the State, the local authority or the joint local authority enterprise may be held liable to pay a fine.

**8a.** Complaints about violation of the prohibition of differences of treatment provided by this Act and about violation of the prohibition of reprisal set out in section 7(2) shall be considered by the Board of Equal Treatment.

### Part 5

#### *Entry into force and relations to other legislation etc.*

**9.-(1)** Section 4 shall not apply in so far as other rules follow from special legislation.

(2) This Act shall not prevent the introduction of measures in pursuance of other legislation, in pursuance of provisions authorised by other legislation or by public measures otherwise aimed to provide improved occupational opportunities for persons of a specific race, colour of skin, religion or belief, political affiliation, sexual orientation or national, social or ethnic origin or of a certain age or with disabilities.

(3) This Act shall not prevent the introduction of measures to assist occupational opportunities for elderly workers and persons with disabilities.

(4) In order to protect children and young workers, the prohibition of discrimination based on age set out in sections 2 – 5 of this Act shall not prevent the establishment of age limits for the access to employment by legislation or in pursuance of legislation.

**10.** This Act shall enter into force on 1 July 1996.

**11.** This Act shall not extend to the Faroe Islands and Greenland.

---

Act No. 253 of 7 April 2004 on the Prohibition of Differences of Treatment in the Labour Market etc., which contains amendments concerned with section 1, section 2(4), section 3(4), sections 5-7a and section 8a and the title of Part 4, includes the following commencement provision:

#### **2.**

This Act shall enter into force the day after its promulgation in the Law Gazette. <sup>2)</sup>

---

Act No. 1417 of 22 December 2004 to Amend the Act on the Prohibition of Differences of Treatment in the Labour Market etc., which contains amendments concerned with section 1, section 1a, section 2a, section 5, section 5a, section 6, section 6a and section 9, includes the following commencement provision:

#### **2.**

This Act shall enter into force the day after its promulgation in the Law Gazette. <sup>3)</sup>

---

Act No. 240 of 27 March 2006 to Amend the Act on the Prohibition of Differences of Treatment in the Labour Market etc. (Exemption for young persons under 18 years of age), which contains amendments concerned with section 5 and section 5a, includes the following commencement provision:

#### **2.**

This Act shall enter into force on 1 April 2006.

---

## TRANSLATION

Act No. 1542 of 20 December 2006 on the Prohibition of Differences of Treatment in the Labour Market etc. (the Raising of the Age Limit for Resignation Agreements), which contains amendments of section 5a, includes the following commencement provision:

### 2.

*Subsection (1)* This Act shall enter into force on 1 January 2008.

*Subsection (2)* Provisions of contracts or collective agreements on termination of employment for workers who turn 65 years or more, entered into later than 27 December 2004 but before the commencement of this present Act shall however continue to be effective until the date when the collective agreement may be terminated for expiry.

---

Act No. 387 of 27 May 2008 on the Board of Equal Treatment, which includes amendments of section 8a, contains the following commencement provision:

### 14.

This Act shall enter into force on 1 January 2009.

*Ministry of Employment, 16 December 2008*

Claus Hjort Frederiksen

/ Lise Fangel

---

## Schedule 1

### **COUNCIL DIRECTIVE 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 13 thereof,

Having regard to the proposal from the Commission <sup>(4)</sup>, Having regard to the Opinion of the European Parliament <sup>(5)</sup>, Having regard to the Opinion of the Economic and Social Committee <sup>(6)</sup>, Having regard to the Opinion of the Committee of the Regions <sup>(7)</sup>, Whereas:

(1) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States and it respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States as general principles of Community law.

(2) The principle of equal treatment between women and men is well established by an important body of Community law, in particular in Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions <sup>(8)</sup>.

(3) In implementing the principle of equal treatment, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.

(4) The right of all persons to equality before the law and protection against discrimination constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories. Convention No 111 of the International Labour Organisation (ILO) prohibits discrimination in the field of employment and occupation.

(5) It is important to respect such fundamental rights and freedoms. This Directive does not prejudice freedom of association, including the right to establish unions with others and to join unions to defend one's interests.

## TRANSLATION

(6) The Community Charter of the Fundamental Social Rights of Workers recognises the importance of combating every form of discrimination, including the need to take appropriate action for the social and economic integration of elderly and disabled people.

(7) The EC Treaty includes among its objectives the promotion of coordination between employment policies of the Member States. To this end, a new employment chapter was incorporated in the EC Treaty as a means of developing a coordinated European strategy for employment to promote a skilled, trained and adaptable workforce.

