



SUNICOP

European Labour Law (Equal Treatment)



SUNICOP

Equal Treatment

- principle of equality or non-discrimination is deeply embedded within EU law
- one of the general principles of law
- The EC played an important role, first by adopting Article 141 EC Treaty, which contains the principle of equal pay for equal work, and consequently by adopting several directives from 1975 to 2006

Equal treatment directives 1975-2006

- Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women
- Council Directive 76/207/EEC of 9 February 1976 on the implementation of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions
- Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security
- Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes
- Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes

Equal treatment directives 1975 -2006

- Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation
- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
- Council Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC 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
- Council Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)

Equal Treatment

The Gender Employment Directive

2006 Recast Gender Employment Directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation

Equal Treatment

The Racial Equality Directive

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin) prohibits discrimination on grounds of racial or ethnic origin in employment, vocational training, education, social protection, social advantages, and access to goods and services, including housing

Equal Treatment

The Employment Equality Directive

Council Directive 2000/78/EC of 27 November

2000 establishing a general framework for

equal treatment in employment and

occupation) prohibits discrimination on

grounds of religion or belief, disability, age and

sexual orientation, but only in respect of

employment and vocational training

Equal Treatment

Concept of discrimination (Directive 2000/78/EC)

Direct discrimination

Indirect discrimination

Harrasment

Equal Treatment

Directive 2000/78/EC

Scope:

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

Equal Treatment

Directive 2000/78/EC

Scope:

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

Equal Treatment

Directive 2000/78/EC

Scope:

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

Equal Treatment

Directive 2000/78/EC

Scope:

- 1. The 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.*
- 2. The Directive does not apply to payments of any kind made by state schemes or similar, including state social security or social protection schemes*

Equal Treatment

Maruko case (homosexual partners)

- A survivor's benefit granted under an occupational pension scheme falls within the scope of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Case C-267/06 *Tadao Maruko v. Versorgungsanstalt der deutschen Bühnen* [2008] ECR I-1757)

Equal Treatment

- The prohibition of discrimination laid down by the Directive on equal treatment in employment and occupation is not limited to disabled people alone
- *Coleman* case

Equal Treatment

- *Reasonable accommodation for disabled persons*
- *Justification of differences of treatment on grounds of age*
- *Palacios de la Villa case*

Equal Treatment

- *Positive Action*
- *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 stated grounds*

Equal Treatment

Excercise 1

- *Please read and try to identify main findings of Chacón Novas case on term of ‘disability’. Please also read the relevant provisions of Equal Treatment Directive. See Handbook Annex 3 and Annex 5 (case).*

Gender Employment Directive

Council Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)

Gender Employment Directive

Purpose:

- to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. To that end, it contains provisions to implement the principle of equal treatment in relation to:
- access to employment, including promotion, and to vocational training;
- working conditions, including pay;
- occupational social security schemes.

It also contains provisions to ensure that such implementation is made more effective by the establishment of appropriate pro

Gender Employment Directive

Definitions

Direct discrimination

Indirect discrimination

Harrasment

Sexual harassment

Gender Employment Directive

Positive Action

Kalanke case !?

Marschall case

Abrahamsson case

Equal pay

- According to Article 3 of Recast Directive for the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated
- Article 157 TFEU (ex 119(141) EC Treaty)

Excercise 2

Please read the CHAPTER 3

Equal treatment as regards access to employment, vocational training and promotion and working conditions of the Recast Directive (Annex 4) and try to interpretate

Group A – case Commission v. France (C-318/86) (Annex 6)

Group B – case Commission v. Germany C-248/83 (Annex 7)