

## How European Community law operates

### Directives and their transposition

Directives are binding, as to the result to be achieved, upon each Member State to whom they are addressed. However, the national authorities are left the choice of form and methods to achieve their objectives. Directives may be addressed to individual, several or all Member States.

For objectives laid down in directives to become applicable to individual citizens, an "act of transposition" by national legislators is required, whereby national law is adapted to the objectives laid down in directives. Individual citizens are given rights and bound by the legal act when the directive has been transposed into national law.

Since the Member States are only bound by the objectives laid down in directives, they have some discretion, when transposing them into national law, in taking account of specific national circumstances. Transposition must be effected within the period laid down in a directive. In transposing directives, the Member States must select the national forms, which are best suited to ensure the effectiveness of Community law.

Directives must be transposed in the form of binding national legislation, which fulfils the requirements of legal security and clarity, and establishes an actionable legal position for individuals. Legislation, which has been adapted to EC directives, may not subsequently be amended contrary to the objectives of those directives.

### Directives and their application

Directives are not directly applicable, in principle. The [European Court of Justice](#), however, has ruled that individual provisions of a directive may, exceptionally, be directly applicable in a Member State without requiring an act of transposition by that Member State beforehand where:

1. the period for transposition has expired and the directive has not been transposed or has been transposed inadequately;
2. the provisions of the directive are imperative as to their substance; and
3. the provisions of the directive confer rights on individuals.

Accordingly, if these requirements are fulfilled, individuals may cite the provisions of the directive against all agencies in whom State power is vested (usually referred to as the "vertical direct effect" of the Directives). Such agencies include organisations and establishments which are subordinate to the State, i.e. public bodies, or on which the State confers rights that exceed those arising from the law on relations between private persons. On the other hand, an individual who feels that they have been discriminated against, according to the grounds of discrimination stated in the Racial Equality Directive or Employment Equality Directive, cannot invoke the provisions of either Directive against their employer in court if the employer is a privately owned company. However, the European Court of Justice has called in those circumstances national judges to interpret the national law in accordance with the provisions of EC legislation. This particular aspect of the law is specifically referred to in the so-called Marleasing case (Case 106/89 Marleasing SA v La Comercial Internacional de Alimentacion SA [1990] ECR 1839) where the ECJ addressed consequences arising from a non-implemented Directive in a dispute between two "individuals". During the case, the ECJ reiterated that under Article 249 EC it "lies on all elements of the state, including the courts, and required

national courts, when applying national law, whether adopted prior to or after the Directive, to interpret that law in the light of the wording and purpose of the directive".

The agencies must then automatically comply with the directly applicable provisions of the directive. But even when the provision concerned does not seek to confer any rights on the individual and only requirements (1) and (2) are fulfilled, the Court's current case law says the Member State authorities have a legal duty to comply with the untransposed directive.

According to Court case law, an individual citizen may also be entitled to claim compensation from a Member State, which has not transposed a directive or has done so inadequately where:

1. the directive is intended to confer rights on individuals;
2. the substance of the rights can be ascertained on the basis of the directive;
3. there is a causal connection between the breach of the duty to transpose the directive and the loss sustained by the individual. Fault on the part of the Member State is then not required in order to establish liability, although the breach by the Member State must be "sufficiently serious".

You can find more information on the nature of Community law in [The ABC of Community law](#).

### **What to do if you have been discriminated against?**

European legislation requires that Member States give victims of discrimination the right to make a complaint through a judicial or administrative procedure. If you feel you have suffered discrimination as defined under the two EC anti-discrimination Directives, you will need to familiarise yourself first with the provisions and procedures of your national legal system, including the official organisations that are supposed to help victims of discrimination (see: [National Equality Bodies](#)); the judicial and administrative procedures you can use; the financial support available to you to follow the legal process; the kind of legal remedies available; the process for proving discrimination has taken place; and sources of advice and assistance.

Knowledge of your national legal system is imperative as the national courts are the primary level of recourse for cases pertaining to the Racial Equality Directive and the Employment Equality Directive. If necessary, as part of a so-called 'preliminary ruling' procedure, you are entitled to ask, within the framework of a procedure before a national court, that the national judge requests the [European Court of Justice](#) (ECJ) to interpret the Directives. At the judge's request, the Court will rule whether your case will be upheld or not.

According to the ECJ, it is up to the national courts - both the lower courts and the highest court(s) - to decide before which actions are brought. The courts are also responsible for the subsequent decision to assess, in the light of the special features of each case, whether a preliminary ruling is required. The ECJ may dismiss a request from a national court if:

- the question is not relevant in the sense that the answer to that question, regardless of what the answer may be, in no way can affect the outcome of the case;
- the requested interpretation of Community law bears no relationship to the actual facts;
- the problem is hypothetical; or

- the Court has not been provided with the factual or legal material necessary to give a useful answer on the questions submitted.

It should be noted that a court is not legally obliged to follow the preliminary ruling procedure, except as stated in article 234(3) EC Treaty, where a question relating to the interpretation or validity of Community law is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy e.g. a Supreme Court.

Employment and occupation are key elements in guaranteeing equal opportunities for all. They contribute strongly to the full participation of citizens in economic, cultural and social life, and to realising their potential. For nearly 50 years, the European Member States have worked towards achieving a high level of employment and social protection, increased standards in living and quality of life, economic and social cohesion and solidarity. They have also endeavoured to create an area of freedom, security and justice. Discrimination can seriously undermine these achievements, and damage social integration in the labour force and at large.

That is why in 2000 the European Community (EC) enacted two laws (or in EC terminology, Directives) that prevent people in the European Union from being discriminated against on grounds of race and ethnic origin (in short: Racial Equality Directive), and on grounds of religion or belief, disability, age or sexual orientation (in short: Employment Framework Directive). The two Directives define a set of principles that offer everyone in the EU a common minimum level of legal protection against discrimination.

They follow directly from Article 13 of the [Treaty](#) establishing the EC and were unanimously agreed by the EU governments within 18 months of the Treaty of Amsterdam entering into force in May 1999. All EU Member States were due to have transposed the Directives into national laws by the end of 2003. However, this process has not been uniformly applied in the EU countries. For those that did not meet the deadlines for compliance, and had not requested an extension period, the European Community has now initiated infringement procedures to ensure that transposition occurs.

The two Directives do not cover discrimination on the ground of sex. Since 1957, the [EEC Treaty](#) has contained a provision prohibiting unequal pay for men and women, which has been revised in the Treaty of Amsterdam. From 1975, the EU has issued several directives on sex discrimination and the [European Court of Justice](#) has given a great number of judgments on sex discrimination cases. The European Commission refers to sex discrimination as 'gender discrimination', and treats it separately from the other forms of discrimination specified in the Racial Equality and Employment Framework Directives. If you would like to find out more about EC gender discrimination policy, please [click here](#).

From the outset, the EEC Treaty also contained provisions prohibiting nationality discrimination and guaranteeing the free movement of workers within the European Union. These provisions have been strengthened by the Treaty of Amsterdam (Articles 12 and 39). The [European Court of Justice](#) has interpreted these provisions in a great number of cases. If you would like to find out more about EC policy on nationality discrimination, please see either of the following two web links: [Free movement of workers](#) (DG Employment) or [Free movement](#) (DG Justice and Home Affairs).

Concerning disability, the European Union adopted a strategy whose purpose is to mainstream disability issues into relevant Community policies and develop concrete actions in crucial areas to enhance the integration of people with disabilities. You can find out more about this EU-wide disability strategy (see [details](#)).