

Brussels, 8 October 2009

Gender equality rules: cases closed in Austria, Finland and Malta; reasoned opinions to Germany and Portugal

The Commission has today sent reasoned opinions to Germany and Portugal to fully implement EU rules prohibiting discrimination in employment and occupation on the grounds of gender (2002/73/EC, see also [MEMO/08/742](#)). It has also decided to close the infringement proceedings on the same Directive against Austria, Finland and Malta after they successfully brought national legislation into line with EU requirements.

Vladimír Špidla, EU Commissioner for Equal Opportunities, said: "This Directive is crucial to tackling gender discrimination, an important goal of the European Union. It was agreed unanimously by the Member States and adopted in 2002, but EU directives cannot reach their full potential if they are not fully and correctly transposed into national laws. I am happy to see that Austria, Finland and Malta have adapted their national laws to comply with EU norms following the Commission's legal action. We will continue our constructive dialogue with Germany and Portugal to achieve full compliance with the Directive".

Today, Portugal and Germany have received reasoned opinions for incorrect transposition of Directive 2002/73/EC.

In the case of **Portugal**, the reasoned opinion raises three points of non-conformity with the Directive: scope (provisions of national law do not apply to civil servants), right of associations to engage in judicial procedures on behalf or in support of complainants and the competences of the national equality body. Portugal has two months to reply. If there is no satisfactory reply, the Commission can refer the matter to the European Court of Justice.

The reasoned opinion sent to **Germany** raises one point of non-conformity with the Directive. According to the Commission, national law does not grant the level of protection required by the Directive since it does not prohibit discrimination on the grounds of sex concerning dismissals, as required by the Directive.

The Commission has also decided to close three infringement proceedings open for incorrect transposition of the Directive by **Austria, Finland** and **Malta**.

Malta

In the Reasoned Opinion, the Commission raised the issues of definition of discrimination; the rules on compensation or reparation for loss and damage; and the independent nature of the Equality Body. The necessary amendments to Maltese law were notified to the Commission on 11 June 2009, and the Commission is now satisfied that Malta has correctly transposed Directive 2002/73/EC.

Finland

In the case of Finland, the Commission highlighted two problems of non-conformity: the definitions of harassment and sexual harassment and the rules on compensation and reparation, which set an upper limit for compensation not allowed under the Directive. Finland adopted a new law in 2009. This new law redefines the concept of harassment and sexual harassment in conformity with the Directive. In addition, it restricts the existence of upper limit compensation to those cases concerning access to employment in which the employer can prove that the applicant would not have been chosen for the job even if the choice had been made on non-discriminatory grounds. The Commission is now of the opinion that Finland has correctly transposed the Directive.

Austria

In the Reasoned Opinion, the Commission pointed out that national law did not entirely comply with the Directive since it did not expressly provide for compensation in case of discriminatory dismissal. Austria amended in 2008 the relevant national law, introducing explicitly the possibility for victims of discriminatory dismissals to claim compensation.

Background

Infringement procedures consist of three steps. The first step is that the Member State receives a letter of formal notice and has two months to respond. In case further compliance with EU legislation is needed, the Commission sends a reasoned opinion. Again the Member State has two months to reply. If there is no satisfactory reply, the Commission can refer the matter to the European Court of Justice in Luxembourg. It can also request that the Court impose a fine on the country concerned if it does not comply with the Court's ruling.

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