

## 2) Non-discrimination and equal treatment in professional life

***a. Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State***

*Official Journal L 343, 23/12/2011 P. 0001 – 0009*

*[Whereas]*

(29) Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation in particular in accordance with Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

***b. Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work***

*Official Journal L 327, 05/12/2008 P. 0009 – 0014*

## CHAPTER II - EMPLOYMENT AND WORKING CONDITIONS

### *Article 5*

The principle of equal treatment

1. The basic working and employment conditions of temporary agency workers shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job.

For the purposes of the application of the first subparagraph, the rules in force in the user undertaking on:

- (a) protection of pregnant women and nursing mothers and protection of children and young people; and
- (b) equal treatment for men and women and any action to combat any discrimination based on sex, race or ethnic origin, religion, beliefs, disabilities, age or sexual orientation;

must be complied with as established by legislation, regulations, administrative provisions, collective agreements and/or any other general provisions.

***c. Regulation (EC) No 1927/2006 of the European Parliament and of the Council of 20 December 2006 on establishing the European Globalisation Adjustment Fund***

*Official Journal L 406, 30/12/2006 P. 0001 – 0006, last amended by Regulation (EC) No 546/2009 of the European Parliament and of the Council of 18 June 2009, Official Journal L 167, 29/06/2009 P. 0026 – 0029*

### *Article 7 Equality between men and women and non-discrimination*

The Commission and the Member States shall ensure that equality between men and women and the integration of the gender perspective are promoted during the various stages of implementation of the EGF. The Commission and the Member States shall take appropriate steps to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the various stages of the implementation of and, in particular, in access to, the EGF.

***d. Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services***

*Official Journal L 373, 21/12/2004 P. 0037 – 0043*

*[Whereas]*

(3) While prohibiting discrimination, it is important to respect other fundamental rights and freedoms, including the protection of private and family life and transactions carried out in that context and the freedom of religion.

***e. Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities***

*Official Journal L 124, 27/04/2004 P. 0001 – 0118*

**Annex I Amendments to the staff regulations of officials of the European Communities**

The Staff Regulations of officials of the European Communities are amended as follows:

1) (...)

3) the former Article 1a becomes Article 1d and is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. In the application of these Staff Regulations, any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation shall be prohibited.

For the purposes of these Staff Regulations, non-marital partnerships shall be treated as marriage provided that all the conditions listed in Article 1(2)(c) of Annex VII are fulfilled.";

(...)

30) Article 26 is amended as follows:

(a) in the third paragraph, the following is added after the word "letter": "to the last address communicated by the official.";

(b) the fourth paragraph is replaced by the following: "An official's personal file shall contain no reference to his political, trade union, philosophical or religious activities and views, or to his racial or ethnic origin or sexual orientation.

The preceding paragraph shall not however prohibit the insertion in the file of administrative acts and documents known to the official which are necessary for the application of these Staff Regulations.";

(...)

**Annex II Amendments to the conditions of employment of other servants of the European Communities**

The Conditions of Employment of other servants of the European Communities are hereby amended as follows:

45) the existing Title IV becomes Title V and the following Title is inserted:

"TITLE IV CONTRACT STAFF

CHAPTER 3 CONDITIONS OF ENGAGEMENT

Article 82

1. Contract staff shall be selected on the broadest possible geographical basis from among nationals of Member States and without distinction as to racial or ethnic origin, political, philosophical or religious beliefs, age or disability, gender or sexual orientation and without reference to their marital status or family situation.

***f. Code of Conduct of the European Central Bank in accordance with Article 11.3 of the Rules of Procedure of the European Central Bank***

*Official Journal C 076, 08/03/2001 P. 0012 – 0015*

**2. Basic principles**

***2.1. Equal treatment and non-discrimination (1)***

The addressees should avoid any form of discrimination and, in particular, any discrimination based on race, nationality, gender, age, physical disability, sexual preference, political opinions, philosophical views or religious convictions.

***g. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation***

*Official Journal L 303, 02/12/2000 P. 0016 – 0022*

*[Whereas]*

(...)

(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.

(...)

(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.

(...)

(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.

(...)

(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.

(...)

(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.

(...)

## **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 4 Occupational requirements*

(...)

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.

### **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 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.

#### ***h. Council Regulation (EC, ECSC, Euratom) No 781/98 of 7 April 1998 amending the Staff Regulations of Officials and Conditions of Employment of Other Servants of the European Communities in respect of equal treatment***

*Official Journal L 113, 15/04/1998 P. 0004 – 0005*

#### *Article 1*

The Staff Regulations of officials of the European Communities are hereby amended as follows:

1. The following Article shall be inserted after Article 1:

##### Article 1a

1. Officials shall be entitled to equal treatment under these Staff Regulations without reference, direct or indirect, to race, political, philosophical or religious beliefs, sex or sexual orientation, without prejudice to the relevant provisions requiring a specific marital status.

(...)

2. The second paragraph of Article 27 shall be replaced by the following:

'Officials shall be selected without distinction as to race, political, philosophical or religious beliefs, sex or sexual orientation and without reference to their marital status or family situation.'

#### *Article 2*

The conditions of employment of other servants of the European Communities are hereby amended as follows:  
(...)

2. the second subparagraph of Article 12(1) shall be replaced by the following:

'Temporary staff shall be selected without distinction as to race, political, philosophical or religious beliefs, sex or sexual orientation and without reference to their marital status or family situation.' (...)

*i. Council Regulation (ECSC, EEC, Euratom) No 1860/76 of 29 June 1976 laying down the Conditions of Employment of Staff of the European Foundation for the Improvement of Living and Working Conditions Official Journal L 214, 06/08/1976 P. 0024– 0046, last amended by Council Regulation (Euratom, ECSC, EEC) No 680/87 of 23 February 1987, Official Journal L 072, 14/03/1987 P. 0015 – 0028*

### **Chapter 3 Conditions of engagement**

#### *Article 23*

1. The engagement of staff shall be directed to securing for the Foundation the services of persons of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of the Member States of the European Communities.

Staff shall be selected without reference to race, creed or sex.

(...)