(8) The Employment Guidelines for 2000 agreed by the European Council at Helsinki on 10 and 11 December 1999 stress the need to foster a labour market favourable to social integration by formulating a coherent set of policies aimed at combating discrimination against groups such as persons with disability. They also emphasise the need to pay particular attention to supporting older workers, in order to increase their participation in the labour force.

(9) Employment and occupation are key elements in guaranteeing equal opportunities for all and contribute strongly to the full participation of citizens in economic, cultural and social life and to realising their potential.

(10) On 29 June 2000 the Council adopted Directive 2000/43/EC <sup>(9)</sup> implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. That Directive already provides protection against such discrimination in the field of employment and occupation.

(11) Discrimination based on religion or belief, disability, age or sexual orientation may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and social protection, raising the standard of living and the quality of life, economic and social cohesion and solidarity, and the free movement of persons.

(12) To this end, any direct or indirect discrimination based on religion or belief, disability, age or sexual orientation as regards the areas covered by this Directive should be prohibited throughout the Community. This prohibition of discrimination should also apply to nationals of third countries but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and occupation.

(13) This Directive does not apply to social security and social protection schemes whose benefits are not treated as income within the meaning given to that term for the purpose of applying Article 141 of the EC Treaty, nor to any kind of payment by the State aimed at providing access to employment or maintaining employment.

(14) This Directive shall be without prejudice to national provisions laying down retirement ages.

(15) The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or practice. Such rules may provide, in particular, for indirect discrimination to be established by any means including on the basis of statistical evidence.

(16) The provision of measures to accommodate the needs of disabled people at the workplace plays an important role in combating discrimination on grounds of disability.

(17) This Directive does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training, without prejudice to the obligation to provide reasonable accommodation for people with disabilities.

(18) This Directive does not require, in particular, the armed forces and the police, prison or emergency services to recruit or maintain in employment persons who do not have the required capacity to carry out the range of functions that they may be called upon to perform with regard to the legitimate objective of preserving the operational capacity of those services.

(19) Moreover, in order that the Member States may continue to safeguard the combat effectiveness of their armed forces, they may choose not to apply the provisions of this Directive concerning disability and age to all or part of their armed forces. The Member States which make that choice must define the scope of that derogation.

(20) Appropriate measures should be provided, i.e. effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources.

(21) To determine whether the measures in question give rise to a disproportionate burden, account should be taken in particular of the financial and other costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance.

## TRANSLATION

(22) This Directive is without prejudice to national laws on marital status and the benefits dependent thereon.

(23) In very limited circumstances, a difference of treatment may be justified where a characteristic related to religion or belief, disability, age or sexual orientation constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate. Such circumstances should be included in the information provided by the Member States to the Commission.

(24) The European Union in its Declaration No 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. With this in view, Member States may maintain or lay down specific provisions on genuine, legitimate and justified occupational requirements which might be required for carrying out an occupational activity.

(25) The prohibition of age discrimination is an essential part of meeting the aims set out in the Employment Guidelines and encouraging diversity in the workforce. However, differences in treatment in connection with age may be justified under certain circumstances and therefore require specific provisions which may vary in accordance with the situation in Member States. It is therefore essential to distinguish between differences in treatment which are justified, in particular by legitimate employment policy, labour market and vocational training objectives, and discrimination which must be prohibited.

(26) The prohibition of discrimination should be without prejudice to the maintenance or adoption of measures intended to prevent or compensate for disadvantages suffered by a group of persons of a particular religion or belief, disability, age or sexual orientation, and such measures may permit organisations of persons of a particular religion or belief, disability, age or sexual orientation where their main object is the promotion of the special needs of those persons.

(27) In its Recommendation 86/379/EEC of 24 July 1986 on the employment of disabled people in the Community <sup>(10)</sup>, the Council established a guideline framework setting out examples of positive action to promote the employment and training of disabled people, and in its Resolution of 17 June 1999 on equal employment opportunities for people with disabilities <sup>(11)</sup>, affirmed the importance of giving specific attention *inter alia* to recruitment, retention, training and lifelong learning with regard to disabled persons.

(28) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.

(29) Persons who have been subject to discrimination based on religion or belief, disability, age or sexual orientation should have adequate means of legal protection. To provide a more effective level of protection, associations or legal entities should also be empowered to engage in proceedings, as the Member States so determine, either on behalf or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts.

