

Research of the FADA at a glance: Positive Action

Overview of the expert opinion

When reviewing the expert opinion, the FADA examines the legal prerequisites, the benefit and the success factors of positive action.

Authors, title and publication year of the expert opinion

Alexander Klose, Andreas Merx: Positive action to prevent or compensate for existing disadvantages under the terms of Section 5 of the General Equal Treatment Act (2010).

What is positive action?

Positive action includes all measures aimed at guaranteeing complete and efficient equal opportunities for all members of society who are disadvantaged or have to suffer from the consequences of past or present discrimination in any other way.

Examples of positive action in the field of labour are

- Purposeful recruiting methods and scholarships for disadvantaged groups of persons,
- Implementation of diversity training programmes at companies,
- In-plant agreements to promote diversity within the workforce,
- Preferential employments of disadvantaged groups of persons and management by objectives,
- Flexible quota arrangements.

Examples of positive action in the field of goods and services are

- Special conditions of soft loans to disadvantaged groups of persons,
- Quotas of allocation of housing preferably to disadvantaged persons,
- Special opening hours in public baths.

What are the legal prerequisites?

According to Section 5 of the General Equal Treatment Act, positive action shall be permitted where the purpose and the proportionality of the respective action meet the requirements of admissibility. The purpose of positive action shall comprise prevention of and compensation for existing disadvantages at a company, in a region, a branch of industry or with regard to the entire situation of society as a whole. Moreover, the proportionality between the extent of existing *de facto* disadvantages and the adverse effects on persons who have to take second place has to be measured.

This means:

- Even in case of equal qualifications, the preferred candidates must not be given absolute priority.
- In concrete, individual cases an objective evaluation has to be made, also taking into account the special and personal situation of those who are not preferred.
- When balancing these aspects, one has to consider both, the type of position, goods or services as well as the question as to whether these are available on the free market.

Further development of legal framework required

Section 5 of the General Equal Treatment Act only permits the implementation of positive action. However, in the opinion of the authors this is not sufficient. According to them, there is a lack of legal obligations and incentives reaching beyond the promotion of women and disabled persons in the public service. Other European countries have already introduced a more mandatory system, as for example by laying down obligations of promotion.

How is positive action to be implemented?

Positive action may trigger envy and fears of loss. Furthermore, disadvantaged groups of persons may be stigmatized again when being reduced to one characteristic. Based on the results of the interviews of the study, the authors refer to the following success factors of positive action:

- Positive action has to be supported by the senior management.
- Both the employees and also the target group have to be included in planning and implementation, and their awareness of the benefit of positive action has to be raised.
- The necessary resources have to be provided.
- Positive action should be integrated into an overall concept, as for example in a horizontal approach to diversity management. Verifiable targets should exist.

Checklist for the implementation of positive action

	Procedure	Success factors
1.	In advance	<ul style="list-style-type: none"> ▪ Clear commitment and support of the senior management ▪ Development of an overall concept (in writing) ▪ Strong personal involvement, conviction and will of responsible persons at all organisational levels
2.	Situation analysis	<ul style="list-style-type: none"> ▪ Identification of barriers, chances and risks ▪ Analysis of the starting position, particularly by statistics as well as by collection and evaluation of data ▪ Implementation of an internal / external diversity check
3.	Statement of targets	<ul style="list-style-type: none"> ▪ Determination of realistic, concrete and measurable targets with due consideration of available resources ▪ Development of target indicators
4.	Strategic development	<ul style="list-style-type: none"> ▪ Development of a long-term and comprehensive overall concept ▪ Provision of sufficient financial and institutional resources as well as of staff and working hours ▪ Involvement of target groups and further relevant stakeholders in the elaboration of the concept and its implementation ▪ Inclusion of the entire staff to the largest possible extent
5.	Selection of appropriate tools	<ul style="list-style-type: none"> ▪ Depending on situation analysis, resources, targets and strategy: Selection of tools which are target group-oriented and/or applicable to multiple target groups as well as general measures aiming at the change of structures
6.	Implementation	<ul style="list-style-type: none"> ▪ Monitoring of the implementation by transparent, systematic and sustained public relations and continuous information on the project, justification of the societal, economic and social advantages of positive action.
7.	Performance assessment	<ul style="list-style-type: none"> ▪ Verification of targets by monitoring, controlling and evaluation.

More information

The expert opinion entitled “Positive action for the prevention or balancing of existing disadvantages under the terms of Section 5 of the General Equal Treatment Act” is accessible =>[here](#), available only in German language.

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