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Contact: J Schmitt

Ms Belinda Pyke
Director
European Commission
DG Employment
B- 1049 Brussels

12 October 2007

Dear Ms Pyke,

I would like to thank you for having given us the opportunity to respond to the specific social partner consultation launched by your services last July and entitled "Discrimination, does it matter?".

We have consulted BUSINESSEUROPE members on the different issues raised in the consultation paper. You will find below a summary of their replies.

1) Need and nature of any initiative

- Is there clear evidence of discrimination on any of the grounds covered by Article 13 of the Treaty, i. e. sex, religion or belief, disability, age or sexual orientation against which people have no legal protection?

BUSINESSEUROPE believes that there is no evidence of discrimination on any of the grounds covered by Article 13 of the Treaty against which people have no legal protection. The implementation laws of Art. 13 EU Directives as well as pre-existing national regulations offer a comprehensive framework to combat discrimination on all above-mentioned grounds.

However, employers point to the fact that it is in certain cases extremely difficult for companies and service providers to comply with the multiple layers of rules that may exist to ensure an environment free of discrimination. Efforts at national level could therefore be usefully made to explain in simple terms how best to comply with existing rules.

Examples of difficulties faced by companies include:

- Costs induced by the obligation to put in place preventive measures such as new strategies, training etc. which are in some cases disproportionate with the number of potential discrimination cases. A recent German study by the University of Dortmund states that the new German legislation transposing EU Directives implies



the spending of 1.73 billion Euro per year by German companies for these types of preventive measures.

- How to deal with legitimate differences made between different categories of clients in the access to goods and services. For example, on the ground of age, special offers for younger and older people are made for some services such as cheaper transport, which might not be available for passengers between 18 – 65 years. On the ground of disability, the Dutch government commissioned a research on the limitations that disabled people experience in the area of goods and services. A very long list of all kind of ‘thresholds’ has been drawn up: for some groups shelves in shops are too high, for others they are too low; for autistic people loud music and flashes are limitations to access of certain café’s but people with poor eyesight need a very bright environment; in swimming pools the water is too warm for some people and for others too cold; etc. In specific cases, accommodation of particular needs might seem simple, but it should be kept in mind that in other cases a suitable solution to be proposed at a reasonable cost may not exist.
- Difficulties to fully grasp the meaning of some concepts and definitions imported in the national rules from the EU level but that might not match the concepts used earlier in the national context.
 - What areas should any new initiative cover? In what areas other than employment do you find that discrimination is most widespread?

BUSINESSEUROPE members believe that no new initiative of the Commission is necessary. The role of the EC should remain to organise exchanges of experiences and promote good practices across countries and stakeholders. Initiatives such as the European Year of Equal Opportunities for All are useful and their benefits could be further exploited even after the year has ended.

2) The nature and effectiveness of non-legislative measures and of measures to accompany any legislation

- Do you believe that non legislative measures, for example, awareness-raising, training for specific groups, exchange of best practice, open method of co-ordination, could effectively deal with the remaining problems?

Non-legislative measures are certainly the best suited tools to ease the access to goods and services to all because tailored solutions have to be found to suit the particular needs of persons in specific situations. One-size-fits-all solutions are certainly not an option.

A great number of measures such as awareness-raising, training, exchange of best practice etc. are taken at national, regional or local levels already. Employers would support the promotion of initiatives such as :

- Campaigns to inform companies in a specific sector about potential problems and give suggestions for solutions;



- Organisation of transparency of information on the supply of targeted services for specific groups (disabled persons etc.);
- Twinning programmes between companies and associations to “label” suppliers of specifically tailored services;
- Tailored advice and training to be given to employees especially in small structures;
- Guides on the business case for diversity.

Public investments to put in place the right infrastructure that would allow companies to propose tailored services despite the huge costs it implies may also be usefully considered. This could concern areas such as buildings and public infrastructure, availability of translators for deaf people etc.

- If legislation is proposed, what accompanying measures would support effective implementation?

For the reasons mentioned above, BUSINESSEUROPE members do not believe that legislation should be proposed.

3) Advantages and disadvantages of dealing in one single initiative with discrimination outside the labour market not currently covered by EU legislation

- What is the best approach to tackle multiple discrimination?
- How could a single initiative address the specificities of the different types of discrimination?

The only suitable approach to non discrimination is one that allows for specific solutions to be found to meet the needs of individuals while taking into account the needs and constraints of the other stakeholders and in particular of companies. The right balance between the two objectives has to be struck to allow individuals to live in an environment free of discrimination and to allow companies to concentrate on their core business, grow, and stay competitive in Europe.

BUSINESSEUROPE members believe that a general and non legislative approach should be taken from the EU level. The current legislative framework is suitable to deal, at national level, with specific situations such as multiple discrimination.

4) Exceptions

- What exceptions to the general rule of equal treatment should be allowed (genuine and determining occupational requirements, positive action, protection of privileges based on certain characteristics)?

BUSINESSEUROPE members are of the opinion that the existing EU and national legislative principles of non discrimination are sufficient to cover situations of access to goods and services. The application of such principles should be fair for individuals and companies alike and should not create disproportionate burdens on the side of the



service providers (costs, burden of proof etc.). The possibility for service providers to make differentiated offers to potential clients by using legitimate criteria such as age should be maintained. To ease the application of the principles, the conditions of “fair treatment” could therefore usefully be explained closest to the local players. It should be borne in mind that a multitude of providers of goods and services are potentially concerned ranging from companies, self-employed to landlords, etc.

5) Role of equality bodies

- Should the role of equality bodies be widened to go beyond their current remit of discrimination based only on race?
- How can it be ensured that they can operate effectively?

In most countries, a number of equality bodies or equivalent institutions already exist, be they prompted by EU legislation or not. Before discussing the widening of their scope, effective cooperation or even rationalisation could be envisaged at national level in some countries. Duplication of work should be avoided and cooperation is necessary notably to address issues such as multiple discrimination. In some countries, existing bodies already work together in a satisfactory manner. In any case, equality bodies should not try and substitute the role played by courts of justice.

We very much hope that BUSINESSEUROPE comments will be fully reflected as the debate evolves. We would in addition urge caution in the treatment of the replies received in the parallel online consultation, which was open to a larger public, as the way most of the questions were drafted were biased, pointing to the need for further EU legislation and not allowing for an informed discussion on whether legislation is indeed the most suitable way forward or not.

Yours sincerely,

Jørgen Rønne
Acting Director, Social Affairs