(30) The effective implementation of the principle of equality requires adequate judicial protection against victimisation.

(31) The rules on the burden of proof must be adapted when there is a *prima facie* case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought. However, it is not for the respondent to prove that the plaintiff adheres to a particular religion or belief, has a particular disability, is of a particular age or has a particular sexual orientation.

(32) Member States need not apply the rules on the burden of proof to proceedings in which it is for the court or other competent body to investigate the facts of the case. The procedures thus referred to are those in which the plaintiff is not required to prove the facts, which it is for the court or competent body to investigate.

(33) Member States should promote dialogue between the social partners and, within the framework of national practice, with non-governmental organisations to address different forms of discrimination at the workplace and to combat them.

(34) The need to promote peace and reconciliation between the major communities in Northern Ireland necessitates the incorporation of particular provisions into this Directive.

(35) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.

## TRANSLATION

(36) Member States may entrust the social partners, at their joint request, with the implementation of this Directive, as regards the provisions concerning collective agreements, provided they take any necessary steps to ensure that they are at all times able to guarantee the results required by this Directive.

(37) In accordance with the principle of subsidiarity set out in Article 5 of the EC Treaty, the objective of this Directive, namely the creation within the Community of a level playing-field as regards equality in employment and occupation, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and impact of the action, be better achieved at Community level. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

### HAS ADOPTED THIS DIRECTIVE:

#### CHAPTER I

#### GENERAL PROVISIONS

##### *Article 1*

#### **Purpose**

The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

##### *Article 2*

#### **Concept of discrimination**

1. For the purposes of this Directive, the 'principle of equal treatment' shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, or

(ii) as regards persons with a particular disability, the employer or any person or organisation to whom this Directive applies, is obliged, under national legislation, to take appropriate measures in line with the principles contained in Article 5 in order to eliminate disadvantages entailed by such provision, criterion or practice.

3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.

4. An instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1.

5. This Directive shall be without prejudice to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others.

##### *Article 3*

#### **Scope**

1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

(a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

## TRANSLATION

(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

(c) employment and working conditions, including dismissals and pay;

(d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

2. This Directive does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

3. This Directive does not apply to payments of any kind made by state schemes or similar, including state social security or social protection schemes.

4. Member States may provide that this Directive, in so far as it relates to discrimination on the grounds of disability and age, shall not apply to the armed forces.

### *Article 4*

#### **Occupational requirements**

1. Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

2. Member States may maintain national legislation in force at the date of adoption of this Directive or provide for future legislation incorporating national practices existing at the date of adoption of this Directive pursuant to which, in the case of occupational activities within churches and other public or private organisations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. This difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground. Provided that its provisions are otherwise complied with, this Directive shall thus not prejudice the right of churches and other public or private organisations, the ethos of which is based on religion or belief, acting in conformity with national constitutions and laws, to require individuals working for them to act in good faith and with loyalty to the organisation's ethos.

### *Article 5*

#### **Reasonable accommodation for disabled persons**

In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.

### *Article 6*

#### **Justification of differences of treatment on grounds of age**

1. Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate L 303/20 EN Official Journal of the European Communities 2.12.2000 aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary. Such differences of treatment may include, among others:

(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and

## TRANSLATION

persons with caring responsibilities in order to promote their vocational integration or ensure their protection;

(b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;

(c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

2. Notwithstanding Article 2(2), Member States may provide that the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the grounds of sex.

### *Article 7*

#### **Positive action**

1. With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds referred to in Article 1.

2. With regard to disabled persons, the principle of equal treatment shall be without prejudice to the right of Member States to maintain or adopt provisions on the protection of health and safety at work or to measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment.

### *Article 8*

#### **Minimum requirements**

1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.

2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive.

## CHAPTER II

### **REMEDIES AND ENFORCEMENT**

### *Article 9*

#### **Defence of rights**

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.

2. Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

3. Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards the principle of equality of treatment.

### *Article 10*

#### **Burden of proof**

## TRANSLATION

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.
2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.
3. Paragraph 1 shall not apply to criminal procedures.
4. Paragraphs 1, 2 and 3 shall also apply to any legal proceedings commenced in accordance with Article 9(2).
5. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case.

### *Article 11*

#### **Victimisation**

Member States shall introduce into their national legal systems such measures as are necessary to protect employees against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.

