



Europaudvalget EU-konsulent

Dato: 3. september 2008

Subsidiaritetscheck af Kommissionens forslag om gennemførelse af princippet om ligebehandling af alle uanset religion eller tro, handicap, alder eller seksuel orientering

COSAC har anmodet Europaudvalgene i EU-landenes nationale parlamenter om at foretage en vurdering af, om Kommissionens direktivforslag om "gennemførelse af princippet om ligebehandling af alle uanset religion eller tro, handicap, alder eller seksuel orientering"¹, overholder subsidiaritetsprincippet.

Parlamenternes prøvelse skal gennemføres inden for en tidsfrist svarende til den, som er forudset i Lissabontraktaten, nemlig 8 uger fra forslagets offentliggørelse på alle EU's officielle sprog².

Forslagets baggrund og indhold

Forslaget bygger på en strategi, der er udviklet siden Amsterdamtraktaten, om at bekæmpe diskrimination i relation til EU's tværgående mål i forhold til blandt andet Lissabonstrategien. Forslaget er fremlagt som del af "den fornyede sociale dagsorden: muligheder, adgang og solidaritet i det 21. århundrede"³ samt Kommissionens meddelelse om "Ikke-forskelsbehandling og lige muligheder: et fornyet tilsagn"⁴.

Med forslaget ønsker Kommissionen at harmonisere reglerne for beskyttelse af personer mod forskelsbehandling uden for arbejdsmarkedet. Hidtil har EU's

¹ KOM(2008)426

² Det pågældende forslag blev offentliggjort på samtlige sprog den 9. juli 2008 og fristen på det pågældende forslag er den 4. september. Behandlingen af forslaget er forsinket på grund af sommerferie.

³ KOM(2007)640

⁴ KOM(2008)420

regler mod forskelsbehandling været rettet mod arbejdsmarkedet og inden for erhversuddannelserne.

Forslaget er således et supplement til EU's eksisterende rammelovgivning om ikke-forskelsbehandling⁵ og sigter mod at fremme ligebehandling uden for arbejdsmarkedet. På dette område har der hidtil kun været tale om forskelsbehandlingsbestemmelser i forhold til køn, race eller etnisk oprindelse.

Med forslaget forbydes al forskelsbehandling på baggrund af alder, handicap, seksuel orientering og religion eller tro inden for følgende områder:

- social beskyttelse, herunder social sikring og sundhedsydelser,
 - sociale goder,
 - uddannelse,
 - adgang til almindeligt tilgængelige varer og tjenesteydelser (for eksempel boliger)

Direktivet fastsætter en *definition på forskelsbehandling*, som både omfatter direkte og indirekte forskelsbehandling ligesom både chikane og manglende tilpasninger i rimeligt omfang betragtes som en form for forskelsbehandling.

Reglerne skal sikre, at organisationer og personer, der driver forretning ikke diskriminerer personer på baggrund af alder, handicap, seksuel orientering og religion eller tro. Desuden skal det med de nye regler gøres nemmere for ofre for forskelsbehandling at indbringe sager for myndighederne. Bl.a. opfordres medlemsstaterne til at oprette et "ligestillingsorgan" ("equality body"), der skal tage sig af forskellige problemstillinger vedrørende forskelsbehandling, herunder oplyse og yde hjælp i sager om forskelsbehandling.

Direktivet berører ikke nationale foranstaltninger, der er nødvendige af hensyn til den offentlige sikkerhed, den offentlige orden, forebyggelsen af kriminelle aktiviteter, beskyttelse af sundhed samt beskyttelsen af andres rettigheder og friheder.

Forslag bygger på høring

Direktivet er fremsat på baggrund af en offentlig online konsultation, hvor Kommissionen har konsulteret virksomheder, sociale partnere samt NGO'er. Derudover blev flere studier og rapporter samt resultaterne fra en

⁵ Direktiv 2000/43/EC, 200/78/EC, 2004/113/EC

Eurobarometerundersøgelse taget i betragtning under formuleringen af direktivet.

Eurobarometerundersøgelsen viser, at 77% af europæerne støtter lovgivning, som beskytter mod forskelsbehandling, når det gælder undervisning og 68% af europæerne støtter beskyttelse mod forskelsbehandling vedrørende adgang til almindeligt tilgængelige varer og tjenesteydelser. Resultaterne fra den danske del af Eurobarometerundersøgelsen er vedhæftet.

