

# **UK CONSULTATION ON THE EUROPEAN COMMISSION PROPOSAL FOR AN EQUAL TREATMENT DIRECTIVE**

## **Response from the Catholic Bishops' Conferences of England and Wales, and Scotland**

### **Overview**

1. The Catholic Bishops' Conferences of England and Wales and Scotland welcome the opportunity to contribute to the consultation exercise on the proposed Equal Treatment Directive. Before commenting on the text of the proposed Directive in detail, there are some important general points to establish.
2. Firstly, the Catholic Church commends the moral principle underlying the Bill on the basis of the innate dignity of every person as made in the image of God.
3. Secondly the Church is not seeking special provisions which exempt it from universally applicable requirements. However the Directive already recognises the validity of varying treatment in particular circumstances, for example risk assessments based on age or disability in relation to financial services. And the Church also recognises that groups which do not agree with its teaching should be free to organise themselves and to propagate their views as they wish.
4. What the Church is seeking from this Directive is simply the right to maintain its own teaching and activities with integrity, according to its own ethos. The rights of Freedom of Religion and Freedom of Expression under Articles 9 and 10 of the European Convention on Human Rights are of fundamental importance in a democratic society – and doubly so in one which prides itself on tolerance and diversity. The key issue for the Church in responding to the consultation is the extent to which the proposed Directive may have the effect of limiting the exercise of those fundamental rights.
5. As the Directive covers religion, belief, disability, age and sexual orientation, it is inevitable that circumstances will arise where the right to equal treatment under the directive will involve competing rights, either within a protected characteristic or between them, given the incompatibility of some of the beliefs concerned. If the Directive is unable to provide a means of balancing those competing rights, there is a risk that practical implementation may effectively turn the Directive into an instrument of oppression against one or other group. It is in nobody's interest for these issues to be left unclear, with organisations and individuals unguided until matters have finally been resolved in the European Court.

## **Detailed comments**

### **Recitals**

6. **Paragraphs (2) and (3)** cite various international instruments but no direct reference is made to Articles 9 and 10 of the European Convention on Human Rights. As these directly establish the rights to freedom of religion – as practice and belief - and to freedom of expression it would be helpful to the understanding of the Directive to have specific reference to the them.
7. **Para. (11) *et al.*** uses the phrase ‘without prejudice to the competencies of the Member States’. We are concerned that the recent Maruko judgement (ECJ, 1 April 2008, Case c-267/06, T. Maruko vs. VdB) and other case law may render a ‘without prejudice’ clause irrelevant when a matter comes before the ECJ. If so there are grave concerns about the extension of community competence by the courts without any prior political process.

### **Articles**

8. **Article 2 (3)** defines harassment as ‘unwanted conduct ... with the purpose or effect of violating the dignity of a person and or creating an intimidating, hostile, degrading, humiliating or offensive environment’. That is to say that no intention is required, the test is entirely subjective, and as the burden of proof is reversed, if a person declares themselves to be offended, there is no legal defence as the respondent cannot prove that the complainant was not offended.
9. Discrimination under this Directive is not restricted to employment, and so this subjective approach to harassment will apply in all walks of life, including academic discourses, sermons, theatre, television and radio discussions. Various pressure groups are likely to use the provisions of the Directive to curtail the expression of views they disagree with by the simple expedient of declaring themselves to be offended. Homosexual groups campaigning for same sex marriage may declare themselves offended by the presentation of the Catholic Church’s moral teaching on homosexual acts; Catholics may declare themselves offended by a ‘Gay Pride’ march; an atheist may be offended by religious pictures in art gallery; a Muslim may be offended by any picture representing the human form.
10. However, freedom of expression is a right which should be used with due regard to others’ feelings. To strike the right balance, the conduct should have both the ‘purpose and effect’ and the consequences should be limited to creating an ‘intimidating, hostile, degrading or humiliating’ environment, on which a more objective judgement could be made than on ‘offensiveness’.

11. **Art. 2 (6&7)** correctly allow for differences of treatment in relation to age and disability in certain circumstances. In the Church's view an additional sub-paragraph is needed confirming that differences of treatment shall not constitute discrimination where such differences are required to enable a religious body to function in accordance with its ethos. A provision of this nature would go a long way to ensure that competing rights are balanced, rather than religious sensibilities being ignored or becoming the subject of tendentious claims.
12. **Art 3 (1) (d)** includes within the scope of the Directive discrimination in relation to 'Access to and supply of goods and services which are available to the public including housing'. It is not clear whether 'goods and services' would apply to the activities of a Catholic priest, if, as recently occurred, he were to refuse to take a booking for a Church Hall from a group of witches. These potential problems could be avoided by the addition of the ethos clause recommended at para. 11 above.
13. **Art 3 (4)** states that the Directive is 'without prejudice to national legislation ... concerning the status and activities of churches and other organisations based on religion or belief'. However, it is not clear that in the absence of specific national legislation the activities of a priest referred to in para. 12 above would benefit from this clause – and the Maruko judgement may render it meaningless even if applicable.
14. **Art. 13** requires Member States to ensure that 'any ...internal rules of undertakings, and rules governing profit or non-profit-making associations contrary to the principle of equal treatment are, or may be, declared null and void or are amended.' This could have the effect of requiring Catholic organisations to act against their ethos: if a Catholic event takes place at a venue that offers double, twin, and single bedded rooms, the teaching of the Church would require that double bedded rooms were only available to married couples. Under Article 13 the rule (and the practice it governed) could be unlawful for failing to provide equal treatment to unmarried heterosexual couples or to homosexual couples. At this point the EU would effectively be dictating to religious bodies what their faith does or does not require: a wholly unacceptable position.
15. **Art. 15** requires implementation of the Directive within two years of adoption. Given the wide scope of the Directive and the need for careful guidance on its application, particularly where there are competing rights, two years may be far too short a time-scale, particularly for Member States with less experience in these areas than the UK.

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