### *Article 12*

#### **Dissemination of information**

Member States shall take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force in this field, are brought to the attention of the persons concerned by all appropriate means, for example at the workplace, throughout their territory.

### *Article 13*

#### **Social dialogue**

1. Member States shall, in accordance with their national traditions and practice, take adequate measures to promote dialogue between the social partners with a view to fostering equal treatment, including through the monitoring of workplace practices, collective agreements, codes of conduct and through research or exchange of experiences and good practices.
2. Where consistent with their national traditions and practice, Member States shall encourage the social partners, without prejudice to their autonomy, to conclude at the appropriate level agreements laying down anti-discrimination rules in the fields referred to in Article 3 which fall within the scope of collective bargaining. These agreements shall respect the minimum requirements laid down by this Directive and by the relevant national implementing measures.

### *Article 14*

#### **Dialogue with non-governmental organisations**

Member States shall encourage dialogue with appropriate nongovernmental organisations which have, in accordance with their national law and practice, a legitimate interest in contributing to the fight against discrimination on any of the grounds referred to in Article 1 with a view to promoting the principle of equal treatment.

## CHAPTER III

### **PARTICULAR PROVISIONS**

### *Article 15*

#### **Northern Ireland**

1. In order to tackle the under-representation of one of the major religious communities in the police service of Northern Ireland, differences in treatment regarding recruitment into that service, including its

## TRANSLATION

support staff, shall not constitute discrimination insofar as those differences in treatment are expressly authorised by national legislation.

2. In order to maintain a balance of opportunity in employment for teachers in Northern Ireland while furthering the reconciliation of historical divisions between the major religious communities there, the provisions on religion or belief in this Directive shall not apply to the recruitment of teachers in schools in Northern Ireland in so far as this is expressly authorised by national legislation.

### CHAPTER IV

#### FINAL PROVISIONS

##### *Article 16*

#### **Compliance**

Member States shall take the necessary measures to ensure that:

(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;

(b) any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations are, or may be, declared null and void or are amended.

##### *Article 17*

#### **Sanctions**

Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 2 December 2003 at the latest and shall notify it without delay of any subsequent amendment affecting them.

##### *Article 18*

#### **Implementation**

Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 2 December 2003 at the latest or may entrust the social partners, at their joint request, with the implementation of this Directive as regards provisions concerning collective agreements. In such cases, Member States shall ensure that, no later than 2 December 2003, the social partners introduce the necessary measures by agreement, the Member States concerned being required to take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof. In order to take account of particular conditions, Member States may, if necessary, have an additional period of 3 years from 2 December 2003, that is to say a total of 6 years, to implement the provisions of this Directive on age and disability discrimination. In that event they shall inform the Commission forthwith. Any Member State which chooses to use this additional period shall report annually to the Commission on the steps it is taking to tackle age and disability discrimination and on the progress it is making towards implementation. The Commission shall report annually to the Council.

When Member States adopt these measures they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

##### *Article 19*

#### **Report**

1. Member States shall communicate to the Commission, by 2 December 2005 at the latest and every five years thereafter, all the information necessary for the Commission to draw up a report to the European Parliament and the Council on the application of this Directive.

2. The Commission's report shall take into account, as appropriate, the viewpoints of the social partners and relevant non-governmental organisations. In accordance with the principle of gender main-

## TRANSLATION

streaming, this report shall, *inter alia*, provide an assessment of the impact of the measures taken on women and men. In the light of the information received, this report shall include, if necessary, proposals to revise and update this Directive.

### Article 20

#### Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

### Article 21

#### Addressees

This Directive is addressed to the Member States.

Done at Brussels, 27 November 2000.

*For the Council*

*The President*

É. GUIGOU

(1) This Act contains provisions that implement parts of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 no. L 180 p. 22) and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 no. L 303 p. 16)

(2) Act No. 253 of 7 April 2004 was promulgated in the Legal Gazette on 14 April 2004

(3) Act No. 1417 of 22 December 2004 was promulgated in the Legal Gazette on 27 December 2004

(4) OJ C 177 E, 27.6.2000, p. 42.

(5) Opinion delivered on 12 October 2000 (not yet published in the Official Journal).

(6) OJ C 204, 18.7.2000, p. 82.

(7) OJ C 226, 8.8.2000, p. 1.

(8) OJ L 39, 14.2.1976, p. 40.

(9) OJ L 180, 19.7.2000, p. 22.

(10) OJ L 225, 12.8.1986, p. 43.

(11) OJ C 186, 2.7.1999, p. 3.