Subsidiaritet og proportionalitet

Hensigten med forslaget er at indføre mindsteregler for beskyttelsen af personer, som udsættes for forskelsbehandling baseret på religion eller tro, handicap, alder eller seksuel orientering. Forslaget vedtages på grundlag af artikel 13 i TEF, hvilket betyder at medlemsstaterne kan indføre strengere bestemmelser end de i direktivet indeholdte.

Direktivet pålægger ikke medlemsstaterne at ændre i national lovgivning for spørgsmål, der vedrører tilrettelæggelse af uddannelsessystemet og undervisningens indhold, anerkendelse af civilstand eller familiemæssig status, adoption og reproduktive rettigheder og andre lignende spørgsmål.

Forslaget berører dermed ikke nationale bestemmelser som f.eks. sundhedsydelser, tilrettelæggelser af uddannelsessystemet eller religiøse aktiviteter ud over, hvad der er nødvendigt for at nå de fastlagte mål.

Forslaget er ikke omfattet af Fællesskabets enekompetence, og skal derfor underkastes et subsidiaritetscheck. Det centrale spørgsmål i den forbindelse er, om den påtænkte handling bedst opnås på medlemsstats- eller EU niveau?

Ifølge EF-traktatens artikel 5 foreskriver subsidiaritetsprincippet, at EU kun skal handle, hvis og i det omfang målene for den påtænkte handling ikke i tilstrækkeligt omfang kan opfyldes af medlemsstaterne, og derfor på grund af den påtænkte handlingens omfang eller virkninger bedre kan gennemføres på EU-plan.

I den forbindelse vurderer Kommissionen, at EU-regler er nødvendige, fordi medlemsstaterne ikke alene er i stand til at nå direktivets mål om at sikre, at der er et minimumsniveau for beskyttelse af personer mod forskelsbehandling på grund af religion eller tro, handicap, alder eller seksuel orientering i alle medlemsstater.

En konsekvensanalyse viser, at der i dag er store forskelle på medlemsstaternes lovgivning på området. Et mindre antal medlemsstater har

allerede fuld beskyttelse, mens de fleste andre har en vis, men mindre omfattende beskyttelse.

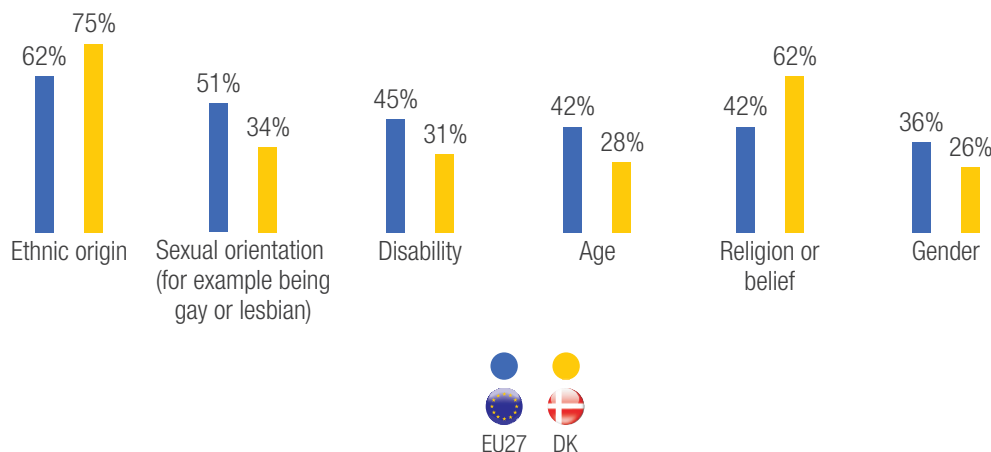
Med venlig hilsen,

Pytrik Dieuwke Oosterhof

1. PERCEPTION AND EXPERIENCE OF DISCRIMINATION

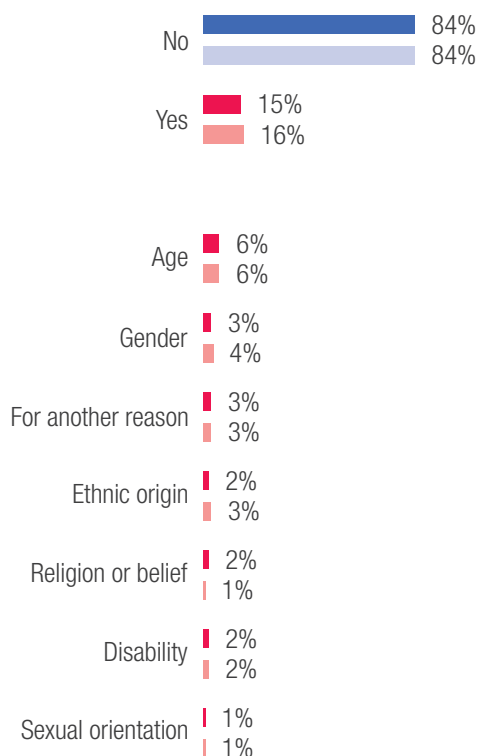
QA1: For each of the following types of discrimination, could you please tell me whether, in your opinion, it is very widespread, fairly widespread, fairly rare or very rare in (OUR COUNTRY)? Discrimination on the basis of...

Answer: Total "very + fairly widespread"



In Denmark perceptions of the extent of discrimination vary considerably, depending on the type of discrimination under consideration. Precisely three-quarters think that discrimination on the basis of ethnic origin is widespread, with this figure being much higher than the equivalent for the EU. Discrimination on the basis of religion or belief is also seen as widespread by a high share of Danes, and considerably more so than it is in the EU. At the same time, discrimination on grounds of sexual orientation, disability, age and gender are all seen as being relatively less widespread in Denmark.

QA3: In the past 12 months have you personally felt discriminated against or harassed on the basis of one or more of the following grounds? Was it a discrimination on basis of...? Please tell me all that apply.
(MULTIPLE ANSWERS POSSIBLE)

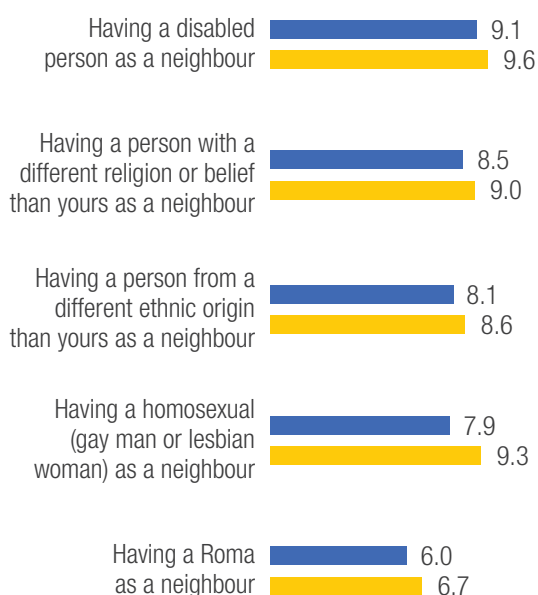


Over a 12 month period, 16% of Danes say that they were discriminated against or harassed on the basis of one or more of the grounds under consideration here. This figure is very close to that for the EU as a whole. In both Denmark and the European Union, the most common basis for discrimination is on grounds of age.

2. ATTITUDES TO DIVERSITY

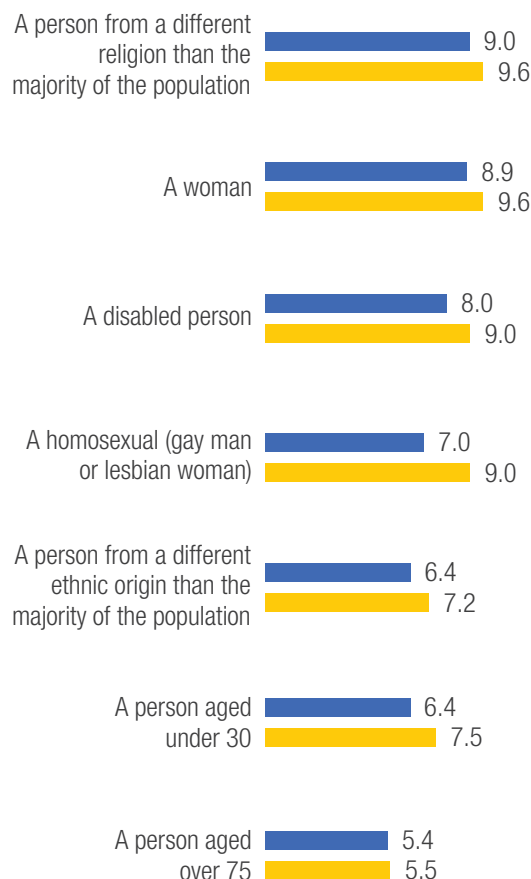
QA6: For each of the following situations, please tell me using this scale from 1 to 10 how you would personally feel about it. On this scale, '1' means that you would be "very uncomfortable" and '10' means that you would be "totally comfortable" with this situation.

"Average score out of 10"



QA8: And using a scale from 1 to 10, please tell me how you would feel about having someone from each of the following categories in the highest elected political position in (OUR COUNTRY)? On this scale, '1' means that you would be "very uncomfortable" and '10' means that you would be "totally comfortable" with this situation.

"Average score out of 10"

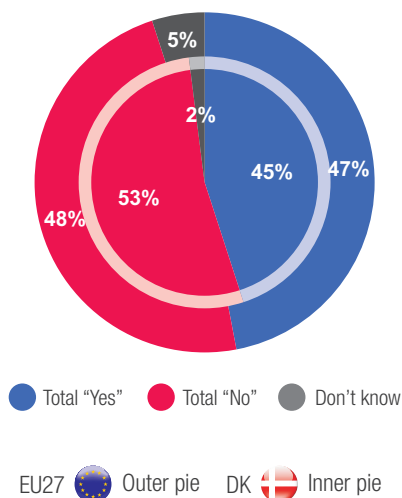


On average, Europeans tend to be more comfortable than uncomfortable with the various neighbour scenarios presented to them. This is even more the case in Denmark, where it is especially notable that respondents are more comfortable than the average European with a homosexual neighbour. Danes are least comfortable with a Roma neighbour, although even here the average result is above the EU level.

In general, respondents from Denmark are more comfortable than the average European with the various scenarios presented to them for incumbents of their highest political office (in the Danish case, Prime Minister). As for the neighbour situation, the largest difference is observed concerning a homosexual person. Regarding age, Danes are relatively more comfortable with a person aged under 30 but are not so for a person aged over 75.

3. COMBATTING DISCRIMINATION

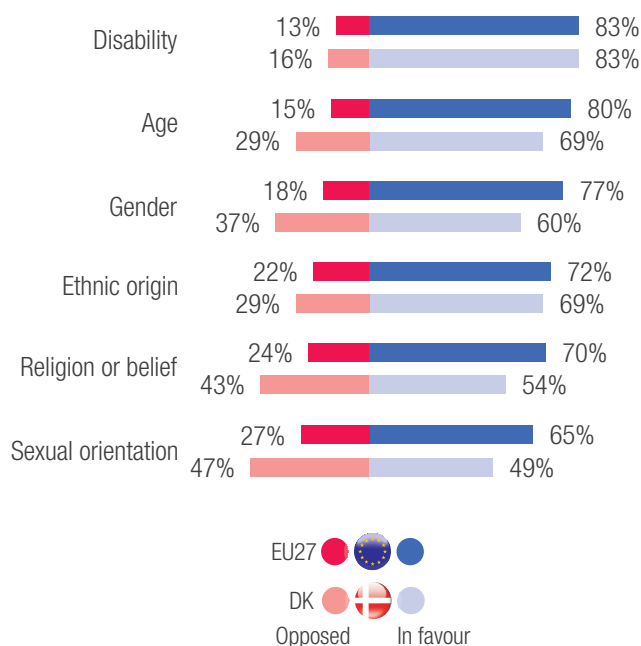
QA11: In general, would you say that enough effort is made in (OUR COUNTRY) to fight all forms of discrimination?



	EU27	DK
	No	No
Total	48%	53%
Gender		
Male	45%	46%
Female	50%	58%
Age		
15-24	53%	50%
25-39	50%	58%
40-54	48%	54%
55+	43%	47%
Education (end of)		
15-	44%	53%
16-19	49%	45%
20+	48%	52%

More Danes think their country does not make enough effort to combat discrimination than express the opposite view. This differs from the EU-wide picture, where results are evenly split. Danish women are more likely than men to think current efforts do not suffice, with the gap here being higher than it is at the EU level. In the EU it is the youngest respondents who are most likely to think not enough effort is made, but in Denmark respondents who are aged 25-39 who are most likely to hold this opinion. Finally, we can see that the group of Danes spending least time in education are as likely to be critical as those spending the most time in education, but this is not true EU-wide.

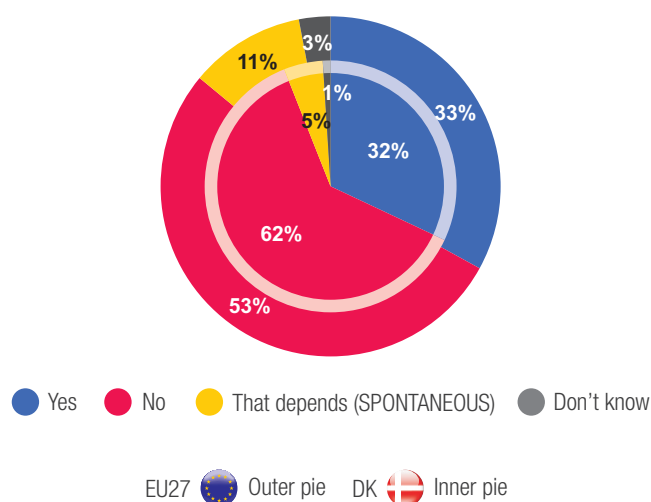
QA9: Would you be in favour of or opposed to specific measures being adopted to provide equal opportunities for everyone in the field of employment? Measures such as, for example special training schemes or adapted selection and recruitment processes, for people depending on their...



In general, most Danes are favourable to equal opportunities measures in the field of employment on all of the grounds under consideration here with over 8 in 10 in favour of measures related to disability. However, there are also several areas where Danish opinion is less favourable compared to opinion across the EU as a whole. This is true for measures based on age, gender, religion/belief and sexual orientation. For the latter, opinion is almost evenly split between favourability and opposition.

4. KNOWLEDGE OF RIGHTS

QA12: Do you know your rights if you are the victim of discrimination or harassment?



	EU27	DK
Yes	Yes	Yes
Total	33%	32%
Gender		
Male	35%	31%
Female	32%	34%
Age		
15-24	35%	20%
25-39	36%	27%
40-54	36%	36%
55+	29%	38%
Education (end of)		
15-	24%	31%
16-19	33%	28%
20+	41%	35%

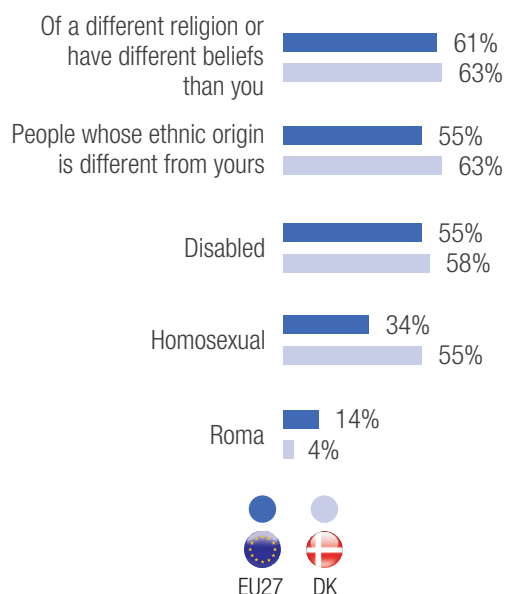
Roughly a third of Danes say that they would know their rights if they were to be a victim of discrimination or harassment: this is very much in line with the EU average. However, Danes are relatively more likely to say that they would not know their rights, with this being due to the fact that fewer give the answer that their knowledge would be dependent upon the circumstances of the discrimination. In Denmark the oldest group of respondents are the most likely to know their rights whereas in the EU they are the least likely to know these. We also see that in Denmark there is a less direct relationship between length of time spent in education and knowledge of rights than is evident in the EU results.

5. CONTEXT

Q47: Do you have friends or acquaintances who are...?

Answer: Yes

Do you have friends or acquaintances who are people whose **ethnic origin** is different from yours?



	EU27	DK
Yes	Yes	Yes
Total	55%	63%
Gender		
Male	57%	63%
Female	52%	63%
Age		
15-24	69%	88%
25-39	63%	77%
40-54	57%	63%
55+	41%	44%
Education (end of)		
15-	37%	42%
16-19	53%	55%
20+	69%	62%

Compared to the average European, Danes are considerably more likely to have friends and acquaintances who are homosexual. Over half of Danes have such friends, with absolute majorities also having friends who have a different religion or beliefs than theirs, a different ethnic origin or who are disabled. Very few Danes have friends who are Roma, with this figure lower than the EU average. As shown by the example of having friends of a different ethnic origin, the diversity of one's social circle is often influenced by socio-demographic factors. In both Denmark and the EU the youngest respondents and those who spent the longest time in education are especially likely to have such friends.